HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 26679 of 2011

ORDER:

The present writ petition came to be filed seeking issuance of writ of mandamus, declaring the action of the second respondent in converting the agricultural lands into non-agricultural lands of respondent Nos.7 and 8 situated in Sy.Nos. 611/1, 611/2, 614/3, 615/3, 605 and 606/A1 of Peduru Village, TP Guduru Mandal, Nellore District vide his proceedings D.Dis.No. (K)/3007/2010 and D.Dis.No. (K)/3008/2010, dated 10.12.2010 without conducting any enquiry and taking objections of the petitioner, as illegal, arbitrary, contrary to Rule 4 of the Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Rules, 2006 (for short "the Rules, 2006") and violative of principles of natural justice.

The averments in the affidavit filed in support of the writ petition are as under:

The petitioner claims himself to be the owner of land admeasuring Ac.6.37 cents in Sy.Nos. 503, 604 and 605 of Peduru Village, situated adjacent to the land of respondent Nos.7 and 8 and has been cultivating the same by raising crops. It is stated that respondent Nos.7 and 8, who have purchased lands in Sy.Nos. 611/1, 611/2, 614/3, 615/3, 605 and 606/A1 in Peduru Village, intend to establish Boiled Rice Mill in the said land, thereby causing much inconvenience to the entire village as it is situated very near to the residential colonies. It is averred that the pollution caused by usage of boiled rice mill would affect the lands of the petitioner as well. Hence, the petitioner along with villagers made a representation, dated 27.09.2010, to the first respondent asking him not to allow respondent Nos.7 and 8 to establish the boiled rice mill in Peduru village and copy of the same was marked to respondent Nos.2 and 3. The petitioner states that he was under the bonafide impression that respondent Nos.1 to 3 will take steps and see that the mill is not established in view of the letter dated 06.10.2010 addressed by the first respondent to the fourth respondent, but however, he came to know through the sixth respondent that the second respondent has passed an order granting permission for conversion of land from agriculture to non-agricultural purpose. The averments in affidavit also disclose that the sixth respondent addressed a letter to the fourth respondent requesting him to defer the process till the Gram Panchayat takes a decision. Similar such representation came to be made by the sixth respondent to the firth respondent. On 16.06.2011, the sixth respondent passed an unanimous resolution rejecting permission for establishment of boiled rice mill and communicated the same to all. It is further stated that on 01.07.2011, the petitioner made a representation before the first respondent seeking indulgence and prevent establishment of a rice mill in Peduru Village. It is stated that in view of the orders of the second respondent (R.D.O.), respondent Nos.7 and 8 are proceeding with construction of boiled rice mill, which according to the petitioner is illegal and improper. Hence, the writ petition.

The second respondent filed his counter denying the averments made in the affidavit filed in support of the writ petition. It is stated that pursuant to a C.F.E. application made in the month of August, 2010 by the promoters of M/s. Venkata

Ramesh Raw and Boiled Rice Mill, the officials of Pollution Control Board inspected the site and placed verification report before the C.F.E. Committee of Zonal Office, Vijayawada on 09.09.2010. The Board vide its order dated 21.09.2010, gave consent for establishment of the mill on certain terms and conditions. It is stated that after complying with all the conditions stipulated, the Board will again given consent for operation. It is further averred that the Tahsildar, enquired into the application made for conversion of land and reported back stating that there is no objection to convert the land. Basing on the report of the Tahsildar, the Revenue Divisional Officer, Nellore, issued the conversion proceedings, dated 10.12.2010. Hence, it is contended that the procedure as contemplated under Rules, 2006 have been followed and there is no illegality or impropriety in the order passed. It is further brought to the notice of the Court that till date respondent Nos.7 and 8 have not constructed any Raw & Boiled Rice mill in the subject land.

Respondent Nos.7 and 8 filed their counter contending that the second respondent has followed the procedure required as per Rules, 2006 and even if the petitioner is aggrieved by the said order, he has a remedy of appeal under Section 8 of the Andhra Pradesh Agricultural Land (Conversion for Non-agricultural Purposes) Act, 2006 (for short “the Act”). It is further stated that neither the petitioner nor any of the villagers have any land near the land in dispute and there are no residential colonies within the radius of 500 meters. The allegation that establishment of rice mill would cause lot of pollution to the surrounding lands and to the residents of the village is refuted by these respondents. In any event it is stated that the issue in the present writ petition does not relate to establishment of rice mill but only deals with conversion of land which has to be agitated by availing the remedy under law and not by way of filing a writ petition before this Court.

From a perusal of the record, the undisputed facts which emerge out are that respondent Nos.7 and 8 purchased lands in Sy.Nos. 611/1, 611/2, 614/3, 615/3, 605 and 606/A1 in Peduru Village, T.P.Guduru Mandal, Nellore District. An application was made for conversion of land from agriculture to non-agriculture purpose along with a challan of Rs.1,37,000/- towards conversion fees. The Tahsildar vide his report dated 04.12.2010 is said to have recommended for conversion of the land. Basing on the report of the Tahsildar, the Revenue Divisional Officer, Nellore, accorded permission for conversion of the land on certain terms and conditions.

The main ground urged by the learned counsel for the petitioner is that the impugned order came to be passed without following the procedure contemplated under Rule 4 of the Rules, 2006.

Section 3 of the Act postulates that, no agriculture land in the State shall be put to non-agriculture purpose without prior permission of the competent authority. Clause (2) of Section 3 of the Act prescribes that an application for conversion of agriculture land for non-agriculture purpose shall be made before the competent authority in the form prescribed along with the conversion fees. Section 5 of the Act contemplates that Revenue Divisional Officer or any officer notified by the government in this behalf shall be the competent person to pass orders in respect of the lands situated within his territorial jurisdiction for conversion of the same from agriculture purpose to non-agriculture purpose. The Act is silent as to who the competent authority is and no notification is placed delegating such power to any other officer competent to pass orders. But a reading of Rule-4 of the Rules, 2006 gives a clear indication that the R.D.O. is the competent authority to receive the application and cause enquiry for conversion of land from agriculture to non-agriculture purpose. It would be useful to refer to Rule 4, which is as under:

> "4. **Procedure to be followed by the Competent Authority:**
>
> The Competent Authority i.e., Revenue Divisional Officer who receive the applications for conversion of agricultural land for non-agricultural purposes:-
>
> (a) may cause such enquiry as may be necessary to determine whether the conversion applied for is objectionable or not;
>
> (b) may invite objections in this regard, if necessary;
>
> (c) may inspect or cause inspection of the land in order to determine whether or not the proposed conversion is objectionable.
>
> (d) shall take cognizance of the Master Plan and such other land use restrictions in determining whether the proposed conversion is objectionable or not;
>
> (e) shall thereafter proceed to pass orders, ordering or rejecting the proposed conversion.

Rule 4 of Rules, 2006 postulate that on receipt of an application for conversion of land from agriculture to non-agriculture purpose, the Revenue Divisional Officer has to cause such enquiry as may be necessary to determine whether the conversion, as applied for, is objectionable or not, invite objections in this regard, if necessary; inspect or cause inspection of the land to determine whether or not conversion is objectionable and thereafter pass order. The order under challenge is as under:

“Sri Makam Ramesh, S/o. Ramthaiah & Smt. Makam Padmaja, W/o. Ramesh, Managing Partners of Sri Venkata Ramesh Raw & Boil Rice Mill, Pedur, residents of Lakshmi Puram, Nellore Town have applied for conversion of agricultural lands situated in Survey Nos. 611/1, 611/2, 614/3 and 615/3 and for an extent of Acs.4.59 cents of Pedur Village, Thotapalli, Gudur Mandal, Sri Potti Sreeramulu Nellore District, for the purpose of Non-agriculture. The request of the applicant is found to be consistent with the provisions of the Act.

The basic value of the lands in Survey Numbers 611/1, 611/2, 614/3 and 615/3 is Rs.3,00,000/- per acre, as per the records of the Sub-Registrar, and the conversion fee i.e. 10% of basic value for the land measuring Acs.4.59 cents i.e. Rs.1,37,000/- has to be paid.

The applicants have paid an amount of Rs.1,37,000/- vide Chalan No.53493 on 25.11.2010 towards conversion fees.

Hence, permission is hereby accorded for conversion of Agricultural Land into Non-agricultural purpose on the following terms and conditions.

1) The permission is issued on the request of the applicant and they are solely responsible for the contents made in the application.

2) The grant of permission cannot be construed that the contents of the application are rectified or confirmed by the authorities under the Act.

3) The permission confirms that the conversion fee has been paid under the Act in respect of the above agriculture lands for the limited purpose of conversion into Non-agricultural purpose.

4) It does not confer any right, title or ownership to the applicant over the above agricultural lands.

5) This permission does not preclude or restrict any authority or authorities or any persons or person or any individual or individuals or others, collectively or severally for initiating any action or proceedings under any law for the time being in force.

6) The conversion fee paid will not be returned or adjusted otherwise under any circumstances.

7) The authorities are not responsible for any incidental or consequential actions or any loss occurred to any body or caused otherwise due to or arising out of such permission granted for any false declaration, claim or depositions made by the applicant.

8) The Authorities reserves the right to cancel the permission if it is found that the permission is obtained by fraud misrepresentation

> or by mistake of fact, at any time in future with our without issue of notice to the applicant.

A perusal of the impugned order does not anywhere indicate enquiry being conducted by the Revenue Divisional Officer before passing the order. Though it indicates receipt of an application from Mulaga Venkateswarlu and Smt. Munaga Venkatalakshmi, but the order is silent as to the enquiry conducted. It appears the impugned order came to be passed basing on the report of the Tahsildar, dated 04.12.2010. In the counter filed by the second respondent, it has been stated that the Tahsildar, T.P.Guduru, enquired into the application filed by Sri Makam Ramesh and submitted a report dated 04.12.2010, basing on which, the Revenue Divisional Officer, passed conversion proceedings in D.Dis.No.(K)/3007/2010 and D.Dis.(K) 3008/2010, dated 10.12.2010. Though it is urged that the Revenue Divisional Officer has followed the procedure as contemplated under Rule 4 of the Rules, 2006, but the counter of respondent Nos.7 and 8 also states that the impugned order came to be passed after getting the report from third respondent (Tahsildar) only.

As stated above, the R.D.O. has to conduct an enquiry by inviting objections; may either inspect or cause inspection of the land and thereafter pass the order. A plain reading of the impugned order does not anywhere indicate objections being called for, conducting enquiry or inspecting the site. On the other hand, the counter filed by respondents clearly shows that the impugned order came to be passed basing on the report of the Tahsildar and not on an independent enquiry being made by the Revenue Divisional Officer. Hence, the order under challenge is liable to be set-aside. It is true that a provision of appeal is provided under the Act but since this Court has already entertained the writ petition in the year 2011 by issuing notice to the respondents and as the impugned order came to be passed in violation of Rule 4 of Rules, 2006, there is no point in directing the party to prefer an appeal at this Stage. Having regard to the circumstances stated above, the order under challenge is set-aside, and consequently the Revenue Divisional Officer is directed to pass orders after conducting an enquiry in terms of Rule 4 of Rules, 2006.

With the above direction, the writ petition is disposed of. No order as to costs.

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

JUSTICE C. PRAVEEN KUMAR

01.12.2015
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