(1990) 09 KAPT CK 0001

Karnataka Appellate Tribunal

Case No: Appeal No. 624/1988

Dattu		APPELLANT
	Vs	
State of Karnataka and Another		RESPONDENT

Date of Decision: Sept. 13, 1990

Acts Referred:

- Karnataka Land Revenue Act, 1964 - Section 54

Citation: (1991) 35 KarLJ 4

Hon'ble Judges: G. Shashikant Rao RM., J; B. Srinivasa Rao, D.J.M.; Mohd. AsifDJM, J

Judgement

@JUDGMENTTAG-ORDER

Sri Mohd. Asif,-This reference to the Full Bench under Section 7 of the Karnataka Appellate Tribunal Act, 1976, read with Rule 6 of the Karnataka Appellate Tribunal Rules, 1979, arises out of "the apparent" difference of opinion between the learned Judicial Member Sri Y.R. Sawkar and the learned Revenue Member Sri Narendra Singh, I.A.S., in appeal preferred under Section 49 of the Karnataka Land Revenue Act, 1964, (hereinafter referred to as the ''Act'') against the order dated 18-8-1988 of the Tahsildar. Athani, rejecting the application of the Appellate for conversion for the land Sy. No. 1225 of Athani Village under Section 95 of the Act.

2. Both the learned Members that constituted the Bench, relying on 1983 Kar. L.J. 74, Neelappa Reddy v Special Deputy Commissioner, Bangalore were of the view that the refusal of permission by the Tahsildar on the ground that the land sought to be converted was re-granted land and as such could not be permitted to be converted was unjustified, and, therefore, the refusal was unsustainable. The operative portion of the judgment written by the learned Judicial Member vide para-10 reads as follows:

"In the result, the appeal is allowed and the order passed by the Tahsildar, Athani is set aside. The permission is granted for conversion of the land in question into non-agricultural use. Hence, the Tahsildar collect the conversion fine as per law."

3. The learned Revenue Member, Sri Narendra Singh, I.A.S., as already observed above, concurred with the learned Judicial Member as to the untenability of the ground for refusal of permission by the Tahsildar, but then proceeded to observe as follows:

"I agree with my learned brother District Judge Member on the facts of the case and the reasonings of the Judgment. But, I do not agree with him so far as the order passed by him in para 10 of the Judgment is concerned. In my view the Karnataka Appellate Tribunal has no power to grant permission for conversion of agricultural land to any non-agricultural purpose. Besides, the Karnataka Appellate Tribunal can neither order payment of conversion at the prevailing rate nor can it impose any conditions in the conversion order. All these things are not within the jurisdiction or competence of this Tribunal so far as this case is concerned. I, therefore, pass the following dissenting order in this case:

"For the reasons mentioned in the body of the order the Appeal is allowed and the impugned order of the learned Tahsildar, Athani, is hereby set aside. The matter is remanded to the learned Tahsildar with the direction that the Appellant is entitled to have the land in question converted and the Tahsildar shall sanction the conversion by imposing such conditions as are permissible within the four corners of Section 95 of the Karnataka Land Revenue Act, 1964, and by levying such conversion fine as is prescribed by the Rules."

4. It was under the above circumstances, that the learned Revenue Member framed the following question for reference to and consideration by a Full Bench.

"Whether the Karnataka Appellate Tribunal is competent to grant permission to the Appellate for conversion of his agricultural land to non-agricultural purpose?"

5. On the very face of it, we do not find any substantial difference or dissent arising out of para-10 of the judgment rendered by the learned Judicial Member and the apparently dissenting note of the learned Revenue Member. However, the cause for the apparent dissent appears to be the following sentence in para-10 of the judgment.

"The permission is granted for conversion of the land in question into non-agricultural use."

6. The learned Revenue Member''s note of dissent appears to have been based on the provisions of Section 95(2) of the Act, which stipulate the grant of permission by the concerned authority under Section 95 "on such conditions as he may think fit". In otherwords, if the authority is convinced or satisfied that the applicant for conversion has made out a case for permitting conversion and granting conversion certificate, apart from levying conversion fine prescribed by Section 95(7), the authority may impose such conditions as he may think fit in the matter or circumscribe the permission with conditions. Obviously, what conditions should

circumscribe the permission will be a matter for decision by the authority granting permission and the nature of the conditions to be imposed will largely depend upon the facts and circumstances of each case. The Appellate Authority, that is, the Tribunal, will not be in a position to know as to what conditions shall have to accompany the permission for conversion and the best judge in this behalf will, obviously, have to be the authority vested with the jurisdiction to grant permission. This would, therefore, imply or mean that while the Tribunal, as the Appellate Authority will have to consider the tenability or otherwise of the grounds for refusal of permission by the competent authority, it is for the latter, if the former were to allow the Appeal of the applicant, for conversion and set aside the latter''s order rejecting the application for conversion, to consider, while granting permission as to what conditions shall have to be imposed under Section 95(2) and how much fine shall have to be levied under Section 95(2)(b) read with Section 95(7) of the Act. That being the case, the Tribunal, though vested with the power under Section 54 of the Act, to annul, reverse, modify or confirm the order appealed from, can, while reversing the order of refusal to permit conversion direct that conversion be granted on such terms and conditions as are stipulated by Section 95 of the Act, that is, the conditions as stipulated by sub-section (2) and the levy of conversion fine as stipulated by Clause (b) of sub-section (2) read with sub-section (7) of Section 95 of the Act. Therefore, while allowing the Appeal and setting aside the order refusing to permit conversion, the Tribunal cannot take upon itself the task of granting conversion, as it is needless to repeat the grant of such permission has to be followed by imposition of such conditions as the authority competent to grant permission may deem fit to impose under the circumstances of the case coupled with fixation by it of the necessary conversion fee. When the original competent authority, while granting the prayer of an applicant has to perform certain consequential acts like imposition of conditions and fixation of conversion fee, the Appellate Authority can only direct it, while reversing its order of refusal to grant permission, to grant permission sought for and while so doing, to impose such conditions as it (the original authority) may deem fit and collect such conversion fine as is permissible under law. Though, theoretically, proceedings in Appeal are deemed to be a continuation of the original proceedings, nevertheless, the Appellate Court cannot, in all cases and under all circumstances, take the place of the original authority vis-a-vis the relief sought before the original authority by the Appellant. If, as in the instant case, the original authority while empowered to grant relief is also to perform some other acts in connection with or relating to the relief to be granted by it, the Appellate Authority cannot be itself grant such a relief to the Appellant, but while reversing the original authority''s order of refusal to grant relief, direct it to grant and further direct it, while granting it, to comply with the conditions and restrictions under the statute relating to the granting of such a relief. Under these circumstances, it will not be correct or proper for the Appellate Authority to step into the shoes of the original authority and grant the relief which is within the competence of the original authority. We do not, for a moment, mean to

say that an Appellate Authority is not competent at all to grant the very relief which the original authority was competent to grant, while allowing an Appeal against that authority''s refusal to grant it. However, this cannot be considered as on omnibus or an unexceptional rule. Suffice it to say, that whether the Appellate Authority should grant the very relief that was refused by the original authority, while allowing the Appeal, or direct the original authority to grant it, would depend upon the facts and circumstances of each particular case. In the case of conversion sought under Section 95 of the Act, we are of the view that the Appellate Authority, while allowing the Appeal and setting aside the refusal to grant permission as unlawful and unjustified will not be competent to grant permission as such to the Appellant, but it will be certainly competent to direct the original authority to grant permission, which it had refused, and while doing so, direct that authority conform to the statutory provisions relating to imposition of conditions and levying of conversion fine.

7. In the result, for the foregoing reasons, we answer the reference made to us as follows:

"The Tribunal is not itself competent to grant permission for conversion of an Agricultural land for Non-Agricultural purposes. But, on Appeal against refusal by the competent authority to grant such permission, on the Tribunal being satisfied that such refusal was unlawful or unjustified and that the Appellant was entitled to permission for conversion, while allowing the Appeal and setting aside the impugned order of refusal, it may direct that authority to grant permission for conversion, within a reasonable time from the date of receipt of the Appellate judgment, such time being fixed in the judgment, and further direct that authority to impose upon the Appellant such conditions and such conversion fine, as contemplated by Section 95(2) and Section 95(2)(b) read with Section 95(7) of the Karnataka Land Revenue Act, 1964, as that authority may deem fit and proper under the circumstances of the case."