(2000) 01 KAR CK 0100

In the Karnataka High Court

Case No : Writ Petition No. 14986 of 1999

E. Bhaskar Rao APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 12-01-2000

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 81, 95, 95 (1)

Citation : (2000) ILR (Kar) 4718 : (2000) 6 KarLJ 435

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sri Vigneswar S. Shastri, for the Appellant; Sri B. Manohar, Additional Govt. Advocate, for the Respondent

Judgement

1. The instant matter had been listed for preliminary hearing in ''B'' Group. The petitioner is represented by Sri Vigneswara S. Shastry whereas, the respondent 1-State and its authorities, the respondent 2-Deputy Commissioner and the respondent 3-Assistant Commissioner are represented by the learned Additional Government Advocate Sri B. Manohar.

2. In filing the instant writ petition, the petitioner herein had challenged the order passed by the respondent 3-Assistant Commissioner, copy as at Annexure-D to writ petition, order dated 19-5-1998 in R.A. No. 5 of 1997-98 passed by the respondent 2-Deputy Commissioner, copy as at Annexure-G to writ petition and further the consequential notice dated 19-3-1999 issued by the Deputy Commissioner demanding the conversion fine and penalty, copy as at Annexure-H to writ petition.

3. Before proceeding further, I feel that certain facts relevant for the purpose have to be set out and they are as follows:

That the petitioner herein at the first instance had challenged the endorsement dated 28-5-1997, copy as at Annexure-E to writ petition before this Court in W.P. No. 15438 of 1997 and while allowing the said writ petition, this Court remanded the matter to the respondent 2-Deputy Commissioner to hold fresh enquiry and further to pass considered order thereon. That thereafter, the Deputy Commissioner after hearing the parties had passed the impugned order at Annexure-G to writ petition, in passing whereof, while dismissing the revision he had confirmed the order dated 11-2-1997 passed by the Assistant Commissioner, in issuance of the further demand notice at Annexure-H to writ petition, the Deputy Commissioner had also demanded a sum total of Rs. 7,01,283/- towards conversion fee and fine.

4. It was the argument of Sri Shastry that both the respondent 3 at the first instance and the respondent 2 at the second had totally misconstrued the case of the petitioner and it is because of that the latter had passed the order at Annexure-G to writ petition to confirm the order of the Assistant Commissioner and further demanded the conversion fine. It was also submitted by him that both the authorities had taken the poultry farm activities of the petitioner as non-agricultural activities whereas, it was not, and it is thus both the authorities held that the petitioner in constructing godown, hatchery, workers'' quarters etc., under duly obtained licence and building plan etc., from the jurisdictional panchayat was opposed to law inasmuch as the subject land was not converted from agricultural use to non-agricultural use. In this context, he had drawn my attention to what had been defined in Section 2(A)(1)(d) and further the Explanation below Section 81 of the Land Reforms Act. While taking me through the said provisions of the Land Reforms Act, it was also argued by Sri Shastry that all that what the petitioner had constructed were all for the purpose of carrying out the poultry farm activities very well covered under the said provisions of the Act and as such it could not be said that the petitioner was not carrying on the agricultural activities at all. He further placed reliance on Section 95 of the Karnataka Land Revenue Act, wherein it is provided for that, subject to any law for the time being in force regarding erection of buildings and construction of wells or tanks, quarters for the servants, erection of buildings thereon in the agricultural land for better use of the same for the agricultural purpose had been construed as the activities for better use of the cultivation of the agricultural lands. In this context, he had also drawn my attention to a copy of the letter dated 20-2-1986 issued by the respondent 1-Secretary to the Government Animal Husbandry and Fisheries, copy as at Annexure-A to writ petition, wherein the State Government had furnished information particulars to Union of India that the poultry farming in the State has been the status of agriculture and concessions given u/s 81 of the Land Reforms Act for agricultural purposes were inclusive of poultry farming. As I see, the said letter was issued by the respondent 1-State to the Government of India as a reply to letter dated 10-9-1999 from the Government of India. Yet another communication what Sri Shastry relied upon is a clarification letter dated 19-8-1999 issued by the Director of Animal Husbandry, Government of Karnataka, in the month of July 1989 to certain private parties to say that the poultry farm activities are also the agricultural activities and that the clarification was issued by the said Director in

tune with reported decision of the Karnataka Appellate Tribunal in Durgappa and Another v Special Deputy Commissioner, Raichur, and Another. Sri Shastry had also produced before me a xerox copy of an unreported decision in W.P. No. 10280 of 1999, DD: 20-9-1999, wherein the learned Single Judge of this Court while disposing of the writ petition held that the poultry farm and continuation of a quarter could not he considered as part of the poultry farm and as such one need not pay conversion fee in respect of the poultry farm.

5. For the aforesaid reasons Sri Shastry submitted that the impugned order passed by the Deputy Commissioner at Annexure-G to writ petition confirming the order of the Assistant Commissioner dated 19-5-1998 and further the pursuant notice issued by the Deputy Commissioner demanding the conversion fine by his letter dated 19-3-1999, copy as at Annexure-H to writ petition are liable to be quashed.

6. The learned Additional Government Advocate Sri B. Manohar, on the other side however supported the impugned order passed by both the authorities and further the pursuant notice issued by the Deputy Commissioner demanding the conversion fine. He had also pointed out that the respondents have filed detailed objection statement. As I see, in filing the same in para 3 of the objection statement, the respondent-State and its authorities had contended as follows:

"3. Section 95(1) of the Karnataka Land Revenue Act states that there is no exemption for erection of concrete buildings, servants living quarters, godowns to manufacture and store poultry and animal feeds. As per Section 2 of the Act, the term ''poultry farming'' is included for the purpose of declaration to be made before the Registering Authority in certain cases under the provisions of Section 81 of the Act but not for violation of the provisions of Land Revenue Act. The provisions of Land Revenue Act and the Land Reforms Act are different and there will be no relaxation to restrain the unauthorised constructions".

7. On going through the objection statement, the respondents had contended that the provisions u/s 81 of the Land Reforms Act cannot be read into the Land Revenue Act to hold that the impugned order and the pursuant notice are liable to be quashed.

8. Now let me consider the respective side of the case put forth before me. Before proceeding, it appears to me that the provisions in Section 95 of the Land Revenue Act be examined at the outset. To quote the said provisions of Act, it reads as hereunder:

"95. Uses of agricultural land and the procedure for use of agricultural land for other purpose.--(1) Subject to any law for the time being in force regarding erection of buildings or construction of wells or tanks, an occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm buildings, construct wells or tanks, or make any other improvements thereon for better cultivation of the land or its more convenient use for the purpose aforesaid.

(2) If any occupant of land assessed or held for the purpose of agriculture wishes to divert such land or any part thereof to any other purpose, he shall [notwithstanding anything contained in any law for the time being in force] apply for permission to the Deputy Commissioner who may, subject to the provisions of this section and the rules made under this Act, refuse permission or grant it on such conditions as he may think fit:

Provided further that in Dakshina Kannada, subject to any law for the time being in force regarding erection of buildings or the construction of wells or tanks an occupant of dry (punja) land, wet land or garden land who is not:

Provided that the Deputy Commissioner shall not refuse permission for diversion of such land included in the Outline Development Plan or the Comprehensive Development Plan published under the Karnataka Town and Country Planning Act, 1961 (Karnataka Act 11 of 1963), if such diversion is in accordance with the purpose of land use specified in respect of the land in such plan;

(a) a person registered or liable to be registered as an occupant of such land u/s 48A of the Karnataka Land Reforms Act, 1961 (Karnataka Act 10 of 1962); or

(b) a grantee of such land u/s 77 of the said Act may without obtaining the permission required under this sub-section and notwithstanding anything contained therein, divert such land or part thereof to any other purpose after sending a prior notice in that behalf, in the prescribed form to the Tahsildar and paying in the prescribed manner, the fine prescribed under sub-section (7).

(3) Permission to divert may be refused by the Deputy Commissioner on the ground that the diversion is likely to defeat the provisions of any law for the time being in force or that it is likely to cause a public nuisance or that it is not in the interest of the general public or that the occupant is leviable or unwilling to comply with the conditions that may be imposed under sub-section (4).

(3-A) The State Government may, with a view to protecting and improving the environment, by notification declare as Green Belt any area lying within the limits of or within the prescribed distance from the limits of the cities under the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977) of city municipalities and notified areas constituted or deemed to be constituted under the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964) and different distances may be so prescribed for each such city, city municipality, town municipality or notified area.

(3-B) Notwithstanding anything contained in this section, no permission shall be granted to divert any land or part thereof assessed or held for the purpose of Agriculture lying within the limits of the Green Belt to any other purpose.

(4) Conditions may be imposed on diversion in order to secure the health, safety and convenience, and in the case of land which is to be used as building sites, in order to secure in addition that the dimensions, arrangement and accessibility of the States are adequate for the health and convenience of occupiers or are

suitable to the locality and do not contravene the provisions of any law relating to town and country planning or the erection of buildings.

(5) Where the Deputy Commissioner fails to inform the applicant of his decision on the application made under sub-section (2) within a period of four months, from the date of receipt of the application, the permission applied for shall be deemed to have been granted".

9. On a simple reading of the above provision, it is clear that an occupant of land assessed or held for the purpose of agriculture can as well construct quarters for self-occupation or for occupation of his servants as persons working for him and to erect farmhouses, buildings, wells, tanks and any other constructions by way of improvements of the agricultural land and its better use.

10. Now let me turn to the provisions made in the Land Reforms Act of the State. As one can appreciate, under the provisions in the Land Reforms Act u/s 2(1)(d) and Explanation below Section 81 of the Land Reforms Act, the poultry farm activities are equated with the agricultural activities, as asserted by the respondent 1-State while addressing a letter to Government of India as long back as on 20-2-1986 while supplying certain particulars to the Government of India, copy as at Annexure-A to writ petition. To reproduce the same, it reads as here-under:

"Copy of letter AAH SSS dated 20-2-1986 of the Secretary to Government, Animal Husbandry, Fisheries and Forest Department, Karnataka Government Secretariat, Bangalore, addressed to the Secretary to Government of India, Department of Agriculture and Co-operation, Ministry of Agriculture, Krishi Bhavan, New Delhi.

Sir,

Sub: Treating the poultry on part with the status Agriculture.

With reference to the Government of India letter DO No. 43.03/VS/VDT-V II, dated 18-9-1981 on the subject mentioned above, I am directed to furnish the following information particulars to the State of Karnataka.

1. Laws: As per Section 2(a)(d) of KLR Act, 1961 poultry farming has been given the status of agriculture and extended all concessions given u/s 81 of the said Act for agricultural purposes, were inclusive at poultry farming.

2. Electrical: Electricity tariff on poultry tariff on poultry farming has been reduced from 40 paise to 20 paise per unit with a sanction load of 10 hp and below vice verification of KEB B 10 bills 81/82, dated 27-11-1982.

3. Labour: Poultry farming is included in the Schedule to the Minimum Rates Act under Part II agriculture. Further for poultry farming at Rs. 0.50 minimum rate of daily wages also have benefits the vide No. R1.DNN....., dated 30-1-1985.

4. Sales Tax: Government of Karnataka have exempted w.e.f. 1-11-1985 the tax

payable under the Karnataka Sales Tax, 1957 Karnataka Act 25 of 19 by a poultry labour having an annual turnover of Rs. 5.00 lakhs and below on the sale of culled birds and poultry manure vide Notification No. FD 211 CSL Hd (II), dated 31-10-1984.

5. Octroi: Collection of octroi has been abolished in Karnataka State.

6. Institutional Financing: It is being provided through nationalised banks and other financing institutions.

Copies of the relevant applications are enclosed herewith for information.

Yours faithfully, Sd/- Under Secretary to Government, Animal Husbandry, Fisheries, Forest Department".

Let apart that position is made furthermore clear in letter issued by the Director of Animal Husbandry of the respondent 1-State in a communication passed in the month of July 1989. The letter produced at Annexure-B to writ petition. To quote, the same reads as hereunder:

11. Even otherwise, it is not the case of the respondents that the petitioner in constructing the farmhouse, quarter, hatchery for the purpose of running poultry farm had violated any law for the time being in force, for in filing an I.A. subsequent to filing of the writ petition, the petitioner herein had produced additional documents such as building licence dated 17-9-1996 from the Group Panchayat, copy as at Annexure-J to writ petition, permission or licence dated 2-9-1996 from the Taluk Health Officer, copy as at Annexure-K to writ petition, and no objection certificate issued to K.E.B. by the Group Panchayat for supply of electricity power to the poultry farm, copy as at Annexure-M to writ petition.

12. That being so, I find every force in the arguments of Sri Shastry that both the respondent 3-Assistant Commissioner and the respondent 2-Deputy Commissioner had totally misconstrued the law applicable to the case of the petitioner and it is thus they entered into errors in passing the impugned orders, copies as at Annexure-D and G to writ petition and further in issuing pursuant demand notice demanding conversion fee and penalty, copy as at Annexure-H to writ petition.

13. In that view of the matter, I am of the considered view that both Annexure-D and G and further the pursuant notice at Annexure-H to writ petition are liable to be quashed. I order accordingly:

(i) The writ petition, therefore, succeeds and accordingly stands allowed. No cost.

(ii) The registry is directed to send a copy of the order herein made, one to the Chief Secretary to Government of Karnataka and another to the Secretary to Revenue Department, Government of Karnataka.

(iii) It is felt that it is appropriate for them to issue general circular to all the Deputy Commissioners and other Revenue Officers down below, so that they are well-informed about for they may continue to commit such errors in future too in such situations leading to litigations of no consequence.

