

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No.46912/2016 (KLR-RES) DATED:15-12-2016

G.S. SIDDARAJU, S/ O B. SIDDALINGAPPA VS. STATE OF KARNATAKA, REP BY ITS PRINCIPAL SECRETARY, REVENUE DEPARTMENT, M.S.BUILDING, BENGALURU-560 001 AND OTHERS.

ORDER

1. In this writ petition, petitioner is challenging the order dated 05.07.2016 passed by respondent No.3 Tahsildar,-Davangere.By the said order, the Tahsildar, in exercise of powers under Section 95 of the Karnataka Land Revenue Act, 1964 (for short, ' the Act '), has directed that the construction made by petitioner herein of a building in the lands bearing R.S.No.58 measuring 3 acres 12 guntas and R.S.No.59/P2-P1 measuring 2 acres 6 guntas situated in Avaragere Village, Kasaba Hobli, Davangere Taluk, shall be demolished after taking necessary approval from the Deputy Commissioner, Davangere District.It is further directed that expenses to be incurred for removal of the structure shall be recovered from the petitioner after obtaining necessary permission from the Deputy Commissioner, Davangere.The Tahsildar has also directed both parties to maintain status-quo regarding the property in question till the dispute with regard to their title and interest over the property in question was decided by the Civil Court.

2. Facts, as narrated in the memorandum of writ petition, disclose that petitioner claims to be the owner in possession and enjoyment of the property in question.He has constructed a building in a portion of agricultural lands allegedly as a farm house.The Tahsildar issued notice dated 17.08.2015 to the petitioner alleging that he had violated the provisions of Section 95 (2) of the Act because construction put up by him was not of a farm house, but of a huge building for purposes other than agriculture.

3. An order had been passed on 01.09.2015 in similar terms as has been done now under the impugned order.The same was challenged before this Court in W.P.Nos.41416/2015 & 41784/2015.This Court disposed of the said writ petitions on 01.10.2015 observing that petitioner had to prefer an appeal under Section 49 of the Act. W.A.Nos.4356/2015 & 4524/2015 were filed against the same.The Division Bench of this Court set aside the order passed by the Tahsildar and remitted the matter to the Tahsildar for consideration afresh and directed the parties to maintain status-quo with regard to change in the nature and character of the property in dispute till the matter was considered by the Tahsildar.

The Tahsildar was directed not to prevent the petitioner from entering into the farm house already constructed on the land.This is how the Tahsidlar has considered the matter afresh and has passed the impugned order.

4. As per the findings recorded by the Tahsildar, although petitioner had asserted before him that construction put up in the land in question was that of a farm house, report secured by the Tahsidlar from different

authorities such as the Assistant Executive Engineer, Public Works Department and the Assistant Director of Agriculture, Department of Agriculture disclosed that size of the construction was 150 X 50 sq.mtrs.and the approximate cost of construction was around rupees twenty two lakhs and therefore, such a building could not have been constructed in the agricultural land and hence, it had to be regarded as illegal construction put up without getting the land converted as required under Section 95 of the Act.

5. Learned counsel appearing for the petitioner contends that the Tahsildar obtained report from the Public Works Department and Department of Agriculture behind the back of the petitioner and none of the reports relied upon were furnished to the petitioner to have his say in the matter.

He further points out that merely because construction was relatively huge, it could not be contended that it ceased to be a farm house.

6. It is contended that as long as the construction put up is for the purpose of the farmer to enable him to carry on his agricultural activities in the farm land, no matter whether it is a smaller construction or bigger one, it does not lose the characteristic feature of a farm house.

7. Sri S.V.Angadi, learned counsel appearing for impleading applicant in I.A.1/2016 submits that petitioner has been illegally enjoying the property without parting with the requisite share which the impleading applicant is legally entitled as per the judgment and decree passed by the Civil Court.He submits that petitioner is unjustly enriching himself by enjoying the properties including the subject lands with utter disregard to the judgment rendered by the Civil Court.

8. Learned Additional Government Advocate points out that as per Section 95 (1) of the Act, erection of building for better cultivation of the agricultural land or for its more convenient use, though permissible, in terms of the proviso to sub-section.

(1) of Section 95 of the Act and the explanation appended thereto, the farm building or farm house, so erected shall not be more than 10% of his holding and that farm house or farm building means a house attached to a farm and construction in a portion of agricultural land, used for the residence of the agriculturist or used for the purpose of keeping agricultural equipments and tethering cattle. The house shall be used by farmer for his own use and it shall not be let out for commercial activities to any individual or agency.

9. In the light of the above, I have examined the contentions urged by all the parties and also the entire matter in detail. Sub-section (1) of Section 95 of the Act which is relevant for the present purpose can be usefully extracted as under:

" Subject to any law for the time being in force regarding erection of buildings or construction of wells or tanks, an occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm buildings, construct wells or tanks, or make any

other improvements thereon for the better cultivation of the land or its more convenient use for the purpose aforesaid:

Provided that the farm Building or farm House so erected shall not be more than ten per cent of his holding subject to maximum of such extent of land as may be prescribed. "

10. Section 96 of the Act provides for imposition of penalty for using agricultural land for other purposes without permission. Sub-section (1) of Section 96 of the Act reads as under:

" If any land assessed or held for the purpose of agriculture be diverted or used for any other purpose without the permission of the Deputy Commissioner, or before the expiry of the period prescribed in sub-section (5) of Section 95, the Deputy Commissioner may summarily evict the occupant and the person responsible for the diversion from the land so diverted and any building or other construction erected thereon shall also, if not removed after such written notice as the Deputy Commissioner may deem reasonable, be liable for forfeiture or to summary removal. The occupant and the person responsible for the diversion shall also be liable to pay, such penalty not exceeding one thousand rupees as the Deputy Commissioner may, subject to the rules made by the State Government in this behalf, direct. "

Rule 107- A of the Karnataka Land Revenue Rules, 1966 makes provision for payment of amount for compounding, in case of diversion of agricultural lands for non-agricultural use.

11. It is thus clear that an agriculturist can erect building in his agricultural land for its more convenient use or better cultivation, provided such farm building or farm house so erected is not more than 10% of his holding subject to maximum of such extent of land as may be prescribed. No Rule prescribing any maximum extent of land on which such building can be erected is brought to the notice of the Court. Therefore, proviso which says that the farm building or farm house so erected shall not be more than 10% of his holding has to be kept in mind while examining whether the house constructed is in the nature of a farm house or it loses its characteristic feature of a farm house. In other words, if the farmer has got 10 acres of land, he cannot be found fault with for putting up construction utilizing a bigger area in his agricultural land, say up to 1 acre provided he uses such construction for his own residence for the purpose of agricultural operations, tethering of cattle or for storing agricultural implements or products including for residence of himself and his family members, his servants and dependents.

12. If the agricultural land is so required to be used for erecting a farm house or farm building, then the agriculturist is not required to file an application seeking conversion of land as contemplated under sub-section (2) of Section 95.

13. In the instant case, the Tahsildar has proceeded on the basis of the report obtained from the Public Works Department and Department of Agriculture wherein it has been allegedly stated that petitioner had constructed a huge building by spending about rupees twenty two lakhs apparently for subjecting it to

commercial use and therefore, it could not be regarded as a farm house. This finding recorded by the Tahsildar is not preceded by a fair and reasonable opportunity given to the petitioner by supplying copies of the reports obtained from the Assistant Executive Engineer of Public Works Department and Assistant Director of Agriculture of Agriculture Department. It is well established that if a quasi judicial authority wants to place reliance on any report which is adverse to the interest of the petitioner, then the affected person (petitioner herein) shall be furnished with copies of such reports and shall be provided an opportunity to rebut the contents thereof. Such a procedure has not been followed in the instant case.

14. Merely because the construction put up is a bigger one, it cannot be held that the construction loses the characteristic of a farm building unless it falls within the mischief of proviso to sub-section (1) of Section 95 of the Act which states that such farm building or farm house erected shall not be more than 10% of his holding or that it does not satisfy the explanation appended to sub-section (1) of Section 95 of the Act which states that farm building or a farm house means a house attached to a farm and construction made in a portion of agricultural land, used for the residence of the agriculturist or used for the purpose of keeping agricultural equipments and tethering cattle or that the house shall be used by farmer for his own use and shall not be let out for commercial activities to any individual or agency.

15. There is no finding recorded in the instant case that construction put up has been let out either for commercial use to any other person or agency. In such circumstances, the Tahsildar was not right and justified in making an inference based on the structure put up that as the building was bigger one, it could not be regarded as a farm house/building. In addition, the Tahsildar was not right and justified in directing the parties to maintain status-quo till disposal of the civil suit. It is for the authorities to work out their remedies in the pending civil suit and not for the Tahsildar to pass an order directing the parties to maintain status-quo during the pendency of the civil suit.

16. In the instant case, it is pointed out that a decree has been passed declaring the right of the impleading applicant in the family properties and for allotment of her share as back as in the year 1972. It is also pointed out by Sri Angadi, learned counsel appearing for the impleading applicant that till today impleading applicant has not been able to secure the fruits of the decree. Learned counsel for the petitioner points out that appeal filed against the decree is pending before this Court. If that is so, both parties are well advised to expedite the said appeal or request the Court to refer the matter for mediation so that long standing litigation can be put at rest.

17. Subject to above observation, this writ petition is allowed. Impugned order passed by the Tahsildar is set aside. Matter is remitted to the Tahsildar for fresh consideration in accordance with law by providing fair and reasonable opportunity to both parties. Parties, including the impleading applicant are directed to appear before the Tahsildar on 14.12.2016 at 3 p.m.