

(2015) 01 KAR CK 0428

In the Karnataka High Court

Case No : Writ Petition No. 7811 of 2013 (LB-RES)

Karagappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-01-2015

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 237, 237(3), 269

Citation : (2015) 1 KarLJ 515 : (2015) 4 KCCR 3544

Hon'ble Judges : D.H. Waghela, C.J.; Ram Mohan Reddy, J.

Bench : Division Bench

Advocate : G. Shankarappa for P.M. Siddamallappa, for the Appellant; Sriyuths Shwetha Krishnappa, High Court Government Pleader, Yogesh Naik for B.O. Anil Kumar, B.S. Shrikantha and Musrath Tabassum for S.N. Aswathanarayana, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The Executive Officer of the Taluk Panchayat exercising jurisdiction under Section 269 of Karnataka Panchayat Raj Act, 1993 (for short, "Act") allowed Appeal No. GPA 5/09-10 by order dated 10-2-2010 and set aside the resolution dated 14-9-2009 Annexure-B of the 4th respondent-Grama Panchayat, which when carried in an appeal by respondents 5 to 8 before the 2nd respondent-Zilla Panchayat invoking Section 237(3) of the Act was set aside by order dated 26-7-2012 by allowing the appeal. Hence the petition. Section 269 of the "Act", provides for an appeal to the Executive Officer of the Taluk Panchayat against any original order of the Grama Panchayat, by an aggrieved party. Sub-section (2) states that the order in appeal shall be final.

2. In the instant case, the order Annexure-B of the Executive Officer invoking jurisdiction under Section 269 of the Act is final. In other words no further appeal lies under the Act. Nevertheless respondents 5 to 8 preferred an appeal against that order invoking sub-section (3) of Section 237 of the Act before the 2nd respondent-Zilla Panchayat.

3. A bare reading of sub-section (3) of Section 237 of the Act discloses that the Adhyaksha of the Zilla Panchayat is invested with a jurisdiction to suspend the execution or prohibit the doing of anything in execution of any order or resolution of the Taluk Panchayat or any order of any authority or Officer of the Taluk Panchayat, or the doing of anything which is about to be done, or is being done, by or on behalf of a Taluk Panchayat, is unjust, unlawful or improper or is causing or is likely to cause injury or annoyance to the public or to lead to a breach of peace.

4. In that view of the matter, the challenge to the order Annexure-C of the Executive Officer, Taluk Panchayat, invoking Section 237(3) of the Act before the 2nd respondent-Zilla Panchayat was not maintainable and therefore the order Annexure-D of the 2nd respondent-Zilla Panchayat setting aside the order of the Executive Officer under Section 269 of the Act cannot but be characterised as illegal, arbitrary and in excess of jurisdiction vested in the 2nd respondent.

5. The assertion of the learned Counsel for the petitioner that the land in question remains vacant and there is no construction on the said property and proposed to produce photographs was recorded in the order dated 8-12-2014. However, that submission is not complied with and it is not known as to whether or not there are constructions on the property in question, though respondents 5 to 8, in their Statement of Objections assert that they are in possession of sites and have put up construction of houses and huts. In the result, this petition is allowed. The order Annexure-D of the 2nd respondent-Zilla Panchayat is quashed reserving liberty to respondents 5 to 8 who claim to have put up construction, and invested with right, title and interest in the immovable property in question, to have their grievance over the order dated 10-2-2010 Annexure-C of the 3rd respondent, redressed in an appropriate legal proceeding.