

(2003) 11 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 30273 of 2000 (KLR-RES)

The State of Karnataka

APPELLANT

Vs

A. Sidramappa

RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Karnataka Land Grant Rules, 1969 — Rule 106A
Karnataka Land Revenue Act, 1964 — Section 95
Karnataka Land Revenue Rules, 1966 — Rule 107

Citation : (2004) ILR (Kar) 270 : (2004) 2 KarLJ 370 : (2004) 1 KCCR 305

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Suman Hegde, HCGP, for the Appellant; Pundikai Eshwar Bhat, for the Respondent

Final Decision : Allowed

Judgement

Chandra Shekaraiah, J.—This Writ Petition is by the State Government challenging the order of the Karnataka Appellate Tribunal (KAT) passed in appeal No. 542/ 1997 disposed of on 3.9.1998.

2. The Deputy Commissioner has passed an order on 9.5.1994 levying the compounding fee at Rs. 18,78,525/under Rule 107 of the Land Revenue Rules, (hereinafter referred to as Rules) since the respondent has used the agricultural land for non agricultural purpose without obtaining the permission as required u/s 95 of the Karnataka Land Revenue Act (hereinafter referred to as "Act"). The respondent, after he came to know of the said order, filed a petition for review of the said order. The said petition was also dismissed by the Deputy Commissioner by his order dated 22.1.1996. As against this order the respondent preferred an appeal No. 102/1996 before the KAT. In the said appeal the Tribunal declined to grant any interim order. This has made the petitioner to come to this Court by way of filing W.P.No. 9839/1996. This Court passed an interim order staying the order of the Deputy Commissioner pending disposal of the Writ Petition.

In the meanwhile, the appeal filed by the respondent before the KAT was allowed and the matter was remanded to the Deputy Commissioner for fresh consideration. After remission, the Deputy Commissioner has again passed an order determining the penalty for using the agricultural land for non-agricultural purpose at Rs. 18,78,525/-. This order was again challenged by the respondent by way of an appeal before the KAT in appeal No. 542/1997. The Tribunal after hearing the parties allowed the appeal and set aside the penalty levied holding that the respondent has used the agricultural land for non-agricultural purpose by virtue of the deemed permission since the Deputy Commissioner did not pass the order within four months. This order has been questioned by the State Government in this Writ Petition.

2. Learned Counsel appearing for the State submits that the Tribunal has committed a very serious error in holding that there is a deemed permission in favour of the respondent even though there is no application, filed by him seeking for permission to use the agricultural land for non agricultural purpose, in the eye of law. It is further contended that even assuming that there is an application filed by the respondent for permission to use the agricultural land for non agricultural purpose, when the Deputy Commissioner called upon the respondent to produce the copy of the ROR for the year 1983-84 to substantiate his rights over the land in question, he has not produced the same and therefore, the application, if any, filed by the respondent cannot be treated as an application in the eye of law so as to get the benefit of Section 95(5) of the Act.

3. In reply to this submission, learned Counsel for the respondent submits that when once an application is filed before the Tahsildar and it is forwarded to the Deputy Commissioner, it should be taken as an application filed in accordance with law and therefore, in the absence of any order passed by the Deputy Commissioner within four months from the date of the application, there is a deemed permission as provided u/s 95(5) of the Act. He further submits that the land in question comes within the Vijayanagar steel Planning Area of Hospet. If that is so, if the agricultural land is used for non agricultural purpose after obtaining necessary permission as provided u/s 14 of the Karnataka Town and Country Planning Act 1961, no permission is required u/s 95 of the Act. In support of this contention he has also relied upon the decision of this Court in the case of Special Deputy Commissioner Vs. Narayanappa,

4. In order to appreciate the rival contentions I looked into the records produced by the learned Government Advocate. From the records, I find that there is a letter written by the respondent to the Tahsildar for permission to use the land in question for the purpose of establishing a Ginning and Pressing Factory. No date is mentioned in the said letter. From the letter found in the records it is not possible to say when actually the Tahsildar received the same. However, the Deputy Commissioner on the basis of the report of the Revenue Inspector called upon the Tahsildar to recommend the case for permission to use 6 acres of land in Sy. No. 739 of Bellary belonging to the respondent for non agricultural

purpose. The Tahsildar intimated the Deputy Commissioner stating that in so far as this land is concerned, no application is filed seeking for grant of occupancy rights before the Land Tribunal. The Tahsildar by his letter dated 20.11.1983 called upon respondent to intimate whether he has filed any declaration u/s 66 of the Land Reforms Act. The Vijayanagar Steel Planning Area Authority had issued a commencement certificate under the Karnataka Town and Country Planning Act permitting the respondent to use the land for industrial purpose. Thereafter, the Deputy Commissioner by his letter dated 21.1.1984 called upon the respondent to produce the latest ROR for the year 1983-84 to substantiate his rights over the land in question. In the said letter the Deputy Commissioner has notified the respondent that in the event if the respondent fails to produce the ROR within a week, the request of the respondent for permission to use the agricultural land for non agricultural purpose will be rejected. Again the Deputy Commissioner issued one more remainder on 10.4.1984 calling upon the respondent to produce the ROR failing which his application for conversion will be rejected. In spite of these two notices the respondent has not produced the ROR before the Deputy Commissioner.

Section 95(2) of the Act reads as follows:-

If any occupant of land assessed or held for the purpose of agriculture wishes to divert such land or any part thereof to any other purpose, he shall notwithstanding anything contained in any law for the time being in force 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:

Under this section any person who wishes to use the agricultural land for non agricultural purpose has to obtain the permission of the Deputy Commissioner. In the event if he fails to obtain the permission as required, then such a person is liable to pay penalty as required under Rule 107 of the Rules.

Section 95(5) of the Act reads as follows:-

Where the Deputy Commissioner fails to inform the applicant of his decision on the application made under Sub-section (2) within a period of four months, from the date of receipt of the application. The permission applied for shall be deemed to have been granted.

Under this Section on the application filed by the holder of the land for permission to use agricultural land for non agricultural purpose, if the Deputy Commissioner fails to inform the applicant of his decision on the said application within four weeks from the date of the application, the permission applied for is deemed to have been granted.

5. The case of the respondent is that he made an application before the Tahsildar and the Tahsildar forwarded the same to the Deputy Commissioner. On that application the Deputy Commissioner had written a letter, on the basis of the

report of the Revenue Inspector, and therefore, that date is to be taken as the date of the application filed by the respondent before the Deputy Commissioner. The letter of the respondent to the Tahsildar seeking for permission is undated. From the records I find no material to show that the Tahsildar had forwarded the said letter to the Deputy Commissioner. But, the Tahsildar had written a letter to the Deputy Commissioner intimating that the respondent had made an application for conversion of agricultural land in Sy.No. 739(p) measuring 6 acres. This letter is of the year 1983. Prior to 7.1.1984, every applicant who wants to use the land for non agricultural purpose was required to make application only to the Deputy Commissioner as provided u/s 95(2) of the Act. This power conferred by the statute on the Deputy Commissioner has not been delegated to the Tahsildar. Rule 106A was introduced by way of amendment in the year 1984 (w.e.f. 7.1.1984) which reads as follows:-

Rule 106-A of the Karnataka Land Grant Rules 1966: Notice for diversion of dry (Punja) Land:-

The prior notice for diversion of dry (Punja) Land under the proviso to Sub-section (2) of Section 95 of the Act shall be in Form 21-A. the occupant shall enclose to the said notice a challan for having credited the fine computed in accordance with Rule 107 to the concerned Treasury.

After the insertion of Rule 106A, Form 21A has been prescribed. Any application to use the agricultural land for non-agricultural purpose is to be made to the Tahsildar of the concerned Taluk in Form No. 21A subsequent to 7.1.1984 along with the challan for having credited the fine computed. Prior to the introduction of Rule 106A of the Rules, the application for conversion should have been made only to the Deputy Commissioner and not to the Tahsildar. In the instant case, the respondent has not made any application to the Deputy Commissioner. If any application is filed before the Tahsildar prior to 1984, it cannot be considered as an application in the eye of law.

6. Even assuming that the said application has been filed by the respondent in accordance with law, the question is; whether he is entitled for the benefit of Section 95(5) of the Act, when he has not produced the material as required by the Deputy Commissioner?

Section 95(5) of the Act no doubt provides that in the event if the Deputy Commissioner fails to inform the applicant his decision on the application within four months from the date of the application, the said permission is deemed to have been granted. In the instant case, even assuming that the respondent has made the application for permission, when he has not furnished the required information as called for by the Deputy Commissioner vide his letters dated 21.2.1984 and 10.4.1984 intimating that his application will be rejected, the said letter is to be treated as communication of the decision of the Deputy Commissioner. Therefore, even on this ground also the respondent is not entitled for the benefit of deeming provision of Section 95(5) of the Act.

7. The next contention of the respondent is that in view of the decision of this Court in the case of the SPECIAL DEPUTY COMMISSIONER v. NARAYANAPPA (Supra), the respondent need not obtain the permission u/s 95 of the Act as he has already obtained permission from the Planning Authority.

8. After the above said decision, Section 95(2) of the Act has been amended. In view of this amendment, notwithstanding anything contained in any law, the applicant is required to obtain the permission of the Deputy Commissioner to use the agricultural land for non-agricultural purpose. Therefore, in view of the said amendment the decision relied upon by the learned Counsel for the respondent is of no assistance to him. The Supreme Court in the case of State of Karnataka and others Vs. Shankara Textiles Mills Ltd., . has held that obtaining permission to use the agricultural land for non agricultural purpose u/s 95(2) of the Act is mandatory in view of the non obstinate clause introduced by way of an amendment.

In view of the amendment introduced to Section 95(2) of the Act and also in view of the decisions referred to above, the argument of the learned Counsel for the respondent is liable to be rejected and accordingly, it is rejected.

The Tribunal while passing the impugned order has not applied its mind and has not considered the scope of Section 95 of the Land Revenue Act with reference to the documents available on records. Therefore, the order of the KAT is liable to be quashed.

9. In the result, I pass the following order:

- i) Writ Petition is allowed;
- ii) The impugned order of the KAT which is produced as Annexure-A is quashed;
- iii) The order of the Deputy Commissioner is confirmed.