

(1982) 11 KAR CK 0022
In the Karnataka High Court
Case No : WA 2669/82

Gopalappa

APPELLANT

Vs

Gurushankariah and Others

RESPONDENT

Date of Decision : 23-11-1982

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a
Karnataka Land Revenue Act, 1964 — Section 95

Citation : (1983) 2 KarLJ 148

Hon'ble Judges : N. D. Venkatesh, J;K. Jagannatha Shetty, J

Judgement

Venkatesh, J.-The appeal is directed against the order dt. 6-7-1981 of the learned single Judge in WP No. 11326/79.

2. In the said writ petition the first respondent herein had challenged the order dt. May 17, 1979 of the Land Tribunal Doddaballapur by which the occupancy right was granted in respect of a land in favour of the appellant. Admittedly the first respondent is the owner of the land.

3. Seeking a writ of certiorari to quash that order of the Tribunal, the contention of the first respondent before the learned single Judge was that the land in question, not being a "land" as defined in the Karnataka Land Reforms Act, 1961 ("the Act"), did not vest in the State Government under S. 44 of the Act. The learned single Judge, after hearing the counsel and examining the material on record, came to the conclusion that the land was a non-agricultural one as on March 1, 1974, the date on which, under S. 44, all tenanted lands vested statutorily in the State Government. Placing reliance on a previous decision of this Court in Narasimha Shetty v. State of Karnataka, (1978) 1 Kar. LJ 208, the learned Judge was of the view that that no occupancy rights could have been claimed by the appellant under S. 45 read with S. 48A of the Act, and the Tribunal also had no jurisdiction to deal with the claim.

4. While challenging these findings it was argued before us that the learned single Judge had erred in placing reliance on an order of the concerned authority

permitting conversion of the land for non-agricultural purpose without taking into consideration the fact that the land was still under cultivation as found by the Tribunal. It was further submitted that the permission accorded to use the land for a non-agricultural purpose did not take away the jurisdiction of the Tribunal to investigate into the nature of the land concerned.

5. The extent of the land is 3 acres 36-guntas. It stands in the katha of the first respondent. It is not disputed and indeed cannot be disputed that the land was converted to non-agricultural purpose as per the order of the Spl. Dy. Commissioner dt. Decr. 8, 1959. In this connection the following Observations made by the Tribunal may be noted:

"The respondent submitted an extract of the IL (Index of land records), which indicates that an extent of 3-14 acres of land was converted as per the order of the Spl. Dy. Commissioner, Rural Dist., Bangalore, as per memo No. ALN 712/C-9613/61-62 dt. 29-1-1963 and also bears a shara to the effect that the remaining extent of 12 guntas was also converted to non-agricultural purposes as per the SDC memo No. D-Dis. A3. ADN-61/58-59 dt. 8-12-1959. He also produced an endorsement in No. RCP-RLI-35/74-75 dt. 6th Septr., 1974 issued by the TMC, Doddaballapur. As the endorsement is stated that subsequent to the order of conversion assessment has been levied by the TMC, Doddaballapur. He also produced an extract of Municipal katha No. 3303/665. Accordingly he stated that the Municipal tax is again confirmed. He stated that he has been paying the Municipal tax levied on this land. He also produced a copy of the licence No. MBL 38/74-75 issued by the TMC, Doddaballapura, to install a saw mill..... He admitted that even now 25 cocoanut trees are standing in this land".

6. Apart from the documents referred to above, the landlord also had produced a rent bond dt. July 11, 1973 said to have been executed by this appellant and another Venkatashamappa taking on lease a house said to be situate in a portion of this land on an agreed rent of Rs. 10 per month.

7. In spite of this evidence, the Tribunal has held that the land is an agricultural land; that the claimant before it was a lessee as on March 1, 1974; that there were a few cocoanut trees on the land; that the pahanies for the year 1967-68 indicated that the claimant's father Gurappa was cultivating the land; and, therefore, It should be presumed that the claimant before it and the members of his family were still cultivators.

8. The learned single Judge, on the contrary, has held that the unimpeachable evidence on record proves beyond doubt that the entire extent of land had been converted into a non-agricultural one in 1960 and so it was not a "land" as defined in sub-sec. (18) of S. 2 of the Act and the Tribunal therefore has no jurisdiction to deal with the claim in question.

In our judgment, the view taken by the learned Judge appeals to be perfectly justified.

Sub-sec. (18) of S. 2 reads as follows:

"(18) "land" means agricultural land, that is to say, land which is used or capable or being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope, but does not include house site or land used exclusively for non-agricultural purpose".

9. As the law stands in the State, the holder of an agricultural land, if he intends using the same for any non-agricultural purpose, should get that land converted for a non-agricultural purpose under S. 95 of the Karnataka Land Revenue Act, 1964 (Land Revenue Act). The land in question has been converted long prior to March 1, 1974 as a non-agricultural land. The learned Judge has found, from the material available, that a few houses had also been built on the land after the land was converted. In this connection the observation made by him at para 5 of the order is as follows:

"In the instant case Exs. B and F are the endorsements given by the Tahsildar about the grant of alienation. According to the endorsement Ex. F the petitioner had paid the conversion fine before 21-11-72. He got the khatha changed into his name. He applied and got licence for construction of houses and that in fact he had constructed four houses. The material on record clearly establish that the land in question was a converted land".

10. Apart from Narasimha Shetty's case, (1978) 1 Kar. LJ 208, relied upon by the learned Judge, there is another decision of this Court in D.S. Lakshminarayana Rao v. Land Tribunal, Doddaballapur, ILR 1980 Kar. 285, wherein also it was held that a land once converted for non-agricultural purpose ceases to be a land as defined under the Act.

11. The two enactments, namely, the Land Reforms Act and the Land Revenue Act are distinct and different. Permission to convert an agricultural land for non-agricultural purpose has to be obtained from the prescribed authority under the Land Revenue Act. A person aggrieved by grant of such permission has to challenge the same before the appropriate authorities prescribed thereunder. He cannot by-pass that remedy and get that order invalidated before the Land Tribunal constituted under the Land Reforms Act. The Land Tribunal has no power to go behind the statutory order according permission to convert the land for non-agricultural purpose under the Land Revenue Act. Therefore, the finding of the learned Judge that the Tribunal had no jurisdiction to deal with the claim of the appellant and the provisions of the Act were not attracted to the land in question is correct and calls for no interference. Therefore, the appeal is rejected.

12. The appellant's counsel seeks a certificate to appeal to the Supreme Court. We are of the view that this case does not involve any substantial question of law of general importance which needs to be decided by the Supreme Court. Therefore, the certificate prayed for is refused.