
(2006) 02 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 389 of 2005

Champa Lal

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 23-02-2006

Acts Referred:

Rajasthan Municipalities (Constitution of Committees) Rules, 1996 — Rule 3, 3(1), 3(2)
Rajasthan Municipalities Act, 1959 — Section 17, 170, 170(12), 170(6), 197

Citation : (2006) 2 RLW 1545 : (2006) 3 WLC 80

Hon'ble Judges : S.N. Jha, C.J.;N.P. Gupta, J

Bench : Division Bench

Advocate : Preetam Solanki, for the Appellant; Rajesh Joshi and R.S. Saluja, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, C.J.—This special appeal is directed against the order of the learned Single Judge dated 23.7.2005 in S.B. Civil Writ Petition No. 5774/2003 allowing the writ petition of respondent No. 3 Suresh Nath (hereinafter referred to as "the respondent").

2. The respondent had filed the writ petition for quashing the order of the Appellate Committee of the Jodhpur Municipal Corporation (in short, the Corporation). Brief facts of the case are that the respondent filed an application in the Corporation seeking permission to open a gate on the land in front of the house of the appellant which had allegedly been closed by the appellant by putting stones on one end to prevent the neighbours from dumping garbage on it. The Building Committee of the Corporation allowed the application vide resolution dated 6.6.1998 and the respondent was permitted to erect the gate. The appellant filed appeal before the Appellate Committee of the Corporation. Challenging the jurisdiction of the Appellate Committee the respondent approached this Court in S.B. Civil Writ Petition No. 3253/2002. The writ petition was disposed of by order dated 29.4.2003 with liberty to raise objections before

the Appellate Committee itself. Overruling the objections of the respondent the Appellate Committee by order dated 22.7.2003 set aside the resolution of the Building Committee. The respondent against approached this Court in the connected writ petition i.e. S.B. Civil Writ Petition No. 5774/2003. After hearing counsel for the parties, the learned Single Judge took the view that the respondent had been granted permission to open the gate in a lane in which other persons also had their gates - a fact admitted on behalf of the appellant, and in that view of the matter, the Appellate Committee had no reason to deny similar and natural benefit available to the respondent. The learned Judge observed that if the lane is small the question as to how it is to be used can be decided by the neighbours, and if there is any nuisance, the aggrieved party has right to approach the civil court. But once other neighbours have opened their gates in the lane, permission granted by the Building Committee to the respondent should not have been cancelled. In these premises, the learned Single Judge quashed the decision of the Appellate Committee dated 22.7.2003 and thus allowed the writ petition.

3. After hearing counsel for the parties at length it appears to us that there are serious disputed questions of fact involved in the case. The appeal nevertheless is fit to be allowed on a question of law. The question is whether the Appellate Committee was competent to interfere with the resolution of the Building Committee ?

4. The provisions relating to erection of building including renovation or opening of gate are contained in Section 170 of the Rajasthan Municipalities Act, 1959 (in short, the Act Section 17 provides mechanism for grant of permission etc. by the Municipal Board or Corporation, as the case may be Sub-section (12) of Section 170 provides for appeal against order of the Board/Corporation. Sub-section (12) reads as under:

Any person aggrieved by an order of a board under Clause (a) or Clause (b) or Clause (c) of Sub-section (6) or Clause (a) or Clause (b) of Sub-section (11) may, within thirty days from the date of such order, exclusive of the time requisite for obtaining a copy thereof appeal to the Collector and no such order shall be liable to be called in question otherwise than by such appeal.

Provided that in relation to a corporation, this sub-section shall have effect as if for the expression "the Collector", the expression "the State Government or such officer as may be authorised by it in this behalf were substituted therein.

5. Relying on the above provisions Shri Rajesh Joshi appearing for the respondent submitted that if the appellant was aggrieved by the order of the Building Committee of the Corporation dated 6.6.1998 it was open to him to prefer appeal before the Divisional Commissioner who has been delegated with the power of the State Government to hear appeals against orders of the Corporation under proviso to Sub-section (12), and the so called Appellate Committee had no jurisdiction to entertain the appeal. Counsel pointed out that

Section 73 of the Act provides for committees. There is no mention of any such Appellate Committee. Counsel urged that the constitution of the Appellate Committee being totally illegal, its decision was not fit to be set aside on this short ground alone. Counsel placed reliance on a Division Bench decision of this Court in D.B. Civil Special Appeal No. 510/1999 State of Rajasthan v. Balaji Industries, decided on 20.11.2001.

6. Shri Preetam Solanki appearing for the appellant and Shri R.S. Saluja appearing for the Corporation on the other hand submitted that under the Rajasthan Municipalities (Constitution of Committees) Rules, 1996 (in short, "Committees" Rules) framed in exercise of rule making power u/s 297(1) read with Section 73 and 78 of the Act, apart from the committees mentioned in Section 73 of the Act and Sub-rule (1) of Rule 3, other committees not exceeding the prescribed number can be constituted as may be deemed proper under Sub-rule (2) of Rule 3. It was submitted that by virtue of Rule 3(2) of the "Committees" Rules, the constitution of Appellate Committee cannot be questioned, and the function of the Appellate Committee being to decide appeals arising from original orders, the Appellate Committee in the instant case rightly entertained the appeal of the appellant.

7. Counsel for the parties also went into the factual gamut of the case which we do not propose to go into. As observed above there are disputed questions of fact and this Court would not like to record any finding on those questions.

8. We have already referred to Sub-section (12) of Section 170 of the Act which in no uncertain terms provides for appeal against orders under clauses (a), (b) and (c) of Sub-section (6) or clauses (1) and (b) of Sub-section (11). Clause (a) of Sub-section (6) refers to permission to execute any work of which notice has been given under Sub-section (1). The order of the Building Committee dated 6.6.1998 was clearly an order under Clause (a) of Sub-section (6) of Section 170 and therefore appealable under Sub-section (12). Such appeal lies to the Collector in case of Board and the Divisional Commissioner authorised by the State Government to hear the appeal on its behalf where the order is of the Corporation. The point is where provision for appeal has been statutorily provided in the Act itself, whether the rules framed under the Act can provide for a parallel appeal before another authority.

9. It is well settled, and it has been so stated in Sub-section (1) of Section 297 of the Municipalities Act, that the rules are framed for the purpose of carrying into effect the provisions of the Act. Any rule repugnant to the Act would be ultra vires. The field as regards appeal against the specified kinds of order of the Board or Corporation, as the case may be, being occupied by Sub-section (12) of Section 170, rules cannot provide for hearing of appeals against such orders by any Appellate Committee. Indeed, neither the Act nor the "Committees" Rules provides for any Appellate Committee as such. Section 73 of the Act which contains provisions regarding committees does not mention above any Appellate Committee. It refers to the Executive Committee. In addition, five more

committees, namely, Finance Committee, Health and Sanitation Committee, Building and Works Committee, Rules and Bye-laws Committee and Public Conveyance Committee may also be constituted by the Municipal Council. The "Committees" Rules have been framed giving reference to Sections 73 and 78 apart from Sub-section (1) of Section 297 of the Municipalities Act but there is nothing in these sections to authorise constitution of an Appellate Committee. We have already referred to Sub-section (1) of Section 297 and Section 73 of the Act. Section 78 refers to delegation of powers, duties and functions of the Board to such committees as may be prescribed. By virtue of this provision, on delegation of powers, duties and functions, the Committee may exercise any power, discharge any duty or perform any function of the Board. It cannot sit in appeal over the decision of the Board.

10. Now coming to the "Committees" Rules which is the foundation of the case of the respondents, Rule 3 provides for constitution of Executive Committee, Finance Committee, Sanitation and Health Committee and Building and Works Committee. Sub-rule (2) of rule 3 also lays down "such other committees as may be deemed proper may be constituted but their number shall not exceed five in case of board, ten in case of council and fifteen in case of corporation". Under Sub-rule (3), the committees aforesaid "shall exercise, discharge and perform such powers, duties and functions as are delegated to them by rules made under Clause (a) of Section 88 of the Act". Clause (a) of Section 197, "regulating the delegation of any of its powers or duties and the appointment and constitution of committees". Thus u/s 88 the Board is empowered to make rules, inter alia, in the matter of appointment and constitution of committees "but not inconsistent with the Act or the rules of the State Government". The Act having made provisions for appeal under Sub-section (12) of Section 170, any provision providing a different appellate forum would be Inconsistent with Section 170(12), Though under Sub-rule (2) of Rule 3 of the "Committees" Rules, committees other than those mentioned in Sub-rule (1) may be constituted "as deemed proper", not exceeding the prescribed number, the committee so constituted cannot encroach upon the field occupied by the provisions of Sub-section (12) of Section 170. The result of the aforesaid discussions is that if the appellant was aggrieved by the resolution of the Building Committee dated 6.6.1998, he should have preferred appeal to the Divisional Commissioner rather than to the so called Appellate Committee. The Appellate Committee being incompetent, the order passed by it was rightly set aside by the learned Single Judge, though for different reason. The decision of the learned Single Judge therefore does not require any interference by the Division Bench.

11. Counsel for the appellant submitted that the appellant may be allowed liberty to file appeal to the Divisional Commissioner. The prayer was opposed by the counsel for the respondent who submitted that the learned Single Judge having already decided the matter taking into consideration facts of the case, it would not be proper to grant liberty to the appellant to file appeal to the Divisional Commissioner at this stage. We express no opinion. In view of the dispute

involved between the parties involving questions of fact, we would observe that for complete and effective adjudication of the dispute, if the jurisdiction of civil court is not barred, it would be appropriate that the dispute is decided by the civil court.

12. With the above observation, the appeal is dismissed.