

(2002) 02 KL CK 0059
In the High Court Of Kerala
Case No : O.P. No. 15060 of 2001

Keerampara Grama Panchayat

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-02-2002

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 282

Citation : AIR 2002 Ker 289 : (2002) 1 KLJ 562

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Siby Mathew and Philip J. Vettickattu, for the Appellant; K.P. Vijayan, P.F. Rosy, C.B. Suma Devi, Suresh Samuel and V.M. Syam Kumar and Sojan James, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The petitioner which is a Panchayat challenges Ext. P6, whereunder the District Collector has ordered sharing of revenue from a ferry service operated across Periyar river between two panchayats located on either side of the river, on the main ground that the District Collector has no jurisdiction to decide the dispute between two panchayats as the matter is to be decided by the Government u/s 282 of the Kerala Panchayat Raj Act. Counsel for the petitioner also pointed out Ext. P2 decision of the Government u/s 282 in this regard pursuant to the direction issued by this Court in an Original Petition. According to him, Ext. P2 has become final and the District Collector has no right to overrule the same. Apparently, the contention appears to be reasonable and acceptable. However in view of the subsequent developments in the matter, I do not think Ext. P2 has become final, static or irreversable. The third respondent panchayat has produced Ext. R3(c) whereunder the Panchayat has taken up the matter with the Chief Secretary and the Chief Secretary in turn authorised the District Collector to decide the matter. Apart from all these, there is a direction by this Hon"ble Court in O.P. 5939/2001 dated 22.2.2001 directing the District

Collector to settle the dispute between the panchayats. On going through Ext. P6 order of the District Collector, I find the District Collector has directed sharing of the income from the Thattekkadavu ferry across Periyar river between the panchayats for the reason that the boundaries of the panchayats have been resurveyed and fixed by the Deputy Director of Survey by order dated 12.2.2001 whereunder the boundary between the panchayats is treated as the middle of the Periyar river. Admittedly, the panchayats are located on either side of the river and therefore both panchayats have equal right in respect of the ferry operated from either side to the other. In fact, the ferry is obviously between one Panchayat area to other and from the other to this panchayat area because the panchayats are located on either side of the river. The finding of the District Collector is that predominant use of the ferry is by the people residing in the Kuttampuzha panchayat, third respondent herein over the management of the ferry, conduct of auction, fixation of time etc. Accordingly he entrusted management of the ferry service to the third respondent Panchayat. He has however directed to set apart only 10% of the income towards expenses for auction of the ferry service; for maintenance etc. and directed the balance 90% of the income after deducting the 10% to be shared between the petitioner and third respondent panchayats. It is also pertinent to note that the Deputy Director of Panchayats has approved the survey done by the Deputy Director of Survey fixing the boundary of the contesting panchayats through the middle of the river.

2. On the query to the petitioner's counsel whether the survey report is accepted by the petitioner-panchayat or whether any objection is raised against the name fixing the boundary through the middle of the river, the counsel has pointed out that the panchayat does not appear to have contested the same. If that be so, the fixation of boundary which is stated to be confirmed by the Deputy Director of Panchayats as well, stands confirmed and has become final. In view of the re-fixation of the boundary by the order dated 12.2.2001, Ext. P2 order of the Government ceases to have any effect. Therefore, I find nothing wrong in the Government in overlooking Ext. P2 in view of the subsequent developments and directing the Collector to decide the matter afresh. Counsel for the petitioner pointed out that the District Collector cannot overrule the Government's decision issued u/s 282 of the Kerala Panchayat Raj Act. All that is stated u/s 282 is that the Government should settle disputes between the panchayats. The Government always acts through its officers and the Government is absolutely free to get the issue decided by any of the officers in its service. Naturally, the District Collector having jurisdiction over both the panchayats is rightly found to be the appropriate authority by the Government for deciding the dispute between those panchayats. Therefore, the decision of the District Collector in Ext. P6 cannot be termed to be as an independent one but should be taken as an order of the Government issued under delegated authority u/s 282 of the Kerala Panchayat Raj Act. A decision u/s 282 is not a static or irreversable one and if the same requires modification, the Government is always free to do it. In view of the re-fixation of the boundary of the panchayat, it is open to the Government

to alter Ext. P2 by a later decision and I feel the Government is perfectly justified in authorising the District Collector to decide the matter. If at all anybody can question the validity of Ext. P6, it is for the Government of Kerala to question the same and the Government has not chosen to do so. In view of the acceptance of the boundary by the petitioner panchayat, the petitioner-panchayat cannot question the validity of Ext. P6. Apart from all these, even after giving a finding that the third respondent-panchayat and the residents of the Panchayat are the beneficiaries of the Thattekkadavu ferry which means the income is essentially attributable to that panchayat and the residents, the District Collector still ordered sharing of the net income between the two Panchayats equally. Therefore, the order of the District Collector is absolutely equitable, fair and reasonable. There is nothing to interfere with the said order and the O.P. is dismissed.

This Court under interim orders permitted the petitioner to operate the ferry on a provisional basis. The said arrangement will continue for a period of three weeks from today. Thereafter the ferry should be operated by the third respondent in terms of Ext. P6 order of the District Collector.