

(2016) 03 KAR CK 0240

In the Karnataka High Court

Case No : W.A. Nos. 100403-100406 of 2015 (KLR-CON)

Rajkumar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95(2)

Citation : (2016) ILRKarnataka 3097 : (2016) 3 KCCR 2413

Hon'ble Judges : H.G. Ramesh and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : S.B. Hebballi, Advocate, for the Appellant; K. Vidyavathi AGA, for the Respondent No. 1 to 3; Basavaraj Indi for K.L. Patil, Advocates, for the Respondent No. 4

Final Decision : Allowed

Judgement

H.G. Ramesh, J.(Oral)—These intra court appeals are directed against an order dated 15.12.2014 made by a Learned Single Judge of this Court dismissing the appellant's writ petitions in W.P.Nos.75263 and 75278-280 of 2013. In the writ petitions, the appellant had challenged the endorsement dated 08.12.2011(Annexure-F) issued by the Tahsildar, Bagalkot, rejecting his application dated 21.11.2011 (Annexure-E) filed under Section 95(2) of the Karnataka Land Revenue Act, 1964 ("the Act" for short) to the Deputy Commissioner, Bagalkot District, for grant of permission to divert his agricultural land measuring 4 acres 14 guntas for using it for residential purposes.

2. By consent of Learned Counsel on both sides, the appeals are heard finally on merits and are being disposed of by this order.

3. The Learned Single Judge has dismissed the appellant's writ petitions on the ground that the petitioner's aforesaid application dated 21.11.2011 has not been rejected by the Tahsildar by the impugned endorsement dated 08.12.2011.

4. We have perused the order of the Learned Single Judge and also the

impugned endorsement at Annexure-F. A plain reading of the endorsement will show that the appellant's application has been rejected by the Tahsildar on the ground of non-production of No Objection Certificates from the Town Planning Authority, Local Planning Authority and from Karnataka Water Resources Department. It is stated in the endorsement that No Objection Certificates from the Town Planning Authority and the Local Planning Authority require to be produced as per Government Circular No.RD 56 LGP 2008 dated 17.10.2008. It is further stated that No Objection Certificate from the Water Resources Department is required as the appellant's land is in the list of lands identified for future acquisition for extension of Bagalkot Town.

5. To examine as to whether consideration made by the Tahsildar as per the impugned endorsement is correct or not, it is relevant to extract Section 95 of the Karnataka Land Revenue Act, 1964;

"95. Uses of agricultural land and the procedure for use of agricultural land for other purpose. - (1) Subject to any law for the time being in force regarding erection of buildings or construction of wells or tanks, an occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land or its more convenient use for the purpose aforesaid:

Provided that the farm Building or farm House so erected shall not be more than ten per cent of his holding subject to maximum of such extent of land as may be prescribed.

Explanation. - For the purpose of this sub-section "Farm Buildings" or "Farm house" means a house attached to a farm and constructed in a portion of an agricultural land, used for the residence of the agriculturist or used for the purpose of keeping agricultural equipments and tethering cattle. The house shall be used by farmer for his own use and it shall not be let out for commercial activities to any individual or agency.

(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 notwithstanding anything contained in any law for the time being in force 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 as he may think fit:

Provided that the Deputy Commissioner shall not refuse permission for diversion of such land included in the Master Plan published under the Karnataka Town and Country Planning Act, 1961 (Karnataka Act 11 of 1963), if such diversion is in accordance with the purpose of land use specified in respect of the land in such plan:

Provided further that in Dakshina Kannada District, subject to any law for the

time being in force regarding erection of buildings or the construction of wells or tanks, an occupant of dry (punja) land, wet land or garden land who is not.-

(a) a person registered or liable to be registered as an occupant of such land under Section 48-A of the Karnataka Land Reforms Act, 1961 (Karnataka Act 10 of 1962); or

(b) a grantee of such land under Section 77 of the said Act, may, without obtaining the permission required under this sub-section and notwithstanding anything contained therein, divert such land or part thereof to any other purpose after sending a prior notice in that behalf, in the prescribed form to the Tahsildar and paying in the prescribed manner, the fine prescribed under sub-section(7).

(2-A) Where any occupant of land assessed or held for the purpose of agriculture has diverted such land or part thereof to residential purpose without obtaining the permission of Deputy Commissioner under sub-section (2), prior to 31st day of December, 2008 and, desirous to get such diversion be regularised, shall, apply within the period of one year from the date of commencement of the Karnataka Land Revenue (Amendment) Act, 2011 in such form, along with such fee and penalty, as may be prescribed, to the Deputy Commissioner. On receipt of such application, the Deputy Commissioner may, notwithstanding anything contained in this Act, but subject to the provisions of any other law for the time being in force and subject to such conditions and in such manner as may be prescribed, on production of such evidence as he may require it to be necessary" and after an enquiry, regularise or refuse to regularise except where such land.-

(i) lies in the line of natural drains or course of valley;

(ii) belongs to the State Government or an authority owned or controlled by the State Government or any local Authority;

(iii) coming in the way of existing or proposed roads, inner or outer ring roads, national high ways, by pass over ring roads including those proposed for widening and railway lines, tram ways, mass rapid transit system projects, communications and other civic facilities or public utilities;

(iv) is a forest land;

(v) belonging to another person over which the applicant has no title;

(vi) is reserved for parks, play grounds, open places or for providing any civic amenities;

(vii) or building is abutting to neighbouring property, storm water drains, tank bed areas, river course or beds and canals or below the high tension electric line;

(viii) use is against height restrictions specified in zoning regulations for heritage monuments, aerodromes and defence Regulations;

(ix) not conforms to any clearance from high-tension lines or fire protection measures;

(x) is in the area covered by the Coastal Zone Regulations of the Ministry, Environment and Forest, Government of India;

(xi) regularisation of violation in respect of change of land use shall be made as far as may be in accordance with Section 14-A of the Karnataka Town and Country Planning Act, 1961;

(xii) or development in respect of any building having more than two floors shall be regularised unless.-

(a) a certificate from a Structural Engineer is produced regarding the structural stability of such building;

(b) a No Objection Certificate is obtained from the Fire Force Department.

(xiii) Or unauthorised development or construction made in agricultural zone of approved Master Plan or green belt area declared under Karnataka Land Revenue Act, 1964; and

(xiv) is covered under any other prohibition as may be prescribed.

(2-A A) Burden of proving that the diversion or change of land use was made for residential purpose prior to 31st day of December, 2008 shall lie on the applicant who seeks regularisation of such unauthorised diversion or change of land use.

(2-AAA) All such diversions or change of land use which are not regularised or where applicant does not apply within the time specified in sub-section(2-A) shall be liable to be demolished or brought back to their earlier use and expenses incurred thereon shall be collected from such person as arrears of land revenue.

(3) Permission to divert may be refused by the Deputy Commissioner on the ground that the diversion is likely to defeat the provisions of any law for the time being in force or that it is likely to cause a public nuisance or that it is not in the interests of the general public or that the occupant is unable or unwilling to comply with the conditions that may be imposed under sub-section (4).

(4) Conditions may be imposed on diversion in order to secure the health, safety and convenience, and in the case of land which is to be used as building sites, in order to secure in addition that the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of occupiers or are suitable to the locality and do not contravene the provisions of any law relating to town and country planning or the erection of buildings.

(5) Where the Deputy Commissioner fails to inform the applicant of his decision on the application made under sub-section (2) within a period of four months, from the date of receipt of the application, the permission applied for shall be deemed to have been granted.

(6) Unless the Deputy Commissioner shall, in any particular instance otherwise direct, no application under sub-section (2) shall be recognised unless it is made by the occupant.

(6-A) In Dakshina Kannada District, Kodagu district, and Kollegal Taluk of Mysore District, where any land assessed or held for purposes of agriculture has been diverted or used for any other purposes, before the date of commencement of the Karnataka Land Revenue(Amendment) Act, 1981, the land so used together with the land appurtenant to any building (other than a farm house) therein, not exceeding three times the built area of such building, shall with effect from such date be deemed to have been permitted to be used for purposes other than agriculture.

(7) When any land assessed or held for the purpose of agriculture is permitted under sub-section (2) or is diverted under the provisos to the said sub-section or is deemed to have been permitted under sub-section (5) or sub-section(6-A), to be used for any purpose unconnected with agriculture, the Deputy Commissioner may, subject to such rules as may be made by the State Government in this behalf, require the payment of a fine. No assessment shall be leviable on such land thereafter except under sub-section (2) of Section 83.

(8) The permission for diversion of agricultural land for industrial development, educational institutions, places of worship, a Housing Project approved by the State Government, or for purpose of Horticulture under this section shall be deemed to have been granted when permission for purchase of agricultural land is accorded under section 109 of the Karnataka Land Reforms Act, 1961(Karnataka Act 10 of 1962), for industrial development, educational institutions, places of worship, a Housing Project approved by the State Government, or for purpose of Horticulture as the case may be subject to the payment of fine as may be prescribed.

(9) Whenever any occupant of land assessed or held for purpose of agriculture wishes to divert such land or any part thereof for the purpose of quarrying of minor minerals, whether specified or non-specified in accordance with the rules governing quarrying of minor minerals or stone crushing activity under the Karnataka Regulation of Stone Crushers Act, 2011 (Karnataka Act 8 of 2012), shall make an application along with the fine applicable to the Deputy Commissioner for diversion of such land. On such application, the permission for diversion of such land shall be deemed to have been granted subject to obtaining lease or licence or working permission under the said enactments.

(10) If any occupant of any agriculture land assessed or held for the purpose of agriculture wishes to divert such land or part thereof for the purpose of setting up of solar power generation in accordance with Karnataka Solar Policy 2014-2021 issued in GO.No.EN 21 VSC 2014 dated 22/05/2014 which has been approved by State and Central Governments and which has been approved by the Competent Authority, the permission applied for conversion of such land shall be deemed to have been granted for that purpose so long as they use for purpose for which permission is granted subject to payment of the conversion fine and all such other fees payable if any, in this regard.

Explanation.- For the purpose of this section, "occupant" includes a mulgeni tenant or a permanent tenant.

(underlining supplied)

6. A plain reading of the above extracted Section 95 of the Act will show that the competent authority to grant permission under Section 95(2) of the Act to divert agricultural land to any non-agricultural purpose is the Deputy Commissioner. But, in the present case, the Tahsildar has considered and rejected the appellant's application filed under Section 95(2) of the Act. The rejection is, therefore, contrary to Section 95(2) of the Act. On this ground alone, the endorsement impugned in the writ petitions is liable to be Set-aside. It is not the case of the respondents that the power conferred on the Deputy Commissioner under Section 95(2) of the Act has been delegated to the Tahsildar as provided under Section 195 of the Act.

7. The appellant's application at Annexure-E is under sub-Section (2) of Section 95 of the Act. As per the said sub-section, the Deputy Commissioner shall consider the application for grant of permission for diversion, in accordance with the provisions of Section 95 of the Act and the rules made under the Act. As per the first proviso to sub-Section (2) of Section 95 of the Act, the Deputy Commissioner shall not refuse permission for diversion of any land, if such land is included in the Master Plan published under the Town and Country Planning Act, 1961 and if the diversion sought is in accordance with the purpose of land use specified in respect of the land in such plan.

8. To consider the application filed under sub-Section (2) of Section 95 of the Act, there is no requirement in law to produce any No Objection Certificate from any authority. Government Circular No.RD 56 LGP 2008 dated 17.10.2008, which is referred to in the impugned endorsement and on which reliance is placed for production of No Objection Certificates, has no statutory force as it is not issued in exercise of any power traceable to any provision of the Act or the Rules made under the Act or any provision of the Constitution or any other law. In other words, the circular is not issued by the Government in exercise of any power traceable to any provision of law. Such a circular cannot impose any condition or restriction which is not even imposed under the Act or the Rules, for grant of diversion under Section 95(2) of the Act. On the contrary, to obtain regularisation, under Section 95(2-A) of the Act, of the diversion to residential purpose of any building having more than two floors, Clause (xii) of Section 95(2-A) mandates an applicant to produce a certificate from a structural engineer and also a No Objection Certificate from the fire force department. As stated above, there is no requirement in law to produce any No Objection Certificate from any authority for consideration of an application filed under Section 95(2) of the Act. Therefore, rejection of the appellant's application filed under Section 95(2) of the Act on the ground of non-production of No Objection Certificates is unsustainable in law. However, as per sub-Section (3) of Section 95 of the Act, it is open to the Deputy Commissioner to obtain any information from any

authority to examine as to whether granting of permission for the diversion sought is likely to defeat the provisions of any law for the time being in force or whether it is likely to cause a public nuisance or whether it is not in the interest of general public.

9. For the reasons stated above, in our opinion, rejection of the application by the Tahsildar is wholly without the authority of law, and the Government circular referred to in his endorsement is also without the authority of law. Accordingly, we make the following order:

10. The order of the Learned Single Judge dated 15.12.2014 impugned in these writ appeals is set-aside. The endorsement of the Tahsildar dated 08.12.2011 at Annexure-F is also set-aside. As laid down in Section 95(2) of the Act, the Deputy Commissioner, Bagalkot "strict, who is the competent Authority under the Act, shall consider the application of the appellant strictly in accordance with Section 95 of the Act. The appeals are allowed in the above terms.