

(1994) 07 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 25066 of 1991

Rudraswamy

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

Date of Decision : 26-07-1994

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95, 95 (5)

Citation : (1994) ILR (Kar) 2958

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : H. Srinivasa Rao, for the Appellant; N. Devadas, Government Advocate, for the Respondent

Judgement

Hari Nath Tilhari, J.—By this Petition, the petitioner has prayed for issuance of a Writ of Mandamus directing the respondent to collect the conversion charges from the petitioner concerning Sy.No. 80/7C measuring 1 acre 9 guntas situated at Hiriyoora Village, Chitradurga District. He has also prayed for issuance of a Writ of Certiorari and quashing the order -Annexure "D" dated 28-9-1991 passed by the Deputy Commissioner.

2. Facts of the case in brief are ; that the petitioner, who claims to be the owner in possession of Sy.No. 80/7C measuring 1 acre 9 guntas situated at Hiriyoora Village, Chitradurga District, had applied u/s 95 of the Karnataka Land Revenue Act, 1964 to the respondent-Deputy Commissioner, seeking his permission for conversion of the land with respect to the purposes thereto from residential to industrial purpose in view of the predominant use of that land. The application was originally made on 18-12-1989 and thereafter, with reference to that application vide letter dated 12-4-1990, the petitioner was informed that the application had been deferred in view of the fact that the land is reserved for residential purpose and not for industrial area. Deferring here appears to be tantamounts to refusal to grant permission and rejecting the application for the time being. The petitioner has further stated that, on 7-3-1991, he made another

application requesting him to consider his case for being permitted to change the user of the land from residential to industrial purpose keeping in view the subsequent developments viz., the permission granted by the Town Planning Department in that regard. A copy of that application has been annexed as Annexure "B". According to the petitioner's case, on petitioner's application dated 7-3-1991, the Town Planning Department, by its letter dated 21-3-1991 gave its opinion to the respondent informing him that, after spot inspection, the area has been developed for industrial activity and so he expressed the opinion that the earlier order mentioning that the area has been ear-marked for residential purpose is withdrawn and now the permission for change of the land for use of industrial purpose can be given. The petitioner's case is that more than 4 months have lapsed i.e., the period of 4 months was allowed to expire and no order was passed either rejecting or allowing the application of the petitioner for conversion. It is only after the expiry of 6 months period that the opposite party has informed the petitioner that petitioner's application dated 7-3-1991 has been rejected including the opinion of the Town Planning Department.

3. No counter affidavit has been filed. So, as regards the factual position, it is admitted that no order was passed on the application dated. 7-3-1991 for a period of 4 months and not only 4 months, but 6 months by the authority concerned.

4. In view of these facts, the learned Counsel for the petitioner submitted that permission should be deemed to have been granted, u/s 95(5) of the Karnataka Land Revenue Act, 1964 and as such, when, in the eyes of law, the permission is deemed to have been granted, the learned Counsel submitted, that the opposite party had no authority to pass any subsequent order rejecting the said application on 28-9-1991.

5. Sri N. Devadas, learned Government Pleader appearing for the opposite party, submitted that the application dated 18-12-1989 had been rejected by the order dated 12-4-1990 vide Annexure "A". It is tantamount to say that the area is reserved for residential purpose and so, permission cannot be granted and therefore, the application was rejected.

6. In the changed circumstances and taking note of the subsequent events, it was it open to the applicant to move the Second Application and in this case, the petitioner had moved the Second Application almost one year after the expiry of the rejection of the earlier application. With reference to the developments in the industrial age, it cannot be doubted that, during this period, the industrial activity would have gone ahead and these circumstances, entitled the petitioner to move the application dated 7-3-1994.

7. The provision of Sub-section (3) of Section 95 provides that permission to divert can be refused on the grounds mentioned therein i.e., refusal can be made only on the grounds mentioned in Sub-section (3) of Section 95 of the Act Sub-

section (3) of Section 95 reads as under: -

"Permission to divert may be refused by the Deputy Commissioner on the ground that the diversion 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)."

Sub-section (4) of Section 95 empowers the Deputy Commissioner to impose certain conditions. Sub-section (5) of Section 95 reads as under:-

"Where the Deputy Commissioners 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."

8. Under Sub-section (5) of Section 95, it has been provided that if the Deputy Commissioner fails to inform the applicant of his decision on the application made under Sub-section (2) within a period of 4 months from the date of receipt of the application, the permission shall be deemed to have been granted. The deeming clause, it is well known, leads to an assumption in law of a fact as if the fact has taken place in reality though it might not have taken place. When law provided that thing is deemed to have happened, then in the eye of law, it will be taken as happened though it might not have occurred in fact. It is well settled principle of law and rule of interpretation that a deeming provision has to be given its full effect. Reference in this regard may be made to the following Decisions of the Supreme Court-

(a) The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others,

(b) Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore,

Then it means that the permission is to be deemed to have been granted on the expiry of the period of 4 months i.e., on the expiry of four months period as aforesaid. It shall be deemed that the Deputy Commissioner has granted permission and once this deeming clause applies, the jurisdiction of the authority of the Deputy Commissioner to reject the application ceases and gets exhausted.

9. In view of the facts of the present case and in view of the fact that the industrial development had taken place, I am of the opinion that the order dated 28-9-1991 contained in Annexure "D" to the Writ Petition becomes illegal and without jurisdiction and as such, it is liable to be quashed. Once I have held that under deeming clause, the permission for conversion shall be deemed to have been granted on the expiry of the period of 4 months due to the failure of the Deputy Commissioner to inform the petitioner of the fate of his application, the only thing that has got to be done is that, the petitioner should be allowed to deposit the necessary conversion charges and let the conversion order be issued in favour of the petitioner under Sub-section (5) of Section 95 of the Act according to law. Let the Writ of Mandamus be issued to the opposite party to issue the conversion order entitling the petitioner to change the user of the land

under the permission deemed to have been granted u/s 95(5) of the Act and in accordance with law as well as after the petitioner having been allowed to deposit the necessary charges therefore within reasonable time.

10. This Writ Petition is allowed. Costs are made easy i.e., the parties to bear their own costs.