IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30TH DAY OF NOVEMBER 2011

PRESENT

THE HON'BLE MR.JUSTICE K.L.MANJUNATH

AND

THE HON'BLE MR.JUSTICE K. GOVINDARAJULU

Writ Appeal No.771/2008 (ULC)

BETWEEN:

Mallaiah Basalingayya Hiremath,
S/o.Basalingayya Hiremath,
Aged about 51 years,
R/o.Sattur, Dharwad Taluk,
Dharwad District.

...APPELLANT

(By Sri.Ravi S.Balikai for Sri.Anandkumar A. Mugadum, Sri.Mahantesh, Sri.C.Kottur Shettar, Sri.K.N.Mahableshwar Rao, Advocates)

AND:

1. The State of Karnataka,
   Urban Development Department,
   By its Secretary, Vikasa Soudha,
   Bangalore.

2. The Special Deputy Commissioner &
   Competent Authority under ULC Act,
   Hubli-Dharwad Urban Agglomeration,
   Office of Deputy Commissioner,
   Dharwad.

...RESPONDENTS

(By Sri.C.S.Patil, Additional Government Advocate.)

This Writ Appeal is filed under Section 4 of the Karnataka High Court Act, 1961, praying to set aside the judgment dated 28/3/2008 passed in Writ Petition No.259/2008.

This Appeal coming on for final hearing this day, K.L.Manjunath, J, delivered the following judgment:

JUDGMENT

The legality and correctness of the order passed by the learned single Judge, in W.P.No.259/2008, dated 28.3.2008, is called in question in this appeal.

2. We have heard the learned counsel for the parties. The facts leading to this case are as under:

3. The appellant was a tenant in respect of 15 acres 11 guntas of land, situate at Sattur village in Dharwad Taluka, which was an inam land and the same was granted to him by the Special Land Tribunal, on 7.11.1981, under the provision of Certain Inams Abolition Act, 1977. He was cultivating the land as a tenant. Even after granting the land, as per Annexure-A, by the Land

Tribunal, Dharwad, he continued the agricultural operations and is also residing therein.

4. It is the case of the appellant that without knowing the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Act' for brevity), under a wrong impression and bonafide believing that the provisions of the above said Act would apply to the land granted to him by the Tribunal, filed a declaration under Section 6(1) of the said Act on 11.12.1981. Accordingly, the Deputy Commissioner declared an area measuring 1950.2133 square meters as excess land.

5. Realizing the mistake committed by him, the appellant filed an appeal before the Divisional Commissioner, Belgaum, on 11.11.1993 and the said appeal was allowed in part and modified the order of the Special Deputy Commissioner, by his order dated 28.12.1993. Though an order is passed, the appellant continued to be in possession of the property and cultivating the

same as an owner. In spite of declaring a portion of his land as an Urban property and an excess land, no compensation has been paid to the appellant and even the compensation payable has not been determined as on today also. After realizing the mistake committed by him in giving declaration as an urban property, he filed a writ petition before the learned single Judge. The learned single Judge dismissed the petition on the ground of delay and latches, by his order dated 28.3.2008. Challenging the legality and correctness of the same, the present appeal is filed.

6. We have heard the counsel for the appellant and the Government Advocate for the respondents.

7. The learned counsel for the appellant taking us through the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, submitted that the land of the appellant could not have been declared as an urban property, because the

appellant continues to be in possession of the land and cultivating the same as an agricultural land and it does not fall within the definition of Urban Land, as described under Section 2(o) of the Act. Section 2(o) of the Act reads as hereunder:

2. Definitions.- In this Act, unless the context otherwise requires,-

(o) "urban land" means,-

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat,

but does not include any such land which is mainly used for the purpose of agriculture.

Explanation.-For the purpose of this clause and clause (q),-

(A) "agriculture" includes horticulture, but does not include-

(i) raising of grass,
(ii) dairy farming,
(iii) poultry farming,
(iv) breeding of live-stock, and
(v) such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house, then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) notwithstanding anything contained in clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;

8. Relying upon the provisions of the law, as the land in question was granted to the appellant by the Land Tribunal, on 7.11.1981, and as the Urban Land (Ceiling and Regulation) Act, 1976, has come into force w.e.f. 17.2.1976, and as on the commencement of the Act the land in question was an agricultural land and as an inam land vested in the Government, later granted to the appellant, in the year 1981, could not have been treated as an Urban Property. According to him, if the land was under the purview of the Urban Land (Ceiling and Regulation) Act, 1976, the Land Tribunal could not have granted the land under the provisions of Certain Inams Abolition Act by its order dated 7.11.1981. He further contends that, as on today also the appellant is cultivating the land and the Tahasildar, Dharwad Taluka, has submitted a report in the year 2009 during the pendency of this appeal, stating that the appellant has grown 85 teak trees, 7 neem trees and one banni tree, etc., and the remaining land is used for

cultivation and the land has not lost the character of agriculture even in 2009. Based on the records of the Government he contends that the declaration submitted by the appellant, as per Annexure-C, dated 11.12.1981, has to be set aside holding that the same has been filed by the appellant under a wrong presumption that the land in question is covered under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. He further contends that under Act 15 of 1999, the Urban Land (Ceiling and Regulation) Act, 1976, itself is repealed. In view of the same, the appeal has to be allowed and accordingly he requests the Court to allow the appeal and declare Annexure-C as null and void and does not bind the appellant and to further hold any notification issued by the Government treating the property of the appellant as an Urban Property, does not bind the appellant.

9. Per contra, the learned Government Advocate Mr.C.S.Patil, contends that the property in question comes under the provisions of the

Urban Land (Ceiling and Regulation) Act, 1976, when the appellant himself has declared it as an Urbanized Property, he cannot be permitted to contend that it is not an Urban Property and as an Agricultural land. In the circumstances he requests the Court to dismiss the appeal on the ground of delay and latches. According to him, the possession is taken by the respondents on 21.4.1998, by drawing a mahazar by the competent authority. He further submits that the land in question is included under the Comprehensive Development Plan of City Improvement Trust Board of Hubli. Therefore, he requests the Court to dismiss the appeal. To support his contentions he also relied upon an unreported judgment of a Division Bench of this Court in Writ Appeal No.7772/2003 dated 13.11.2008 and also the judgment of the Hon'ble Supreme Court reported in AIR 2010 Supreme Court 2962.

10. The learned counsel for the appellant relying upon the judgment of this Court reported

in ILR 2008 Karnataka 5059 contends that possession of the land is not taken by the respondents and still with the appellant. Therefore he contends that the contention of the respondents that possession is taken over by the competent authority is incorrect.

11. Having heard the counsel for the parties, what is to be considered by us in this appeal is, whether the land declared by the appellant is covered under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. If this point is answered in favour of the appellant, whether on the ground of delay and latches the respondents can contend that a non urban property can be taken over by the Government on account of the wrong declaration furnished by the appellant.

12. Having heard the counsel for the parties, it is not in dispute that the land was an inam land. The appellant was a tenant of the land. He had filed an application before the Land Tribunal, Dharwad, for grant of the land under the

provisions of the Karnataka Certain Inams Abolition Act, 1977, which Act has come into force as on 5.6.1978. Therefore, as on 5.6.1978 the land in question had vested in the Government, since it was an inam land. Admittedly the Urban Land (Ceiling and Regulation) Act, 1976, has come into force on 17.2.1976. If the said Act has come into force w.e.f. 17.2.1976, before filing an application by the appellant for grant of land under the Karnataka Certain Inams Abolition Act, 1977, the land had vested in the Government and if the land was an Urban Land, covered under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, the Land Tribunal, Dharwad, could not have granted the land in favour of the appellant on 7.11.1981, as per Annexure-A. However even if we hold that there was no bar for the Land Tribunal to grant the land, still this Court has to examine whether the land in question was covered under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 or not.

13. The Government Advocate has made available the records to us. A mahazar is drawn to show that the possession is taken by the respondents pursuant to the declaration declaring the land in question as an Urban Land. But in the original records at page No.353 we have seen a report sent by the Tahasildar, Dharwad, to the Deputy Commissioner, Dharwad, on 12.1.2008, stating that the appellant has been cultivating the land and there are about 85 teak wood trees and 7 neem trees and one banni tree and the land is under cultivation by the appellant. In the same file at page No.295 the appellant has addressed a letter to the Deputy Commissioner, Urban Land (Ceiling and Regulation), stating that out of 15 acres 11 guntas, 5 acres 5 guntas has been declared as excess land and an order is passed by the Government to take possession of the excess land and he has agreed to hand over possession with certain conditions and has also sought permission to cultivate the land by using the

borewell water, till the dispute is decided. From this it is clear that though there is an order to take possession, he continues to be in possession by cultivating the land by using the borewell water.

14. The Government Advocate submits that the appellant had requested the Government to settle the compensation at the rate of ₹.10/- per square feet. Even if we consider that there was a request by the appellant to grant ₹.10/- per square feet, the Government has not determined the compensation payable to him under the Act 1976 as on today and the compensation is also not paid.

15. From the above discussion it is clear that there is a notification declaring the land in question, as an Urban Property, pursuant to the declaration filed by the appellant. The appellant still continues to be in possession of the same and the land is still continued to be an agricultural land and the character of the land is not changed.

Therefore the question is, whether the land in question is an Urban Land, as per Section 2(o) of the Act and even if it is an urban property, in view of land is being used for agriculture, can it be considered as an urban property.

16. The revenue records available in the original records produced by the Government Advocate clearly shows that still it is an Agricultural Land. It may be true that now on account of development of Hubli Dharwad, the area may have been included within the limits of Hubli Dharwad Municipal Corporation, but still the land is retained as an Agricultural Land. Therefore, it is clear that there is nothing on record to show that the land in question is an Urban Land. Alternatively, in view of the provisions of Section 2(o) of the Act when the land is mainly used for agriculture and it cannot be treated as an Urban Property, under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. It is no doubt true that it is not the mistake of the respondents

in declaring the land as an Urban Property, because the respondents have proceeded based on the declaration filed by the appellant.

17. Merely because the appellant has committed an error in filing a declaration, declaring his agricultural land as an urban land, the same ~~case~~ cannot not be adjudicated mechanically, since a duty is cast upon the competent authority under the Act to find out whether the land declared by the appellant is really an urban land or not and whether such declaration can be adjudicated by the competent authority. If the authority is lack of inherent jurisdiction, merely based on a declaration filed by an innocent person, the competent authority or the Government cannot declare the land of the appellant as an urban land and pass an order under the Act. The competent authority would get a right to declare the property as an urban land, provided, the land in question comes under the definition of Section 2(o) of the Act. In the instant case both the appellant as well

as the respondents have proceeded on the basis that the land of the appellant falls under Section 2(o) of the Act and there is no examination by the competent authority about his jurisdiction to entertain the declaration and pass an order on merits. This fact is also not noticed by the appellate authority and so also by the learned single Judge. The learned single Judge has dismissed the writ petition only on the ground of delay and latches. When the competent authority has passed an order without jurisdiction, even if there is a delay, it was for the learned single Judge to set aside the order and give relief to the parties. In the circumstances, the appellant cannot be made to loose his valuable agricultural land and similarly on the ground of delay in approaching the Court, the legitimate rights of a farmer who is cultivating the land cannot be taken away by the Government on technicality. In the circumstances, though there is a delay in approaching the Court, considering the merits of this case, as the land

does not falls under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, we have to hold that on the ground of delay and latches the request of the appellant cannot be turned down by any Court.

18. So far as the judgment relied upon by the learned Government Advocate we are of the view that both the judgments are not applicable to the facts and circumstances of the case, because those judgments are rendered by the Hon'ble Supreme Court and a Division Bench of this Court, in respect of the land wherein the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, is applicable. When the Act itself is not applicable to the land of the appellant, these judgments are not applicable to the facts and circumstances of the case. Accordingly, these decisions will not come to the aid of the respondents.

19. In the result, the appeal is allowed. The order passed by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976,

declaring the agricultural land of the appellant as Urban Land, measuring 5 acres out of 15 acres 11 guntas, is bad in law and the land of the appellant is declared as Agricultural Land. All orders passed by the authorities, pursuant to the declaration by the appellant, as per Annexure-C to the writ petition, are hereby quashed. The order of the learned single Judge is set aside, because the learned single Judge has dismissed the writ petition only on the ground of delay and latches, without considering whether the land in question comes under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, or not.

Sd/-
JUDGE

Mrk/-

Sd/-
JUDGE