

(1999) 02 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 3633 of 1998

The State Government Employees' Co-operative Housing
Society Limited, Hubli, Dharwad District

APPELLANT

Vs

The Hubli-Dharwad Urban Development Authority, Hubli,
Dharwad District

RESPONDENT

Date of Decision : 18-02-1999

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95 (2)

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2 (n), 2 (n) (A) (ii), 20

Citation : (1999) ILR (Kar) 1797 : (1999) 3 KarLJ 286

Hon'ble Judges : Y. Bhaskar Rao, Acting C.J.; A.M. Farooq, J

Bench : Division Bench

**Advocate : Sri T.S. Ramachandra, for the Appellant; Sri Basava Prabhu S. Patil
Advocate, for the Respondent**

Judgement

Y. Bhaskar Rao, Actg. C.J.

1. This appeal is filed assailing the order of the learned Single Judge dismissing the writ petition.

2. The brief facts of the case, are, that, the land in question which belonged to the previous owners has been purchased by the appellant in pursuance of an order made by the State Government u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (in short "the Act"). The appellant, thereafter made an application before the Urban Development Authority seeking permission to form a layout and the respondent called upon the appellant to get the land converted after paying conversion fee as provided u/s 95 of the Karnataka Land Revenue Act. Assailing the said order, the appellant filed a writ petition contending that the Government had granted exemption u/s 20 of the Act, treating the land as urban land and once the land is an urban land, it is no more an agricultural land. So, the conversion as contemplated u/s 95 of the Karnataka Land Revenue Act is not needed, as it is no more an agricultural land. The learned Single Judge

dismissed the writ petition, against that, the present appeal is filed.

3. Learned Counsel for the appellant contended that, once the land is treated as a vacant land, under the Act an exemption is required for excess vacant land. When a direction to make the land into plots to be allotted to the members of the Society was passed, the land is no more an agricultural land. Therefore, requirement of obtaining conversion of land to non-agriculture as contemplated u/s 95 of the Karnataka Land Revenue Act does not arise.

4. On the other hand, learned Counsel for the respondent contended that though the exemption has been granted u/s 20 of the Act, the land is an agricultural land, unless conversion u/s 95 of Karnataka Land Revenue Act is obtained, and the land cannot be used for non-agricultural purpose, i.e., for house plots or for construction of houses.

5. In view of the above contention, the important question that arises for consideration is:

"Whether the conversion of the land as provided u/s 95 of the Karnataka Land Revenue Act is required when once the land is treated as a vacant land under Urban Land (Ceiling and Regulation) Act".

6. To appreciate the above contention, it is relevant to extract the provisions of the Urban Land (Ceiling and Regulation) Act, 1976.

Section 2(n) of the Act defines "urban agglomeration" which reads as follows:

"(A) in relation to any State or Union Territory specified in column (1) of Schedule I, means,--

(i) the urban agglomeration specified in the corresponding entry in column (2) thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof; and

(ii) any other area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to Category D in that Schedule and the peripheral area therefore shall be one kilometre;

(B) in relation to any other State or Union Territory, means any area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to Category D in the Schedule I and the peripheral area therefore shall be one kilometre;

Section 2(o) defines "urban land" which means-

"(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in 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 town committee, a small town committee, a cantonment board or a panchayat,

but does not include any such land which is mainly used for the purpose of agriculture.

Explanation.--For the purpose of this clause and clause (q),--

(A) "agriculture" includes horticulture, but does not include

(i) raising of grass,

(ii) dairy farming,

(iii) poultry farming

(iv) breeding of livestock, and

(v) such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farmhouse, then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of farmhouse, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) Notwithstanding anything contained in clause (B) of 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;"

Section 2(q) defines "vacant land" which means-

"(q) "Vacant land" means land, not being land mainly used for the purpose of agriculture in an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building

regulations in force in the area in which such land is situated,

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before or is being constructed on the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of livestock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause".

7. u/s 2(n), an urban agglomeration can be extended beyond Municipal limits and including villages which includes the peripheral area specified and also the areas notified by the State Government with the approval of the State Government. Thus the land within the peripheral area of urban agglomeration as per the notification issued by the Government or concerned authorities is the land within the urban agglomeration. The agricultural land which is included in the urban agglomeration by virtue of the notification will become the land within the urban agglomeration, including the agricultural land.

8. The Urban land is a land situated within the limits of an urban agglomeration and referred to as such in the master plan or where there is no master plan or where the master plan does not refer to any land, as urban land, the land which is within the local limits of a Municipality, a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, is an urban land, but does not include the land which is mainly used for the purpose of agriculture.

9. Therefore, the land which is used mainly for agriculture and which is an agricultural land is not the urban land. Now we have to decide whether a particular land is an agriculture or not.

10. Sub-clause (B) under explanation to Section 2(o) provides a criteria that, if a land is entered in the revenue or land records before the appointed day as for the purpose of agriculture, such a land will be deemed as an agricultural land.

11. As per sub-clause (C) of the said explanation, if in the master plan, the land is shown as other than for the purpose of agriculture, the land shall not be deemed as an agricultural land.

12. Section 2(p) defines "urbanisable land" which means land situated within an urban agglomeration, but not being urban land.

Section 2(q) defines "vacant land" which means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include:-

"(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated,

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of livestock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause".

13. By reading the above sub-clauses, it is manifest that the land situated under the urban agglomeration consists of land included in the master plan, the land included in the urban agglomeration by virtue of the notification by Section 2(n) (A)(ii) and the land within the Municipal Corporation limit or Town Municipal limits etc., and referred to as such in the master plan, or where there is no master plan, the land situated within the Municipal Corporation limits or Municipal authorities as provided in the section but does not include a land which is mainly used for agriculture. A vacant land is the land not being used mainly for the purpose of agriculture in urban agglomeration, but does not include a land on which, there is no construction and on which, a building cannot be constructed and the area permissible to be retained as a vacant land adjacent to the house, according to rules. Thus by reading the above sub-section, it is evident that, within an urban agglomeration, there can be an agricultural land, but the same is not an urban land if the land is used for the purpose of agriculture. Section 6 of the Act provided that persons holding excessive vacant land for filing declaration and such declaration will be considered if there is excess vacant land, and the same will be acquired as provided u/s 10 of the Act.

14. Section 20 of the Act, empowers the Government to grant exemption to hold excess vacant land for the grounds mentioned therein. Section 20 specifically provides grant of exemption only for holding excess vacant land, not of agricultural land or the land within the urban agglomeration which is not a vacant land. Therefore, once the land is declared as a vacant land, it ceased to be an agricultural land. Once the land is ceased to be agricultural land by application of process of the Urban Land Ceiling Act, the land is no more agriculture. Once the land is not an agricultural land, the question of getting the land converted from

agriculture to non-agriculture as provided u/s 95 of Karnataka Land Revenue Act, does not arise. A similar question arose in Civil Appeal No. 6079 of 1997 before the Supreme Court and the Supreme Court held that once the land is treated as a vacant land and exemption is granted, there is no requirement of obtaining permission u/s 95 of Karnataka Land Revenue Act. The principles laid down in the above judgment apply to the facts of the present case.

Therefore, the writ appeal is allowed and the order of the learned Single Judge and the order challenged in the writ petition are quashed.

Writ appeal allowed accordingly.

No order as to costs.