

(2000) 11 KAR CK 0075

In the Karnataka High Court

Case No : Writ Petition No's. 23224, 23609 to 23611 and 34573 of 2000

K. Ramaswamy

APPELLANT

Vs

The Assistant Commissioner, Mysore Sub-Division, Mysore

RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 94 A, 95 (3) (b)

Citation : (2001) ILR (Kar) 748 : (2001) 1 KCCR 637

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Sri H.N. Narayan, Associates, for the Appellant; Sri H.B. Mahesh, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. Writ Petition No. [35473] of 2000 is filed by the State seeking quashing of the orders of the Karnataka Appellate Tribunal passed in Appeal No. 438 of 1999 at Annexure-A.

2. The other writ petitions are filed by the petitioners in respect of the same subject-matter which relates to a request for conversion of the lands bearing Sy. No. 291/1 measuring 24 guntas, Sy. No. 292 measuring 1 acre 36 guntas, Sy. No. 293/1 measuring 1 acre 35 guntas, Sy. No. 293/2 measuring 1 acre 26 guntas in all 6 acres 1 guntas situate in Kodakola Village of Mysore Taluk. The petitioner made an application seeking conversion of the said lands for the non-agricultural purpose with a view to form housing layout. The Assistant Commissioner rejected the request for conversion on the ground that no proper road provisions are shown in the layout, layout plan submitted for seeking conversion. Being aggrieved by the said rejection, the appeal came to be filed before the Appellate Tribunal in No. 438 of 1999.

3. The Appellate Tribunal on perusal of the material produced, as a matter of fact comes to the conclusion that proper road provisions have been made and

accordingly, held that the view taken by the Assistant Commissioner is illegal and allowed the appeal and directed the Assistant Commissioner to grant the required permission after collecting necessary fee. Accordingly, the petitioner has paid necessary fee by making remittance and also furnished fresh necessary agreements with a required undertaking to be submitted to the authority before granting of conversion. Although, on the part of the petitioner all the required formalities have been completed, the Assistant Commissioner has not acted upon and kept the matter in cold storage. Therefore, the writ petition is filed by the petitioners seeking mandamus against the respondent to consider their applications and grant necessary conversion order.

4. The State feels equally aggrieved by the order of the Appellate Authority has filed the writ petition challenging the order of the Appellate Authority that the order of permitting granting of conversion is illegal since the lands in question come within the green belt area and by virtue of the provisions contained in Section 95(3)(b) of the Land Revenue Act, the request for conversion cannot be granted.

5. On the question of the objection raised by the Assistant Commissioner regarding the road provisions, although, the Tribunal has held on the question of fact that road provisions have been provided, but nonetheless, it is to be appreciated that it is a too premature a stage for the Assistant Commissioner to have insisted upon showing the necessary road provisions in the layout plan. After the conversion, the layout plan prepared has to be approved by the authorities concerned, like Town Planning Authority and the Municipal or Corporation Authorities etc. Therefore, at the stage of conversion, it would be improper to insist for the production of a full-fledged layout plan and also it is not within the jurisdiction of the Assistant Commissioner to insist on the production of such layout plan or to find fault in the layout plan in the manner done.

6. On the question of green belt area, the Government Pleader relied on the ruling of this Court in State of Karnataka Vs. Jayashree, , wherein it has been held that there can be no permission to divert the agricultural land within the green belt area for other purposes. The said decision is rendered while considering the provisions of the Karnataka Town and Country Planning Act in conjunction with the provisions of Section 95 of the Karnataka Land Revenue Act and the said decision deals with the limitations envisaged for grant of permission in accordance with the urban development plan and comprehensive development prepared under Karnataka Town and Country Planning Act.

7. On the other hand the Counsel for the respondent in Writ Petition No. 34573 of 2000 relied on the unreported ruling of this Court in W.P. Nos. 17658 and 17659 of 1999. In the said case it is observed that the State has failed to produce any material to show the issuance of notification u/s 95(3) of the Karnataka Land Revenue Act. This infers that there is no notification as such issued u/s 95(3) declaring the green belt areas concerning each city and town in the State.

8. The Government Pleader relied on Annexure-C, circular issued by the Housing and Urban Development Department dated 1-1-1992. In the said circular instructions at para 3 a total prohibition is made for converting any agricultural land situate within the green belt area prohibiting the officers from granting any such permission for conversion. The Government Pleader also referred to Annexure-D notification issued by the Mysore Development Authority declaring that these lands come within the jurisdiction of the Mysore Development Authority. On the strength of the said notification also, he argued that the lands in question if they come within 10 km range, of the city limits no permission can be granted as the said lands are deemed to be in the green belt area.

9. The distance limit canvassed by the Government is also not borne out by any notification issued with reference to 95(3-A) of the Land Revenue Act. The 10 km distance, of course, is fixed as outer limit for considering the application for regularisation of unauthorised occupation u/s 94A of the Land Revenue Act. However, the said distance limit cannot be imported and read into the provisions of Section 95(3-A) to appreciate the outer limit of green belt area. In fact the provisions of Section 95(3-A) specifically states issuance of the notification by the Government with respect to each city and town municipality or corporation prescribing the different distance limits for declaring green belt area.

10. In the instant case no such notification is produced. On the other hand, in the latest ruling of this Court referred to by the Counsel for the landowner also discloses that no notification was produced in that case also. In this view of the matter, the objections raised by the Government Pleader for rejecting the request for conversion on the ground of land coming within the limits of green belt area is to be rejected and pursuant to the order of the Appellate Tribunal, the Assistant Commissioner is bound to issue necessary conversion certificate by obtaining necessary fee and after verification of compliance of the required formalities, the Assistant Commissioner is directed to dispose of the request expeditiously preferably within three months.

Accordingly, the Writ Petition Nos. 23244, 23609 and 23611 of 2000 are allowed and writ petition filed by the State in Writ Petition No. 34573 of 2000 is dismissed.

The Government Advocate is permitted to file memo of appearance within four weeks.