
(2015) 11 KAR CK 0315

In the Karnataka High Court

Case No : Writ Petition Nos. 200764/2015 (KLR-CON)

Sushim

APPELLANT

Vs

The Deputy Commissioner

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95

Citation : (2015) 11 KAR CK 0315

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Ratna N. Shivayogimath, Advocate, for the Appellant; A. Syed Habeeb, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—Petitioner is before this Court assailing the endorsement dated 19.12.2014/23.12.2014 impugned at Annexure-H to the petition. The petitioner in that view is seeking direction to the respondents to accord permission for conversion of the land for the purpose for which the petitioner has sought.

2. The petitioner claims to be the owner of the property bearing Sy. No. 17/2 measuring 5 acres 2 guntas of which 2 guntas of land is (a) kharab land situated at Mupata village, Chittapur Taluk, Kalaburagi District. The said agricultural land was desired to be converted for the residential purpose by the petitioner. In that view, the application dated 15.10.2013 as provided under Section 95 of the Karnataka Land Revenue Act ("KLR Act" for short) was filed by the petitioner. Petitioner contends that the application filed by the petitioner was also intimated to the different departments and clearance was obtained. Since the application had not been considered in accordance with law, petitioner was before this Court in W.P. No. 206183/2014. The petition was disposed of on 28.11.2014 on taking note of the undertaking given on behalf of the Deputy Commissioner that consideration of the application made by the petitioner would be completed within one month from that date. Subsequent to the same, the impugned

endorsement dated 19.12.2014/23.12.2014 is issued to the petitioner declining the request of the petitioner. It is in that circumstance, petitioner is before this Court assailing the same.

3. The respondents have filed their objection statement. The very reason which is indicated in the endorsement is sought to be magnified by way of objection statement. Through the documents filed in support of the objection statement, it is contended that the Deputy Commissioner would be empowered to reject the request for conversion as provided under sub-section (3) to Section 95 of the KLR Act if such conversion is contrary to any other law. In that regard, it is contended that several other lands including the land of the petitioner is required for setting up the National Investment and Manufacturing Zone, Kalaburagi, ("NIMZ" for short) and therefore when the land indicated therein are required for industrial purpose, conversion as sought by the petitioner for the residential purpose would not arise. In that view, the communication addressed between the Government of India, Ministry of Commerce and Industry and the Government of Karnataka is referred and the subsequent endorsement dated 29.05.2015 issued to the petitioner indicating the said reason is also referred.

4. In the light of the contentions that have been urged in the pleadings, having heard the learned counsel for the petitioner and the learned Additional Government Advocate, I have perused the petition papers.

5. From the objection statement as filed by the respondent it could be inferred that there is proposal with regard to the setting up of NIMZ. Even if that be the position, the question for consideration is as to whether in the fact situation arising in the instant case, the impugned endorsement rejecting the request of the petitioner would be justified. If the provision of law contained in the KLR Act and the consideration of the same as made by this Court is kept in view, the provision contained in sub-section (5) of Section 95 of the Act would provide that if the application is made seeking conversion and if no decision is taken, the request as made would be deemed to have been granted. The said provision had arisen for consideration before this Court in the case of Rudraswamy Vs. Deputy Commissioner, . If the said decision is kept in view, there is no dispute to the fact that in the instant case, petitioner had made application seeking conversion on 15.10.2013. A period of four months as provided therein would lapse on 15.02.2014.

6. Admittedly, no decision has been taken by the Deputy Commissioner based on the application made by the petitioner before the said date. It is no doubt true that the petitioner was before this Court in W.P. No. 206183/2014 which was disposed of on 28.11.2014. The said petition was disposed of granting time as has been sought by the Deputy Commissioner to consider and dispose of the application filed by the petitioner. The learned Additional Government Advocate in that regard would contend that since in the said writ petition, the issue relating to the deemed permission did not arise for consideration, the same would not arise for consideration at this stage. Though the said contention is put

forth, I am of the opinion that the same cannot be accepted for more than one reason. Firstly, this Court though had directed consideration of the application filed by the petitioner had not adverted to the said question and the contention has not been rejected. Further, the order discloses that even without adverting to the facts that arose, since undertaking on behalf of the respondent was given to consider the application within a month, the petition was disposed of recording the same.

7. If in that light, the Deputy Commissioner was to dispose of the application, it would be incumbent on the Deputy Commissioner to keep in view the position of law and thereafter, come to a conclusion. Therefore, even in the light of the direction issued by this Court to dispose of the application within one month, the Deputy Commissioner himself was required to keep in view the provision of law and come to a conclusion that as on the date of his taking decision whether the deemed provision had come into effect and whether he was required to pass his orders in accordance with law which had come into effect as on that day. Therefore, the earlier order itself cannot bar such consideration. Further, what is also to be noticed is that this Court in the case of *Sri Mohammed Hassan Fazal v. The Deputy Commissioner and Others* [ILR 1992 KAR 3165], in addition to referring to the deemed provision had also taken into consideration a similar contention therein that the land in question was required for a public purpose. In that light, this Court had arrived at the conclusion that even if preliminary notification seeking to acquire the land was issued, until the process of acquisition is completed, right seeking conversion of the land cannot be denied.

8. If the said decision is kept in view and the instant facts on the contention relating to the requirement of the land of the petitioner including the other lands for NIMZ is taken into consideration, admittedly, no notification to acquire the said lands or to change the zonal pattern of the land in the area has been issued. That apart, as noticed, a period of four months relating to the application made by the petitioner had come to an end on 15.02.2014 whereupon the right for conversion had vested in the petitioner. The process relating to setting up of the NIMZ was initiated on 03.03.2014 as evident from Annexure-R1 since it is on 04.03.2014 the Government of India, Ministry of Commerce and Industries has given its in-principle approval for the said project. Therefore, when the process relating to reserving land for a particular purpose by the Government has not crystallized in any manner and no steps whatsoever having been taken by the respondents to acquire the said land even as on this day and as already noticed, the right had accrued in favour of the petitioner on 15.02.2014 much prior to the process by the respondents to reserve property for any other purpose had arisen, the said proposal cannot be indicated as a reason to deny the vested right of the petitioner to take benefit of conversion. As noticed, in the instant case, the right had accrued to the petitioner on 15.02.2014 in view of the deemed provision.

9. Hence, the endorsement dated 19.12.2014/23.12.2014 impugned in the

instant petition is quashed. The endorsement dated 29.05.2015 produced as Annexure-R5 though has not been assailed in the petition, since the respondent seek to rely on the same for the very same reason indicated in the impugned endorsement, the subsequent endorsement shall also not have any effect for the reasons stated.

10. In view of the reasons as indicated in the impugned endorsement not being accepted by this Court, a direction is issued to the respondent to take note of the observation made herein and pass order of conversion in favour of the petitioner in an expeditious manner but not later than six weeks from the date on which a copy of this order is furnished.

The petition is disposed of accordingly.