
(1990) 02 KAR CK 0015
In the Karnataka High Court
Case No : W.P. No. 2114/1984

M/s. Manipal Industries Ltd.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-02-1990

Acts Referred:

Karnataka Industrial Areas Development Board Act, 1961 — Section 3(1)
Karnataka Land Reforms Act, 1961 — Section 79B

Citation : (1991) 1 KarLJ 14

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-This writ petition is directed against the notification issued by the Special Deputy Commissioner who is the 3rd respondent herein, a copy of which is Annexure-S under Section 79-B of the Karnataka Land Reforms Act, 1961 (in short "the Act, 1961").

2. The petitioner is an industrial enterprise holding a total extent of lands measuring 63 acres and 64 cents. The lands were purchased by the petitioner under a registered sale deed dated 3-5-1962 for valuable consideration and a copy of the sale deed is Annexure-A. Even at the time of purchase of the said lands, the lands were being used for industrial purpose by the vendor and the lands continued to be so after the petitioner purchased the same. The petitioner proceeded to set up some more industries on the purchased lands and according to the petitioner, the lands had been put to use continuously for industrial purpose only. On 15-6-1984, a declaration in Form No. 30 was filed by the petitioner wherein it was described that the entire lands had been in possession and enjoyment of the petitioner for non-agricultural purpose and particularly for the installation of the Tile Factory machineries and equipments pertaining to M/s. Madi Tile Works, which carried on the activity of stocking, removal of clay and for providing raw-materials for the purpose of cutting wood and clay necessary for running the tile industry. In the said declaration it was also clearly stated that similar activity was being carried on since 1962 by the predecessor in title. It was further mentioned in the said declaration that in regard to items 38 to 56 of

Annexure-A therein, the petitioner had already moved the Assistant Commissioner, Coondapur to permit conversion of lands for non-agricultural purpose under the provision of the Karnataka Land Revenue Act, 1964 (in short "the Act, 1964") since the petitioner intended to expand its business activity.

3. It is stated that after an application was made by the petitioner on 30-5-1974 to the Assistant Commissioner, Coondapur in accordance with Section 95 of the Act, 1964, though it was acknowledged by the Assistant Commissioner on 30-5-1974 calling upon the petitioner to produce "No Due Certificate" along with the application and accordingly the petitioner re-presented the application together with "No Due Certificate" on 15-6-74, it was only on 22-6-1977 an endorsement was issued by the Assistant Commissioner which was served on the petitioner on 24-6-1977 rejecting the request of the petitioner for grant of conversion. It is stated that by virtue of efflux of statutory period, the lands mentioned in the application ceased to be agricultural in character and conversion was deemed to have been granted. Meanwhile, after the declaration was submitted by the petitioner in Form No. 30 on 15-6-1974, a Government Notification dated 27-8-1979 was published in the Karnataka Gazette of 6th September, 1979 and the same reads as follows in respect of a total extent of lands measuring 63 acres and 64 cents:

"No. CI 94 SPQ 79(I). In exercise of the powers conferred by Section 3 of the Karnataka Industrial Areas Development Act, 1961 (Karnataka Act 13 of 1966) the Government of Karnataka hereby declare the area comprised in survey numbers mentioned in column (2) of the schedule below, to the extent specified in column (3) situated in Cherkady Village,..... Hobli, Udupi Taluk, South Kanara District to be an Industrial Area for the purpose of the said Act, and defines the limits of the said area as specified in the corresponding entries in column (4) thereof."

Thus it is stated that the entire holding of lands of the petitioner came within the sweep of the said notification declaring as an industrial area. The said notification was issued under the Karnataka Industrial Areas Development Act, 1966 (in short "the KIAD Act, 1966"). However, another notification came to be issued under Annexure-S dated 12-9-1983 published in Karnataka Gazette of 15th December, 1983 purported to have been issued under Section 79-B(1)(B)(i) of the Act, 1961 notifying that the petitioner company is not entitled to hold agricultural lands to the extent of 33 acres 12 cents out of the total extent of 63 acres and 64 cents. The petitioner is aggrieved by the said notification.

4. The point for consideration is, whether the notification under Annexure-S dated 12-9-1983 and published in the Karnataka Gazette of 15th September, 1983 deserves to be quashed for the reason that the provisions of Section 79-B of the Act, 1961 are inapplicable in the facts and circumstances of the case.

5. On behalf of the petitioner, it is contended that the lands in question even prior to the purchase made by the petitioner were being put to use for industrial

purpose and after purchase not only the lands were put to use for similar purpose but also for expanding industrial activity and no part of the lands ever remained agricultural in character. It is submitted that the petitioner being a company, made an application for conversion on 30-5-1974 to the Assistant Commissioner, Coondapur in accordance with requirements of Section 95 of the Act, 1964. But ultimately after re-presentation of the application with the required "No Due Certificate" on 15-6-1974, an endorsement was issued by the Assistant Commissioner about 3 years later which is on 22-6-1977 declining conversion. It is submitted that by virtue of lapse of the statutory period, the lands ceased to be agricultural in character and there was deemed conversion of the lands for non-agricultural purpose and therefore, the impugned notification issued in respect of non-agricultural lands was without jurisdiction.

6. The learned counsel appearing for the petitioner relied on the Government Notification dated 27-8-1979 published in the Karnataka Gazette dated 6-9-1979 issued in exercise of the powers conferred by Section of the KIAD Act, 1961 (Karnataka Act 13 of 1966) declaring that the entire holding of the petitioner measuring 63 acres and 64 cents to be an industrial area for the purpose of the said Act and contended that the notification dated 12-9-1983 published in Karnataka Gazette of 15-12-1983 under the Act, 1961 not only runs counter to the notification issued under the KIAD Act, 1966, but also issued in respect of lands which had already lost their agricultural character by virtue of the notification issued under Section 3 of the KIAD Act, 1966.

7. The learned High Court Government Pleader appearing on behalf of the respondents submitted that preceding the issue of the notification dated 12-9-1983, the competent authority had conducted necessary enquiry and had afforded a reasonable opportunity of hearing to the petitioner and after complying with the procedural requirements, had issued the said notification invoking the power vested in it under Section 79-B of the Act, 1961 and therefore, it is not open to the petitioner to make a grievance out of the same.

8. The KIAD Act, 1966 was enacted for the purpose of making special provision for securing the establishment of the industrial areas in the State of Karnataka and generally to promote the establishment of orderly development of industries therein and for that purpose to establish an Industrial Areas Development Board and also for purposes connected with the matters aforesaid. Section 3(i) of the said Act provides:

"The State Government may by notification declare any area in the State to be an industrial area for the purpose of this Act.

(ii) Every such notification should define limits of the area to which it relates."

9. The declaration which is manifest in the notification issued on 27-8-1979 in exercise of the powers conferred by Section 3 of the KIAD Act, 1961 was subsequent to 1-3-74. When the notification was issued covering the entire area of 63 acres and 64 cents as an industrial area, the reasonable inference that

could be drawn is that the Government intended and declared that the entire lands in question should be brought within the sweep of industrial area for the purpose of the Act. In the said notification dated 27-8-1979, I do not see any description that the lands are of the category of agricultural lands. In the absence of such a description of the lands under the schedule therein, it has to be presumed that the lands which were being put to non-agricultural purpose came to be declared as an industrial area. The Act, 1961 aims at enactment of uniform law relating to land reforms in the State of Karnataka in respect of agrarian relations, conferment of ownership on tenants, ceiling on land holdings and for certain other matters appearing therein. Sub-section (18) of Section 2 of the Act, 1961 defines "land" as follows:

"Land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes sub-servient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and top but does not include house site or land used exclusively for non-agricultural purposes.

Thus it is clear from the definition that the Act, 1961 excludes from its purview land used exclusively for non-agricultural purpose. According to Section 79-B of the Act, 1961, it shall not be lawful for a company to hold any land which means agricultural land. As already noticed, assuming that the lands in question fell within the description of industrial area only consequent upon the issue of notification dated 27-8-1979, it is not possible to reconcile how the State Government issued a notification 4 years later dated 12-9-1983 that the petitioner was holding agricultural lands and that since it is a company it is precluded from holding agricultural lands in view of the prohibition imposed by Section 79 of the Act, 1961. It appears to me that the Government has somehow lost sight of the earlier notification dated 27-8-1979 issued under Section 3 of the KIAD Act, 1961 and by wrongly assuming that the lands were agricultural in character proceeded to issue notification dated 12-9-1983 under Section 79-B(iii) of the Act, 1961. There is no material on record nor a counter to the contrary. In the circumstances of the case, I have to presume that there is a wrong application of law under the provisions of Act, 1961 as a result of which the impugned notification has emanated. It is asserted by the learned counsel for the petitioner that before the impugned notification was issued, the Additional Special Tahsildar had issued a notice dated 11-12-1979 proposing to hold a local inspection of the lands on 20-12-1979 and the petitioner had replied this notice reiterating that the lands were not agricultural but they were used for non-agricultural purposes. The assertion of the petitioner that the lands were being used for non-agricultural purposes even prior to 1962 and for the purpose of tile and brick factory by the petitioner from the year 1962 stands unrebutted. That the application for conversion made by the petitioner on 30-5-1974 and represented on 15-6-1974 came to be rejected on 22-6-1977, is not in dispute. The statutory implication arising out of efflux of time enures to the benefit of the petitioner. Though according to the petitioner, the lands in question were being

used for non-agricultural purpose ever since 1962, why the petitioner made an application for conversion of the lands for non-agricultural purpose needs an explanation. It is possible to hold that the purpose of the application for conversion was more in the nature of a formality in order to utilise the lands for industrial purpose to be more precise because the lands were being already put to non-agricultural purpose. In the circumstances of the case, it is possible to reach the finding that the notification dated 27-8-1979 declaring the entire area as an industrial area was only a recognition of the fact that the lands were only being used for the identical purpose by the petitioner prior to the date of the notification. I therefore hold that the impugned notification is bad in law.

10. For the above reasons, I pass the following order:

The notification issued by the 3rd respondent, a copy of which is Annexure-S dated 12-9-1983 published in the Karnataka Gazette dated 15-12-1983, is hereby quashed, insofar as the petitioner is concerned, in respect of an extent of 33 acres and 12 cents fully described under Annexure-S.

The learned High Court Government Pleader Sri Patel D Karigowda is given two weeks time to file his memo of appearance.

Writ petition allowed.