

(1981) 08 KAR CK 0053
In the Karnataka High Court
Case No : Writ Appeal No. 935 of 1979

The Asstt. Commissioner and Competent Authority, Urban
Land Ceiling, Bangalore

APPELLANT

Vs

I.B.M. World Trade Corporation and Others

RESPONDENT

Date of Decision : 11-08-1981

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10 (4), 20, 27 (2), 27 (4), 5 (3)

Citation : AIR 1982 Kar 118 : (1982) ILR (Kar) 204 : (1981) 2 KarLJ 563

Hon'ble Judges : V.S. Malimath, J;N.R. Kudoor, J

Bench : Division Bench

Advocate : S.V. Narasimhan Govt. Pleader, for the Appellant; S.G. Sundaraswamy, S. Ramaswamy Iyengar and M.K. Vishwanath, for the Respondent

Judgement

Malimath, J.—This appeal is by the Assistant Commissioner and Competent Authority under the Urban Land Ceiling Act, challenging the order made by the learned single Judge in W. P. No. 11462 of 1978. For the sake of convenience we would refer to the parties to this appeal with reference to the status and position in the writ petition.

2. The petitioner IBM World Trade Corporation owned land Survey Nos. 88 to 104 of By at arayanapura village, Yelahanka Hobli, Bangalore North Taluk. They were originally agricultural lands with some buildings standing thereon. The 1st petitioner made an application under S. 95 of the Karnataka Land Revenue Act to the appropriate authority seeking permission to convert the land to non-agricultural use. Permission, in due course, was granted. We are informed that the total extent of the land measures 1,72,211.46 sq. metres. On the 11th Aug., 1973 the 1st petitioner entered into an agreement with the 2nd petitioner Larsen & Toubro, Limited agreeing to sell the aforesaid land at the rate of Rs. 35,000/ per acre stipulating that the transaction should be completed before the 31st

Mar., 1975. The 2nd petitioner was actually put in possession on the 11th of Nov., 1974 in pursuance of the agreement to sell. We are informed that the 2nd petitioner has paid nearly Rs. 13,00,000/- towards consideration to the 1st petitioner. Before the sale deed could be executed, the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act") came into force in the State of Karnataka on the 17th Feb, 1976. On the 11th Aug., 1976, an application was presented by the 2nd petitioner before the State Government, seeking exemption from Chapter III 1, under S. 20 of the Act. The State Government after making the necessary enquiries "made an order on the 2nd June 1977 as per Exhibit "G" granting exemption in respect of the lands in question from the operation of Chapter III of the Act subject to certain conditions. After the lands were thus exempted from the provisions of Chapter III of the Act which contains the provisions regarding ceiling on vacant land. the 1st petitioner made an application on 22nd Sept. 1977 to the Assistant Commissioner and Competent Authority, Urban Land Ceiling, Respondent-I in the writ petition, who is the appellant in this appeal. That application was made under S. 27(2) of the Act seeking permission of the Competent Authority for transfer of the lands by the 1st petitioner in favour of the 2nd petitioner. Sub-s. (4) of S. 27 of the Act provides that where within a period of sixty days of the date of receipt of an application under this Section the competent authority does not refuse to grant the permission applied for or does not communicate the refusal to the applicant, the competent authority shall be deemed to have granted the permission applied for. The competent authority to whom the application was presented on the 22nd Sept. 1977 did not refuse to grant permission applied for nor did it communicate the refusal to the 1st petitioner within a period of sixty days from the date of receipt of the application. That being the position, the petitioners proceeded on the assumption that the permission applied for under sub-sec. (2) of S. 27 of the Act must be deemed to have been granted transferring the lands in favour of the 2nd petitioner. But unfortunately for the petitioners they were communicated with the order made by the 1st respondent D/- 24-11-1977 as per Exhibit W rejecting the application and refusing permission prayed for under S. 27(2) of the Act. The petitioners challenged the said order - Exhibit W in appeal under S. 33 of the Act before the prescribed appellate authority, namely, the Urban Land Appellate Tribunal - Respondent-2 in the writ petition. The appellate authority by its order D/- 22-4-1978 - Exhibit "K" - dismissed the appeal of the petitioners holding that though the permission applied for must be deemed to have been granted by operation of S. 27(4), the same is ineffective on account of non-compliance with sub-sec. (3) of S. 5 and sub-sec. (4) of S. 10 of the Act. Being aggrieved by the orders of Respondents 1 and 2, the petitioners presented writ petition No. 11462 of 1978. In the writ petition they prayed for quashing of the orders of Respondents 1 and 2, namely, Exhibits "J", and "K". They further sought a declaration that permission prayed for under S. 27(2) of the Act should be deemed to have been granted in their favour. They also sought for a declaration that the 1st petitioner is at liberty to execute the sale deed in favour of the 2nd

petitioner on the basis of deemed permission granted under sub-section (4) of S. 27 of the Act.

3. The Writ Petition was resisted by the competent authority, the appellant in this appeal, on various grounds. The learned single Judge allowed the writ petition and quashed the impugned orders Exhibits "J" and "K" passed by Respondents 1 and 2. It was further declared that permission shall be deemed to have been granted under S. 27(4) of the Act. The learned single Judge further issued a direction in the nature of mandamus to the appropriate registering authority that if any deed of sale is presented by either or both of the petitioners in respect of the land in question, the same shall be duly registered in accordance with the law governing such registration. It is the said order made by the learned single Judge that is challenged by the Competent Authority in this appeal.

4. Shri S. V, Narasimhan, learned High Court Government "Pleader, appearing for the appellant contended that the learned single Judge was not right in holding that permission should be deemed to have been granted by the operation of sub-sec, (4) of S. 27 of the Act. Sub-section (1) to (4) of S. 27 of the Act which are relevant for the purpose of this case may be extracted as follows:

"27. (1) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of sub-section (3) of S. 5 and sub-section (4) of S. 10, no person shall transfer by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urban is able land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years of such commencement or from the date on which the building is constructed whichever is later, except with the previous permission in writing of the competent authority.

(2) Any person desiring to make it transfer referred to in sub-section (1), may make an application in writing to the competent authority in such form and in such manner as may be prescribed.

(3) On receipt of an application under sub-section (2), the competent authority may, after making such inquiry as it deems fit, by order in writing, grant or refuse to grant the permission applied for :

Provided that the competent authority shall not refuse to grant the permission applied for unless it has recorded in writing the reasons for doing so and a copy of the same has been communicated to the applicant.

(4) Where within a period of sixty days of the date of receipt of an application under this section the competent authority does not refuse to grant the permission applied for or does not communicate the refusal to the applicant, the competent authority shall be deemed to have granted the permission applied for."

Section 28 of the Act imposes certain obligations on the registering authority in the matter of registration of documents presented before him, which reads as follows:

"28 Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of Cls. (a) to (e) of sub-section (1) of S. 17 of the Registration Act, 1908, purports to transfer by way of sale, mortgage, gift, lease or otherwise any land or any building (including any portion

(a) xx xx xx xx xx xxx

(b) In the case of any transfer referred to in S. 27, no registering officer appointed under that Act shall register any such document unless the transferor produces before such registering officer the permission in writing of the competent authority for such transfer or satisfies the registering officer that the period of sixty days referred to in sub-section (4) of that Section has elapsed."

5. It is clear from a combined reading of Ss. 27 and 28 extracted above that a person who is interested in transferring the land has to secure permission to transfer the land from the Competent Authority under S. 27 of the Act. The Registering Authority to whom the document of transfer is presented will not register the document unless it is satisfied that the permission contemplated by S. 27 has been granted. If express permission is granted on the application made under Sub-s. (2) of S. 27 of the Act, the said permission granted in writing will satisfy the requirement of Section 28(b) of the Act and the registering authority can proceed to register the document subject to satisfaction of all other conditions. But, if there is no written permission granted under S. 27 of the Act, the Registering Authority is required to be satisfied that the period of sixty days has elapsed from the date of presentation of the application as contemplated under Sub-s. (4) of S. 27 of the Act. If within the prescribed period of sixty days permission prayed for is not refused or the communication regarding refusal is not communicated, the Registering Authority would be competent to proceed on the basis that permission applied for must be deemed to have been granted under Sub-s. (4) of S. 27 of the Act. On such satisfaction, the Registering Authority would be entitled to take further steps in the matter of registration of the document.

6. As already stated, all the conditions specified in S. 27(4) of the Act having been satisfied in this case, the learned Single Judge has rightly come to the conclusion that permission for transfer applied for, must be deemed to have been granted. Permission shall be deemed to have been granted, on the expiry of sixty days from the date of receipt of application under sub-section (2) of S. 27. Application, in this case, for transfer was made on 22-9-1977. On the expiry of sixty days from the date of receipt of the said application, it is to be deemed that permission was granted in favour of the first petitioner.

7. The first respondent, however, made an order dt. 24th Nov., 1977 as per Exhibit W refusing permission prayed for. When such an adverse order came to be made, notwithstanding the fact that by the operation of law, permission prayed for must be deemed to have been granted in favour of the 1st petitioner,

an appeal had to be preferred to get rid of the adverse order made against the petitioners. The only question. that the Appellate Tribunal was required to consider was as to whether by the operation of sub-section (4) of S. 27, permission prayed for stood granted in favour of the 1st petitioner before the 24th of Nov., 1977, the date on which the competent authority made the order refusing permission. If the appellate Tribunal came to the conclusion that by the operation of Section 27(4) of the Act, permission prayed for should be deemed to have been granted before the 24th Nov., 1977, it is obvious that the competent authority would have no jurisdiction to make an order on 24th of Nov., 1977 refusing the permission prayed for. In this case, we have positively come to the conclusion agreeing with the finding of the learned Single Judge that permission stood granted by the operation of S. 27(4) of the Act, on the expiry of sixty days from the date of receipt of the application. It is only after such deemed permission stood granted in favour of the first petitioner that the competent authority has proceeded to reject the application, by his order dated 24th Nov., 1977. On that day, he had no competence to deal with the application and to make an order refusing the permission as by that time, by the operation of Section 27(4) of the Act, permission stood granted in favour of the first petitioner on account of the inaction of the competent authority for the requisite period. The Appellate Tribunal has also come to the conclusion that permission should be deemed to have been granted by the operation of S. 27(4) of the Act before the competent authority made the order under appeal on 24th Nov., 1977. But the Appellate Tribunal further proceeds to hold that though there is such a deemed permission by the operation of law in favour of the first petitioner, the same has become ineffective on account of the non-compliance with the provisions of sub-section (3) of S. 5 and sub-sec. (4) of S. 10 of the Act. In our opinion, the investigation made by the Appellate Tribunal and the finding recorded by it in this behalf, was wholly outside the scope of the appeal and unnecessary. The only question to which the Appellate Tribunal should have confined its attention was as to whether the competent authority had the necessary competence to refuse permission as on the 24th Nov. 1977. For the purpose of examining this aspect of the matter, the competent authority was required to examine as to whether the conditions specified by sub-s. (4) of Section 27 were satisfied and as to whether by the operation of the said provision, the first petitioner stood granted deemed permission before the competent authority made the order under appeal on the 24th Nov., 1977, The Appellate Tribunal having recorded a finding in this behalf in favour of the appellant before it should have allowed the appeal, set aside the order of the competent authority dt. 24th Nov., 1977 holding that permission prayed for by the first petitioner must be deemed to have been granted by the operation of sub-sec. (4) of S. 27. If the Appellate Tribunal had confined its order to the legitimate scope of the appeal, there would not have been any occasion for the petitioners to approach this Court for relief under Art. 226 of the Constitution. In our opinion, the only mistake that requires to be corrected by this Court under Art. 226 of the Constitution is, to keep within bounds the order of the appellate

authority and to quash that portion of the order of the Appellate Tribunal, which was unnecessary and which was beyond the scope of the appeal. We have already stated that the Appellate Tribunal rightly came to the conclusion that the permission prayed for should be deemed to have been granted by the operation of sub-section (4) of S. 27 and that therefore, the competent authority acted without jurisdiction when it made the order under appeal on 24th Nov., 1977 rejecting the first petitioner's application for grant of permission. In our opinion, it would have been enough for the learned Single Judge to have corrected the mistake committed by the Tribunal in this behalf.

7A. It appears that the learned single Judge was persuaded to examine other questions because arguments were advanced before him that there being no compliance with sub-section (4) of S. 10, no permission, could be granted u/s 27 of the Act. This argument was advanced on the basis of the language employed in sub-section (1) of S. 27. Subsection (1) of S. 27 provides that notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of sub-section (3) of S. 5 and sub-s. (4) of S. 10, no person shall transfer by way of sale etc. except with the previous permission in writing of the competent authority. When permission is deemed to have been granted by the operation of sub-section (4) of Section 27, it has to be presumed that every condition necessary for grant of such permission must be deemed to have been fulfilled. That being the position, the question as to whether conditions required to be satisfied for grant of permission were satisfied or not is not required to be gone into. As already stated, the only matter that required examination was whether the conditions specified in sub-sec. (4) of S. 27 were satisfied in order to come to the conclusion that the deemed permission was granted. Once we come to the conclusion that the conditions specified in sub-s. (4) of S. 27 are satisfied and therefore permission shall be deemed to have been granted, no further question arises so far as the grant of permission is concerned.

8. Section 28 provides that the registering authority has to be satisfied as to whether there is a written or deemed permission to effect transfer. If there is no written permission. the registering authority has to consider if the conditions specified in sub-sec, (4) of S. 27 are satisfied. If these conditions are satisfied, he has to proceed on the basis that there is deemed permission. The question of the said permission becoming ineffective does not at all arise. In that view of the matter, it was unnecessary for the learned single Judge to consider the scope of subs (1) of S. 27. The only relief the learned single Judge should have granted in the circumstances of the case was to quash that portion of the order of the Appellate Tribunal which stated that the deemed permission granted tinder sub-section (4) of S. 27 of the Act, has become ineffective, in view of the non-compliance with the provisions of sub-section (3) of S. 5 and sub-section (4) of S. 10 of the Act.

9. Sri S. V. Narasimhan, learned High Court Government Pleader, is right in contending that the learned single Judge was not right in issuing a writ in the

nature of mandamus to the appropriate registering authority that if any deed of sale is presented by either or both of the petitioners in respect of the land in question, the same shall be duly registered in accordance with law governing such registration. The question of issuing such a writ in the nature of mandamus did not at all arise in this case. A writ in the nature of mandamus can be issued for enforcing statutory obligation when the authority is called upon to discharge its obligation and the said authority refuses to discharge its legal obligation. In this case, no sale deed has been presented to any registering authority and no registering authority has refused to register the document so presented. Therefore, the essential pre-requisite for grant of a writ in the nature of mandamus is not satisfied. Another important aspect to be borne in mind is that the authority which is required to obey the writ in the nature of mandamus, is not impleaded as a party in the writ petition. Hence, a writ in the nature of mandamus of such a general character to the appropriate registering authority which is not before the Court, could not have been granted.

10. For the reason stated above, we hold that the conditions specified in sub-section (4) of S. 27 of the Act having been fulfilled, permission shall be deemed to have been granted to effect the transfer as prayed for by the 1st petitioner. Consequently, we hold that the competent authority had no competence to make the order as per Exhibit 7 dated 24th of Nov, 1977 refusing permission. Though the Appellate Tribunal was right in taking the view that permission shall be deemed to have been granted in favour of the first petitioner by the operation of sub-sec. (4) of S. 27, we hold that the other portion of the order made by the Appellate Tribunal to the effect that the permission deemed to have been granted is ineffective on account of non-compliance of sub-section (3) of S. 5 and sub-section (4) of S. 10, is not valid.

11. For the reasons stated above, we allow the Writ Appeal in part and make "the following order in place of the order made by the learned single Judge in Writ Petn. No. 11462 of 1978 since reported in (1979) 2 Kant LJ 121.

12. The order made by the competent authority as per Exhibit "J" dt. 24th Nov., 1977 is quashed. Only the portion of the order of the Appellate Tribunal dt. 22nd April., 1978 Exhibit X" which declares that the permission deemed to have been granted in favour of the first petitioner under sub-section (4) of S. 27 has become ineffective on account of the noncompliance of sub-sec. (3) of S. 5 and sub-section (4) of S. 10 of the Act is also quashed. We further declare that the petitioners are entitled to the benefit of deemed permission granted under Sub-section (4) of S. 27 of the Act. No costs.

13. Order accordingly.