
(1994) 09 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 4214 of 1994

Robert D'Silva

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

Date of Decision : 23-09-1994

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95 (4)

Citation : (1994) ILR (Kar) 3119 : (1994) 4 KarLJ 602

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : M.R. Naik, for the Appellant; H.H. Kaladgi, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Saldanha, J.—Heard the learned Counsel on both sides.

2. An interesting aspect of law has arisen in this Petition which concerns the deeming provision contained in Section 95(4) of the Karnataka Land Revenue Act, 1964. The statutory provision prescribes that in the event of non-action on the part of the authorities to whom an application for conversion has been submitted, that the permission is deemed to have been granted on the expiry of four months from the date on which the application has been submitted. Briefly stated, the legislative intent was to the effect that the authority must either grant or reject the permission within an outer limit of four months from the date on which it was submitted. It was quite obvious to the framers of the law that in matters relating to permission for conversion, that there is a degree of expediency involved and that therefore, a specific embargo must be embodied in the Section which enjoins the authority to decide the matter within the time frame of four months. If this is not done, the law prescribes that the permission shall be deemed to be granted and the intention is not far to seek, for the simple reason that when a citizen applies for such conversion, it is presumed that unless there is valid reason for rejecting that application, that the permission ought to be granted and this is precisely the end-result that has been provided for.

3. In the present case, the petitioner applied for conversion on 21-6-1991 and the four month period expired on 21-10-1991. The authorities proceeded with certain enquiries etc., including calling upon the petitioner to produce some documents and to comply with some other requirements and ultimately, as late as on 9-11-1993, an order was passed that since the petitioner had not complied with what he had been asked to do, that his application for conversion stands rejected. It is this order that has been called into question in the present Petition. But the reliefs asked for are slightly different, in so far as the petitioner has asked for a declaration that deemed permission has accrued to him with all consequential benefits.

4. In support of the Petition, Mr. Naik, has submitted that there is absolutely no dispute about the fact that the order of rejection was passed beyond the period of four months and he, therefore, submits that the deemed provision has accrued to his client by virtue of Section 95(4) of the Act. He also places reliance on a Decision of this Court in the case of HABEEB KHANDASARI INDUSTRIES v. KARNATAKA APPELLATE TRIBUNAL AND ANR. 1987(1) KARLJ 45. This Court, while interpreting the provisions of Section 95(4), held that immediately on the expiry of the period of four months in the absence of a rejection order that by operation of law, the permission is deemed to have been granted. Mr. Naik has also relied on another Decision of this Court in the case of Ganapati Mankalu Gouda Vs. State of Karnataka, whereby a slightly different proposition fell for consideration. In that case, in the face of a similar provision, where an application had been filed for permission to cut certain trees and a period of one year had expired, the petitioner contended that by virtue of the provisions of Sub-section (4) of Section 8 of the Act, permission is deemed to have been granted to him. As in the present case, the respondents had canvassed the defence that the application was defective and that consequently, there could be no deemed permission on the face of a defective application. I need to point out that in this case also, the learned Government Counsel has vehemently contended that the application was no application insofar as it did not in so many words very clearly set out that it was an application for conversion. But more importantly, he contended that it was defective as it was insufficiently stamped and also because some part of the lands in respect of which conversion was asked for had already been alienated. This Court in the Decision referred to supra very clearly held that there can be no question of raising objections of this type after the statutory prescribed period has elapsed. Mr. Naik has cited this Decision in order to meet the objections raised by the learned Government Counsel, and he submits that even assuming there were some defects, that the same would not in any way affect the validity of the application and that the same were inconsequential and capable of being corrected.

5. Mr. Naik also submits that within the prescribed period of four months, no such objection had been raised with regard to the alleged defects in the application and that the authorities had proceeded with the investigation on the basis that it was a valid application. The learned Government Counsel has

contested this position by pointing out that some of the subordinate officers had intimidated the petitioner about some irregularities. To my mind, this aspect of the matter is totally irrelevant. If there are any fundamental defects in the application, it is for the authorities to reject the same within the prescribed period. The mere fact that they continued with their so called enquiries on the basis that the application was in order is sufficient to indicate that there was nothing seriously wrong.

6. This aspect of the matter is really begging the question for the simple reason that in the absence of a rejection order, the legal consequences follow on the expiry of the statutorily prescribed period of four months. As on 21-10-1991, by effect of law the permission for conversion is deemed to have been granted and this is precisely the ratio of the Decision referred to by Mr. Naik.

7. In this view of the matter, it is purely an attempt to do a belated post mortem at this point of time and contend that the application was defective because there is no legal sanction for any such procedure.

8. The learned Government Counsel very strongly opposed the grant of any reliefs in this Petition. He submitted that the Court must take into account the fact that the deemed permission even by operation of law can only accrue in a case where the application submitted is valid in all respects which presupposes the fact that it is duly stamped, accompanied by all relevant annexures and conforms to all the legal requirements. He submitted that where the Department is in a position to demonstrate that there were these inherent infirmities in the application, that the Court will have to regard it as either an invalid application or that the Court would have to ignore that application. He also pointed out that. It would virtually be a miscarriage of Justice. If a party who has already taken steps towards utilisation of the land for non-agricultural purposes, thereafter seeks to ratify his action through an application for conversion and in fact, the procedure must be in the reverse direction. The learned Government Counsel also pointed out to me that the subsequent investigation done by the authorities has revealed that even as far as the lands in question are concerned, that some part of these lands has been alienated prior to the date on which the application was filed. More than this, he relied on the record to point out that the lands in question as far as the revenue records were concerned did not stand in the petitioner's name. On all these grounds, he contended that the Decision cited by Mr. Naik would not have any application. He also relied on an earlier Decision of this Court in case of SAHADEV BAIRU KHANNUKAR v. SPECIAL DEPUTY COMMISSIONER, BELGAUM AND ANR. 1987(1) KLJ 52 wherein, in certain circumstances, this Court held that the benefit of deemed permission is not always available even if the four month period has elapsed. As far as this Decision is concerned, I need to point out that the facts were entirely different. In that proceeding, in so far as the permission had been rejected within the four month period and therefore, subsequently after remand when the fresh orders were not passed within the period of four months, the Court held that the

provision relating to deemed permission would not hold good at a subsequent point of time, namely after the remand. That Decision, to my mind, would not have any application on the facts of the present case.

9. As earlier indicated by me, the legislative intent embodied in Section 95(4) of the Act is unambiguous. It provides for time bound disposal of application for conversion and it presupposes that in the light of this mandate, that the authorities will, without any delay, examine the application and pass orders. If at the stage of examination, any of the infirmities indicated by the learned Government Counsel were present, the application is liable to be rejected. If no such examination is done or if the application is not rejected on any of these grounds, one would have to proceed on the presumption that the application is valid and that it has been duly submitted to the designated authority who has retained it on file. The time bar in respect of the four month Rule would then become mandatory. The authority is obliged to decide the application within that period and once the period has elapsed, deemed permission accrues automatically and it is impermissible thereafter to reopen the matter and seek to find fault either with the application, proceedings or anything for that matter. In fact, a Court would be precluded from going through any of these questions.

10. In this view of the matter, the Petition succeeds. Rule is made absolute to the extent that the deemed permission in respect of Survey No. 42/A measuring 31 cents in Block No. 17 is deemed to have accrued to the petitioner on 21-10-1991. As a necessary consequence of this, the authorities concerned will have to treat the matter as though the permission for conversion in respect of this Survey Number had been granted on that day and the necessary entries in the records will have to be made. It also follows that the petitioner will comply with all the other requirements of law such as payment of conversion fee, etc., within a period from two months from today. In the circumstances of the case, there shall be no order as to costs.