

(2004) 08 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 12012 of 2004

Smt. Sharfunnissa

APPELLANT

Vs

The Deputy Commissioner and Another

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 45, 60, 61, 62
Karnataka Land Revenue Act, 1964 — Section 95

Citation : (2004) ILR (Kar) 5062 : (2005) 1 KCCR 64

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : M. Raviprakash, for the Appellant; S.S. Karamadi, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The petitioner who is registered as an occupant u/s 45 of the Karnataka Land Reforms Act of 1961 (in short called as KLRF Act) in respect of 13 Acres 23 guntas of land in Survey Nos. 169, 171 and 172 of Devanur Village, Kasaba Hobli, Mysore Taluk, is aggrieved by the order passed by the KAT dismissing the appeal and confirming the order passed by the 1st respondent refusing to convert the Land from agricultural use to non-agricultural purpose. Hence, he has prayed to quash the endorsements issued by R-I vide Annexures "D" and "E" dated 26.8.2002 and 4-11-2002 respectively and also to quash the impugned order at Annexure "G" dated 27.10.2003 urging various legal contentions.

2. The learned Counsel for the petitioner Mr. Ravi Prakash has placed strong reliance upon the decision of this Court reported in State of Karnataka v. The Ryots Agricultural Produce Co-operative Marketing Society Employees Co-operative Society Limited and Anr. 1986 (1) KARLJ 237 wherein the provision of Section 95 of the Karnataka Land Revenue Act, 1964 (in short KLR Act) has been interpreted by this Court and law has been laid down as under:

"The authority to grant conversion cannot refuse the same if it is not covered by the prohibitions contained in Section 95 of the Land Revenue Act. The alienation of agricultural lands in favour of disqualified persons are dealt with different laws, who has got its own machinery to deal with the breach of the laws and the Special Deputy Commissioner acting u/s 95 of the Act cannot assume those functions."

The Counsel has placed reliance upon the Division Bench judgment of this Court reported in Special Deputy Commissioner Vs. Narayanappa, wherein after interpreting Sections 14 and 24(1) of the Karnataka Town and Country Planning Act, 1961 ("KTCP Act" for short) and also Section 95 of the VKLR Act" with reference to Section 76M of the KTCP Act at Paragraph 13 it is held that,

"If a land fell within the ODP or CDP prepared for Bangalore Metropolitan Planning area the Special Deputy Commissioner, Bangalore, ceases to have any power u/s 95 of the Act, in view of the over-riding effect given to the provisions of the Planning Act by Section 76M thereof over all other laws which includes The Land Revenue "Act."

3. I have examined the correctness of the impugned orders passed by the 1st respondent and the KAT with reference to the undisputed facts referred to in the Writ Petition. It is an undisputed fact that the petitioner is registered as an occupant in respect of the aforesaid agricultural lands by the Land Tribunal vide its order dated 12.3.1999. Occupancy Certificate in Form No. 10 was issued on 25.3.1999 to her with a condition of non-alienation of the lands in question for a period of 15 years from the date of the order passed by the Tribunal as per Section 61 of the KLRF Act.

4. Section 62 of the KLRF Act stipulates that, if the person who has been registered as occupant under Chapter -III of the KLRF Act or his successor in title intends within six years from the date of such registration to give up personal cultivation of the land, he shall surrender the land to the State Government. The surrendered land shall be at the disposal of the State Government.

5. Undisputedly, 15 years period of non-alienation of the lands from the date of the order passed by the Tribunal stipulated u/s 61(1) of the Act is not yet over as on the date the petitioner sought conversion of the lands. There is no provision in the KLRF Act to relax the condition regarding non alienation of the lands either by the State Government or any other authority.

6. Section 60 of the KLRF Act postulates as follows:

"FAILURE TO CULTIVATE PERSONALLY -

Notwithstanding anything contained in any law, if at any time after the tenant has been registered as occupant under any of the foregoing provisions, such tenant fails to cultivate the land personally for three consecutive years, he shall, unless the Tahsildar condones such failure for sufficient reasons, be evicted and the land shall be disposed of in accordance with the provisions of Section 77.

This provision is not at all taken into consideration either by the 1st respondent or the KAT. This is a very important provision required to be taken into consideration by them while considering the applications seeking conversion of lands. The petitioner has not stated that he has cultivated the lands personally for three consecutive years. Hence she is liable to be evicted from the lands by the Tahsildar u/s 60 of KLRF Act.

7. In the order of the 1st respondent he has assigned two reasons namely : (1) that the lands in, question are acquired or proposed to be acquired in favour of the Mysore Urban Development Authority and (2) as per the provisions of the KLRF Act, 15 years of non-alienation period has not been completed for sale of lands. The issuance of preliminary notification by the State Government under the provisions of Karnataka Urban Development Authority Act of 1987 for acquisition of the lands in question is not in dispute. The fact that 15 years period of non-alienation incorporated in the occupancy certificate is not yet over. Another important aspect is the proposal for acquisition was much prior to grant of occupancy rights in favour of the petitioner. While the preliminary notification was issued on 27.9.1991 as per Annexure-B, occupancy rights was granted on 12.3.1999. However, as per the endorsement at Annexure-C, acquisition was not proceeded with. But the non- alienation period u/s 61(1) of KLRF disentitles the petitioner to seek conversion.

8. The KAT has examined the correctness of the findings recorded by the first respondent and has extensively referred to the undisputed facts, certain provisions of the KLRF Act and also the power of the Ist respondent u/s 95 of the KLR Act and it has concurred with the reasons assigned by the 1st respondent for not granting conversion of the land from agricultural use to non-agricultural purpose. In my considered view, the concurrent findings and reasons recorded by the KAT are in conformity with the provisions of Sections 60, 61(1) and 62 of the KLRF Act and also Section 95(3) of KLR Act. Therefore, the same cannot be interfered with by this Court.

9. The decision of this Court in the case reported in 1986 (1) KarLJ 237 relied upon is not applicable to the fact situation of the present case as the question that arose for consideration in that case was whether the exercise of power u/s 95 of KLR Act by the Deputy Commissioner for grant of conversion of agricultural lands purchased by disqualified persons and who sought conversion of agricultural land come within the prohibitions contained in Section 95 of the KLR Act. In the said case this Court has held that in respect of the lands purchased by persons who are ineligible in law, law provides for its own machinery to deal with such contravention of the KLRF Act and the Deputy Commissioner in exercise of his power u/s 95 of the KLR Act cannot assume functions of such machinery.

10. In the case reported in 1986 (1) KU 237 relied upon by the petitioner's Counsel amended Sub-section (3) of Section 95 of the KLR Act was not examined as the same was inserted subsequently by Act No. 2/91 w.e.f. 20.3.1993. The amended sub- section (3) of Section 95 reads thus:

"(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)."

(Amended portion by way of substitution is underlined by the Court.)

11. Conversion of lands in question must be examined by the Deputy Commissioner keeping in view Sub-section (3) of Section 95 of the KLR Act which clearly spells out that the Deputy Commissioner shall not exercise his power for grant of conversion of agricultural land into non-agricultural purpose, if that diversion of the lands is likely to defeat the provisions of any law for the time being in force. The said provision of the KLR Act will come in the way for the Deputy Commissioner to exercise his power for granting conversion. The Division Bench decision of this Court in the case of Special Deputy Commissioner Vs. Narayanappa, referred to supra is also not applicable to the fact situation of this case for the reason that the Karnataka Land Reforms Act is a special enactment. The condition of non-alienation of the lands imposed upon the occupant in the order and also in the occupancy certificate are binding upon the petitioner and violation of the same amounts to contravention of statutory provisions of the Act which disentitles the petitioner to continue as occupant in respect of the lands in question. This important aspect of the matter has not been noticed by the Division Bench of this Court in the said case. That apart, application of Section 76M of KTCP Act to the agricultural lands in respect of which occupancy rights are granted to the tenants is also not been considered in that case. Therefore, the reliance placed upon the said decision of the Division Bench is also misplaced and, the same cannot be applied to the fact situation.

12. For the reasons stated supra, it is not a fit case for this Court to interfere with the impugned endorsement and the order.

13. Accordingly, the Writ Petition is dismissed. Since the petitioner has not cultivated the lands personally for three consecutive years, the Tahsildar is directed to take action to evict the petitioner from the lands in question as provided u/s 60 of-KLRF Act.