
(1986) 10 KAR CK 0021
In the Karnataka High Court
Case No : W.P. No. 9007/1986

Habeeb Khandasari Industries

APPELLANT

Vs

Karnataka Appellate Tribunal and Another

RESPONDENT

Date of Decision : 21-10-1986

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95(5)

Citation : (1987) 1 KarLJ 57

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-The petitioner has presented this petition praying for quashing the order of the Karnataka Appellate Tribunal dismissing its appeal against the order of the Deputy Commissioner calling upon it to pay a conversion fine at the rate prescribed in the Rules which came into force long subsequent to the conversion deemed to have been granted as provided in Section 95(5) of the Karnataka Land Revenue Act, ("the Act" for short).

2. The petition has come up in the orders" list. By consent of both the counsel, it is taken up for final hearing and disposed of by this order.

3. The facts of the case, in brief, are as follow: The petitioner is an owner of a Khandasari industry in Mandya City. It owns 9 acres 301/4 guntas of land at Guttalu village in Mandya District. Under sub-section (5) of Section 95 of the Act, the petitioner applied to the Special Deputy Commissioner, Mandya, for according permission for using the land in question for non-agricultural purpose. The application was made on 28th January, 1983. Sub-section (5) of Section 95 of the Act reads:

"95. Uses of agricultural land and the procedure for use of agricultural land for other purpose.

xxx xxx xxx xxx

(5) Where the Deputy Commissioner fails to inform the application 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."

In view of the above provision, the Deputy Commissioner was required to pass an order within four months from the date on which the application was made by the petitioner. Further, it is also clear from the said provision that if the Deputy Commissioner failed to make any order on the said application, the permission for conversion sought for by the applicant would be deemed to have been granted on the expiry of four months from the date on which the application was made. There is no dispute in this case that the Deputy Commissioner did not pass any order within a period of four months. Therefore, by the force of the provision, the permission for conversion sought for by the petitioner, must be deemed to have been granted on 28th May, 1983. The Deputy Commissioner, however, chose to pass an order on 21-1-1985 purporting to grant permission for conversion though such permission was granted by the force of the Section itself. At this stage, it is necessary to state that on the date when the petitioner made the application for conversion as also on the date on which the permission must be deemed to have been granted in view of sub-sec. (5) of Sec. 95 of the Act, the rate of conversion fine prescribed under Rule 107 of the Rules was Rs. 1,400/- per acre, which worked out to a total amount of Rs. 13,658-78. The Rule was, however, amended on 31-7-1984. According to the amended rule the rate of conversion fee prescribed was 0.25 paise per square foot, which works out to Rs. 10,890-00 per acre. The Special Deputy Commissioner, having passed an order on 21-1-1985, as aforesaid, called upon the petitioner to pay conversion fine at the rate of Rs. 10,890-00 per acre. The total amount of conversion fine demanded was Rs. 1,06,245-67. Aggrieved by the said order, the petitioner preferred an appeal before the Karnataka Appellate Tribunal.

4. Before the Tribunal, the petitioner contended that the rate of conversion fee which was in existence as on the date on which deemed conversion was granted alone was payable by the petitioner and he was not liable to pay the conversion fee at the rate which came into force subsequently on 31-7-1984. In support of the above submission, the petitioner relied on a Division Bench judgment of this Court in the case of Sureshchandra C. Mehta v State of Mysore (1969-2 Mys.L.J. 112). This is evident from paragraph 9 of the written arguments filed by the petitioner before the Tribunal. It reads:

"9. The conversion fine that can be levied by the Deputy Commissioner is the rate prescribed under Rule 107 as in force on the date of deemed conversion. This has further been clarified by the Hon"ble High Court of Karnataka in a judgment reported in 1969 (2) Mys.L.J. P. 112. It has been held by the Hon"ble Court that the conversion fine can be levied only in accordance with rules which are operating on the date of deemed permission."

In the case considered by the Division Bench also the Deputy Commissioner levied conversion fee at the rate prescribed subsequent to the date on which statutory permission came to be granted. The Division Bench held that the rate

which was in force on the date on which the permission for conversion was deemed to have been granted alone was payable. Relevant part of the judgment reads:

"It is also clear that the fine imposed by the Deputy Commissioner at Rs. 2000/- an acre is excessive. When the statutory permission came into being on December 4, 1965 the old rules were still operating and the new rules under which the higher fine could be demanded came into being only on February 26, 1966. So, we set aside the direction of the Deputy Commissioner that conversion fine shall be paid at Rs. 2000/- an acre and we direct him to impose the fine which can properly be imposed under the rules which were operating on December 4, 1965."

Notwithstanding the above binding judgment of this Court, relied on by the petitioner before the Tribunal, the Tribunal proceeded to dismiss the appeal. The relevant portion of the order of the Tribunal reads:

"5. The short question before us in this case is that the application was made by the appellant on 28-1-1983. As per Sec. 95(4) of the Act, the Special Deputy Commissioner has to pass orders within 4 months or else it will be treated as deemed conversion. In the instant case, the orders have been passed after a lapse of 2 years. The Assistant State representative states that the appellant has no valid title and the Special Deputy Commissioner was in the process of getting various report of conversion whereas the appellant states that he is entitled for a deemed conversion after a lapse of 4 months. But it is very pertinent to know that the party has slept over the matter till an order of the Special Deputy Commissioner, Mandya was communicated to him on 30-1-85. That means after a lapse of 4 months though deemed conversion he is entitled to he has not exercised his right within the period of limitation. If only after a lapse of 4 months he had approached either the Special Deputy Commissioner, Mandya or this Tribunal with necessary application then rightly he was entitled to. On the other hand, he has utilised that opportunity and the question of now treating this as deemed conversion will not arise."

A reading of the above paragraph at once indicates the untenability of the grounds on which the appeal was rejected. The fact that the petitioner made an application for conversion on 28-1-1983 and the Deputy Commissioner did not pass any orders within a period of four months as provided in Section 95 of the Act, have been noted. The contention of the appellant that he was entitled to presume deemed conversion after a lapse of four months was also noticed; but the Tribunal proceeded to state that the petitioner (appellant before the Tribunal) slept over the matter, though it was actually the Special Deputy Commissioner who slept over the matter. Further, the Tribunal states that though the petitioner was entitled to deemed conversion he had not exercised his right within the period of limitation. There is no provision in Section 95(5) of the Act that the benefit of deemed conversion should be utilised by the party concerned within a particular period. On the other hand, the clear effect of Section 95(5) of the Act

is that the conversion shall be deemed to have been granted on the expiry of four months from the date of application. Thereafter, there is nothing further to be done by the party concerned. He could proceed to use the land for non-agricultural purpose as if permission had been granted, as such permission stands granted by the force of the provisions of the Act itself. Further, it is for the Deputy Commissioner concerned to collect the conversion fine. If the Deputy Commissioner concerned fails to demand and collect the conversion fine at the rate prevailing on the date of deemed conversion, the party cannot be blamed. Therefore, the order of the Tribunal is patently erroneous,

5. What is, however, amazing is that the Tribunal disregarded the binding judgment of this Court directly on the point which was relied on before the Tribunal at the time of arguments as stated in the petition. Further, the said decision was relied on in the written arguments filed by the learned counsel for the appellant, who appeared before the Tribunal, at paragraph 9 extracted earlier. The Tribunal omitted to refer to the said judgment in its order. Such a conduct on the part of the members of the Tribunal is subversive of the Rule of Law and amounts to contempt of the High Court as held by the Supreme Court in the case of *Baradakanta Mishra v Bhimsen Dixit* (A.I.R. 1972 S.C. 2465). Relevant part of the Judgment reads:

"The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the Constitutional Authority of the High Court. This conduct is therefore comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the Court in a particular case, similarly and deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons" the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but is also likely to subvert the rule of law and engender harassing uncertainty and confusion in the administration of law."

In the circumstances, not only the order of the Tribunal should be set aside, but, for the reasons stated by the Supreme Court as above, it is also expedient to initiate appropriate action against the two members of the Tribunal who disregarded the decision of this Court.

6. In the result, I make the following order:

(i) Rule made absolute;

(ii) The order of the Karnataka Appellate Tribunal dated 7-4-1986 (Annexure-C)

is set aside.

(iii) The second respondent is directed to accept the conversion fee at the rate which was prevailing on 28-5-1983 which the petitioner has already remitted pursuant to the interim order of this Court.

(iv) Sri P.M. Appaji, learned HCCP, is permitted to file his memo of appearance in two weeks.

(v) Prepare two carbon copies of this order and send the same to the two members of the Tribunal along with a notice calling upon them to show cause as to why action should not be taken against each of them for committing contempt of this Court, fixing the date of hearing on 24th November, 1986.

Petition is Allowed.