HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 7196 of 2011

ORDER:

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the notice issued by the respondent in Roc.No.575/2008/B, dated 23.09.2009, as illegal, arbitrary and without jurisdiction; and consequently to set aside the same.

The factual matrix of the case is as under:

The petitioner herein is a society registered under the Societies Registration Act with a view to establish a residential school for imparting good education to the children in Kadiri Area. In order to fulfil its objects, the petitioner society purchased dry land admeasuring Ac.2.50 cents in Sy.No.873/3 of Kummaravandlapalli Village, Kadiri Mandal through a registered sale deed dated 31.01.1985. It is stated that the Gram Panchayat, Kummaravandlapalli, Kadiri Mandal, passed a resolution on 02.06.2004 granting permission for construction of a building in the said land and also approved the building permission. The petitioner society constructed ground floor in the year 2004 by converting the land from agricultural to non-agricultural and later, first and second floors were constructed after obtaining necessary permission from the Gram Panchayat. While things stood thus, the respondent issued the impugned notice under Section 6 (1) of the Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purpose) Act, 2006 (for short "the Act"), demanding payment of Rs.12,28,125/- on the ground that the agricultural land is being converted into non-agricultural purpose without obtaining necessary permission. Questioning the said notice, the present writ petition is filed.

Learned counsel for the petitioner mainly submits that the agricultural land has been converted into non-agricultural purpose much prior to the Act coming into force and as such the provisions of the Act are not applicable to the case on hand. He further submits that the property tax is being paid to the

Gram Panchayat after obtaining necessary permission from the Gram Panchayat for construction of a building. Since the provisions of the Act are not applicable to the case on hand, he submits that issuance of impugned notice is illegal.

On the otherhand, the Government Pleader for Revenue submits that since the alterations in the said land were made subsequent to the Act came into force, the petitioner is liable to pay 10% of the basic value of the property along with 50% penalty.

A perusal of the material on record would show that the land was converted in the year, 2004, and the Act came into force in the year 2006. The certificate issued by the Panchayat Secretary, Kadiri, indicate that after obtaining permission from Gram Panchayat, ground floor was constructed in the year 2004 itself and a compound wall was also raised around the entire extent of land. The said certificate also discloses that since then the petitioner society has been paying the property tax @ Rs.4,512/- per year to Kummaravandlapalli Gram Panchayat.

Issue identical to the case on hand came up for consideration before this Court in ***K.Satyananda Patnaik and others v. Hyderabad Urban Development Authority***. In the said case a learned Single Judge of this Court while dealing with the provisions of the Act held that the Act is intended to regulate the conversion of an agricultural land for non-agricultural purposes and if the stipulated amount is paid, the concerned authority has no option, whatsoever, except to accord permission. The Court held that once the authority under the Act accords permission to convert the agricultural land, the matter ends there, and it would not at all be concerned, whether the land is put to industrial, residential, commercial, or any such other use. While dealing with the argument as to whether the Act can insist on clearance under the Act, even where the land ceased to be agricultural, prior to the enactment of that legislation, the Court observed that the Act does not indicate as to whether the enactment is retrospective in operation. This Court categorically held that it is only from the date on which the Act came into force, no piece of land which was earmarked for agriculture, and is shown as such in the revenue records, can be put to non-agricultural use. In the said case the land was already put to residential or other use, much before the said Act came into force and as such the Court held that permission under the Act need not be insisted.

In **Writ Appeal No.702/2010 and Batch**, a Division Bench of this Court while dealing with the same issue held as under:

> "a) It shall be competent for the Urban Development Authorities or the Local Authorities, as the case may be, to insist on submission of clearance/permission under the 2006 Act as a condition precedent for releasing of layouts, and
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> b) the land has been put to non-agricultural use before the 2006 Act came into force, such clearance/permission shall not be insisted.
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> c) Conversion of land into Non-agricultural use under the provisions of Act 3 of 2006 is necessary even if the land is covered by Master Plan and sanction of layout by the Development Authority under the provisions of Act 1 of 1975.

In the instant case, the land was converted from agricultural to non-agricultural in the year 2004, which is much prior to the date of Act coming into force; the Gram Panchayat gave permission for construction of ground floor and property tax was being paid from the year 2004 itself by the petitioner society. Hence, it is clear that even before the Act came into force the land was converted and construction was made by obtaining permission.

In view of the judgments referred to above and having regard to the facts and circumstances of the case, the writ petition is allowed and the notice issued by the respondent in Roc.No.575/2008/B dated 23.09.2009, is hereby set-aside. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

17.11.2015

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