

(1986) 09 KAR CK 0002
In the Karnataka High Court
Case No : W.P. No. 9624 of 1986

Sahadev Bhairu Khannukar

APPELLANT

Vs

Special Deputy Commissioner, Belgaum and Another

RESPONDENT

Date of Decision : 19-09-1986

Acts Referred:

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

Citation : (1987) 1 KarLJ 52

Hon'ble Judges : K. A. Swami, J

Judgement

K.A. Swamy, J.-In this petition under Articles 226 and 227 of the constitution, the petitioner has sought for a declaration that the permission sought for by him for conversion of the agricultural land to an extent of 1 acre in S. No. 1077/1A at Belgaum is deemed to have been granted. He has also sought for an alternative relief for issuing a direction to the first respondent to receive conversion fine in respect of the land in question.

2. The case of the petitioner is that he is a owner in occupation of the land in question measuring 1 acre bearing S. No. 1077/1A of Belgaum; that he made an application under Sec. 95(2) of the Karnataka Land Revenue Act (hereinafter referred to as the Act) for permission to convert the land in question for non-agricultural purposes; that, that application was rejected by the Special Deputy Commissioner, Belgaum, by the order dated 20-6-1984 in No. RB. LNA. SR-1 276/83-84 on the ground that the land in question is reserved for green belt.

3. Being aggrieved by the aforesaid order the petitioner preferred an appeal No. 481/1984 LB. B.G.M. before the Karnataka Appellate Tribunal (hereinafter referred to as the Tribunal). The Tribunal by the order dated 14-12-1984 allowed the appeal and set aside the aforesaid order of the Special Deputy Commissioner and remanded the case for fresh disposal as per law expeditiously taking into account various contentions raised by the petitioner including the applicability of the amended provisions of Sec. 95 of the Act.

4. The grievance of the petitioner is that the Special Deputy Commissioner has

not so far disposed of the application. It is contended that the records along with the order of the Tribunal were received by the Special Deputy Commissioner on 1-2-1985; that thereafter the petitioner filed an application bringing to the notice of the Special Deputy Commissioner that the records along with the order of the Tribunal have been received by the office on 1-2-1985, and no order has so far been passed. Under these circumstances, it is submitted that the application must be deemed to have been granted as per the provisions contained in Sub-Sec. (2) of Sec. 95 of the Act. On these facts, it is contended that as the Special Deputy Commissioner has not intimated any decision within a period of four months from the date of receipt of the records from the Tribunal, the application must be deemed to have been granted. On the contrary, it is submitted by Sri Appaji, learned Government Pleader that having regard to the fact that the land in question is situated within the green belt area the Special Deputy Commissioner has sought for a clarification from the State Government; therefore, the application has not so far been disposed of.

5. Under these circumstances, having regard to the facts and circumstances of the case the only point that arises for consideration is as to whether the permission sought for by the petitioner shall be deemed to have been granted under Sub-Sec. (5) of Sec. 95 of the Act.

6. It is not possible to accept the contention urged on behalf of the petitioner. It is not a case in which on receipt of the application no decision is taken by the Special Deputy Commissioner. On the contrary, the Special Deputy Commissioner did take a decision whether rightly or wrongly and rejected the application. In the appeal as pointed out earlier the Tribunal has set aside the decision of the Special Deputy Commissioner and has remanded the matter for fresh consideration pursuant to remand, the application is required to be decided in accordance with law and in the light of the observations made in the order of the Tribunal. To such a situation the provisions contained in Sub-sec. (5) of Sec. 95 of the Act, do not apply. Sub-Section (5) of Section 95 of the Act applies at the initial stage of the application in other words on the filing of the application under sub-Sec. (2) of Section 95 of the Act, if the Special Deputy Commissioner on the Deputy Commissioner as the case may be fails to inform the applicant of his decision on the application within four months from the date of its receipt, the permission shall be deemed to have been granted. That stage in the instant case was over when the Special Deputy Commissioner rejected the application in the 1st round of the proceeding. Now there is no scope for applying sub-section (5) of Section 95 of the Act. Therefore the contention of the petitioner that he is entitled to invoke the provisions contained in Sub-sec. (5) of Section 95 of the Act, cannot be accepted. Accordingly, the point raised for determination is answered against the petitioner.

7. The next point that arises for consideration is as to whether the Deputy Commissioner should be directed to decide the application expeditiously.

No doubt, it is necessary on the part of the Special Deputy Commissioner to

decide the proceeding immediately. The object of providing a provision like the one contained in sub-sec. (5) of Sec. 95 of the Act, is to impress upon the authority that the application is required to be decided within four months from the date of its receipt. It is also indicative of the fact that decision is required to be taken by the concerned authority immediately, whenever it becomes necessary. Therefore, it is necessary to decide the application immediately, after it is remanded for fresh consideration. Mere fact that sub-sec. (5) of Sec. 95 of the Act, does not apply to the stage at which the application is pending, does not enable the Special Deputy Commissioner to delay the decision.

The application has been remitted to the Special Deputy Commissioner as long back as in the month of December, 1984 and the records are received by him along with the order of the Tribunal on 1-2-1985. The Special Deputy Commissioner ought to have decided the matter long back. Further, the delay in the matter is likely to adversely affect the petitioner. Under these circumstances, the writ petition is allowed in the following terms:

The Special Deputy Commissioner is directed to decide the application within four months from the date of receipt of this order.

Communicate the order immediately.

Writ Petition is Allowed