

(1998) 11 KAR CK 0053
In the Karnataka High Court
Case No : Writ Petition No. 26887 of 1992

Mahiboobsab

APPELLANT

Vs

Chief Officer, Town Municipal Council and Another

RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 306 (1)

Citation : (1999) ILR (Kar) 4300 : (2000) 1 KarLJ 314

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri S.B. Hebballi, for the Appellant; Sri Ashok N. Nayak, High Court Government Pleader, for the Respondent

Judgement

1. The petitioner in this petition claims to be the owner of property bearing No. 171/2 of Kerur Village, Badami Taluk, Bijapur District. In this petition, he has called in question the correctness of the order dated 31st July, 1992, a copy of which has been produced as Annexure-J passed by the 2nd respondent. A few facts which are not in serious dispute that may be relevant for the disposal of this petition may be stated as follows:

2. On the application filed by the petitioner for grant of licence to put up a building in the property referred to above, the 1st respondent had granted a licence to the petitioner on 1st June, 1992, a copy of which has been produced as Annexure-E. It appears that the Headmaster of a school situated adjacent to the property, raised an objection and moved the 2nd respondent to nullify the resolution passed by the 1st respondent granting licence to the petitioner to put up the building. On the said objection raised by the Headmaster of the school, the 2nd respondent has passed Order-Annexure-J suspending the resolution passed by the 1st respondent granting licence to the petitioner to put up a building (establishing a complex) on the property in question.

3. Sri Hebballi, learned Counsel appearing for the petitioner in support of his prayer that the impugned Order-Annexure-J is liable to be quashed made two

submissions. Firstly, he submitted that the impugned order having been admittedly passed without hearing the petitioner and giving an opportunity to the petitioner, the same is liable to be quashed on the ground it came to be passed in disregard of the principles of natural justice. Secondly, he submitted that the impugned order is liable to be quashed on the ground that the reasons given by the 2nd respondent to suspend the resolution passed by the Municipal Council granting the building licence to the petitioner to enable him to put up the construction on the property in question are totally extraneous and irrelevant for exercise of the power conferred on him under sub-section (1) of Section 306 of the Karnataka Municipalities Act (hereinafter referred to as "the Act"). Sri Hebballi, learned Counsel appearing for the petitioner pointed out that from a reading of sub-section (1) of Section 306 of the Act, it is clear that if the 2nd respondent is of the opinion that the execution of any order or resolution of a Town Municipal Council, or the doing of anything which is about to be done or is being done or on behalf of the Town Municipal Council, is in favour or is causing or likely to cause injury to or to lead to a breach of the peace, the 2nd respondent by order in writing shall suspend execution or prohibit the doing of such an act. In the impugned order, he submits that there is no such finding recorded by the 2nd respondent and therefore he submits that it was not permissible for the 1st respondent to suspend the resolution passed by the 1st respondent granting building licence to the petitioner. He further pointed out that the 2nd respondent on the basis of the report of the Assistant Commissioner which was not made available to the petitioner and without giving an opportunity to the petitioner to have his say on the said report passed the impugned order. He further submitted that the 2nd respondent appears to have taken collateral consideration to pass the impugned order because the petitioner has approached the Civil Court to protect his property rights.

4. However, Sri Nayak, learned Government Pleader supported the impugned order. He pointed out that since the impugned order has not reached the finality it is premature for the petitioner to approach this Court. He submitted that the impugned order is required to be forwarded to the State Government as provided under sub-section (2) of Section 306 of the Act, and the Commissioner. It is his submission that at that stage, it is open to the State Government after looking into the reasons assigned by the 2nd respondent for suspending the impugned resolution either to modify or cancel the impugned order. Therefore, he submits that this Court should not interfere against the impugned order at this stage. It is his further submission that the petitioner is not entitled for an opportunity of being heard at the stage of passing an order suspending the resolution passed by the Municipal Council. He submits that sub-section (1) does not contemplate giving of such an opportunity. He further pointed out that since the order passed by the 2nd respondent reaches finality only on confirmation of the said order by the State Government, at the stage of passing of an order by the 2nd respondent, no opportunity was required be given to the petitioner.

5. In the light of the rival contentions advanced by the learned Counsel

appearing for the parties, the two questions that would fall for my consideration are:

(i) Whether the 2nd respondent is required to hear the person who is likely to be affected on account of an order being made by him in exercise of the power conferred on him under sub-section (1) of Section 306 of the Act,

(ii) Whether the impugned order is liable to be quashed on the ground that the said order has been passed in disregard of the provisions contained under sub-section (1) of Section 306 of the Act.

6. So far as the first submission of Sri Hebballi that the petitioner was entitled to be heard by the 2nd respondent before passing the impugned order is concerned, I find considerable force in the said submission. No doubt as pointed out by Sri Nayak that sub-section (1) of Section 306 does not in explicit terms provide for giving an opportunity to a person who is likely to be affected on account of an order being made by the 2nd respondent in exercise of the power conferred on him under sub-section (1) of Section 306 of the Act. But it is necessary to point out that when certain rights have accrued to a party by virtue of a resolution of the Municipal Council, if the resolution of the Municipal Council is to be nullified to the detriment of the person for whose benefit the resolution of the Municipal Council came to be passed, I am of the view that though the provisions in explicit terms does not provide for giving an opportunity to the person who is likely to be affected on account of the decision of the 2nd respondent suspending the resolution of the Panchayat, such a person must be heard. Sub-section (1) of Section 306 confers power on the 2nd respondent to suspend the resolution of a Municipal Council if he is of the opinion that the execution of an order of the Municipal Council is likely to cause any injury or annoyance to the public, or likely to lead to a breach of peace, by making an order in writing under his signature and thereby suspend the execution or prohibit the doing of any act. Therefore, it is clear that such an opinion can be formed only on an assessment of the materials that may be placed before it and only after hearing the parties who are likely to be affected. The consequence of an order under sub-section (1) in a case like this is very serious. It cannot be doubted that it would result in civil consequences. In the instant case, a licence has been granted by the Municipal Council to the petitioner to put up a building. The provisions relating to grant of licence is a reasonable restriction imposed under the provisions of the Act to enjoy one's own property. Under these circumstances, if a resolution passed granting licence to the petitioner to put up a building is suspended without hearing the petitioner, it would have serious consequences on the rights of the petitioner. Any delay in completing the construction of a building would result in serious financial loss and injury. Therefore, I am of the considered view that though sub-section (1) of Section 306 of the Act does not expressly provide for giving of an opportunity, however, having regard to the consequences that is likely to flow from such an order being passed notwithstanding the fact that sub-section (2) of Section 306 provides for

confirmation of the said order by the State Government, the person who is likely to be affected on account of an order being made under sub-section (2) of Section 306 of the Act should be heard. It is well-settled that if a statute does not expressly exclude the right of hearing or compliance of the provisions of natural justice, it is open to the Court to read into the provisions of the statute, the principles of natural justice. In support of the above view, I take assistance from the decision of the Supreme Court in the case of *The Government of Mysore and Others Vs. J.V. Bhat and Others*, and also in the case of *The Scheduled Caste and Weaker Section Welfare Association (Regd.) and another Vs. State of Karnataka and others*, . The Supreme Court in the case of *Scheduled Caste and Weaker Section Welfare Association*, supra, at paragraph 15 has observed as follows:

"15. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made. What particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself unnecessarily implied an obligation to hear before deciding, that the *audi alteram partem* rule could be imported. Thus, in applying the test to the provisions of the earlier Act, *The Mysore Slum Areas (Improvement and Clearance) Act, 1958*, this Court held in *J.V. Bhat's case*, supra, thus:

There can be no two opinions about the need to hear the affected persons before declaring an area to be a slum area u/s 3 or an area as a clearance area u/s 9 or before taking action u/s 10. All these difficulties will be removed if the affected persons are given an opportunity to be heard in respect of the action proposed" .

7. The principle laid down in the decision referred to above, in my view fully applies to the facts of the present case. Therefore, I am of the view that the impugned Order-Annexure-J is liable to be quashed on short ground that the said order came to be passed without hearing the petitioner.

8. In the light of my above conclusion on the first question referred to above, I find it unnecessary to consider the second question. Accordingly, the Order-Annexure-J, dated 31st July, 1972 is hereby quashed and the matter is remitted to the 2nd respondent for fresh consideration. He is directed to pass fresh orders after hearing the petitioners and all others who may be interested. Accordingly, this petition is allowed and disposed of. Rule issue is made absolute.

9. Sri Ashok N. Nayak, learned Government Pleader is given four weeks" time to

file his memo of appearance.