

(2015) 07 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition Nos. 17446 to 17453 of 2015 (BDA)

Preethi Ranka and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Karnataka Town and Country Planning Act, 1961 — Section 12, 13, 14-A, 69

Citation : (2015) 4 AKR 848 : (2015) ILR Kar 3881 : (2015) 6 KarLJ 477

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Vivek Holla, Advocate, for the Appellant; A.S. Ponnanna, Additional Advocate General, Laxminarayan, Additional Government Advocate and K. Krishna, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Ram Mohan Reddy, J.—Facts briefly stated are:

(i) Land measuring 2 acres 39.5 guntas (12089.88 square meters) in Sy. Nos. 27/1, 28/4, 28/5 and 28/6 situated at Lalbagh Siddapura Village, Kasaba Hobli, Bengaluru North Taluk, Bengaluru, belonging to the petitioners was designated for use to residential purpose under the Revised Comprehensive Development Plan, 1995, notified under Section 13 of the Karnataka Town and Country Planning Act, 1961 ("Act" for short) by the State Government. In the Revised Master Plan, 2015 with effect from 25-6-2007, the lands in question were designated for use to parks and open spaces.

(ii) Petitioners made an application dated 12-7-2011 invoking Section 14-A of the Act to permit change of land use from park and open spaces to residential, by restoring the designation in terms of the draft Revised Master Plan. That application when considered, public notice issued, procedure followed, led to a recommendation by the respondent-BDA to the State Government favouring the change of land use which when considered led to the order dated 18-11-2014 of

the State Government approving the change of land use following which petitioners deposited Rs. 5,46,600/- in compliance with the demand of the BDA.

(iii) Respondent-BDA, on 24-12-2014 issued a certificate for initial commencement notifying the change of land use to residential purpose, however, the State Government by order dated 13-3-2015, withdrew the order dated 18-11-2014 on the premise that such change of land use was not permissible in view of the order passed in W.P. No. 21436 of 2005, staying all proceeding relating to change of land use under Section 14-A of the Act.

(iv) Section 69 of the Act provides for effect of not acquiring by agreement within five years from the date master plan is published in the Gazette under Section 13 or if proceedings under Land Acquisition Act, 1894 are not commenced within the said period in respect of lands designated for specific purpose, to be deemed to have lapsed.

Sri Udaya Holla, learned Senior Counsel for petitioners does not press the first prayer to quash the order dated 13-3-2015 of the State Government, in the light of the deeming provision under sub-section (2) of Section 69 of the Act.

2. Sri A.S. Ponnanna, learned Additional Advocate General, though, seeks to sustain the order dated 13-3-2015 impugned as being well-merited, fully justified and not calling for interference, nevertheless, since the challenge to the said order being withdrawn, there will be no necessity to consider the submission of the Additional Advocate General. However, learned Additional Advocate General is fair in his submission that sub-section (2) of Section 69 contains a deeming provision, provided relevant facts as mentioned therein are complied with.

3. In the facts and circumstances noticed supra, without having to go into the merit or demerit of the reasons assigned by the State Government to withdraw the order dated 18-11-2014 by order dated 13-3-2015, Annexure-M restoring the designation of the said land for use to parks and open spaces in the Revised Master Plan, 2015, suffice it to consider the case of the petitioner over deemed lapse of designation under sub-section (2) of Section 69 of the Act.

4. Paragraphs 16 and 17 of the Memorandum of writ petition relates to claim for declaration under sub-section (2) of Section 69 of the Act to be deemed lapse of designation of the land as parks and open spaces, while alternative prayer is also in the said direction.

5. Sub-section (2) of Section 69 of the Act reads thus:

"69. Acquisition of land designated for certain purposes in a Master Plan.-(1).....

(2) If the designated land, except land specified for the purpose in clause (b) of sub-section (1) of Section 12, is not acquired by agreement within five years from the date, the Master Plan is published in the Gazette under sub-section (4) of Section 13 or if the proceedings under the Land Acquisition Act, 1894 are not

commenced within such period the designation shall be deemed to have been lapsed."

6. Admittedly, neither State nor BDA acquired by agreement within 5 years from 25-6-2007 the date of coming into force of Revised Master Plan, 2015, published in the Gazette under sub-section (4) of Section 13 of the Act nor that the authorities have initiated proceedings under the Land Acquisition Act, 1894, in that regard, within the period of five years, hence, the designation of the land for use to parks and open spaces is deemed to have been lapsed, by operation of law.

7. In the light of what is noticed supra, petitioners are entitled to a declaration as sought for regard being had to sub-section (2) of Section 69 of the Act. In the result, these petitions are allowed in part. The first relief to quash the order dated 13-3-2015 of the State Government is unnecessary. It is declared that the immovable property measuring 2 acres 39.5 guntas (12089.88 square meters) in Sy. Nos. 27/1, 28/4, 28/5 and 28/6 situated at Lalbagh Siddapura Village, Kasaba Hobli, Bengaluru North Taluk, Bengaluru, designated for use to park and open spaces in Revised Master Plan, 2015 is deemed to have lapsed. Sequentially, it is declared that petitioners are permitted to put to use the land in question, for residential purpose.