

(2003) 10 KAR CK 0070
In the Karnataka High Court
Case No : Writ Petition No. 28352 of 2001

J. Mahabaleshwarappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-10-2003

Acts Referred:

Citation : (2004) 1 KarLJ 139 : (2004) 1 KCCR 67 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.A. Huddar Associates, for the Appellant; G. Nagarajulu Naidu, A.G.A. for Respondents-1 and 2 and V. Srinivasa Raghavan, for Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner, assailing the correctness of the communication/ letter bearing No. BANA/ARB/BHU/BA/13/98-99/2358,

dated 9/10th February, 1999 vide Annexure-H, has presented this writ petition. Further, he has sought for a direction, directing the respondents 1

to 3 to consider the case of the petitioner for issue of "No Objection Certificate" as the same is required by the petitioner to erect kerosene bunk

in Bellary in Town Survey No. 656, plot No. 3, Ward No. 6, Block No. 5 situated at Idgah Maidan, Bellary.

2. The grievance of the petitioner in the instant writ petition is that, he being a dealer and doing business in kerosene, has obtained a dealership

licence from the Competent Authority namely, the Hindustan Domestic Oil and Gas Company, Bombay. The petitioner intended to erect a

kerosene bunk at Bellary to store kerosene for his requirements in Sy. No. 656, plot No. 3, Ward No. 6, Block No. 5 situate at Bellary. The

respondent 4 herein is the owner of the said land and that the petitioner has entered into an agreement with the fourth respondent by a registered lease agreement in respect of the said plot in the instant case. The fourth respondent has given his consent for erection of the said kerosene bunk on his plot. When things stood thus, the petitioner has given a representation dated 2nd July, 1998 to the second respondent and other Competent Authority requesting for grant of "No Objection Certificate" for the purpose of establishment of kerosene bunk. In pursuance of the representation given by the petitioner, the petitioner received a communication from the second respondent, stating that the proposed plot on which kerosene bunk is sought to be erected has to be converted from agricultural to non-agricultural land and also to install safety devices. Accordingly, the fourth respondent, who was the owner of the proposed plot filed an application dated 18th November, 1997 before the third respondent requesting him for conversion of the plot in question from agricultural to non-agricultural land for the purpose of erection of kerosene bunk, subject to terms and conditions that may be imposed for granting "No Objection Certificate" in respect of the plot in question. Thereafter, the Divisional Fire Officer, Davangere has inspected the plot in question and the Karnataka Fire Services Department has issued no objection for issue of licence for erecting a kerosene bunk, however, subject to adherence to the conditions laid down by them in the "NOC" and the precautionary measures to be taken. The third respondent has called for objections from the public in general vide notification published in the "Loka Darshana" a Kannada daily on 9th January, 1998. In pursuance of the said paper publication, calling for objections from the public, nobody has filed objections. Accordingly, the third respondent recommended for conversion of the plot from agricultural to non-agricultural land for commercial purpose to the first respondent by his communication dated 28th May, 1998. In pursuance of the said recommendation sent to the first respondent, the first respondent after going through the records and after verifying the other materials available on file, has rejected the recommendation sent by the third respondent on the ground that the said land cannot be permitted for conversion from agricultural to non-agricultural land for the reason that adjacent to the said land, there is one Urdu School and also Idgah; and as per the Comprehensive Development Plan (CDP) of the Bellary City, the proposed plot has been

shown as residential zone and not reserved for any public or semi-public purpose. Once it is not reserved for any public or semi-public purpose,

the question of considering the request of the petitioner does not arise especially when there is no provision under the Town and Country Planning

Act. Accordingly, the same was rejected and was communicated to the third respondent herein. The third respondent in turn has issued the

impugned communication dated 9/10th February, 1999 to the petitioner. Feeling aggrieved by the said communication sent by the third respondent

to the petitioner, the petitioner has presented this writ petition.

3. I have heard the learned Counsels appearing for the respondents. After careful perusal of the grounds urged in the writ petition, other materials

placed before the Court as well as the entire original records made available by the learned Counsels appearing for respondents and after careful

evaluation of the records threadbare, it is manifest on the face of record that the first respondent has not committed any error or illegality as such, in

rejecting the recommendation sent by the third respondent by his order dated 25th January 1999 and moreover, it is clear from the Comprehensive

Development Plan of Bellary, which is duly certified by the Bellary Development Authority Town Planning Member, that adjacent to the plot in

question, there is an Urdu School and also an idgah. Once it has been shown as residential zone, it cannot be converted into any other purpose.

From the CDP, it is seen that the plot in question has not been reserved for any public or semi-public purpose. The said plot comes within the

residential zone. Therefore, there is a total bar under the mandatory provisions of the Town Planning Act and the Development Authority Act. The

recommendation sent by the third respondent is contrary to the material on record and contrary to the ground reality of the utilization of the land for

which it was meant. Therefore, the order passed by the first respondent dated 25th January, 1999 is in consonance with the mandatory provisions

of the Act. Hence, I do not find any error or illegality in the order passed by the first respondent. Therefore, the writ petition filed by the petitioner

is liable to be dismissed.

4. Yet another reason as to why the writ petition filed by the petitioner is liable to be rejected at the threshold itself is that, the petitioner, without

challenging the order passed by the first respondent dated 25th January, 1999,

has filed the instant writ petition, assailing only the communication dated 9/10th February, 1999 sent by the third respondent to the petitioner vide Annexure-H. Against the said communication (Annexure-H), the petitioner cannot maintain this writ petition. Once his case has been considered on merits and decided in strict compliance of the mandatory provisions of the Town and Country Planning Act, thereafter, again, the question of considering the request of the petitioner for issuing "No Objection Certificate" is totally uncalled for as it is impermissible under law.

5. Having regard to the facts and circumstances of the case, as stated above, taking into consideration the legal aspect of the matter, as

enumerated above, I do not find any good ground to entertain the writ petition.

6. For the foregoing reasons, the writ petition filed by the petitioner stands dismissed.

7. Learned Government Advocate is permitted to file memo of appearance within two weeks from today.