

(2001) 11 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 37581 of 2001

Mohammad Naaseer

APPELLANT

Vs

Abdul Majid and Others

RESPONDENT

Date of Decision : 21-11-2001

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 64

Citation : (2002) ILR (Kar) 3139 : (2002) 2 KarLJ 421 : (2002) 2 KCCR 114 SN

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : T.P. Rajendra Kumar Sungay, for the Appellant; K.V. Narasimhan and B.J. Somayaji, for the Respondent

Final Decision : Allowed

Judgement

H. Rangavittalachar, J.—The first respondent's complaint before the Executive Officer, Taluk Panchayat was that the writ petitioner has put up constructions in violation of the licence granted by the Bellur Grama Panchayat by encroaching into his property. The Executive Officer vide Annexure-C by its endorsement dated 7-4-2001 directed the parties to approach the Civil Court for necessary redressal in this behalf. Against the said order the first respondent preferred an appeal before the President, Zilla Panchayat, Mandya who has granted an interim order vide Annexure-D, dated 23-4-2001.

2. This order of the President is challenged by the writ petitioner on the ground that the President lacks total jurisdiction even to entertain the appeal. He has therefore sought for quashing of Annexure-C and also for a writ of prohibition prohibiting the President from hearing the appeal.

3. Heard the learned Counsels for petitioners and respondents.

4. In my view, the contention of the petitioner deserves to be accepted.

5. One of the functions of "Grama Panchayat" u/s 64 of the Karnataka Panchayat

Raj Act, 1993 is to regulate the erection of buildings to be constructed within its territorial jurisdiction and to ensure that the constructions are in accordance with the permission granted by it and if need be to take suitable action for any violation of the building licences.

6. Section 64(5) provides an appeal to the "Execution Officer" by any aggrieved person against every order of Grama Panchayat passed in exercise of its power under the said section.

Relevant clauses of Section 64 is extracted omitting what is not necessary for ready reference.

"Section 64. Regulation of the erection of buildings.--(1) Subject to such rules as may be prescribed, no person shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Grama Panchayat. The permission may be granted on payment of such fees as may be specified by bye-laws.

(2) xxx xxx xxx (3) Whenever any building is erected, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under Sub-section (1) or any conditions imposed by the permission granted, the Grama Panchayat may, whether any action is taken or not against such person u/s 298, --

(a) direct that the building, alteration or addition be stopped; or

(b) by written notice require within a reasonable period to be specified therein, such building, alteration or addition to be altered or demolished as it may deem necessary for the promotion of public health or the prevention of danger to life or property.

(4) In the event of non-compliance with the terms of any notice under Clause (b) of Sub-section (3) within the period specified in the notice, it shall be lawful for the Grama Panchayat to take such action as may be necessary for the completion of the act thereby required to be done, and all the expenses therein incurred by the Grama Panchayat shall be paid by the person or persons upon whom the notice was served and shall be recoverable as if it were a tax imposed u/s 199.

(5) An appeal shall lie to the (Executive Officer) from any order or direction or notice of the Grama Panchayat under Sub-section (1), (2) or (3) and his decision on such appeal shall be final".

Thus u/s 64(5) extracted above, it is only the Executive Officer who is the designated Authority to hear the appeals against any order of Grama Panchayats and his decision is declared "Final", for purposes of the Act. If a statute declares that the decision or order of administrative body or Tribunal shall be final, to all intents and purposes it means, that there is no appeal under the statute (See Wade on Administrative Law, 7th Edition, page 730).

7. Insofar as the powers of Adhyaksha of a Zilla Panchayat is concerned, under

the Panchayat Raj Act, 1993, the powers of the Adhyaksha of a "Zilla Panchayat" are traceable to Section 193 and Section 237. u/s 193 no appellate power is vested in him against the orders or resolutions of Grama Panchayat. Section 237, gives to both Adhyaksha of Taluk Panchayat and Adhyaksha of Zilla Panchayat the powers of suspending the execution of unlawful orders.

8. Section 237 is extracted herein for a proper understanding of the nature of power available to the President. Section 237 reads as under:

"Section 237. Power of suspending execution of unlawful orders of resolution.--

(1) If in the opinion of the (Adhyaksha of Taluk Panchayat), the execution of any order or resolution of a Grama Panchayat, or any order of any authority or officer of the Grama Panchayat, or the doing of anything which is about to be done, or is being done, by or on behalf of a Grama 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, he may by order suspend the execution or prohibit the doing thereof.

(2) When the (Adhyaksha of Taluk Panchayat) makes an order under Sub-section (1), he shall forthwith forward to the Commissioner and the Grama Panchayat affected thereby a copy of the order with a statement of the reasons for making it, and the (Adhyaksha of the Zilla Panchayat) may confirm or rescind the order or direct that it shall continue to be in force with or without modification permanently or for such period as he thinks fit:

Provided that no order of the (Adhyaksha of Taluk Panchayat) passed under Sub-section (1) shall be confirmed, revised or modified by the (Adhyaksha of the Zilla Panchayat) without giving the Grama Panchayat concerned a reasonable opportunity of showing cause against the proposed order,

(3) If in the opinion of the (Adhyaksha of the Zilla Panchayat), the execution of any order or resolution of a 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, he may by order suspend the execution or prohibit the doing thereof.

(4) When the (Adhyaksha of the Zilla Panchayat) makes an order under Sub-section (3) he shall forthwith forward to the Government and the Taluk Panchayat affected thereby a copy of the order with a statement of the reasons for making it, and the Government may confirm or rescind the order or direct that it shall continue to be in force with or without modification permanently or for such period as he thinks fit:

Provided that no order of the (Adhyaksha of the Zilla Panchayat) passed under Sub-section (3) shall be confirmed, revised or modified by the Government without giving the Taluk Panchayat concerned a reasonable opportunity of

showing cause against the proposed order.

(5) If the Government is of the opinion that execution of any order or resolution of Zilla Panchayat or the doing of anything which is about to be done or is being done by on behalf of a Zilla 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 the peace, it may, by an order suspend the execution or prohibit the doing thereof.

(6) When the Government makes an order under Sub-section (5), it shall forthwith forward to the Zilla Panchayat affected thereby a copy of the order with a statement of reasons for making it and the Government may confirm or rescind the order or direct that it shall continue to be in force with or without modification permanently or for such period as it thinks fit:

Provided that no order under this Sub-section shall be passed by the Government without giving the Zilla Panchayat concerned a reasonable opportunity of showing cause against the said order".

9. A reading of Section 237 indicates that an order or resolution of a "Grama Panchayat", may be suspended only by the Adhyaksha of a Taluk Panchayat, if the circumstances stated therein exist and transmit the papers to the Adhyaksha of Zilla Panchayat. But the Adhyaksha of a "Zilla Panchayat", has powers only against the resolution or order of "Taluk Panchayat". He no where comes in the picture to act as a superior authority directly against the resolution or order of Grama Panchayat.

10. Besides even this power of suspension of resolution of Grama Panchayat, cannot be exercised in respect of orders passed u/s 64 is clear by a combined reading of Section 237 and Section 64; for if such a power is to be conceded then it leads to anomalous results, inasmuch as, if the same order of Grama Panchayat is challenged both before the Appellate Authority i.e., Executive Officer and also before the Adhyaksha of Taluk Panchayat and conflicting orders are passed it would lead to dangerous results. Therefore, it has to be held that the Adhyaksha of a Taluk Panchayat or Zilla Panchayat has no jurisdiction to deal with the order passed by Grama Panchayat u/s 64 of the Act.

11. Hence the act of the President of Zilla Panchayat in entertaining the appeal and passing orders vide Annexure-D is totally without jurisdiction and is liable to be quashed and accordingly quashed and a writ of prohibition is issued to the President prohibiting him from hearing the appeal in question.

12. Petition allowed.