

(2014) 11 KAR CK 0329

In the Karnataka High Court

Case No : Writ Petition No. 53359 of 2014 (KLR-RES)

Nithyananda Swamy

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95, 96
Karnataka Town and Country Planning Act, 1961 — Section 14

Citation : (2015) 1 KarLJ 360 : (2015) 4 KCCR 3150

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Ashok Harnahalli, Senior Counsel for Vinayaka B., Advocates for the Appellant; K.S. Ponnana, Additional Advocate General and Kiran Kumar, Additional Government Advocate, Advocates for the Respondent

Judgement

B.V. Nagarathna, J.—Petitioner has sought the following reliefs:

"(i) Declare that the respondents have no jurisdiction or authority under the Karnataka Land Revenue Act, 1964 to demolish a structure/construction built over land which has been included in the Master Plan published under Section 14 of the Karnataka Town and Country Planning Act, 1961;

(ii) Issue a writ of certiorari and quash the order dated 14-10-2014 bearing No. LNDKR/42/2012-13 issued by the third respondent (vide Annexure-II;

(iii) Issue a writ of mandamus directing the respondents not to demolish the existing structures/constructions put up by the petitioner situated in Sy. No. 21/7 (old) measuring 20 acres 35 guntas of land of Kallugopanahalli Village, Bidadi Hobli, Ramanagar Taluk;

(iv) Issue a writ of mandamus and direct the first respondent to regularise the deviations, if any, by levying fine;

(v) Issue a writ of mandamus and direct the Karnataka Appellate Tribunal to

dispose of the Revenue Appeal No. 749 of 2014 expeditiously vide Annexure-G;

(vi) Issue such other writ, order or direction as deemed fit in the circumstances of the case, in the interest of justice and equity."

Learned Senior Counsel appearing for the petitioner at the outset states that the petitioner does not press prayer Nos. 1 and 4 in respect of the land in question bearing Sy. No. 21/7 (old) measuring 20 acres 35 guntas at Kallugopanahalli Village, Bidadi Hobli, Ramanagar Taluk.

2. Briefly stated facts of the case are that in respect of Sy. No. 21/7, petitioner is stated to be in possession of 22 acres 35 guntas. Out of that, 02 acres is converted land. In respect of 20 acres and 35 guntas, petitioner made an application seeking conversion of that land for residential purpose, under Section 95 of Karnataka Land Revenue Act, 1964. By order dated 23-6-2014, the first respondent-Deputy Commissioner, Ramanagara District, Ramanagara rejected the application. Against that order, petitioner has filed Appeal No. 749/2014 before the Karnataka Appellate Tribunal and that the appeal is pending adjudication. When the matter stood thus, the third respondent-Tahsildar, Ramanagara Taluk has issued Annexure-H notice dated 14-10-2014. The said notice reads as under:

The above notice is assailed in this writ petition.

3. I have heard the learned Senior Counsel for the petitioner and the learned AAG instructed by the learned AGA for respondents and perused the material on records.

4. It is contended on behalf of the petitioner that the order of the Deputy Commissioner passed under Section 95 of the Act is a subject-matter of appeal before the Karnataka Appellate Tribunal. During the pendency of that appeal, the third respondent has issued the impugned notice directing the petitioner to stop further construction being put up on the land in question. Learned Senior Counsel states that the petitioner is not putting up any construction on the land in question and that pending disposal of the appeal before the Tribunal, would not take up any further construction activity, on the said land and that the petitioner would await the decision of the Tribunal, in the matter of conversion of the land, for non-agricultural purpose before putting up any construction on the land in question.

5. Submission of the learned Senior Counsel for the petitioner is placed on record.

6. However, the apprehension of the petitioner is that pending adjudication of the appeal by the Tribunal, the Tahsildar has issued the impugned notice in order to take adverse action, such as demolition of the construction, already put up on the land in question. It is therefore under a grave apprehension and threat, petitioner has assailed notice dated 14-10-2014.

7. Learned Senior Counsel stated that when the petitioner is undertaking not to

put up any construction on the land in question and that he would not put up any construction on the land in question, pending disposal of the appeal before the Tribunal/there was no need for the Tahsildar to issue impugned notice particularly when the matter regarding conversion of the land is pending adjudication before the Tribunal. He therefore contended that so long as the Tribunal does not decide the appeal one way or the other, the Revenue Authorities cannot go on issuing notices and threats and therefore, a direction may be issued to the Tribunal to dispose Appeal No. 749 of 2014.

8. Learned AAG appearing for the respondents states that as there is rejection of the application filed by the petitioner under Section 95 of the Act, the third respondent was empowered to issue the impugned notice as in the absence of there being an order of conversion, the petitioner was putting up construction on the land in question, which is in violation of Section 95 of the Act and therefore, action has been initiated under Section 96 of the Act.

9. Be that as it may, as the petitioner categorically states that no construction is being put up on the land in question and that no construction would be put up till the adjudication of the appeal before the Tribunal, the submission of the petitioner made through the learned Senior Counsel being recorded, it would not be necessary for the petitioner to respond to such a notice, at this stage. In the circumstances, a direction can be given to the petitioner to seek early disposal of the Appeal No. 749 of 2014.

10. It is stated at the Bar, the respondents have been served with notice of the appeal and the State Representative would have to make available the records to the Tribunal, so that the Tribunal on perusal of the records and after hearing the parties, could pass the judgment in that appeal. Therefore, the Tribunal is directed to dispose the Appeal No. 749 of 2014 in an expeditious manner. As the parties are represented by their respective Counsel, they are directed to appear before the Tribunal on 1-12-2014 and seek advancement of the appeal from 5-5-2014 to that date. It is needless to observe that both the parties shall co-operate with the Tribunal for early disposal of the appeal. The appeal shall be disposed within a period of three months from 1-12-2014. Till then, the respondent-authorities are directed not take any precipitative action, including any demolition of the construction that has already been put up, pursuant to Annexure-H, notice dated 14-10-2014, particularly when the petitioner has stated before this Court that he is not putting up any construction on the land in question and that no further construction would be made, until the disposal of the appeal before the Tribunal. Since the issue before the Tribunal is with regard to the conversion of the land in question, if any construction has been put up by the petitioner, till date, that would be a subject-matter to be considered, after the Tribunal passes a judgment in the appeal, filed by the petitioner.

With the aforesaid observations and directions, the writ petition stands disposed.