

(1995) 04 GUJ CK 0015
In the Gujarat High Court

Chiloda Gram Panchayat

APPELLANT

Vs

Administrator, Gandhinagar District Panchayat and Others

RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Gujarat District Panchayat Appeal Committee (Procedure) Rules, 1968 — Rule 3
Gujarat Panchayats Act, 1961 — Section 271(2)(i), 271(2)(i), 303, 319

Citation : (1996) 3 GLR 360

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Judgement

R.K. Abichandani, J.—The petitioner Gram Panchayat seeks to challenge the interim order passed by the District Development Officer on 6th March, 1995 in Appeal No. 1 of 1995 by which the respondent Nos. 3 and 4 were required to deposit the amount in connection with illegal encroachment at the rate of Rs. 13.50 paise per square yard as against Rs. 90/- per square yard, fixed under the resolution of the Panchayat dated 18th April, 1994. The petitioner also seeks a direction on the Administrator of the Gandhinagar District Panchayat to hear Appeal No. 1 of 1995. A further direction is sought for setting aside Resolution No. 53 dated 31st August, 1994 made by the respondent-Administrator, by which he purported to delegate powers to the District Development Officer.

2. The resolution passed by the petitioner-Panchayat being Resolution No. 3 dated 18th April, 1994 under which the Panchayat fixed the rent for unauthorised occupation u/s 319 of the Gujarat Panchayats Act, 1961, at Rs. 90/- per square yard was challenged by the respondent Nos. 3 and 4 before the District Panchayat in Appeal No. 1 of 1995 filed on 23-1-1995. The matter was posted on 27th January, 1995 for hearing on the question of interim relief. When the appeal was taken up for hearing by the District Development Officer, the petitioner raised an objection on the ground that he did not have the powers of the Appeal Committee of a District Panchayat. The Taluka Development Officer had, on 27th January, 1995, suspended the resolution dated 18th April, 1994 and that order came to be challenged by the petitioner in Special Civil Application No. 733 of

1995. In that matter, a direction was issued on 10-2-1995 requiring the appellate authority to hear the Appeal No. 1 of 1995 which was filed by the respondent Nos. 3 and 4 before the District Panchayat. In the same petition, on 21-2-1995, a direction was given to the effect that the appellate authority before whom Appeal No. 1 of 1995 is pending, shall decide the application for interim relief, which was said to have made by the respondent No. 3 u/s 243(6) of the said Act, on or before 6th March, 1995. On 6th March, 1995, the respondent-District Development Officer passed the impugned interim order.

3. The learned Counsel appearing for the petitioner strongly contended that there was no valid delegation of powers in favour of the District Development Officer and therefore, he had no jurisdiction to make any orders in an appeal which was required to be heard by the Appeal Committee of the District Panchayat. It was further argued that the powers of the District Panchayat to pass orders in appeal were exercisable by the Appeal Committee u/s 243 of the Gujarat Panchayats Act, 1993 (corresponding to Section 290A of the Act of 1961). It was contended that when in the instant case, the District Panchayat was not in existence and consequently Appeal Committee was also not in existence, the Administrator who had stepped into the shoes of the District Panchayat alone could exercise the powers of the Appeal Committee and he had no authority to delegate such appellate power to the District Development Officer as was sought to be done by the Resolution No. 53 dated 31st August, 1994. He further submitted that the impugned Resolution No. 53 dated 31st August, 1994 purported to create an appellate authority by authorising the District Development Officer to hear the appeal and by creating such new forum, the Administrator has exercised legislative powers which he does not possess. Moreover, Resolution No. 53 purported to modify the earlier Resolution No. 23 dated 29th March, 1994 even though the subject-matter of the said Resolution No. 23 was entirely different, inasmuch as by that resolution the District Development Officer was designated as Secretary under Rule (3) of the Procedure Rules of 1968. It was also argued that Resolution No. 23 dated 29th March, 1994 was passed by the Administrator of the District Panchayat under the Act of 1961 and it was purported to have been amended by Resolution No. 53 dated 31st August, 1994 under the Act of 1961, which was already replaced by the Act of 1993. It was submitted that Resolution No. 53 could not have been passed under the repealed Act of 1961 and was therefore, a nullity. It was further contended that Resolution No. 53 sets at naught the scheme underlying the Act by empowering the District Development Officer to exercise functions of the Appeal Committee when the District Development Officer was required to be only a Secretary of the District Panchayat and was subordinate to the President. It was further contended that Section 271 of the said Act refers to the powers of the District Panchayat and not of the Appeal Committee of the District Panchayat. Only the powers exercisable by the District Panchayat could be entrusted to a District Development Officer u/s 271 of the Act and when the power of hearing appeal was exercisable only by the Appeal Committee and not by the District Panchayat which could not even

withdraw that power from the Appeal Committee u/s 145(vi) of the Act in view of the non-obstante clause contained in Section 243(1), the District Panchayat could not have delegated the appellate power to the District Development Officer. Therefore, the Administrator also could not have delegated that power to the District Development Officer.

4. As noted above, on 21st February, 1995, this Court had made an order directing the appellate authority before whom Appeal No. 1 of 1995 was pending, to decide the application for interim relief. Admittedly, the District Panchayat was not in existence and therefore, necessarily the Appeal Committee of the District Panchayat was also not in existence. On 31st October, 1993, a Notification was issued by the Government u/s 303 of the Act of 1961 appointing Officers to exercise powers and duties of the District Panchayats named therein, during the period specified therein, which is said to have been extended. Accordingly, the Administrator was required to exercise all the powers and duties of the District Panchayat. By Resolution No. 23 dated 29th March, 1994, the Administrator designated the District Development Officer as Secretary under Rule (3) of the Gujarat District Panchayat Appeal Committee (Procedure) Rules, 1968. On 24th April, 1994, the Act of 1993 came into force.

5. Under the said Rule (3), the District Panchayat is empowered to designate an Officer of the Panchayat to act as a Secretary of the Committee. u/s 271(2)(i) of the Act of 1993, it is provided that subject to the general or special orders which the State Government may issue from time to time, a District Panchayat may delegate to a District Development Officer any powers exercisable by it under this Act. The words "any power exercisable by it under this Act" clearly mean that all the powers of the District Panchayat could be delegated to a District Development Officer by a District Panchayat. Thus, the Administrator who by virtue of Section 303 of the Act of 1961 (corresponding to provision of Section 257 of the Act of 1993) was appointed to exercise all the powers and duties of the District Panchayat, could by virtue of Section 271(2)(i) delegate any power exercisable by the District Panchayat under the Act to a District Development Officer. The expression "any powers" is of wide amplitude and in the context of this, provision would also include power of the District Panchayat to make orders on an appeal filed against any order or decision of a Village or Taluka Panchayat under the provisions of Section 242(1) and (3) of the said Act. As provided in Section 243(7), any decision given by the Appeal Committee in exercise of the powers conferred on it by Section 243 shall be deemed to be the decision of the District Panchayat. Therefore, when admittedly the Appeal Committee of the District Panchayat is not in existence because the District Panchayat itself is not in existence, the appellate power of the District Panchayat would be exercisable by the Administrator, who by virtue of Section 271(2) has the same power of the District Panchayat to delegate to a District Development Officer, any of the powers exercisable by the District Panchayat under the Act. To argue that the words "powers exercisable by the District Panchayat" in Section 271(2) would exclude the powers exercisable by the Appeal Committee u/s 243(1) is to bring

about a situation not contemplated by law. It could not be the intention of the legislature that during the period that Administrator exercises all the powers and duties of the District Panchayat which would include power to delegate its functions, no appeal against any decision or order of a Gram Panchayat or a Taluka Panchayat could be heard by any one since the District Panchayat and its Appeal Committee are not in existence. It is clear from the provisions of Section 271(2)(i) read with Section 257 of the Act of 1993 that the Administrator can delegate to a District Development Officer the appellate power of the District Panchayat under which the District Panchayat could pass any order on the appeal as it may deem just and proper. Such appellate power includes power to grant temporary injunction in view of the provisions of Section 243(6) of the said Act. Therefore, the impugned Resolution No. 53 dated 31st August, 1994 by which the Administrator delegated the powers including the appellate power u/s 290 of the Act of 1961 (corresponding to Section 242 of the Act of 1993) to the District Development Officer, is valid.

6. Under the impugned resolution the provisions are referred to from the Act of 1961. This has been done presumably because the resolution delegates powers to the District Development Officer to be effective from 1st February, 1994. In the present petition we are concerned with the order passed by the District Development Officer on 6th March, 1995 and we are not concerned with the question of the retrospective delegation of powers to the District Development Officer from 1-2-1994. On the date on which the power is exercised by the District Development Officer, i.e., on 6th March, 1995, this resolution of delegation of powers was already in existence. Reference to the provisions of Sections 93, 178 and 290 of the Act 1961 in the said resolution dated 31 st August, 1994 has obviously to be read in context of the order made by the District Development Officer on 6th March, 1995, and construed as a reference to the corresponding provisions of the Act of 1993 and as noted above, the provision corresponding to Section 290 of the Act of 1961 is the provision u/s 242 of the Act of 1993. It will be noted that u/s 276(2)(m) of the Act of 1993, any reference in any law or in any instrument to the provision of the repealed Act, unless a different intention appears, is required to be construed as a reference to the corresponding provisions of the Act of 1993. Therefore, the contention that the impugned resolution is a nullity because it refers to the provisions of the Act of 1961 is devoid of any substance.

7. The District Development Officer was, thus, for the aforesaid reasons, empowered to make an interim order as he was exercising the powers of the appellate authority delegated to him by virtue of the provisions of Section 271(2) (i) read with Section 257 (corresponding Section 303B of the Act of 1961) of the said Act. The impugned interlocutory order is passed after giving an adequate opportunity to the petitioner of being heard and it would not be appropriate for this Court to interfere with the interim rent fixed under the said order in respect of the land which is said to have been encroached upon. Under the circumstances, all the contentions raised on behalf of the petitioner fail and the

decision of the Supreme Court in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, on which a reliance was placed on behalf of the petitioner, cannot assist the petitioner. As can be noted from para 33 of that decision a Judicial Tribunal cannot delegate its functions except when it is authorised to do so expressly or by necessary implication. In the present case, the aforesaid statutory provisions clearly authorise delegation of every power exercisable by the District Panchayat to the District Development Officer.

8. The impugned order has been passed by the District Development Officer as a delegate of the District Panchayat and therefore, while exercising such appellate authority, he could not have been said to have defied the instruction of this Court contained in the order dated 21st February, 1995 by which the appellate authority was directed to decide the application for interim relief. Therefore, reliance placed on behalf of the petitioner on the decision of the Supreme Court in Sri Krishna Singh Vs. Mathura Ahir and Others, is misconceived. Moreover, that decision is rendered in context of the holdings of the Supreme Court which have a binding force by virtue of Article 141 of the Constitution and any order passed in defiance of a decision of the Hon'ble Supreme Court by any authority is required to be completely ignored. No such high constitutional effect could be attached to an interim direction, given by a single Judge of this Court, as was issued by me on 21st February, 1995 in Civil Application No. 256 of 1995 only directing the appellate authority to decide an application for interim relief.

9. Even the decision of the Supreme Court in A.K. Roy and Another Vs. State of Punjab and Others, cannot in any manner help the petitioner, because it lays down that where a power is given to do certain thing in a certain way, the thing must be done in that way or not at all. In the present case, power is given to delegate the functions of the District Panchayat to a District Development Officer and therefore, there is nothing done in contravention of the way suggested by the statute.

10. Even the decision of the Supreme Court in State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others, ific statutory provision contained in Section 271(2)(i) of the said Act empowering the District Panchayat to delegate its powers to a District Development Officer, which power of the District Panchayat can be exercised by the Administrator appointed u/s 257 of the Act of 1993 or under the corresponding provision of Section 303B of the Act of 1961.

In the above view of the matter, there is no substance in this petition and it deserves to be rejected. Notice is discharged with no order as to costs.