

(1988) 03 KAR CK 0041
In the Karnataka High Court
Case No : Writ Petition No. 7895 of 1978

Mysore Feeds Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 01-03-1988

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2 A (18), 79 B, 79 B (3)
Karnataka Land Revenue Act, 1964 — Section 83, 95 (2)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20

Citation : (1988) ILR (Kar) 889 : (1988) 1 KarLJ 310

Hon'ble Judges : Prem Chand Jain, C.J.; Shivashankar Bhat, J

Bench : Division Bench

Advocate : H.B. Datar, K.S. Desai and N. Balagopalan, for the Appellant;
Chandrashekharaiyah Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—Petitioner challenges the validity of notification Annexure-E whereby the Special Deputy Commissioner declared certain lands to vest in the State Government u/s 79B of the Karnataka Land Reforms Act. Petitioner firm was incorporated under the Indian Companies Act in the year 1963 and has been carrying on the manufacture of cattle feed, poultry feed and pig feed in its factory at Pantharapalya village, Bangalore South Taluk. To expand its activities, it purchased about six acres 19 guntas of agricultural lands which were adjacent to its factory under a sale deed dated 17-1-1973 out of which, about 19.15 1/4 guntas are stated to have been acquired from it by the Water Board.

2. In August 1973, petitioner applied u/s 95(2) of the Karnataka Land Revenue Act, seeking permission to divert the user of these lands for non-agricultural purposes. The papers seem to have been returned and a fresh application was filed by the petitioner on 30-6-1975. By an order dated 21-1-1976 the authority concerned issued a conversion certificate permitting the petitioner to utilise these lands for non-agricultural purposes as per Annexure-B. It is clear from this order

that the Special Deputy Commissioner had ordered permission as per his proceedings dated 18-11-1975.

3. On coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 (ULCR Act for short), petitioner applied to the State Government seeking exemption u/s 20 of the said Act, which was granted on 10-3-1977. Petitioner states that it obtained a loan of Rs. 6.28 lakhs from Karnataka State Financial Corporation by hypothecating the lands to the said Corporation in the year 1978. By an additional statement, petitioner has averred that it has obtained sanction for its proposed construction of factory buildings from the Bangalore Development Authority for industrial purposes. State Government has also issued utilisation certificate under the ULCR Act based on the report of the Director of Industries. It is clear that vast sums of money has been expended by petitioner for these developmental activities involved in the establishment of its factory.

4. The Karnataka Land Reforms Act 1961 (L.R. Act for short) was drastically amended by Karnataka Act 1 of 1974 to be effective from 1-3-1974. Inter alia, in Chapter-V, Sections 79A to 79C were introduced. For the first time, certain disabilities were created to hold agricultural land. One such disability or ineligibility was against a Company. By virtue of Section 79-B(1)(b)(ii), it was enacted that it was not to be lawful for a company to hold any agricultural land. A company holding agricultural land as on 1-3-1974 is required, within 90 days from the said date, to furnish to the Tahsildar certain particulars who, after an enquiry, has to send a statement to the Deputy Commissioner. The Deputy Commissioner as per Section 79-B(3) shall by notification declare that such land shad vest in the State Government free from all encumbrances and take possession of the land. Sub-section (4) provides for payment of an amount to the owner, in lieu of the vesting of land in the State.

5. Main scheme of the L.R. Act is to vest all tenanted lands in the State Government u/s 44, impose a ceiling on the land holdings and compel the owner himself to cultivate the land. To achieve these objectives, legislature has thought it fit to introduce other provisions such as Section 79A to 79C. But such provisions are bound to result in hardship to those who acted bona fide and purchased lands during the transitional period, as happened in this case.

6. A disabling provision requires strict construction, so that undue hardship could be avoided. A literal or technical construction of the provisions of a statute leading to the deprivation of one's property and affecting adversely trade, industry, commerce and the livelihood of many, has to be avoided, unless such a construction is inevitable. Here, the action taken by the Deputy Commissioner under the impugned order, by recourse to Section 79B of L.R. Act affects an industrial activity of the petitioner and deprives it of its lands, which in turn, also would result in unemployment of several individuals.

7. By the impugned order dated 7-6-1978, purporting to act u/s 79-B(3) of the L.R. Act, the Special Deputy Commissioner declared that the lands in question

"shall be vest" in the State Government, since the petitioner, a company, could not hold agricultural lands with effect from 1-3-1974.

8. A perusal of Section 79B of the L.R. Act shows that it does not deem the land to have vested in the State Government with effect from 1 -3-1974. Vesting provided u/s 79-B(3) is the consequence of an enquiry and declaration made by the Deputy Commissioner under the said provision. The fact that the State is required to pay compensation to the land owner u/s 79-B(4) shows that, the title of the disabled person like the present petitioner-company continues till the date of the declaration u/s 79-B(3). When the statute says that the Deputy Commissioner shall declare that land "shall vest" in the State Government, it can only be prospective, to be operative on making the declaration.

9. There is no specific finding that as on 1-3-1974 lands in question were agricultural lands, as a fact. Petitioner purchased them on 17-1-1973. Petitioner was already carrying on industrial activities in the locality nearby these lands. Being a non-agriculturist by vocation, it can be assumed that the petitioner did not carry on any agricultural operations on those lands (assuming, that, earlier such operations were being carried on by the previous owner) and thus these lands were, in a sense, ceased to be agricultural lands, de facto. Thus viewed, the disability created as on 1-3-1974 by Section 79B of the L.R. Act cannot apply to the petitioner.

10. The learned Government Advocate contended that the Deputy Commissioner has proceeded on the assumption that the lands in question are agricultural, because, the owner sought permission to divert the user of these lands for non-agricultural purposes u/s 95(2) of the Karnataka Land Revenue Act (Revenue Act for short). Relevant part of Section 95(2) reads :-

"95 : Use of agricultural land and the procedure for use of agricultural land for other purposes -

(1) xx xx (omitted) (2) If any occupant of land assessed or held for the purpose of agriculture wishes to divert such land or any part thereof to any other purpose, he shall apply for permission to the Deputy Commissioner who may, subject to the provisions of this Section and the rules made under this Act, refuse permission or grant it on such conditions he may think fit;

(Proviso omitted as unnecessary)" 11. Section 95(2) of the Revenue Act governs the case of a land, (i) assessed for the purpose of agriculture or (ii) which is held for purposes of agriculture. Therefore, the application seeking conversion u/s 95(2), at the most, can lend support to the inference that the land in question was assessed for purposes of agriculture or held for purposes of agriculture. But it is not possible to hold that the said land was actually an agricultural land in the sense, agricultural operations were being carried on normally. Further, Section 83 of the said Revenue Act also leads to the conclusion that, the land revenue is assessed or deemed to have been assessed with reference to the use of the land for purpose of agriculture. It also provides that in case a non-agricultural land is

diverted to be used for agriculture, the land revenue assessed on it is to be modified with reference to its use for purposes of agriculture. However it has to be noted that there is no provision like Section 95(2) requiring permission to divert a non-agricultural land into agricultural land.

12. A reading of Sections 83 and 95(2) of the Revenue Act indicates that levy of land revenue on a land does not necessarily lead to the inference that it is agricultural land. A land not used for any purpose, may still be levied with land revenue and in case such a land is sought to be used for non-agricultural purposes, Section 95(2) operates, requiring permission.

13. A land which is agricultural may cease to be used for agriculture for various reasons. Theoretically, such a land may be capable of being used for agriculture and may fall within the definition of "land" defined in Section 2A(18) of the Karnataka Land Reforms Act. But, the definitions are always subject to context and should be read in a practical manner.

14. In the absence of any specific finding that these lands were being used as agricultural lands, the Special Deputy Commissioner erred in assuming them to be agricultural lands by the sole fact that the petitioner sought permission for using the lands for non-agricultural purposes u/s 95(2) of the Land Revenue Act.

15. There is another aspect of the case to be noted. The State Government acted u/s 20 of ULCR Act by an order dated 10-3-1977 which is 15 months prior to the impugned order of the Deputy Commissioner. Exemption u/s 20 of ULCR Act is to enable holding of Vacant land as defined under the ULCR Act.

16. Definitions of Vacant land" u/s 2(q) of ULCR Act and the definition of "Urban land" u/s 2(o) clearly shows that, it is a land, other than land mainly used for agriculture. Scheme of ULCR Act is to regulate holding of Urban lands. Its aim is not to affect agricultural lands. When the State Government grants exemption u/s 20 of ULCR Act, "the vacant land" to which exemption is granted can be only in respect of non-agricultural land. Exemption to hold such a land is given to the person who has title to hold such a land. In this case, admittedly. State Government granted exemption to the petitioner u/s 20 of ULCR Act on 10-3-1977. Inference is irresistible from this fact that as on 10-3-1977 :- (1) petitioner was holding the lands and this fact was recognised by the State Government and (2) the lands held by the petitioner in respect of which the exemption was granted, were non-agricultural.

17. If the State Government, has, thus recognised the petitioner's possession of these lands and accepted the lands to be non-agricultural, is it open to the Special Deputy Commissioner to go behind these postulates on which the competence of State Government rests to make the order? Special Deputy Commissioner is a subordinate officer of the State Government, He may have an independent statutory executive function to discharge. But, while discharging his executive functions under any statute, he cannot ignore the facts recognised as in existence by the State Government. Otherwise, the very basis of the

hierarchical system in which the executives are to discharge their duties will be in jeopardy, That is why, it is observed in STATE OF KARNATAKA v. SRI KUMARESHWAR SAHAKARI GRUHA NIRMAN ABHIVRIDDI SANGHA LTD. & ANOTHER thus :-

"Special Deputy Commissioner is a subordinate officer of the State Government. He has certain implied disabilities flowing out of his subordination to the State Government. He cannot nullify what the State Government permitted. It is not open to him to assume a fact, contrary to the assumptions of the State Government."

The basic facts involved in that case are similar to the one involved in this case, and we are told that the State Government has not filed any appeal against the said decision.

18. There is also no dispute that already another Deputy Commissioner had made an order u/s 95(2) of the Revenue Act permitting conversion of land-use, in respect of these lands in November 1975 and the petitioner had acted upon it. This is completely ignored by the Deputy Commissioner who made the impugned order in the year 1978.

19. Hence, we hold that, - (i) a notification u/s 79-B(3) of the Karnataka Land Reforms Act is prospective from the date of its issuance ; (ii) while issuing an order/or notification u/s 79-B(3), the Deputy Commissioner has to take note of any order of the State Government made u/s 20 of the ULCR Act and the basic facts assumed for the validity of such an order of the State Government ; and (iii) it cannot be assumed straight-away that when permission for conversion is sought u/s 95(2) of the Revenue Act the land in question was factually used as an agricultural land.

20. In the result, for the aforesaid reasons, we allow this petition and the impugned notification issued by the second respondent in LRC.FR. 1292/77-78 dated 7-6-78 (Annexure-E) is quashed. Rule is made absolute.

In the circumstances of the case, there will be no order as to costs.