

(2017) 02 KAR CK 0120

In the Karnataka High Court

Case No : 200561 of 2016 & 200013 of 2017

MOHAMMED FAIZUDDIN

APPELLANT

Vs

THE SECRETARY TO THE

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

[Karnataka Land Revenue Act, 1964](#), [Section 92](#) - Grant of Alluvial land vested in Government

Citation : (2017) 02 KAR CK 0120

Hon'ble Judges : ARAVIND KUMAR, B.A.PATIL

Bench : DIVISION BENCH

Advocate : LIYAQAT FAREED USTAD, R.V. NADAGOUDA AAG

Judgement

1. This intra-Court appeal is directed against the order dated 25.11.2016 passed in Writ Petition Nos.205512-13/2016 whereunder learned Single Judge has declined to quash the endorsement dated 09.01.2015 - Annexure -E and endorsement dated 09/19.01.2015 - Annexure -F issued to petitioners by second respondent.

2. We have heard the learned Advocates appearing for parties and perused the records.

3. Petitioners filed an application on 18.04.2014 under Section 92 of the Karnataka Land Revenue Act, 1964 (for short "Act") seeking for conversion of agricultural land bearing Sy.No.32/2 Khata No.202 measuring 03 Acres 16 Guntas and Sy.No.32/5, Khata No.202 measuring 03 Acres 16 Guntas, both situate at Mupta Village, Chittapur Taluk, Kalaburagi District, which were said to have been purchased under two sale deeds dated 26.11.2013 - Annexures-A and B respectively. Said applications were accompanied by relevant documents and No-Objection Certificates issued from the concerned departments. Jurisdictional Revenue Inspector conducted spot inspection and submitted a report on 24.04.2014 to third respondent who in turn forwarded the same to jurisdictional Assistant Commissioner on 30.06.2014 with a recommendation that said lands in

question can be converted to non agricultural - residential purposes as sought for, vide Annexures -C and D. Second respondent issued an endorsement dated 09.01.2015 and 19.01.2015 to the petitioner declining to accede to the prayer of petitioners on the ground that said lands would fall within the "National Investment and Manufacturing Zone, Kalaburagi (NIMZ)" and a report to said effect had been submitted before State Cabinet on 28.11.2014 and State Government had proposed to establish Industrial Zone in Chittapur. In other words, second respondent - Deputy Commissioner declined to entertain the prayer of petitioners. Hence, petitioners being aggrieved by these two endorsements approached this Court, which was examined by learned Single Judge and on the ground of petitioners having an alternate remedy of appeal under Section 49 of the Act, dismissed the writ petitions by reserving liberty to the petitioners to avail alternate remedy of appeal. Hence this intra-Court appeal.

4. It is the contention of Sri.Liyaqat Fareed Ustad learned Advocate appearing for appellant that under similar circumstances namely, when similar endorsement came to be issued by the Deputy Commissioner, it came to be set aside by learned Single Judge of this Court by order dated 05.11.2015 in Writ Petition No.200764/2015 and same was also affirmed by Division Bench of this Court in Writ Appeal No.200383/2015 and pursuant to the same, conversion orders have been passed in favour of applicant therein and as such there was no justification for second respondent in the instant case to decline the prayer of the petitioners. He would also elaborate his submission by contending that impugned endorsements are contrary to the provisions of the Karnataka Land Revenue Act, 1964 namely, Section 95(5) which is mandatory and in the event of jurisdictional Deputy Commissioner declining to entertain the application within a period of four months from the date of submission, deeming provision would come into operation and such exercise having not been undertaken, impugned endorsement having been issued beyond the period of four months, it is contrary to Section 95(5) of the Act as well as decision of this Court. Hence, he seeks for setting aside the order of learned Single Judge and prays for allowing the writ petitions by quashing the impugned orders.

5. Per contra, Sri.R.V.Nadagouda, learned Addl. Advocate General appearing on behalf of the State would support the order under challenge to contend that petitioner is having alternate remedy of filing an appeal before the Karnataka Appellate Tribunal under Section 49 of the Act and without availing said remedy, petitioners had invoked extraordinary jurisdiction of this Court and as such learned Single Judge has rightly declined to entertain the writ petitions and nonavailment of efficacious and alternate remedy is a good ground to decline the relief sought for, that too, by exercising extraordinary jurisdiction of this Court.

6. In the light of the rival contentions raised, we have examined the case papers on hand and we find that under similar circumstances where an application for conversion of land under Section 95(2) of the Act had been submitted and was not considered, this Court had exercised extraordinary jurisdiction to quash the

impugned endorsement therein. In fact it would be apt and appropriate to note that endorsement issued which came to be quashed by learned Single Judge under identical circumstances was also beyond the period of four months and it is in that back ground, learned Single Judge therein had observed that if the provision of law contained in KLR Act and consideration of the same as made by this Court is kept in view, provision contained in sub-section (5) of Section 95 of the Act would indicate that if an application is submitted seeking conversion of land and if no decision is taken, request as made would be deemed to have been granted and as such it came to be held that Deputy Commissioner himself was required to take a decision thereof, as to whether on the date of his taking the decision whether deemed provision had come into effect and whether he was required to pass orders or not and on account of such exercise having not been undertaken by the Deputy Commissioner, learned Single Judge in Writ Petition No.200764/2015 by order dated 05.11.2015 had quashed the impugned endorsement therein. In fact, observations made thereunder would be of relevance to the facts on hand and as such it is extract herein below ; - "7. If in that light, the Deputy Commissioner was to dispose of the application, it would be incumbent on the Deputy Commissioner to keep in view the position of law and thereafter, come to a conclusion. Therefore, even in the light of the direction issued by this Court to dispose of the application within one month, the Deputy Commissioner himself was required to keep in view of the provision of law and come to a conclusion that as on the date of his taking decision whether the deemed provision had come into effect and whether he was required to pass his orders in accordance with law which had come into effect as on that day. Therefore xxx cannot be denied"

(emphasis supplied)

It has been further held that reason for rejection for not entertaining application of the petitioners for conversion of agricultural lands to non agricultural residential purposes was that said lands including other adjacent lands are required for NIMZ - National Investment and Manufacturing Zone and same would fall within said zone and no notification to acquire said lands or change of the zonal pattern in that area had been issued. It was also noticed as under ;

"8. If the said decision xxx has been issued. That apart, as noticed, a period of four months relating to the application made by the petitioner had come to an end on 15.02.2014 whereupon the right for conversion had vested in the petitioner. The process xxx deeming provision."

This order of learned Single Judge was affirmed by Division Bench of this Court in Writ Appeal No.200383/2015 on 16.02.2016 and as such it had reached finality.

7. Keeping the above principles in mind, when facts on hand are examined, it would disclose that impugned endorsements 09.01.2015 and 19.01.2015 - Annexures -E & F has been issued rejecting the request of the petitioner for conversion of land from agricultural purposes to non agricultural residential

purposes on the ground that said lands would fall within the zone of National Investment and Manufacturing Zone which reason is similar and identical to the one which was the subject matter in Writ Petition No.200764/2015 and impugned endorsement undoubtedly had been issued on 09.01.2015 i.e., beyond the period of four months from the date on which the deemed provision would have come into effect. The reason for declining to grant the prayer of petitioner as could be seen from impugned endorsement is that the State is proposing the set-up National Investment and Manufacturing Zone and process has been initiated in that regard and Government of India, Ministry of Commerce and Industries has given its in-principle approval for the said project. However, when the process relating to reserving the land for a particular purpose has not blossomed itself into decision having been taken or State having taken steps to acquire land for the said purpose as on the date writ petitioner submitted his application, right of petitioner to seek for conversion of land cannot be scuttled or it cannot be gainsaid by the State that petitioner does not have any such right to such conversion of the lands. In fact petitioner has submitted his application in the instant case on 18.04.2014 with all relevant documents and No- Objection Certificates obtained from the concerned departments and said right to claim deemed conversion accrued to the petitioner immediately after four months period was over and as such respondent by the impugned endorsement could not have rejected the request of the petitioner on the ground that State Government is proposing to set up National Investment and Manufacturing Zone. In fact a right had accrued to the petitioner immediately after completion of four months i.e., 18.08.2014 in view of the deeming provision i.e., Section 95(5). Hence, impugned endorsements cannot be sustained.

8. Insofar as contention raised by Sri.R.V.Nadagouda, learned Addl. Advocate General appearing for State that availability of alternate remedy is a good ground to decline the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India when examined in the background of the facts obtained in the present case, we are not inclined to accept the same, inasmuch as, under similar circumstances when identical endorsement came to be issued, this Court had exercised the extraordinary jurisdiction and quashed such endorsement. As such, driving the petitioner to avail alternate remedy would only be an exercise in futility and as such, we are of the considered view that learned Single Judge ought to have exercised extraordinary jurisdiction and ought not to have dismissed the writ petition on the ground of availability of alternate remedy. In the peculiar circumstances of the case, we are of the opinion that exercise of jurisdiction under Article 226 of the Constitution of India was called for and this Court being an appellate Court and these proceedings being continuation of original proceedings, impugned endorsements deserve to be quashed. Hence, we proceed to pass the following: ORDER

(i) Writ Appeal is hereby allowed.

(ii) Order dated 25.11.2016 passed in Writ Petition Nos.205512-13/2016 is

hereby set aside.

(iii) Writ Petition Nos.205512-13/2016 are hereby allowed and endorsement bearing

"VERNACULR MATTER OMITTED"dated 09.01.2015 - Annexure-E and No. "VERNACULR MATTER OMITTED"/94/2014-15 dated 09/19.01.2015 - Annexure-F passed by second respondent are hereby quashed.

(iv) Second respondent is hereby directed to examine application submitted by petitioner in the light of observations made herein above and keeping in mind the observations made in W.P.No.200764/2015 dated 05.11.2015 and accord permission to the petitioner if there is no other impediment under any other law.

(v) Said exercise shall be undertaken by second respondent expeditiously at any rate, within two months from the date of receipt of copy of this order.

(vi) No costs. Ordered accordingly.