
(1996) 10 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5354 of 1992

Hamid Zafar Alam and Others

APPELLANT

Vs

The Municipal Board and Others

RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 80(2)(a)(b)

Citation : (1997) 1 WLC 494 : (1996) 2 WLN 458

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.P. Naolekar, J.—Haji Abdul Jabbar, who is father of petitioners No. 1 and 3" and husband of petitioner No. 2 applied for allotment of a strip of land measuring 29 sq. yards, which according to the petitioners is situated in front of their house in Mohalla Bajarwara, Nagaur, before the Executive Officer, Municipal Board, Nagaur. Allotment Case No. 117 of 1983-84 was registered. The Municipal Board on 28.2.84 recommended that it shall have no objection if the allotment as prayed for by the petitioner is made in his favour. This recommendation was accepted by the Executive Officer. The Executive Officer had directed that a sum of Rs. 885/- be deposited. While the proceedings for allotment were under consideration before the Municipal Board, Nagaur, respondent No. 4 Noor Mohammed filed an application before the Collector, Nagaur, purporting to be u/s 80 of the Rajasthan Municipalities Act, 1959 (for short "the Act" hereinafter) wherein he had made a prayer that the recommendation made by the Executive Officer, Municipal Board, Nagaur, be quashed and the resolution of recommendation dated 28.2.84 be cancelled. According to the respondent, if the allotment of the land is made in favour of the petitioner, his interest shall be adversely affected. Notice of the application moved by respondent No. 4 was served on Haji Abdul Jabbar and he submitted his reply. The Collector after hearing both the parties accepted the application filed by respondent No. 4 and

the proceedings drawn by the Municipal Board Nagaur, were cancelled. Aggrieved by the said order, Haji Abdul Jabbar filed a revision petition u/s 300 of the Act. The revision petition of Haji Abdul Jabbar was dismissed on the preliminary ground by the Divisional Commissioner, Ajmer, respondent No. 3 that the revision is being filed against the order of the State Govt. to the State Govt. and, therefore, the revision is not maintainable.

2. It is contended by the counsel for the petitioners that the order was passed by the Collector in exercise of the powers conferred u/s 80(2)(b) of the Act qua the Collector and, therefore, the revision u/s 300 of the Act was maintainable.

3. On the other hand, it is submitted by the counsel for the Municipal Board, Nagaur, that the order passed by the Collector in exercise of the powers conferred under Sub-section (2) of Section 80 was in the capacity of the delegate of the State Govt. and, therefore, it shall be taken to be an order passed by the State Govt. The order passed by the State Govt. cannot be revised by the State Govt. or any delegated authority u/s 300 and has strongly placed reliance on a decision of the Constitution Bench of the apex Court reported in *Roop Chand Vs. State of Punjab*,

4. Section 80 of the Act empowers every Municipal Board to lease, sell or otherwise transfer any movable or immovable property belonging to the Municipal Board including municipal land and also any Govt. land subject to the condition that no such lease, sale or transfer shall be binding on the Board unless it is in conformity with the provisions of the Act and rules made thereunder and so far as Govt. land is concerned, no lease, sale or transfer shall be valid unless it is confirmed by the prescribed authority in the prescribed manner and on the prescribed conditions. Sub-sections (2) (a) and (2)(b) of Section 80 read as under:

(2)(a) The State Government or any Officer authorised by it in this behalf may, for the purpose of satisfying as to the correctness, legality or propriety of any proposal to lease, sale or transfer of any Government land made by or on behalf of a board or by any member, Chairman, Vice- Chairman or officer of a board call for the relevant record, and may while doing so direct that pending the examination of the matter, the proposal to lease, sell or transfer of the Government land shall remain in abeyance and no action in furtherance thereof shall be taken till the decision of the State Government or of the aforesaid officer under Sub-section (2)(b).

(b) If after examination of the record and after giving to the person interested in such proposal, a reasonable opportunity of being heard, the State Government, or the officer authorised as aforesaid, is satisfied that the proposal to lease, sell or transfer the Government land is not in accordance with or in contravention of the provisions of this Act, it may by order published in the Official Gazette, modify, cancel or rescind wholly or in part the proposal made for lease, sale or transfer of the Government land or any action or proceeding taken in pursuance

thereof or may give any other direction as may be deemed proper.

Under Sub-section 2(a) of Section 80 the State Government or any other Officer authorised, for the purpose of satisfying as to the correctness, legality, or propriety of any proposal to lease, sell or transfer of any Government land made by or on behalf of a board or by any member, Chairman, Vice-Chairman or officer of a board may call for the relevant record and while doing so direct that pending the examination of the matter, the proposal to lease, sell or transfer of the Government land shall remain in abeyance and no action in furtherance thereof shall be taken till the decision by the State Government or by any officer authorised under Sub-section (2)(b) of Section 80. Sub-section 2(b) contemplates that if after examination of the record and after giving to the person interested in such proposal, a reasonable opportunity of being heard, the State Government or the officer authorised as aforesaid, is satisfied that the proposal to lease, sell or transfer the Government land is not in accordance with or in contravention of the provisions of the Act, he may either modify, cancel or rescind wholly or in part the proposal made for lease, sale or transfer of the Government land or any action or proceeding taken in pursuance thereof or may give any other direction which he deems proper by publishing it in the Official Gazette.

5. The powers given under Sub-section (2)(a)(b) of Section 80 to suspend or modify cancel or rescind is given to the State Government or any officer authorised by it in this behalf. The exercise of the powers by the Officer authorised by the State Government is not in exercise of the delegated powers of the State. The State shall only nominate an officer, who shall then exercise the powers vested in Sub-sections (2)(a) and (2)(b) of Section 80. The powers under Sub-sections (2)(a), and (2)(b) are given to both, the State Government and to the officer authorised by the State Government. There is a distinction between delegation of powers to be exercised by the authorised officer and the powers vested in the officer by virtue of the statute under Sub-sections (2)(a) and (2)(b) of Section 80. of the Act. The State Government is competent to authorise an officer to exercise powers under Sub-sections (2) (a) and (2)(b) of Section 80. The movement the State Government authorises an officer to exercise the powers under Sub-sections (2)(a) and (2)(b), the powers shall stand vested in him by virtue of the statute and not as an delegated authority of the State Government. The powers under Sub-sections (2)(a) and (2)(b) of Section 80 can be independently exercised either by the State or by the officer authorised by the State and while doing so, he shall not be acting for and on behalf of the State but shall be acting as an officer competent to decide the matter under Sub-sections (2) (a) and (2)(b) of Section 80 of the Act.

6. Section 300 reads as under:

300. Power to call for records.--(1) The State Government or any authority authorised in this behalf by the State Govt., may, for the purpose of being satisfied as to the correctness, legality or propriety of any order passed or

purporting to have been passed, under this Act, " by or on behalf of any board, its chairman, Vice-chairman, any member or officer, or a collector or other officer appointed by the State Govt. in that behalf call for the relevant record, and may, in doing so, direct that pending the examination of such record, such order shall be held in abeyance and no action in furtherance thereof shall be taken till the decision of the State Government or of the authority authorised in this behalf by the State Government under Sub-section (2).

(2) On examining the records the officer or authority authorised as aforesaid may reverse or modify such order.

The State Government or any authority authorised in this behalf by the State Government for the purpose of being satisfied as to the correctness, legality or propriety of any order passed or purporting to have been passed under the Act or on behalf of any board, its Chairman, Vice-Chairman, any member or officer or a Collector or other officer appointed by the State Government in that behalf may call for the relevant record and may direct that pending examination of such record, such order shall remain in abeyance and no action in furtherance thereof shall be taken till the decision by the State Government or any other authority authorised in this behalf by the State Government. Sub-section (2) of Section 300 provides that on examination of the records the State or authority authorised as aforesaid may reverse or modify such order. Therefore, the State Govt. or any other authority authorised in this behalf by the State Govt. can exercise powers for suspension of any decision arrived at by or on behalf of any board, its Chairman, Vice-chairman, any member or officer, or a collector or other officer appointed by the State Govt. in that behalf and under Sub-section (2) of Section 300 may reverse or modify that order. u/s 300 also, the State has an authority and power to authorise an authority to exercise powers u/s 300 (1) and 300 (2) of the Act. The moment the. State Govt. authorises an officer, he shall exercise the powers u/s 300(1) and 300(2) by virtue of the statute conferring powers in him.

7. The State Govt. or the authority authorised can call for the record and adjudicate legality or propriety of any order passed by or on behalf of the Board, its chairman, Vice-chairman, any member or officer or Collector or other officer appointed by the State and no other. Thus, if the order is passed by the State Govt. u/s 80(2)(a) or u/s 80(2) (b) neither the State Govt. nor any other authority authorised by the State Govt. can exercise the powers u/s 300 because the powers could only be exercised against the order passed by the person named in Section 300(1) of the Act. But there is no such restriction if the order is passed by an authority authorised under Sub-section (2) (a) and (2) (b) of Section 80 of the Act because he shall be an officer named u/s 300(1) of the Act and the State Govt. or any authority authorised by the State Govt. u/s 300 can exercise the powers against the order passed u/s 80(2)(a) and (2) (b) of the Act.

8. The order under revision u/s 300 of the Act would be passed by the Commissioner an authority authorised u/s 300 by the State Govt. against the

orders passed by the Collector an officer authorised u/s 80(2)(a) and (b) of the Act. The powers exercised by Collector are the powers under Sub-sections (2)(a) and (2) (b) of Section 80 not qua the State Govt. but independently under the statute. The order passed by the Collector cannot be treated to be an order passed by the State Govt.

9. The decision relied on by the counsel for the respondents Roop Chand Vs. State of Punjab, wherein it has been held that when the Govt. delegates its power to entertain and decide an appeal u/s 21(4) of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 by an officer or authority, pursuant to such delegation, hears an appeal and makes an order, it is an order passed by the State Govt. and no revision to the State Govt. u/s 42 is maintainable because it shall be tantamounting to a revision against the order passed by the State Govt. to the State Govt. u/s 42 of the Act. The decision turns on the facts and interpretation of Section 21(4) and Section 41(1) and Section 42 of the Act. Section 21(4) provides for an appeal to the State Govt. Section 41(1) lays down that the State Govt. may for the administration of the Act, appoint such persons as it thinks fit, and may by notification delegate any of its powers or functions under the Act to any of its officers either by name or by designation. Section 42 gives supervisory powers to State. On construing those provisions, it has been held by the Supreme Court that when the State delegates its powers and functions under the Act to an officer, and the officer functions under such delegation, he acts and functions for and on behalf of the State Govt. as State and not independently. That is not the case in the present case. Here there is no delegation of powers, vested in the State, by the State Govt. to the authority. The State Govt. has a power to name an officer authorising him to work u/s 80(2)(a) and (b) and the moment it is done, the powers are vested by virtue of the statute in the named officer. The officer is not acting as the State Govt. but is acting as an officer authorised by the State Govt.

10. The dismissal order passed by respondent No. 3 dismissing the revision on preliminary ground that it is not maintainable, is not in accordance with law and cannot be sustained.

11. Writ petition is allowed. The order dated 21.5.92 of the Divisional Commissioner, Ajmer, is quashed. Respondent No. 3 Divisional Commissioner, Ajmer, is directed to hear the petitioner's revision on merits. There shall be no order as to costs.