
(2004) 02 KL CK 0033
In the High Court Of Kerala
Case No : O.P. No. 1861 of 2003

Lekha Rose

APPELLANT

Vs

Palakkad Municipality

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Kerala Municipalities Act, 1994 — Section 406, 509, 509(12)

Citation : (2004) 2 KLT 199

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : P.K. Suresh Kumar, for the Appellant; V. Chitambaresh and P.N. Ravindran and C. Valsalan, Government Pleader, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The petitioner is a resident of Palakkad Municipality. She is challenging Exts.P1 and P2 orders issued by the 1st respondent - Municipality, directing demolition of certain unauthorised constructions made by her. She has filed an appeal before the Government against those orders. Since the alternate remedy is already invoked, there is no necessity for this Court to go into the validity of the impugned orders under Article 226 of the Constitution of India. But, the additional 2nd respondent who got himself impleaded in this O.P., submits that in view of the amendment to Section 509 of the Kerala Municipality Act, the Government do not have any power to hear an appeal against the final order passed by the Secretary u/s 406. So, this point was heard at length.

2. The learned counsel Sri. P.K. Suresh Kumar, appearing for the petitioner and the learned counsel Sri. P.N. Ravindran, appearing for the additional 2nd respondent were heard on the two views regarding the matter. I also heard the learned Government Pleader Sri. Valsalan, appearing for the additional 3rd respondent - State.

3. The petitioner would submit that in view of Section 509(12) of the Kerala Municipality Act, the Government are competent to entertain appeals till the date of constitution of the Tribunal. By necessary implication the said provision grants

the power to dispose of the appeals also. The above said sub-section provides for handing over to the Tribunal only those pending appeals and revisions not disposed of. If such an interpretation is not accepted, the persons suffering from adverse orders of the original authority will be left without remedy and the time limit for invoking the appellate remedy will also be over. In such circumstances, though the affected persons can approach this Court, the powers of this Court to interfere under Article 226 of the Constitution on factual disputes are limited. As far as the findings of facts are concerned, this Court cannot normally interfere. Therefore, unless the interpretation that the Government still retain the power to entertain appeals is not accepted, the same will workout serious prejudice. So, when two interpretations are possible, one that promotes justice and equity should be accepted, submits the learned counsel for the petitioner.

4. The learned counsel for the additional 2nd respondent submitted that no authority has got any inherent power to entertain appeals. The right to file appeal and the power to hear appeal are statutory creations. In this case, Sub-section (6) of Section 509 expressly confers right to file appeal to the Tribunal to be constituted u/s 271 of the Kerala Panchayat Raj Act. That means appeal will lie to no other authority. Therefore, by interpreting Sub-section (12), Sub-section (6) may not be rendered otiose, submits the learned counsel. Reference is also made to the provision in the amending Act of 1999, deleting Section 410 of the Kerala Municipality Act. It was specifically provided in the said section that pending applications for exemption from the operation of the Building Rules can be considered by the Government, notwithstanding the repeal of Section 410. There is no such express conferment of power in this case, it is contended.

5. Sub-section (12) of Section 509 reads as follows:

"(12) Notwithstanding anything contained in this section all appeals and revisions filed and pending before any authority before the date of commencement of the Tribunal shall be handed over by such authority to the Tribunal."

It provides that appeals and revisions filed and pending before the commencement of the Tribunal shall be handed over to the Tribunal. If the intention of the Legislature was that only filing of the appeals alone should be permitted, then the word "pending" will become superfluous. So, the Legislature contemplated that some of the appeals will be disposed of between the date of filing and date of constitution of the Tribunal. Only such pending appeals need be handed over to the Tribunal. So, Sub-section (12) of Section 509 expressively confers right to file appeals before the designated authority, before the constitution of the Tribunal. By necessary implication, the said authority is empowered to dispose of the appeals also. Only those appeals remaining undisposed of need be handed over to the newly constituted Tribunal. Normally, in these matters there should be a right of at least one appeal. It does not mean a statutory provision is bad for not providing an appeal from a decision. But, providing an appeal provides a fair procedure. So, the interpretation which promotes justice and recognizes a fair procedure should be adopted in this case.

6. Accordingly, it is held that the Government can receive appeals and dispose of them till a Tribunal is constituted. Therefore, Ext.P4 appeal filed by the petitioner shall be heard and disposed of by the Government within three months from the date of receipt of a copy of this judgment, after affording an opportunity of being heard to the petitioner and the respondents. Since there is already an interim order in favour of the petitioner, further action pursuant to Exts.P1 and P2 shall remain in abeyance till the disposal of Ext.P4.

7. Having regard to the scheme of the Act, the constitution of a Tribunal u/s 271 S of the Kerala Panchayat Raj Act is essential for the proper administration of the said Act and also the Kerala Municipality Act. The said provision was introduced by Act 13/1999. Section 271 S(1) reads as follows:

"271S. Constitution of Tribunal for Local Self Government Institutions:- (1) The Government shall constitute a Tribunal for every district or for more than one district, to consider and dispose of the appeal or revision filed against the decisions of the Local Self Government Institutions u/s 276 of this Act and Section 509 of the Kerala Municipality Act, 1994."

8. So, it is mandatory for the Government to constitute a Tribunal. The Government have failed to perform that duty for the last more than four years. Therefore, the Government are liable to be directed to constitute without delay at least one Tribunal for the State. The learned Government Pleader upon instructions, submitted that the Government have already passed an order constituting a Tribunal u/s 271S of the Kerala Panchayat Raj Act. This submission is recorded. The Government shall appoint the Presiding Officer for the Tribunal in consultation with the Honourable Chief Justice of the High Court, without delay.

9. The Original Petition is disposed of as above.