
(1997) 08 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 110 Of 1988

Administrator Srinagar Municipality	Vs	APPELLANT
Gh.Qadir		RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Citation : (1998) KashLJ 202 : (1998) SriLJ 29

Hon'ble Judges : A.Q.Parray, J

Bench : Single Bench

Advocate : Syed Manzoor , Advocates appearing for the Parties

Judgement

1. This petition was listed today in the regular cause list for hearing. Nobody has appeared for the respondent. However, Mr. Manzoor is present

for the petitioners.

2. Petitioners have filed this revision against the order dated 1241988 passed by Municipal Magistrate, Srinagar in a suit titled Ghulam Qadir

Naqash versus Administrator, Municipality and others whereunder issue which was taken are preliminary issue has been decided against the

petitioners. In the suit, parties have already filed their pleadings and number of issues came to be framed, amongst them issue No. 1 was taken as

preliminary issue, which reads:

Whether this court has no jurisdiction to proceed with the trial of the suit? OPD.

3. The learned trial court after having heard counsel for the parties at length had returned a finding by holding that the Executive Officer under the

provisions of Section 47 of the Municipal Act, without authority from the government, would not have delegated his official powers to Khalafwarzi

officer to issue notice for demolition or stopping the constructions under section

225(2) of the Municipal Act and on that count, he has returned a finding that the notice was bad as because it was without any authority. So the challenge which was put to that notice in the suit is maintainable.

Aggrieved by this order, the present revision petition has been filed.

4. I had the occasion to go through the law which has been quoted by Mr. Manzoor. Section 47 of the Municipal Act reads:

47. Delegation of power of Executive Officer: The Executive Officer may, and when so required by the Government shall, delegate any of the

powers vested in him under this Act to any Municipal Officer under him for the efficient performance of work.

5. Thus the very reading of the Section do envisage that it is discretion of the Executive Officer to delegate the powers vested in him to any

functionary of the Municipality namely Khalafwarzi Officer etc. But when the Government desires and requires the Executive Officer to delegate his

powers, then it is mandatory, he has but to delegate the same. So in either case there is law which recognizes the delegation of powers which the

statute has envisaged and confer on the person of the Executive Officer. It is these statutory powers which are to be exercised either by the

Executive Officer or by the delegation of any functionary of the Municipality. Thus there is no dispute on that count. The reasoning given by the trial

court in this respect is not sound. It is not required that when the Executive Officer is called upon to delegate his powers to Khalafwarzi Officer, he

has to do it only because Government has directed him to do so. Even if there be no orders from the Government on that score, the Executive

Officer has himself the powers to delegate his powers to Khalafwarzi Officer, a functionary of the Municipality under the Municipal Act and the

Rules framed thereunder. The learned trial court has, therefore, fallen into an error on that score.

6. Even otherwise Section 225 (2) of the Municipal Act reads.

225. Power to Executive Officer to stop progress of building work unlawfully commenced or carried out. (1) In any case in which the erection of

building has been commenced or is being carried on in contravention of the provisions of this Act or any rule or byelaw made thereunder, the

Executive Officer may, by written notice, require the building operations to be discontinued from the date of the service of such notice.

(2) Any person failing to comply with the terms of such notice shall be punishable with fine which may extend to two thousand rupees and when the noncompliance is a continuing one, with a further fine which may extend to one hundred rupees for every day after the first during which the noncompliance continues.

7. So here also is one of the powers vested by the statute to the person of the Executive Officer to issue a notice under section 225(1) asking the

erring person to stop the progress of building work, unlawfully commenced or carried out. This is also one of the powers vested with the Executive

Officer and as per section 47 of the Act, he can delegate this power at his discretion to Khalafwarzi Officer or under the mandates of Section 47, if

the Government desires to delegate. In either case, this is also one of the powers which have been conferred on the person of the Executive Officer

by the statute and he can and is empowered to delegate it without any fetters. No where in the statute, it is provided or spelt out as to what are the

powers which the Executive Officer can delegate or retain to himself. It has been left to the discretion of the Executive Officer. No doubt in case

any specific notification has been issued in that behalf by the Government, enumerating that these are the powers which the Executive Officer shall

delegate to the other functionaries of the Municipality, that does not deprive the Executive Officer in delegating some more powers vested in him

by the statute to any functionary. There is no such bar in such delegation. Neither is there any fetter in such delegation. The purpose of the Act and

the implementation of the directions envisaged in the act is to see that the activities of Building Constructions are being carried in accordance with

the rules and regulations and the law laid down by the relevant provisions of the Statute, so that the building and other activities are duly regulated

under the provisions of the Act and the Rules framed thereunder or any other Development act which empowers for carrying on such activities.

8. The person/persons who is flouting the normal course, rules, bye laws and regulations wants to take wind cut of sail by putting fictitious

challenge. Some times on factual side, some time on administrative laxity and some times for want of authority or source of powers or some times

on the constitutionality of the provisions of the Act, This only is being done in furtherance of their nefarious activities to achieve their nefarious ends.

9. Till date substantial loss has no doubt been caused by such litigation , but now the courts have also come up and are rising to the occasion to

see that illegal constructions and constructions without permission or encroachments etc. are stopped with firm hand. So the pleas that notice

issued is of valid and in accordance with law as the person issuing such notice has no authority to issue such notice etc. are all flimsy things, as in

the present case, petitioner has succeeded in projecting their long grievance by glib tongue and an argument and temporary assuagement is created.

But when the matter has been appreciated in its correct perspective and in light of the law, the contentions raised by the respondent/plaintiff does

not hold and obviously he has not presented before this court for defending their cause or to project his case.

10. In the totality of circumstances, this revision petition is allowed and the order impugned dated 29/3/1988 passed by the trial court is quashed.

Let the records be sent back to the trial court who shall proceed in the matter in accordance with law and in light of the law/issues which have

already been framed, after hearing arguments afresh. However, before proceeding further the trial Judge shall summon the parties. Revision file be

consigned to records.