

(2010) 03 KL CK 0114

High Court Of Kerala

Case No: Writ Petition (C) No. 15755 of 2009 (L)

Dharmadom Paristhithi
Samrakshna Samiothi

APPELLANT

Vs

The Dharmadom
Gramapanchayath and Another

RESPONDENT

Date of Decision: March 23, 2010

Acts Referred:

- Kerala Panchayat Raj Act, 1994 - Section 166, 182, 185B, 235, 235F

Citation: (2010) 2 ILR (Ker) 547 : (2010) 2 KLJ 44 : (2010) 2 KLT 194

Hon'ble Judges: Antony Dominic, J

Bench: Single Bench

Advocate: P.B. Sahasranaman, T.S. Harikumar and K. Jagadeesh, for the Appellant; S. Sreekumar and P.V. Surendranath, for the Respondent

Final Decision: Dismissed

Judgement

Antony Dominic, J.

The issue raised in these writ petitions are connected, and therefore, the cases were heard and are disposed of by this common judgment, For convenience, I shall make reference to the facts as pleaded in WP(C) No. 15755/09.

2. The 2nd respondent is a Company incorporated under the Companies Act. The 2nd respondent submitted an application to the 1st respondent Panchayat for obtaining a building permit for the construction of a multi storied apartment complex. By Ext. P1 resolution, the Panchayat Committee in its meeting held on 25/4/2008 resolved not to grant permit applied for on the ground that if the project is allowed to come up, that will increase the water shortage in the area.

3. Contrary to Ext. P1, the Secretary of the Panchayat issued Ext. P2 building permit on 13/5/2008, Subsequently, Panchayat passed Ext. P4 resolution to cancel Ext. P2 building permit and on that basis, the Secretary then in office issued a

communication to the 2nd respondent, Aggrieved by the aforesaid proceedings initiated at the instance of the Panchayat, the 2nd respondent filed Appeal No. 172/09 before the Tribunal for Local Self Government Institutions, The Tribunal heard the appeal and by Ext. P5 order dated 17th of April, 2009 set aside Ext. P4 and the proceedings of the Secretary. According to the Tribunal, the power to grant building permit is within the exclusive power of the Secretary of the Panchayat, and the Committee of the Panchayat has no original or appellate power in so far as this issue is concerned. On that ground, Tribunal held Ext. P4 and the proceedings of the Secretary to be invalid. Tribunal also found that the cancellation of Ext. P2 building permit was on grounds which are alien to Rule 16 of the Kerala Municipality Building Rules and held the impugned proceedings vitiated for that reason as well. It is challenging Ext. P5 order of the Tribunal that the Dharmadom Paristhithi Sararakshna Samithi has filed WP(C) No. 15755/09 and the Panchayat has filed WP(C) No. 20952/09,

4. The contention raised by the counsel for the petitioners is that it was well within the power of the Panchayat to have passed Ext. P4 referred to above. They relied on Section 166 of the Kerala Panchayat Raj Act read with the Third Schedule and also Section 182 of the said Act.

5. Section 166 of the Kerala Panchayat Raj Act provides powers, duties and functions of the Village Panchayat and it provides that it shall be the duty of the Village Panchayat to meet the requirements of the Village Panchayat area in respect of matters enumerated in the Third Schedule, Regulation of building construction is enumerated as a mandatory function of the Village Panchayat. It is therefore contended that regulation of building construction being one of the mandatory functions of the Village Panchayat, it was well within the power of the Village Panchayat to have passed Exts. P1 and P4. It is further contended that if the Secretary of the Panchayat had any difference of opinion, the course available to the Secretary is as provided u/s 182 of the Act, which deals with the powers and functions of the Secretary. It is argued that under the proviso to this Section, where the Secretary is of opinion that any resolutions passed by the Panchayat has not been legally passed or is in excess of the powers conferred under the Act, he shall request in writing to the Panchayat,, to review the resolution and express his views at the time of its review and that if the Panchayat upholds its previous decision, the matter shall be referred to the Government after intimation to the President and that if no decision of the Government is received within 15 days, such resolution shall be implemented and information thereof shall be given to the Government, On this basis, it is contended that the view taken by the Tribunal in Ext. PS order is illegal,

6. However, I am not in a position to agree with the learned counsel for the petitioners, Although u/s 166 of the Kerala Panchayat Raj Act, among the powers, duties and functions of the Panchayat, regulation of building construction has also

been enumerated as one of its mandatory functions, powers in that behalf has been conferred on the Secretary of the Panchayat under the various provisions contained in Chapter XXI of the Kerala Panchayat Raj Act. Section 235F provides that an application to construct or reconstruct building shall be send to the Secretary, Section 235G provides that the Secretary shall not grant permission unless and until he approves the site and Section 235J provides the period within which the Secretary is to grant or refuse to grant permission to execute work. Section 235K provides for reference to the Village Panchayat in the event the Secretary delays orders on an application made u/s 235G beyond 30 days period provided u/s 235I or J, Section 235L provides the grounds on which the approval may be refused by the Secretary. Section 235N confers power on the Secretary to require alteration in work and Section 235O confers power on the Secretary to stop construction or reconstruction endangering human life. Similar powers are also conferred on the Secretary in so far as an application to construct or reconstruct huts are concerned, by virtue of the provisions contained in Sections 235P, R, S, T and W. Section 185B provides exercise of statutory functions by officers of the Panchayat. This section reads as under:

185 B. Exercise of statutory functions by the officers-Where any officer of the Panchayat is conferred with any statutory powers and functions to be exercised independently and solely, the Panchayat, the Panchayat President, Chairman of the Standing Committee or any member shall not interfere or influence in the exercise of such powers and functions by that officer.

Therefore, by virtue of the provisions contained in Chapter XXI, power to consider and pass orders on an application for building permit is exclusively conferred on the Secretary of the Panchayat. The Committee of the Panchayat gets jurisdiction to consider an application only in a case where reference is made to it u/s 235K, If power is conferred on the Secretary, the same has to be exercised in the manner as provided u/s 185B, which has to be done independently and solely by him and without any interference or influence by the Panchayat, the President or Chairman of the Standing Committee. In this case, while power is thus conferred exclusively on the Secretary, the Panchayat on its own, passed Ext. P1 resolution resolving not to grant building permit, it is this decision which was repeated by the Panchayat again in Ext. P4, In my view, both Exts. P1 and PA orders are without jurisdiction by virtue of the fact that power has been conferred by the Legislature on the Secretary of the Panchayat, which he has to exercise independently as provided in Section 185B of the Act. If so, this conclusion of the Tribunal in Ext. PS order cannot be held illegal.

7. Learned counsel for the petitioners referred me to Section 235X, which provides that where erection of any building or the execution of work has been commenced or is being carried on without obtaining the permission of the Secretary or in K. provides for reference to the Village Panchayat in the event the secretary delays orders on an application made u/s 235G beyond 30 days period provided u/s 235

(or) Section 235L provides the grounds on which the approval may be refused by the Secretary. Section 235N confers power on the Secretary to stop construction or reconstruction endangering human life. Similar powers are also conferred on the secretary in as far as an application to construct or reconstruct huts are concerned, by virtue of the provisions contained in sections 235 P.R. S. T and W. Section 185B provides exercise of statutory functions by officers of the Panchayat. This section reads as under:

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Therefore, by virtue of the provisions contained in Chapter XXI, power to consider and pass orders on an application for building permit is exclusively conferred on the secretary of the contravention of any decision of the Village Panchayat, the Secretary may by order require the person to stop the same forthwith. A reading of the provision shows that the Secretary can require the person to stop the work and resume after the defects noticed are rectified. This certainly gives an indication that the decision of the Village Panchayat on the basis of which an order can be passed by the Secretary under this Section cannot be an order passed by the Village Panchayat rejecting a building permit as has been done in the instant case,

8. The other reason stated by the Tribunal in Ext. PS order is that grounds mentioned for cancellation of the building permit are not traceable to Rule 16 of the Kerala Municipality Building Rules which has been implemented in the Panchayat area. Rule 16 also confers power on the Secretary himself to suspend or cancel building permit and the grounds on which such power can be exercised are also enumerated in the Rule itself. A comparison of the Rule with Exts. P1 and P4 show that the grounds mentioned in Exts. P1 and P4 do not find place in Rule 16. If that be so, this conclusion of the Tribunal also cannot be faulted,

9. Additionally in WP(C) No. 20952/2009" the Panchayat has a case that the Secretary was on the eve of his retirement and was not in office on 13/5/2008 when Ext. P2 building permit was issued by the Secretary. This argument of the Panchayat is answered by the 2nd respondent by referring to Ext. R2(k) produced in WP(C) No, 15755/09, which is the extract of the attendance register of the Panchayat. From this document, prima facie, it would appear that the Secretary who has issued the building permit has signed the attendance register in the F.N. of 13/5/2008. Nothing has been placed on record in either of these writ petitions to conclude that the contents of Ext. R2(k) is incorrect, if that be so, I cannot accept that contention of the Panchayat as well. For these reasons, I do not find any merit in the writ petitions. Writ petitions are only to be dismissed and I do so.