

(2016) 03 KAR CK 0224

In the Karnataka High Court

Case No : Writ Petition No. 7875 of 2015 (KLR-CON)

Nithyananda Swamy

APPELLANT

Vs

The Deputy Commissioner, Ramanagara District and Others

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Karnataka Land Revenue Act, 1964 — Section 95, Section 95(2), Section 95(5)
Karnataka Town and Country Planning Act, 1961 — Section 14
Penal Code, 1860 (IPC) — Section 68

Citation : (2016) 03 KAR CK 0224

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Ashok Haranahalli, Senior Advocate for Vinayaka B., Advocate, for the Appellant; H. Venkatesh Dodderi, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—1. The learned Government Advocate seeks to file statement of objections across the bar, which practice is deprecated. In any event, the petition is considered for final disposal. Therefore, the objections are received.

Heard the learned Senior Advocate Shri Ashok Haranahalli appearing for the counsel for the petitioner.

2. It is the case of the petitioner that he is the owner of property bearing survey No. 21/7 (new Nos. 21/7, 21/12, 21/13, 21/14, 21/15, 21/16, 21/17, 21/18, 21/19, 21/20) measuring 22 acres 35 guntas of Kallugopanahalli, Ramanagaram Taluk, Bidadi District. The petitioner is said to have acquired the property from Jeevan Rao, Pratap, Vinayak and the legal heirs of Srinivas Rao through gift deeds dated 20.1.2003 and 30.12.2004.

The petitioner is said to have applied for and obtained conversion of land user in

respect of an extent of 2 acres for residential purposes in the year 2004 itself. The petitioner has constructed a residential house in the said converted land.

It is claimed that in the year 2009, the Bangalore Metropolitan Region Development Authority (BMRDA) had published a Master Plan in terms of Section 14 of the Karnataka Town and Country Planning Act, 1961 (Hereinafter referred to as the "KTCP Act", for brevity). The said Master Plan included the land bearing survey No. 21/7 (old) of Kallugopanahalli village, and the land has been earmarked for residential and commercial purposes. The respondent is said to have issued notice on 12.7.2012 stating that some portion of the non-converted land has been used for non-agricultural purposes in contravention of Section 95 of the Karnataka Land Revenue Act, 1964 (Hereinafter referred to as the "KLR Act", for brevity) and it was contrary to the condition imposed under the said section. It was also directed that the petitioner shall use the land only for its original purposes and that he was required to remove structures which had been put up in the land which was not converted for non-agricultural use.

Since the land had been included in the Master plan and with an intention to use the land the petitioner is said to have filed an application on 21.1.2014 before the Deputy Commissioner, Ramanagaram, requesting conversion of the remaining extent of land measuring 20 acre 35 guntas under Section 95(2) of the KLR Act. The application had been scrutinized and accepted by issuance of an acknowledgement dated 24.1.2014.

It is claimed that the petitioner had issued a reply to the notice issued on 3.9.2013 dated 21.2.2014, bringing to his attention that the land had been earmarked for non-agricultural purpose in the Master Plan. However, the respondent had passed the impugned order dated 23.6.2014 refusing permission for conversion of the land on the ground that it was likely to cause public nuisance. It is the further case of the petitioner that the first respondent had failed to consider the application filed by the petitioner within the prescribed time and therefore, the land is deemed to have been converted under Section 95(5) of the KLR Act.

Therefore, aggrieved by the order of the first respondent, he had filed an appeal in No. 749/2014 before the Karnataka Appellate Tribunal (KAT). The appeal was admitted, but during the pendency of the appeal, the third respondent had issued a notice alleging that the petitioner was putting up further construction in the non-converted land and directed the petitioner to stop further construction. Thereafter, it is the claim of the petitioner that the respondents sought to demolish the structures. The petitioner was therefore constrained to approach this court in WP 53359/2014, by order dated 18.11.2014 and this court had directed the Tribunal to dispose of the appeal within a period of three months from 1.12.2014 and the respondents were directed not to take any precipitative action of demolition. The appeal was heard and the impugned order was passed on 24.4.2015.

The Tribunal has affirmed the order of rejection of the application seeking conversion of land user accepting the reason assigned that it was likely to cause public nuisance.

3. The learned Senior Advocate Shri Haranahalli would contend that the first respondent had no jurisdiction to refuse the application given the sequence of events. In that, the application seeking conversion had been made on 20.1.2014 and the same ought to have been either allowed or rejected on or before 20.4.2014, where as the order rejecting the application has been passed on 23.6.2014. Therefore, the said order is a nullity and by sheer efflux of time, under section 95(5) of the KLR Act, conversion is deemed to have been granted and respondent No. 1 had no choice, but to issue a Conversion Certificate. This is especially so when in the Master Plan, the land in question falls under the residential and commercial zone and therefore, there was no escape from considering the petitioner's request.

The further contention that it was likely to cause a law and order situation on the basis of a criminal case that may have been instituted against the petitioner, would hardly be a justifiable reason to hold that there is likely to be a law and order situation in the absence of any material placed on record to demonstrate that it has indeed caused a law and order situation in the petitioner seeking to establish an Ashram in the subject lands. It is this which is the primary theme of the present petition in seeking that the orders impugned be set at naught and there be a direction to the respondents to grant a conversion certificate.

4. The State Government has filed statement of objections only to reiterate the stand taken by the respondents in refusing the application of the petitioner, namely, that the petitioner is engaged in illegal activities in the Ashram and the Regional Commissioner, Bangalore has even submitted a report to the Principal Secretary, Home Department of a series of illegal activities and public nuisance that has been caused by the petitioner; that the petitioner is running a school without sanction or permission from the Government; that he was also arrested under Section 107 of the Code of Criminal Procedure, 1973; that the conversion of the land use would be against the interest of the public; and that the petitioner who claims to be a god man is causing disturbance in the vicinity of the village and hence it is against the law.

The State Government seeks to rely on the definition of "public nuisance" as contained in Section 68 of the Indian Penal Code, 1860, to possibly urge that the petitioner would fit the definition of "public nuisance". It is also claimed that the Deputy Commissioner is vested with the power to refuse permission and therefore, the refusal of permission cannot be characterized as being illegal or irregular. It is for good reason that the petitioner has been denied permission to convert the land as there are large number of members of the public who are opposed to the activities of the petitioner and they had displayed their displeasure and protest against the petitioner functioning anywhere near their village and therefore, the apprehension of breach of public tranquility is writ

large in the proposed venture of the petitioner and therefore, the State Government is justified in refusing such permission.

5. As already pointed out by the learned Senior Advocate, the law mandates that any application for conversion ought to be granted or rejected within the time prescribed. The failure to do so would by operation of law and a deeming fiction enable the applicant to claim a deemed conversion and given the sequence of events in the present case on hand, it is evident that the respondents had failed to abide by the time frame prescribed under the provisions namely, Section 95(5) of the KLR Act and hence by operation of law, the conversion order is deemed to have been granted. Hence, the belated claim of the State is also not supported by surrounding circumstances except that there were in the past, criminal cases instituted against the petitioner, which may be pending even as on date. Therefore, in the absence of any finding of guilt against the petitioner, he cannot also be characterized as a criminal in the absence of a conviction, and only with reference to any criminal case which has not attained finality.

6. The Government Advocate seeks to place reliance on the so-called Karnataka Sakaala Services Act, 2011 and (Amendment) Act, 2014, whereunder the provision of Services within the stipulated time would start from the date when the application for service is submitted to the designated officer and duly acknowledged by him. The said service shall be rendered in accordance with the time prescribed under the Schedule to the Act. Insofar as the Revenue Department is concerned, the Schedule to the Act prescribes time for the designated officer to pass appropriate order insofar as the conversion of agricultural land, as being 120 working days. Therefore, it is the endeavour of the learned Government Advocate to submit that if the second Saturdays and Sundays and other general holidays are excluded in computing 120 working days, which would be in consonance with sub-section (5) of Section 95 of the KLR Act, which prescribes four months, as the period within which the order should be passed. If this is taken into account, the endorsement issued is well within time. Even if this contention is taken into account, having regard to the fact that an order is ultimately passed only as on 23.6.2014, that is well beyond five months and if one second Saturday and four or five Sundays in each month are taken into account, it would still be beyond the time prescribed. Even though no such calculation is furnished, the said contention does not advance the case of the State.

Therefore, the petition is allowed. The impugned annexures are quashed. The respondents are directed to issue a conversion order and certificate in accordance with law and after collecting such conversion fee and charges as may be applicable and this shall be done with expedition, in any event, within a period of two months, if not earlier, from the date of receipt of a copy of this order.