

Dollaiah Vs. Deputy Commissioner

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Court : Karnataka

Decided On : Nov-09-1994

Reported in : ILR1994KAR3456; 1995(1)KarLJ525

Judge : G.C. Bharuka, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 95(5)

Appeal No. : W.P. No. 15054 of 1991

Appellant : Dollaiah

Respondent : Deputy Commissioner

Advocate for Def. : H.H. Kaladagi, HCGP

Advocate for Pet/Ap. : Rameakanth V Desai, Adv.

Judgement :

ORDER

Bharuka, J

1. The Petitioner is aggrieved by the order of the Karnataka Appellate Tribunal (Annexure-B) dated 5th April 1991 to the extent the Tribunal has remanded the issue regarding grant of permission for conversion of the agricultural land in question for fresh disposal.

2. The appellant is the owner of Survey No. 105/2C measuring 7 1/2 guntas situated in Bhogadi village. On 4.8.1989, he filed an application before the respondent-Deputy Commissioner for grant of permission to convert the said land as per the provisions of Section 95 of the [Karnataka Land Revenue Act, 1964](#) (in short, the Act). The said application was rejected by an order dated 15.1.1990 by the Deputy Commissioner. The said order was subjected to an appeal to the Tribunal which was disposed of by the impugned order (Annexure-B).

3. Before the Tribunal, the petitioner impugned the order of the Deputy Commissioner on two grounds, namely, (1) there was a deemed grant in terms of Section 95(5) of the Act, and (ii) the grounds assigned in the said order were erroneous, since the land was not reserved for open space by any competent authority.

4. The Tribunal after examining the facts on the basis of records produced and arguments advanced by the contesting parties came to the conclusion that the land in fact was not reserved for any open space and the grounds given by the Collector were unsustainable in law. After having so found, the Tribunal remanded the matter to the Deputy Commissioner for fresh disposal without addressing itself the plea of deemed grant as postulated under Section 95(5) of the Act.

5. The learned High Court Government Pleader has produced the records of the Deputy Commissioner. After going through the records, he could not dispute that the application filed by the petitioner for conversion was not disposed of within a period of four months from the date of filing of the said application muchless the completion thereof within the said period. In view of these basic facts, it cannot be disputed that the provisions of Section 95(5) of the Act came into play and the petitioner acquired the benefit of deemed grant. The said Sub-section reads as under:

'95(5) 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.'

6. This Court in the case of HABEEB KHANDASARI INDUSTRIES v. KARNATAKA APPELLATE TRIBUNAL AND ANR., while considering the scope, ambit and effect of the said sub-section, has held thus:

'The clear effect of Section 95(5) of the [Karnataka Land Revenue Act, 1964](#) is that the conversion shall be deemed to have been granted on the expiry of four months from the date of application. Thereafter, there is nothing further to be done by the party concerned. He could proceed to use the land for non-agricultural purpose as if, permission had been granted, as such permission stands granted by the force of the provisions of the Act itself'.

7. In the above view of the matter, it is held that the petitioner would be deemed to have been granted the permission as desired by him for conversion of the land and use the land for non-agricultural purposes. It will be open for the Deputy Commissioner to demand the conversion fee from the petitioner at the rate prevailing on the date of the deemed conversion.

8. In the result, the order of the Tribunal to the extent it has sought to remand the matter to the Deputy Commissioner is quashed and the Writ Petition is allowed.

No costs.