

(1987) 03 KAR CK 0010
In the Karnataka High Court
Case No : W.A. No's. 2396 to 2398 of 1986

Special Deputy Commissioner

APPELLANT

Vs

Narayanappa

RESPONDENT

Date of Decision : 16-03-1987

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95
Karnataka Town and Country Planning Act, 1961 — Section 14, 24

Citation : (1988) ILR (Kar) 1398

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : S.V. Jagannath, for the Appellant; B.N. Jayadev, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, J.—In these appeals the following important questions of law arise for consideration :

(1) Whether the Deputy Commissioner, Bangalore District has the power to grant permission for conversion of agricultural lands for non-agricultural purpose u/s 95 of the Karnataka Land Revenue Act in respect of lands falling within the area covered by the Outline Development Plan or Comprehensive Development Plan for the City of Bangalore prepared and published under the provisions of the Karnataka Town and Country Planning Act, 1961 ("the Planning Act" for short) and

(2) Whether the Karnataka Appellate Tribunal could have issued direction to the Deputy Commissioner to grant the conversion u/s 95 of the Karnataka Land Revenue Act 1964 as sought for by the respondents in these appeals.

2. The facts of the case, in brief, are as follow:

Respondent-1 M. Narayanappa, filed an application for grant of permission to divert land measuring 1.11 acres in Survey No. 159/1 and 1.21 acres in Survey

No. 159/2 of Bilekahalli Village, Begur Hobli, Bangalore South Taluk. The respondent in the second appeal M. Ramakrishna filed an application for grant of permission to divert agricultural lands measuring 1.22 acres in Survey No. 159/3 and 1.08 acres in Survey No. 159/4 of the same village. The other respondent M. Gopal filed an application for grant of permission to divert the agricultural land measuring 2.00 acres in Survey No. 159/3 of same village for non agricultural use. The Special Deputy Commissioner by order dated 18-8-1982 rejected the applications. The wording of the endorsements issued to all the 3 applicants rejecting their request is similar. Therefore it is sufficient to set out the contents of one of the endorsement Annexure -"A" it reads :

"No.ALN(S) SR. 18/82-83 Office of the Deputy Commissioner, bangalore District, Bangalore, Dated :

OFFICIAL MEMORANDUM

Sub: Sanction of Conversion of an extent of 1-22 - 1.0 out of Section No. 159/5 + 159/4 of Bilekahalli Village, Begur Hobli, Bangalore South Taluk in favour of Sri Begur Hobli, Bangalore South Taluk in favour of Sri M. Ramakrishna for non-agricultural Indus- trial/Residential purpose. Ref: Letter No.BDA/TPM/04/82-83 dt. 12-7-82 of the BDA, Bangalore.

The request of Sri M. Ramakrishna, No. 101, Bull Temple Road. Bangalore for sanction of conversion of an extent of 1-22 + 1-0.8 acres out of Sy.No. (A) 159/3 + 159/4 of Bilekahalli village, Begur Hobli, Bangalore South Taluk from Agricultural to non-agricultural, Industrial/ Residential Commercial purposes of rejected on the following grounds :-

1. the proposed land lies in the rural tract as per the approval of CDP of Bangalore.

Copy forwarded to:

1. Chairman, BDA/Town Planning Officer, Bangalore.

2. Tahsildar, North Taluk, Bangalore, etc."

3. Aggrieved by the said order the respondent preferred appeals before the Karnataka Appellate Tribunal. Before the Tribunal, the contention urged for the appellants therein was that the Deputy Commissioner could not have rejected the application except for reasons set out in Sub-section (3) of Section 95 of the Act and further all that the Deputy Commissioner could do was to impose certain conditions in public interest which could be imposed in view of Sub-section (4) of Section 95, in order to safeguard the public interest. The learned State Representative however submitted that the reasons given by the Special Deputy Commissioner was correct and there was no ground to interfere.

4. The Tribunal however allowed the appeals relying on the Judgment of this Court in IRANNAVAR v. STATE OF MYSORE 1974 (1) KLJ 67 Item 230 The Tribunal held that in view of the said decision the ground on which Deputy

Commissioner could reject the applications were those specified in Section 95(3) of Karnataka Land Revenue Act. In the result, the Tribunal set aside the order of the Special Deputy Commissioner and directed him to grant the permission as prayed for by the appellants before him, subject to imposing the conditions as considered expedient by the Deputy Commissioner by exercising his powers under Sub-section (4) of Section 95 of the Act. Aggrieved by the said order of the Tribunal the Special Deputy Commissioner preferred three Writ Petitions. The Writ Petitions were rejected. Aggrieved by the said order the Special Deputy Commissioner has presented these appeals.

5. The grounds Nos.1 and 2 in the appeals read :

"(1) The learned single Judge has failed to see that as the lands in question are situated in the rural track shown as per the Outline Development Plan of the Metropolitan City of Bangalore, duly approved by the Government u/s 14 of the Karnataka Town and Country Planning Act, the diversion of the lands in question for the purpose sought viz., for industrial and residential purposes being prohibited, the Special Deputy Commissioner has rightly rejected the applications of the respondents.

(2) The learned single Judge has failed to see that Section 95 of the Karnataka Land Revenue Act, cannot be read in the disregard of other laws viz., the Karnataka Town and Country Planning Act and other laws, but to be read subject to other laws in force."

6. As can be seen from the ground urged in the appeal, the case of the Special Deputy Commissioner is that the land in respect of which permission for conversion was sought for by the three respondents lay within the rural track as shown in the Outline Development Plan prepared for the Metropolitan City of Bangalore ("The ODP" for short) and therefore no permission could be granted in contravention of the conditions incorporated in the ODP.

7. The learned Counsel for the appellant contended that the learned single Judge was not right in dismissing the Writ Petition placing reliance on the earlier Judgment of this Court in MYSORE COMMERCIAL UNION v. SPECIAL DEPUTY COMMISSIONER AND ORS., W.P.No. 1189 of 1978 DD 1-8-1-984. We have gone through the Judgment in that case. In the said case, the facts were: The Mysore Commercial Union was the petitioner who had made an application u/s 95 of the Act seeking permission for conversion of certain agricultural land for non-agricultural purposes. The application had been rejected. The appeal filed by the Commercial Union before the Karnataka Appellate Tribunal had also failed. Aggrieved by the said order the Mysore Commercial Union presented the said Writ Petition. The contention urged by it before this Court was, that the grounds on which the application was rejected by the Special Deputy Commissioner were not those on which it could have been rejected in view of Sub-section (3) of the Act. The above contention was accepted and the orders of the Appellate Tribunal and that of the Special Deputy Commissioner were set aside and the Special

Deputy Commissioner was directed to restore the application of the petitioner therein and to dispose of the same in accordance with law and in the light of the observations made in the said order. The question as to whether the land in respect of which conversion was sought for fell within the area covered by the ODP or CDP was not raised and therefore the said question had not been considered by the learned Judge who disposed of the Writ Petition. Therefore, the appellant is right in saying that the ratio of the Judgment in W.P.No. 1189 of 1978 could not have constituted the basis for dismissing the Writ Petition of the appellant.

8. The fact that, an Outline Development Plan has been prepared for the Metropolitan City of Bangalore and has been duly approved by the Government and published u/s 13(4) of that Act can no longer be in controversy, in view of the Judgment of this Court of M.D. NARAYAN v. CORPORATION OF THE CITY OF BANGALORE 1982 (2) KLJ 35 since confirmed in appeal by the Supreme Court.

9. Therefore the question which arises for consideration is whether the Special Deputy Commissioner had any power at all to accord permission u/s 95 of the Karnataka Land Revenue Act. The Chapter III (Sections 9 to 13) of the Planning Act provides for the preparation of an Outline Development Plan for every local planning area declared as such under the provisions of the Act. After the Bangalore Metropolitan area was declared as local planning area under the provisions of the Act, steps were taken to prepare an Outline Development Plan and after following the procedure prescribed under Sections 9, 10, 11, 12 and Sub-sections (1) to (3) of Section 13, the Outline Development Plan was finally published as required under Sub-section (4) of Section 13 of the Act on 22-5-1972 as found in the case of M.D. Narayan, 1982(2) K.L.J. Sh. Notes 35. Section 14 of the Act as in force which is a crucial matter for this case reads :

"14. Enforcement of the Outline Development Plan and the Regulations:

(1) On and from the date of which a declaration of intention to prepare an Outline is published under Sub-section (1) of Section 10, every land-use, every change in land-use and every development in the area covered by the plan shall conform to the provisions of this Act, the Outline Development Plan and the Regulations, as finally approved by the State Government under Sub-section (3) of Section 13.

(2) No such change in land use or development as is referred to in Sub-section (1) shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate granted by the Planning Authority in the form prescribed.

Explanation :- For the purpose of this Section, -

(a) the expression "development" means the carrying out of building or other operation in or over or under any land or the making of any material change in the use of any building or other land;

(b) the following operations or uses of land shall not be deemed to involve a development of any building or land, namely :-

(i) the carrying out of works for maintenance, improvement or other alteration of any building being works which affect only the interior of the building or which do not materially affect the external appearance of the building;

(ii) the carrying out of works in compliance with any order, or direction made by any authority under any law for the time being in force;

(iii) the carrying out of works by any authority in exercise of its powers under any law for the time being in force;

(iv) the use of any building or other land within the cartilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such ;

(v) when the normal use of land which was being temporarily used for any other purpose on the day on which the declaration of intention to prepare the Outline Development Plan is published under Sub-section (1) of Section 10 is resumed;

(3) Every application for permission under Sub-section (2) shall be accompanied by a plan, drawn to scale showing the actual dimension of the plot of land in respect of which permission is asked, the size of the building to be erected and the position of the building upon the plot and such other information as may be required in this behalf by the Planning Authority."

The language of Section 14 of the Act is peremptory. According to that provision no change in the land use in respect of land falling within the area of Outline Development Plan can be made without the written permission of the Planning Authority secured u/s 14 of the Act.

Subsequently, Comprehensive Development Plan ("CDP" for short) has also been prepared and approved by the Government on 12-10-1984 and as required by Section 23 of the Act published in the official gazette dated 18th October 1984. Sub-section (1) of Section 24 of the Act reads:

"(1) The provision of Section 14, 15 and Section 16 shall apply mutatis mutandis to the enforcement of the Comprehensive Development Plan."

In view of the above provision a written permission for change of land use in respect of land falling within the Bangalore City Planning Area and covered by the CDP is mandatory. This subsequent notification also ousts the authority of the Deputy Commissioner u/s 95 of the Land Revenue Act in respect of lands falling within the Planning Area.

10. The fact that the land in question falls within the Bangalore Planning Area has not been disputed by the respondents. But their contention has been that the power to grant permission was governed by the specific provisions i.e. Section 95 of the Land Revenue Act and therefore the provisions of the Planning Act were not relevant. The provisions of the Land Revenue Act on which the

respondent relied were:

"Section 95 : Uses of agricultural land and the procedure for use of agricultural land for other purposes :-

(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 its more convenient use for the purpose aforesaid.

(2) xxx xxx xxx

(3) 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 interests of the general public or that the occupant is unable or unwilling to comply with the conditions that may be imposed under Subsection (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 occupation 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."

The Appellate Tribunal accepted the contention and held that Section 95(3) and (4) of the Karnataka Land Revenue Act, governed the case and therefore the Deputy Commissioner ought to have granted permission subject to the imposition of the conditions specified in Section 95(4) of the Land Revenue Act.

11. If the restriction imposed u/s 14 of the Karnataka Town and Country Planning Act was not attracted to this case,. the view taken by the Appellate Tribunal would have been unexceptionable. But Section 76M of the Planning Act which gives over-riding effect to the provisions of that Act, reads :-

"76M. Effect of other laws :- (1) Save as provided in this Act, the provisions of this Act and the Rules, Regulations and Bye-laws made thereunder shall have effect not with-standing anything inconsistent therewith contained in any other law.

(2) Notwithstanding anything contained in any such other law -

(a) When permission or development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully under taken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained :

(b) When permission for such development has not been obtained under this Act,

such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained."

12. In view of the over-riding effect given by the above provision, a change in the use of land falling within the area of ODP or CDP could be effected or undertaken only with the written permission of the Planning Authority. Further in view of the Section the jurisdiction of the Deputy Commissioner u/s 95 of the Land Revenue Act gets ousted and such permission could be obtained or secured only from the Planning Authority under the Act.

13. The appellant has also relied on the Judgment of a learned single Judge in Writ Petition Nos. 17132 to 17140 of 1984, State of Karnataka Vs. Jayashree, In that case also the parties concerned had made application to Special Deputy Commissioner, Bangalore, praying for permission for conversion of certain agricultural land for non-agricultural purposes. The application had been rejected by the Special Deputy Commissioner; but his order was set aside by the Appellate Tribunal which gave a specific direction to the Special Deputy Commissioner to accord sanction for conversion by imposing such conditions as are permissible in view of Subsection (4) of Section 95 of the Act. Aggrieved by the order of the Tribunal the Special Deputy Commissioner preferred the Writ Petitions. The learned Judge Doddakale Gowda, J. in the course of the order made a detailed reference to the provisions of the Town Planning Act and pointed out that if the land comes within the area of ODP or CDP, sanction of the Planning Authority was essential for change of use of the land. The learned Judge also pointed out that exercise of such powers u/s 95 of the Land Revenue Act would be an exercise in futility. We are in respectful agreement with the view expressed by the learned Judge. But, we however add, if a land fell within 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. Section 76M was not brought to the notice of the learned Judge. Whatever that may be, the fact remains that the view taken by the learned Judge that any permission to be accorded must be in conformity with the provisions of the Town Planning Act and the ODP and CDP prepared thereunder, is correct and we entirely agree with the view taken by the learned Judge.

14. For the aforesaid reasons we answer the two questions set out, first as follows:

(1) The Deputy Commissioner, Bangalore District has no power u/s 95 of the Karnataka Land Revenue Act to grant permission for conversion of agricultural lands falling within the Outline Development Plan or Comprehensive Development Plan prepared for Bangalore Planning area under the provisions of the Karnataka Country and Town Planning Act.

(2) Consequently the Karnataka Appellate Tribunal could not have issued direction to the Deputy Commissioner, Bangalore District to grant the permission for conversion, as sought for by the respondents.

15. In view of this position in law, the only course open to the respondents was to make an application for the change of use of land before the Planning Authority u/s 14 of the Karnataka Town and Country Planning Act, 1961.

16. In the result, we make the following :

ORDER

I. Writ Appeals are allowed.

II. The order made by the learned Single Judge is set aside.

III. The Writ Petitions are allowed and the order of the Karnataka Appellate Tribunal, Annexure-D is quashed.

IV. The respondent in each of the appeals shall however be at liberty to make an application before the Planning Authority u/s 14 of the Act.