

(1966) 07 KL CK 0034
In the High Court Of Kerala
Case No : O.P. No. 199 of 1966

Iype Ulahannan

APPELLANT

Vs

The Panchayat Board, Manjalur and Others

RESPONDENT

Date of Decision : 12-07-1966

Acts Referred:

Kerala Panchayat (Public and Private Markets) Rules, 1964 — Rule 3
Kerala Panchayat Act, 1960 — Section 143(1), 85(1)

Citation : (1966) KLJ 955

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : K. Chandrasekharan, T. Chandrasekhara Menon, C. Sankara Menon, P. Kesavan Nair, K. Vijayan and Thampan Thomas, for the Appellant; George Vadakkal, Varghese Kalliath, Jose Vithayathil and K.J. Kurien for Respondent No. 1 and Government Pleader for Respondent Nos. 2 to 4, for the Respondent

Judgement

V.P. Gopalan Nambiyar, J.—This Writ Petition is to quash the decision of the Manjallur Panchayat (the 1st respondent) to shift the public market (in part) from its present site, and the order of the 3rd respondent (copy Ex. P.8) passed on the appeal presented by the petitioner against the Panchayat's decision. The petition also prayed for a writ of mandamus against the 4th respondent, the State of Kerala, to dispose of the revision preferred against the order of the 3rd respondent, (Ex. P.9) and the application for stay filed therein (Ex. P.10). At the hearing of the O.P. on 8-6-1966, it was represented that the revision petition evidenced by Ex. P.9 had been disposed of by the Government, by proceedings dated 31-5-1966. The petitioner thereupon filed C.M.P. 4689 of 1966 to amend the O.P. and prayed to quash the order passed on revision, a copy of which was filed along with the C.M.P. as Ex. P.13. The decision of the 1st respondent, to shift the public market was objected to by the petitioner on three principal grounds. FIRST, that there was no sanction of the Director of Panchayat for shifting the market as required by section 85(1) of the Kerala Panchayats Act 32 of 1960. SECOND, that the procedural requirements for the shifting of the

market prescribed by Rule 3 of the Kerala Panchayat (Public and Private Markets) Rules 1964 had not been observed as there was no publication of the proposal in any newspaper, and no invitation of objections to the proposal; and THIRD that the decision for shifting the market was mala fide and with a view to favour the President of the Panchayat who owns lands to the south of the proposed new site of the market, which would be considerably benefitted by the shifting.

2. In the light of the facts disclosed at the hearing, the second of the objections as to non-compliance with the procedural requirements, was not pressed. The market in question is a combined cattle, meat and fish, and vegetable market. In pursuance of a resolution of the Panchayat passed on 18-1-1965 the District Panchayat Officer accorded sanction (Ex. R.3) for the purchase of a site for shifting the market under Rule 5(5) of the Kerala Panchayats (Authorising Expenditure) Rules 1964. The site was purchased for Rs. 12,450/-. Tenders were invited for the construction of stalls in the new site and Ex. P.2 is a copy of the tender notice, dated 24-6-1965, published in the issue of the "Deepika" dated 27-6-1965. On seeing this tender notice, the petitioner applied to the 2nd respondent (Ex. P.5) for a copy of the proceedings deciding to shift the public market; and thereafter, presumably under the impression that the Panchayat had already decided to shift the market put in an appeal dated 15-7-1965 before the 3rd respondent (Ex. P.6). By his proceedings evidenced by Ex. P.7, the 3rd respondent stayed further action and also directed that Rule 3 of the Kerala Panchayats (Public and Private Market) Rules 1964 had to be strictly observed. Thereafter, a notice was put up on the notice board of the Panchayat, published in the prominent places in all the Wards, and a notification dated 27-7-1965 under Rule 3 was published in the issue of the "Deepika" dated 29-7-1965. It was in response to this notification that the objection evidenced by Ex. P.3 and P.4 were filed. These objections were considered by the Panchayat and the resolution dated 6-9-1965 was passed deciding to shift the fish market the meat stall and the cattle market, and to retain the vegetable market at the present site. These facts have been stated in paragraphs 4, 5 and 12 of the counter-affidavit of the 1st respondent and were not in controversy at the hearing. In the light of these facts, it would appear that, although the Panchayat perhaps started in a somewhat wrong way by proceeding to acquire a valuable site without any prior resolution to shift, or inviting objections to the decision as required by the Rules, it was set on the right track, probably by the over zealousness of the petitioner in rushing with an appeal at that stage before the 3rd respondent, and by the timely reminder administered by the 3rd respondent (Ex. P.7), that the procedural requirements enjoined by the Rules had to be strictly complied with. There was, thereafter a notification, a calling for objections, and a consideration of the objections. In view of these facts the objection as to non-compliance with the requirements of Rule 3 of the Kerala Panchayat (Public and Private Market) Rules 1964, was not pressed at the time of the hearing, and is indeed without substance.

3. The main point argued was that there was no sanction of the Director of

Panchayat to the shifting as required by Section 85(1) of the Act. Arguments before me proceeded on the assumption that section 85(1) would be attracted even to a shifting of the market. There was also no controversy at the hearing that the power to grant the sanction vested in the Director u/s 85(1) of the Act, had been conferred on the Deputy Director of Panchayats by Government notification published in the Kerala Gazette, dated 24th July 1962, issued u/s 143(1) of the Act. The sanction in question to the Panchayat resolution dated 6-9-1965 was accorded by the Deputy Director in his proceedings evidenced by Ex.P.8 by which the petitioner's appeal Ex. P.6 was disposed of. The only ground on which the above sanction was attacked was that u/s 143(3) of the Act the exercise of an> power delegated under sub-section (1) shall be "subject to such restrictions and conditions" as may be prescribed in the notification; and that the notification dated 24th July 1962 expressly prescribing the restrictions and conditions subject to which the power was conferred, recited that "all such sanctions shall be published in the Gazette". It was therefore argued that where power to do an act is conferred by the statute in a particular manner and subject to restrictions and conditions it shall be done in that manner and subject to those restrictions and conditions, or not at all. After an adjournment granted for the purpose of satisfying as to whether the sanction had been published or not, it was confirmed by the Government Pleader that there has in fact been no such publication. The question therefore is whether the absence of publication in the Gazette would invalidate the sanction. It appears to me, that on the facts of this particular case, it is unnecessary to consider this broad question. There can be little doubt that the object of the publication of the sanction is to make it known to all the persons interested. In the case of the petitioner, that he had notice of the sanction is beyond doubt, as the sanction was accorded in proceedings evidenced by Ex. P.8 to which the petitioner was a party. The petitioner therefore, can certainly have no complaint against the non-publication of the sanction.

4. It appears to me also, that non-publication of the sanction would not invalidate the sanction altogether. The ex-post facto publication of the sanction does not appear to be a condition precedent to its validity, but only a means for its promulgation. I am therefore of the view that the argument based on the invalidation of the sanction by reason of its non-publication, cannot avail the petitioner.

5. The petitioner's counsel raised an argument, that the sanction contemplated u/s 85 was a previous sanction, or one prior to the Panchayat's resolution. The wording of the section does not justify such a conclusion. The language of Rule 3 of the Panchayat (Public and Private Market) Rules. 1964, indicates that the resolution of the Panchayat must be before the Director according sanction u/s 85(1) of the Act.

6. The case of mala fides on the ground that the shifting was with a view to confer personal benefit and advantage to the Chairman of the Panchayat bristles

with disputed questions of fact, and cannot be investigated in these proceedings. The petitioner's allegations in this regard are to be found in ground G of his affidavit where it is stated that just south of the newly proposed site are lands belonging to the President of the Panchayat. This was countered in paragraph 18 of the counter-affidavit of the 1st respondent, and was again replied to in paragraph 15 of the petitioner's reply affidavit. The disputed questions of fact raised by these averment cannot be investigated in these proceedings. The case of mala fides cannot be said to have been substantiated. The O.P. is dismissed; but in the circumstances, without costs.