(1997) 12 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 3748 of 1992

The State Government Employees Co-operative Housing Society Ltd.	APPELLANT
Vs	
The Hubli-Dharwad Urban Development Authority	RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:
Karnataka Land Revenue Act, 1964 — Section 95, 95 (2)
Karnataka Town and Country Planning Act, 1961 — Section 14 (2)

Citation : (1998) ILR (Kar) 3206

Hon'ble Judges : V. Gopalagowda, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; Patil and Associates, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopalagowda, J.—The Petitioner in this case is seeking a writ of cordierites to quash Annexure-B, the order No. HDUA:39 91/8713 dated 5.2.1992 issued by the Commissioner stating that since the land in question is not converted, the permission sought for residential use cannot be granted urging the following grounds:

The impugned order is wholly unsustainable in law in view of the fact that, State Government in exercise of powers u/s 20 of the Urban Land (Ceiling and Regulation) Act of 1976 (in short ''the Act'') granted exemption in respect of the land in question on the basis that it is a vacant land as defined under the provisions of the said Act. Therefore, in view of the exemption granted u/s 20 of the Act, it must be presumed that it is a converted land from Government Authorities again approaching the revenue authorities u/s 95 of the Karnataka Land Reforms Act, 1964 seeking conversion of the Land in question does not arises. Therefore, the impugned order at Annexure-B is without authority of law and same is contrary to the order passed by the State Government at Annexure-

A.

2. Learned Counsel Mr.T.S. Ramachandra submits that Government can grant exemption in respect of non-agricultural lands which are included in Comprehensive Development plan (CDP) approved by the Government under the provisions of the Town and Country Planning Act, 1961. Admittedly, the land in question was included in the CDP. This important aspect of the matter was taken into consideration by the State Government while exercising its power u/s 20 of the Act. Therefore, the impugned order passed by the respondent calling upon the petitioner-Society to get conversion order u/s 95 of the Karnataka Land Revenue Act, 1964 does not arise and the impugned order is liable to" be quashed. In support of the case of the petitioner, he places reliance on a decision of this Court rendered in Writ Appeal No. 1662/89 DD 17.6.1991, which decision was affirmed by the Supreme Court in Civil Appeal No. 6079/97 DD 2nd September 1997. Therefore, he submits that the case on hand is covered by the decision of the Supreme Court and the impugned order is liable to be quashed.

3. Learned Counsel, Mr. Basavaprabhu Patil, appearing, for the respondent submits that notwithstanding the order passed u/s 20 of the Urban Land Ceiling Act, the petitioner Society is required to obtain conversion order in respect of the land in question u/s 95 of the Land Revenue Act, 1964. In support of his submission, he places reliance on a Judgment of Hon''ble Supreme Court reported in State of Karnataka and others Vs. Shankara Textiles Mills Ltd., read thus:

" 6. Section 95(2) of the Revenue Act at the relevant time read as follows:

95. Uses of agricultural land and the procedure for use of agriculture wishes to divert such land or any part thereof to any other purpose, he shall apply for permission to the Deputy Commissioner who may, subject to the provisions of this Section and the rules made under this Act, refuse permission or grant it on such conditions as he may think fit.

7. The obvious purpose of this Section is to prevent indiscriminate conversion of agricultural land for non-agricultural land. Section 83 of that Act provides for different rates of assessment for agricultural and non-agricultural land. That provision strengthens the presumption that agricultural land is not to be used as per the holder''s sweet will, for non-agricultural purposes. This is also clear from the absence of any provision under that Act requiring permission to convert non-agricultural land into agricultural land. In a country like ours, where the source of livelihood of more than 70 percent of the pupulation, is agriculture, the restriction placed by the Revenue Act is quite understandable. Such provisions and restrictions are found in the Revenue Acts of all the States in the Country. The provision has, therefore, to be construed as mandatory and given effect to as such."

4. Again, Mr. Patil draws my attention to the amendment to Section 95 of the Act by Act No. 2/91 dated 5.2.1991 incorporating the following proviso:

"Provided that, Deputy Commissioner shall not refuse permission for diversion of such land included in the outline Development Plan or the Comprehensive Development Plan published under the Karnataka Town and Country Planning Act 1961 (Karnataka Act 11 of 1963) if such diversion is in accordance with the purpose of land use specified in respect of the land in such a plan."

5. Mr. Patil submits that a reading of the above proviso to Section 95 makes clear that once the land is included in the ODP, the Deputy Commissioner has no option but to grant conversion of land from Agricultural use to non-agricultural use. Elaborating his submission, he contends that, the power of conversion of agricultural land for non-agricultural purpose is specifically conferred upon the revenue authorities u/s 95 of the Act and only that authority must exercise that power in the manner stated therein. Learned Counsel further submits, in so far as the power u/s 20 of the Urban Ceiling Act, which deals with grant of exemption on respect of vacant Government land is concerned, the said provision does not deal conversion of Agricultural land into non-agricultural land. He submitted that Section 14 of the Karnataka Town and Country Planning Act, 1961 came to be amended by Act No. 2/1991 with effect from 20th March 1991 by Section 2(14(2)(3) and (4). These provisions provide that change of land use shall not be permitted unless permission is obtained in accordance with law under the provisions of the Karnataka Land Revenue Act, 1964.

6. By reading of the proviso to Section 95 it makes very clear that, conversion of agricultural land for non-agricultural purpose in respect of the lands which are included in CDP, the conversion order must be obtained from the competent authority u/s 95 of the Karnataka Land Revenue Act. Therefore, learned Counsel Mr. Patil submits that, the exemption order u/s 20 cannot confer a right upon the petitioner to contend before the authority that there is a deemed conversion of land in respect of which exemption is granted u/s 20.

7. Learned Counsel for the respondent Mr. Patil further submits that reliance placed by the petitioner on an unreported decision of this court and Supreme Court does not deal with the case after amendment to Section 95 and those decisions are not applicable to facts of this Case.

8. After hearing the learned Counsel for the petitioner and the respondent, it is seen that, the order Annexure-A is passed by the State Government by HUD Department. The amended Section 20 is very clear that in respect of lands which are included in CDP, the conversion must be obtained from the competent revenue authority. Once the lands are included in CDP, the revenue authority has no option but to grant conversion. Further, by a reading proviso to Section 14(2)(3) and (4) of the Karnataka Town and Country Planning Act, 1961, it further makes clear that, change of land use for the purpose of Section 14 needs the diversion of agricultural land to non-agricultural land. Such use or change shall not be permitted unless permission is obtained in accordance with law u/s 95 of the Karnataka Land Revenue Act, 1964.

9. The petitioner is seeking for approval of layout plan by submitting an application on 19.11.1991 on the strength of the exemption order passed by the State Government under the Unban land Ceiling Act. Hon''ble Supreme court considering the very same provisions with reference to Section 95 of the Land Revenue act, has clearly held that conversion of land is mandatory. In view of the law laid down by the Supreme Court, the submission of the learned Counsel for the petitioner that, conversion order u/s 95 of Karnataka Land Revenue Act is not required cannot be accepted. The exemption order can be passed by the Government u/s 20 only in respect of a converted land. Therefore a separate conversion u/s 95 of the Karnataka Land Revenue Act, 1964 is necessary.

10. Keeping in view the law laid down by the Supreme Court in the above referred decision, exemption order u/s 20 does not take away the powers of the revenue authorities and exemption order shall not be construed as conversion order for all purposes, Notwithstanding the facts of exemption order, conversion must be obtained u/s 95 of the Act. If arguments of Sri T.S. Ramachandra, learned Counsel for the petitioner has, to be accepted, Section 95 of the Karnataka Land Revenue Act and proviso to Sub-section (2) of Section 14 of the Karnataka Town & Country planning Act, would be rendered nugatary. Apart from, this, Section 20 of the Urban Ceiling Act deals with grant of exemption of vacant land but does not deal with conversion of agricultural land to non-agricultural land.

11. In this view of the matter and in view of law laid down by the Supreme Court, the impugned order passed by the Urban Development Authority directing the petitioner to obtain conversion order u/s 95 of the Karnataka Land Revenue Act is perfectly justifiable, legal and valid and hence, I pass the following order:

Writ Petition is dismissed. No costs.