

(1985) 08 KAR CK 0029

In the Karnataka High Court

Case No : Writ Petition No"s. 17132 to 17140 of 1984

State of Karnataka

APPELLANT

Vs

Jayashree

RESPONDENT

Date of Decision : 29-08-1985

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95
Urban Land (Ceiling and Regulation) Act, 1976 — Section 2 (2)

Citation : (1986) ILR (Kar) 820

Hon'ble Judges : Doddakale Gowda, J

Bench : Single Bench

Advocate : S. Lakshminarayana, HCGP, for the Appellant; K.G.C. Prabhu, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Doddakale Gowda, J.—Order dated 15-11-1982 of Special Deputy Commissioner, Bangalore, declining to accord permission for conversion of agricultural land into non-agricultural land u/s 95 of the Karnataka Land Revenue Act (hereinafter referred to as the "Revenue Act") has been set aside by the Appellate Tribunal as per impugned order with a further direction to accord sanction for conversion imposing such conditions as are permissible under law.

2. Relief sought for conversion of S. No. 16 situate at Uttarahalli Village, Bangalore South Taluk, has been refused by the Special Deputy Commissioner, Bangalore solely on the ground "land in question lies" in rural tract (agricultural zone) where no developments are permissible as per the approved Outline Development Plan (hereinafter referred to as "ODP" of Bangalore.

3. Appellate Tribunal has held that there is no justification to refuse permission when adjoining lands such as S. Nos. 15, 17 & 18 are permitted to be used as non-agricultural land and ground on which permission is refused will not fall within the ambit of Section 95 of Revenue Act. It is stated thus :-

"We would like to once again observe that such a ground finds no place in the Scheme of Section 95 of the Act, It is nowhere laid down in the said Section that the conversion applied for shall be permitted only if it accords with the development plans of the local body. It is open to the competent authority to attach conditions, while permitting the conversion applied for, to the effect that the provisions, if any, of any law in force relating to Town and Country Planning Act or any rules regulating the construction of buildings, shall be adhered to. If the Government at the policy level want that Special Provisions should be brought in force for an orderly development of any particular urban area, it would be for them to amend the said provisions of the Act so as to rule out conversion of agricultural lands to non-agricultural purpose wherever such conversion clashes with the master plans or zoning regulations of the local body. So long as the said provisions are not amended, there is scope whatsoever for the competent authority to refuse permission for conversion to non-agricultural purposes just because such developments are not permissible as per the master plan drawn up by the local body."

4. Sri S. Lakshminarayana, Learned High Court Government pleader, relying on certain provisions of Karnataka Town and Country Planning Act, 1961 (hereinafter referred to as "Planning Act") contended that impugned order is clearly illegal and order made without reference to provisions of Ceiling Act and Planning Act suffer from errors apparent on the face of record. It is contended inter alia that no permission can be granted for conversion of agricultural land lying within planning area/master plan and/or within rural tract (agricultural zone) and even otherwise, Tribunal could have, at best, remitted matter to Deputy Commissioner for disposal afresh in accordance with law without directing to accord sanction.

Respondents tried to sustain impugned order contending that consideration of provisions of Acts referred to above are alien for the purpose of grant of relief u/s 95 of Revenue Act. In fact, survey number is not included in Green Belt Area. Hence direction given to accord sanction is well within its jurisdiction.

5. Thus, controversy is as to whether provisions of Ceiling Act and Planning Act have any bearing on the grant of permission for conversion) if so, what extent ?

6. As matters of this type are coming up for admission more in number and as there is scope for exercise of arbitrary power granting conversion in one case and denying relief to the other, I am constrained to deal with the matter a little more detail explaining various provisions of Acts governing the issue.

7. Brief reference to salient provisions of various Acts is necessary to resolve this controversy.

"Urban land" means, any land situate within the limits of an urban agglomeration and referred to as such in the master plan or in case where there is no master plan or master plan does not refer to any land as an Urban land, any land within the limits of an urban agglomeration and situate within any area included within

the local limits of a Municipality, by whatever name called, a Notified Area Committee, a Town Area Committee, a City and a Town Committee, a small Town Committee, a Cantonment Board or Panchayat, but does not include land which is mainly used for purpose of agriculture vide Section 2(2) of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as Ceiling Act").

Clauses A & B of Explanation to Sub-section (o) of Section 2 define what is meant by "agricultural land" and Clause C states that notwithstanding anything contained in this explanation, land shall not be deemed to be mainly used for the purpose of agriculture, if the land has been specified in the master plan, for a purpose other than agriculture.

"Master plan", in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out.

Person holding or possessing urban land exceeding ceiling limit is required to give a declaration and consequences envisaged in Sections 8 to 10 would follow.

8. Provisions of Planning Act govern, preparation and publication of development plan for a local area. State Government, by notification, may declare any area in State to be a local planning area, of course, subject to variation adopting procedure prescribed in Sections 4-A and 4-B of Planning Act. Planning Authority is required to prepare accurate map showing present land use in planning area within its jurisdiction with such other particulars as may be prescribed - Section 6. Section 7 provides for an owner of any plot of land included in the map to apply for correction of any entry of land use ; and u/s 8 entries in map regarding present land use is treated as a conclusive evidence. Planning Authority is required to prepare and publish an ODP for local planning area within two years from the date of declaration incorporating particulars as set out in Section 12 (Section 9). Sections 10 and 11 provide for variation accepting suggestions. ODP must contain particulars such as :

"(a) a general land-use plan and zoning of land-use for residential, commercial, industrial, agricultural, recreational, educational and oilier public purpose :

xxx xxx xxx (e) such other proposals for public or other purposes as may from time to time be approved by the Planning Authority or directed by the State Government in this behalf.

(Section 12)

It must also be accompanied by a report explaining the provisions of such plans, regulations in respect of each land use zone to enforce the provisions of such plan and explaining the manner in which necessary permission for developing any land can be obtained from the planning Authority. Apart from publishing approved ODP and regulations, a copy of plan and particulars are required to be

permanently displayed in the office of Director and Planning Authority and made available for inspection of public. On and from the date of declaration of its intention to prepare an ODP, every land use, every change in land use and every development in the area covered by plan shall conform to the provisions of this Act, ODP and regulations - vide Section 14(1). Under Sub-section (2) of Section 14, no such change in land use or development as is referred to in Subsection (1) shall be made except with written permission of Planning Authority which shall be contained in a commencement certificate granted by Planning Authority in the form prescribed. "Development" is explained to mean carrying out of building or other operation in or over or under any land or the making of any material change in use of any building or other land. Under Sub-section (4) of Section 15, if any person does any work on, or makes any use of, any property in contravention of Section 14 or of Sub-section (1) of this section, Planning Authority may direct such person by notice in writing, to stop any such work in progress or discontinue any such use ; and may, after making an inquiry in the prescribed manner, remove or pull down any such work and restore the land to its original condition or, as the case may be, take any measure to stop such use. Section 36 provides for compulsory purchase by Planning Authority and State, in case owner of the plot informs that land has become incapable of reasonable beneficial use in its existing state or the land cannot be rendered capable of reasonable beneficial use, by carrying out the conditions imposed at the time of grant of permission. CDP prepared u/s 19 must include comprehensive zoning of land use for the planning areas together with zoning regulations.

9. CDP prepared in consonance with the provisions of the Act, as certified to be a true copy by Deputy Director of Town Planning, made available by Government Pleader is marked as Court Annexure-I. Replica of this plan as published in Deccan Herald daily news paper dated 11-5-1984 for information of Public is produced by contesting respondent as Annexure-S1. Contour of conurbation area is depicted with thick blue line and area lying between thick blue lines and semi-thick blue line is declared as Green Belt area. As per notification No. HUD 496 TTP 83 dated 13th March 1984 issued under Section-4A of the Planning Act certain villages around conurbation periphery area of Bangalore are declared to be a local planning area for the purpose of the said Act, called by name "Planning Area for the environs of Bangalore", names of villages which lie within such area are mentioned in Schedule-I and boundaries are set out in Schedule-II.

10. By subsequent notification No. RDC 31 MIS 84, dated 20th August 1984, a CDP of Bangalore indicating villages (wholly or partly) in the Green Belt Area, as revised, in Taluks of Nelamangala, Magadi, Anekal, Hoskote, Devanahalli, Bangalore North and South Taluks of District of Bangalore is published. Object is to avoid haphazard growth of village limits ; to restrain village panchayats from issuing licence for construction in areas beyond Gramathana and 200 meters from village limits. It states further that no land acquisition proceeding, if any, need be pursued further in any area under the said Green Belt, no fresh proposals be initiated for acquisition nor any fresh proposals for the formation of

a layout or for any other non-agricultural purpose in the said Green Belt area need be entertained. Relevant portion of Annexure-S1 reads thus :-

"Vintage Bangalore is still around, but is fast giving way to a frighteningly different city. Chirping of birds has yielded to factory sirens, pretty Victorian houses and lush avenue trees have yielded to a concrete jungle marring the once soothing skyline "

Instructions therein are - building construction or development will have to be taken up only with the approval of B.D.A.; building can come up only in lay-outs approved and not in revenue sites ; public are required to verify location of the land and in case land lies either in conurbation area or Green Belt restrict its user for which land is earmarked ; area lying in Green Belt is required to be developed or purchased except for the purpose of agriculture or gardening and warning is that any infringement will unnecessarily force BDA to unpleasant tasks like demolition non-availability of facilities etc., apart from wasteful expenditure.

11. A detailed reference is made to these two notifications by Counsel appearing for contesting respondents to sustain impugned order urging that Uttarahalli, within whose jurisdiction S. No. 16, belonging to them, is situate, will not lie within the area earmarked for Green Belt, consequently, there is no prohibition or hindrance to accede to their prayer. It is true, as contended by Learned Counsel for contesting respondents Arjunapura, Channasandra, Gollahalli, Kembathanahalli, Mallasandra, Pillaganahalli, Talaghattapura, Uttarahalli Manavartha Kaval and Vobichoodanahalli of Uttarahalli Hobli are included in revised Green Belt area. While getting examined the merit or their contention as to whether the land lies within the planning area or outside the planning area, they are caught in the web like a spider. It is really fantastic to suggest that Uttarahalli within whose jurisdiction S. N. 16 is situate lies nowhere within the CDP. Villages mentioned above lies within periphery of Green Belt area whereas Uttarahalli Village lies within conurbation area as could be seen from the CDP, marked as Court Annexure-1 as well as Annexure-S1. Contesting respondents are not able to establish that provisions referred to above have no bearing and land remained untouched by Planning Regulations, As per amended Section 95(3B) of Revenue Act, no permission can be granted to divert any land or part thereof assessed or held for the purpose of agriculture lying within the limits of the Green Belt to any other purpose.

12. Object of Planning Act is to provide for regulation of planned growth of land use and development and for making and execution of Town Planning Schemes in the State ; intends to create conditions favourable for planning and re-planning of urban and rural areas in State, with a view to provide full civic and social amenities for the people ; to stop uncontrolled development of land due to land speculation and profiteering in land. Town Planning, as the name itself indicates, includes both civic design and regional planning ; may be scientific and architectural.

13. In respect of land lying within conurbation area, necessarily user of the land is earmarked for a particular purpose in ODP/CDP/Master Plan prepared by Planning Authority. According to Section 14 of Planning Act every land use, every change in land use and every development in the area covered by plan should conform to the provisions of the Act. Sections 15 to 18 provide for obtaining permission from concerned authority to use land for a purpose other than the one earmarked in ODP and for compulsory purchase in case, owner expresses that particular land is incapable of reasonable beneficial use to him. Thus, it is clear, no land lying with planning area can be used for a purpose other than the one specified in ODP/CDP/Master Plan without the Sanction of Planning Authority. Object appears to be to maintain orderly development. Otherwise, planning will go awry and prone to haphazard development without salvage. Can a permission for conversion in exercise of power u/s 95 be given to negate all these provisions ? I am afraid, not.

14. No doubt, in proceeding u/s 95 of Revenue Act there is no provision to appraise Planning Authority about the prayer made by contesting respondents for conversion. Even then, statutory authorities exercising their power must consider all these aspects so as to lessen the risk of using a land for a purpose other than the purpose earmarked and determine whether permission for conversion can be accorded or not. It does not involve any discretion or policy but is an adjudication upon the law as applicable to the facts.

15. Sub-section (1) of Section 95 of Revenue Act enables an occupant of land assessed or held for the purpose of agriculture, to erect farm buildings, construct wells or tanks or make any other improvements thereon for better cultivation of land or its more convenient use subject to any law for the time being in force regarding erection of buildings or construction of wells or tanks. Under Sub-section (2) Deputy Commissioner may grant or refuse permission for diversion subject to provisions of this Section and Rules made thereunder. Section 95 which commences with the phrase "subject to any law for the time being in force regarding erection of building" contemplates grant of conversion u/s 95(2) must necessarily conform to law in force regarding erection of buildings. Exercise of power u/s 95 of Revenue Act is subject to provisions of Planning Act. As has already indicated, Planning Authority u/s 17 of Planning Act may sanction the proposed development or plan either without modification or subject to such modifications and conditions as it considers expedient or may refuse to give sanction if it is of the opinion that such division or laying out is not in any way consistent with ODP/CDP. Unfortunately, Appellate Tribunal has proceeded on the premise that nowhere it is laid down that permission for conversion should be adhered to the development plan. Views of Appellate Tribunal which reads thus :-

"If the Government at the policy level, want that Special provisions should be brought in force for an orderly development of any particular urban area, it would be for them to amend the said provisions of the Act so as to rule out conversion of agricultural lands to non-agricultural purposes wherever such

conversion clashes with the master plans or zoning regulations of the local body. So long as the said provisions are not amended there is scope whatsoever for the competent authority to refuse permission for conversion to non-agricultural purposes just because such developments are not permissible as per the master plan drawn up by the local body."''

run counter to the tenor of the Section itself.

16. So also there is no basis for the proposition that sanction can be accorded for conversion imposing restrictions to comply with Planning Regulations. Grant of permission for diversion imposing a condition to comply with ODP/CDP is just like placing a cart before the horse. Unless sanction is accorded by Planning Authority exercise of power u/s 95 of Revenue Act will only be an exercise in futility, unnecessarily exposing the owner of the plot to risk. Undisputedly contesting Respondents have not obtained permission of Planning Authority to use this plot for a purpose other than the one earmarked in ODP/CDP.

17. The submission that prohibition contained in Subsection (3B) of Section 95 is only in respect of land lying within the Green Belt Area and there is no prohibition for according sanction or permission for conversion of land lying within inner circle of Green Belt Area is fallacious. Sub-section (3B) of Section 95 prohibits grant of conversion of land lying within the Green Belt area which forms outer limits of conurbation area. As has already indicated, grant of conversion or diversion lying within the inner circle is made subject to the other laws prevailing viz., Planning Act. There was no necessity to introduce a provision similar to Sub-section (3B) of Section 95.

18. Lastly, it is contended that conversion of adjoining survey numbers viz., 15, 17 and 18 is granted and denial of permission in respect of S. No. 16 would be arbitrary and violative of Article 14 of the Constitution of India. If permission accorded for conversion of those survey numbers is not legal, that cannot form a firm foundation to claim the extension of same privilege or benefit. Hence, I find no merit in this contention also.

19. For the reasons stated above, Writ Petitions are allowed. Impugned order of Appellate Tribunal, passed in Appeal Nos. 42 to 50 of 1983 marked as Annexure A is hereby quashed reserving liberty to approach Revenue Authority for conversion after obtaining necessary permission from Planning Authority. Rule made absolute.