

(2001) 01 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 348 Of 2000

Kewal Krishan and Others

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 01-01-2001

Acts Referred:

Citation : (2001) KashLJ 504

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : V.R.Wazir, H.Rehman, Advocates appearing for the Parties

Judgement

1. The present petitioner challenges a direction given by the Director, Local Bodies, Jammu, whereby he has directed that the bids for the properties auctioned by the Notified Area Commissioner, Samba, be not given effect to. This is challenged mainly on the ground that the Director Local Bodies Jammu had no jurisdiction in the matter.

2. It is not in dispute that the Notified Area Committees are constituted under Chapter XXX of the J and K Municipal Act Samvat 2008 BK.

Sections 283 and 285 are relevant and are quoted below :

283. Constitution of notified areas. The Government may, by notification, declare that, with respect to some or all of the matters upon which a

Municipal Fund may be expended, improved arrangements are required within specified area, hereinafter called a notified area, which nevertheless,

it is not expedient to constitute a Municipality. 283A. When a local area, the whole or part of which was a Town area under the Town Area Act,

Svt. 2011 is declared to be a Notified Area under this Chapter, the Notified Area Committee shall be deemed to be the perpetual successor of

such Town Area Committee in respect of all its rules, general and special orders, taxes and all other matters whatsoever." "285. Application of Act

of Notified Areas. For the purposes of any section of this Act which may be extended to a notified area, the committee appointed for such area

under the preceding section shall be deemed to be a Municipal Council under this Act and the area to be a Municipality.

3. At present, there are no elected bodies.

The properties belonging to the Notified Area Committees are being looked after by the Administrator. In this situation all those consequences

which ensue when an elected body is under supersession would ensue and apply to the facts of this case. This relevant provision is Section 260.

This is reproduced below:

260. Consequences of supersession. (1) When the Council is superseded under the preceding section, the following consequences shall ensue :(a)

all powers and duties of the council and standing committee may, until the council is reconstituted, be exercised and performed by such person as

the Government may appoint in that behalf, and the person so appointed shall be called the Administrator of the Municipality; (b) all property

vested in the council shall, until the council is reconstituted, vest in the Administrator in trust for the purposes of this Act.

(2) The Administrator of the Municipality shall be a corporation sole and may sue and be sued in the name of "The Administrator of the

Municipality.

(3) The Administrator of the Municipality shall be subject to the control of the Government and such other person or persons as it may direct, and

shall be subject also to all other restrictions, limitations and conditions imposed by this Act on the council and the standing committees.

(4) The Administrator of the Municipality may at any time be removed by the Government who shall also have power to appoint another person in

his place.

(5) The Government may, if it thinks fit, at any time constitute another council according to the provisions of this Act in the place of the Council

superseded under the preceding section.

4. When the affairs of a corporate body constituted under the Municipal Act are looked after by an administrator then the property of the

corporate body would vest in the State Government and the State Government is competent to deal with it. Therefore, to say that the Director

Local Bodies is a nonentity in this regard, is a view which cannot be accepted. The Supreme Court of India in case reported as Hitkarni Sabha Vs.

Municipal Corporation AIR 1972 SC 2017 has observed that when a Municipal Corporation or a Municipal Committee is under supersession,

then the property would vest with the State Government and even the Administrator had no jurisdiction to deal with the property and to grant lease

of the property. Therefore, to say that the Director Local Bodies acting on behalf of the State Government had no jurisdiction to deal with this

property, is an argument which cannot be accepted.

5. The direction given by the Director Local Bodies calling upon the Administrator to cancel the bid is valid. No exception can be taken to this.

The net result is that if the bid has not been accepted and the petitioners have not been put into possession then no right can be said to have

accrued in their favour. The respondents are at liberty to deal with the property in any manner whatsoever. The petitioners of course, would be

entitled to refund of the amount deposited by them. Let the same be refunded to them. They would be entitled to interest @ 12% p.a. Let the

amount be refunded within two months from the date copy of this order is made available by the petitioner to the respondents. After the above

stipulated period, the rate of interest would be 15%. The Director Local Bodies, Jammu is directed to issue instructions as to how the property is

to be dealt with. The shops belonging to the Notified Area Committee would be disposed of by public auction. This direction would be in line with

judgment of the Supreme Court reported as Common Cause Registered Society Vs. Union of India and others (Petrol pumps matter) 1996 (6)

SCC 530.

6. Disposed of as such.