

(2009) 06 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 15553 of 2001

Albert Jerone

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 08-06-2009

Acts Referred:

Kerala Building Rules, 1984 — Rule 5
Kerala Municipalities Act, 1994 — Section 410
Kerala Municipality (Amendment) Act, 1999 — Section 172

Citation : (2009) 3 KLT 194

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : R.S. Kalkura, for the Appellant; Mathew Vadakkal, Government Pleader, C.J. Joy and S. Gopakumaran Nair, for the Respondent

Final Decision : Dismissed

Judgement

B. Radhakrishnan, J.—Petitioners challenge Ext.P4 exemption granted to the 4th respondent from the provisions of the Kerala Building Rules, 1984.

2. The fourth respondent applied for exemption on 5.8.1998. Section 410 of the Kerala Municipality Act, 1994, hereinafter referred to as the "Principal Act", then provided for grant of exemption from all or any of the provisions of Chap. XVIII of that Act. While that application was pending, Section 410 of the Principal Act was repealed with effect from 24.3.1999 by Kerala Municipality (Amendment) Act, 1999 (Act 14 of 1999), hereinafter, the "Amending Act", forshort. Thereafter, on 1.10.1999, Kerala Municipality Building Rules, 1999, for short, the "K.M.B.R., 1999", came into force resulting in the repeal of the Kerala Building Rules, 1984, for short, the "K.B.R., 1984". It was thereafter, i.e., on 5.11.1999, that the impugned Ext.P4 was issued. On the strength of Ext.Pl, the Panchayat granted permit.

3. The factual controversies between the parties rest on verdicts rendered inter partis by the civil courts.

4. Learned Counsel appearing for the petitioners argued that by the coming into force of the K.M.B.R., 1999 with effect from 1.10.1999, there was no authority to exercise any power referable to Rule 5 of K.B.R., 1984, which stood repealed and therefore, the issuance of the impugned exemption on 5.11.1999, in exercise of authority under Rule 5 of the K.B.R., 1984, is without jurisdiction.

5. Per contra, learned Counsel for the 4th respondent argued that the Amending Act provided certain savings in Section 172 of that Act and this, essentially, enables the continuance of proceedings on the basis of applications which were already pending before the competent authority for exemption.

6. Section 410 of the Principal Act, as it then stood, provided for grant of exemption from any of the provisions of Chap-XVIII or the rules made thereunder. The modality of exercise of that power was also stated in Section 410. On and after the repeal of that provision by the Amending Act with effect from 24.3.1999, the power of exemption as was available u/s 410 would not be there.

7. But, Section 172 of the Amending Act provided that:

notwithstanding the repeal of Section 410 of the Principal Act, actions or the petitions, Appeal Petitions or Review Petitions seeking exemption from the provisions or rules relating to building construction filed and pending before the Government or any Officer authorised by Government immediately before such repeal shall be continued in accordance with the provisions of the said Section and disposed of accordingly.

This essentially enables exercise of authority u/s 410 of the Principal Act, notwithstanding the repeal, in relation to matters which were already pending with the Government. Therefore, the power to grant exemption as done in the case in hand was available.

8. The consequential question then would be as to whether the coming into force of K.M.B.R., 1999 with effect from 1.10.1999 and the resultant repeal of K.B.R., 1984, would result in lack of power to make an order of exemption relying on the similar clause in Section 172 of the Amending Act and referable to Section 410 of the Principal Act read with Rule 5 of the K.B.R., 1984, in cases then pending with the Government. The saving clause contained in Section 172 of the Amending Act essentially saves the continuance of the provisions of Section 410 along with the provisions in the K.B.R., 1984 for the purpose of consideration and disposal of applications, appeals, revisions, reviews etc. pending in relation to the grant of exemption. That would work in terms of Section 172 of the Amending Act only if K.B.R., 1984 is also held to be alive concurrently and limited by the operational impact of Section 172 of the Amending Act. Therefore, in relation to matters which fall u/s 172 of the Amending Act, Section 410 of the Principal Act; and Rule 5 and the other provisions of the K.B.R., 1984 would continue to operate, notwithstanding the coming into being of K.M.B.R., 1999, which included the repeal of K.B.R., 1984.

9. For the aforesaid reasons, this Writ Petition fails. The same is accordingly dismissed. No costs.