

(1997) 09 KL CK 0035
In the High Court Of Kerala
Case No : W.A. No. 1230/96 C

Mohanan

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 13-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Building Rules, 1984 — Rule 15(3), 5
Penal Code, 1860 (IPC) — Section 143, 147, 149, 323, 34

Citation : (1997) 09 KL CK 0035

Hon'ble Judges : U.P. Singh, C.J.; S. Sankarasubban, J

Bench : Division Bench

Advocate : V.R.K. Kaimal and N.M. Madhu, for the Appellant; Jose K. Kochupappu, Government Pleader for Respondents 4 and 5, Issac Perumpilly, for 3rd Respondent and S. Sreekumar, for 6th Respondent, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, C.J.—This Writ Appeal has been preferred by the 5th Respondent in the Original Petition. The Petitioner in the writ petition is the Respondent No. 6 in the present appeal. He is a purchaser of 1 cent of land contiguous to the house constructed by the Appellant. From the facts of this case, it appears that the 6th Respondent—the Original Petitioner, was determined to put all kinds of objections against the valid right of the Appellant in the construction of his house. Not only that a suit was filed before the Court of Munsiff, Kannur, by the Original Petitioner and his sister, which is still pending, even the services of the criminals were obtained to put obstruction in the valid exercise of the right of the Appellant over the construction of his house. Having failed to obtain a temporary injunction from the Court of the learned Munsiff, Anr. circuitous method was adopted to harass the Appellant by influencing the police authorities and the Appellant was dragged to the Police Station which gave an earlier occasion to the Appellant to come to this Court by filing O.P. 6091/96 asking for a direction to the Police authorities restraining them from interfering with the civil disputes. Pending that Original

Petition filed by the Appellant, the direction was given in the C.M.P. 110491/96 restraining the Police Officers from interfering with the civil disputes. The interim direction of this Court is contained in the order dated 26th April 1996. The notice of the same was accepted by the 6th Respondent. The matter did not end there. The 6th Respondent, namely, Sri Tajudin being the Original Petitioner in O.P. 8474/96, persuaded his remedy further by seeking an appointment of Advocate Commissioner on the ground of violation of Kerala Building Rules. The appointment of the Commissioner was sought with a view to obtain report about the nature and the situation of the constructed building and other particulars to be gathered by taking its measurements. But for the reasons best known to them, it was not pursued and was dismissed as not pressed. The ground relating to violation of the Building Rules remained undecided. The First Information Report lodged by the Appellant alleging trespass at the hands of the 6th Respondent-the Original Petitioner is pending with the Police authorities without any progress. It was alleged that the Original Petitioner Sri Tajudin had taken law in his own hands and a posse of miscreants trespassed into the Appellant's property and caused damages to the construction by demolishing it. They were alleged to be the agents of Sri Tajudin. The First Information Report was therefore lodged for offences under Sections 447, 427, 379, 506(ii) read with Section 34 of the Indian Penal Code. It is pointed out by the counsel that a complaint was also filed by the Appellant before the Police which has been registered as Crime No. 163/96 of Valapattanam Police Station. It is also pointed out that the 6th Respondent has lodged a complaint before the Police as against the Appellant which is registered as Crime No. 95/96 of Valapattanam Police Station under Sections 143, 147, 447, 323 read with Section 149 of the Indian Penal Code.

2. We are now to consider the question raised in the writ petition and the appeal in the background of these facts and now we proceed to consider the question raised in this appeal.

3. At the outset the learned Counsel appearing for the Appellant pointed out that the material facts were suppressed from the court when the O.P. 8474/96 was filed by Tajudin (Respondent No. 6 in the appeal). As against that, the learned Counsel appearing for the Tajudin, 6th Respondent in the appeal, has pointed out that he had mentioned about the filing of the original suit in the Court of Munsiff for injunction and the pendency of it. But then, it has to be seen that the interim injunction had not been granted and this fact was not stated. Further, the filing of the criminal case, the interference by the Police at their instance, trespass by the miscreants who were the agents of Tajudin and causing damage by demolishing the construction of the Appellant, were not mentioned which gave rise to the filing of the First Information Report against them. Even the filing of their First Information Report registered as Crime No. 95/96 on 18th March 1996 against the Appellant was not mentioned. Further, the application moved in the Munsiff's Court for appointment of an Advocate Commissioner alleging violation of the Kerala Building Rules was not mentioned and they did not pursue the said

proceedings under Exts. R-5(a) and R-5(b) and the matter relating to the appointment of the Advocate Commissioner was ultimately dismissed as not pressed.

4. In the O.P. 8474/96 filed by Tajudin, the Appellant before us had filed the counter-affidavit. He has specifically pointed out that the aforesaid material facts were suppressed from the Court and that the Petitioner sought discretionary remedy approaching this Court with unclean hands and this was not gone into and considered by the learned Single Judge. The Appellant, therefore, first in time, raised the contention that the petition under Article 226 of the Constitution filed by Sri Tajudin should have been dismissed on that count alone. We find force in this contention and we are in agreement with the Appellant "in accepting the contention that in the facts of the present case the appropriate remedy and the nature of the reliefs sought in the case could have been suitably determined by the learned Munsiff when the suit was pending. The question as to the power of the District Collector to review could have also been raised and determined by the learned Munsiff. In fact, while making an application for appointment of Advocate Commissioner and the proceedings relating to that under Ext. R-5(a) and R-5(b) were taken up on behalf of Tajudin and the main allegation in the petition was the violation of Kerala Building Rules. But then Respondent No. 6, Tajudin, did not press it for the reasons best known to him and the said proceeding under Exts. R-5(a) and R-5(b) in the Munsiff's Court was dismissed as not pressed. If the same would have been pursued, the violation of Kerala Building Rules by the District Collector on any ground whatsoever including his own jurisdiction and power to review could have been gone into and finally determined. But then the remedy was not pursued and the point relating to the violation of Kerala Building Rules was not placed at all. The agony was kept continued against the Appellant. It thus appears that since they did not succeed in getting temporary interim injunction from the Munsiff's Court, O.P. 8474/96 was filed on behalf of Tajudin the 6th Respondent in the appeal. Thus the litigation was continued causing harassment to the Appellant and he was dragged to this proceeding under Article 226 by suppressing the relevant facts. On this ground alone, Tajudin-the original Petitioner, did not deserve the discretionary remedy of this Court.

5. Now coming to the sole contention raised in the writ petition which has been determined against the Appellant, is contained in paragraph 16 of the judgment rendered by the learned Single Judge in O.P. 8474/96. The same may be noticed:

Counsel on either side has not pointed out any provision in the Act empowering the Government to review its own order, which is passed u/s 410 read with Rule 5 of the Rules. If power of review is not vested in the Government under the Act a priori, the District Collector a delegate cannot exercise the power of review. As held by the Supreme Court in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, , power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. It is

pointed out by Supreme Court in that case, there is no provision in the Act from which the power of the State Government to review its own order can be gathered. Therefore in the absence of any power of review conferred on the Government, District Collector has no jurisdiction to review his own order.

Ext. P-3 order will not, therefore, stand in the eye of law, for the above-mentioned reasons. Accordingly I quash Ext. P-3 and allow the Original Petition.

6. Before appreciating this contention, one relevant fact may be noticed that the Appellant had obtained sanction, which was granted as per Ext. P-3. The said Order proceeded on an application filed by the Appellant to review the Order passed under Ext. P-2 by the District Collector. By Ext. P-3 Order, the District Collector granted exemption in favour of the Appellant from the provisions of Rule 15(3)(a) and (b) of the Kerala Building Rules, 1984. Thereafter, the construction was started satisfying all their specifications and directions provided in Ext. P-3. Long thereafter, the 6th Respondent (the original Petitioner Tajudin) who had purchased 1 percent of land adjacent to the property belonging to the Appellant on. 5th March 1996 when Ext. P-3 order of exemption had been granted by the District Collector on 27th January 1996. The 6th Respondent in the appeal, (original Petitioner-Tajudin) had then filed an application before the District Collector on 8th March 1996 to withdraw the exemption granted in favour of the Appellant. Thereafter the 6th Respondent along with his sister filed the civil suit before the Munsiff's Court, which is still pending and in which temporary injunction had not been granted. Pending that, Ext. P-3 Order passed by the District Collector was challenged in the writ petition. Even in the writ petition C.M.P. No. 14174/96 was filed praying for stopping the i construction by the Appellant. But the same was not granted by this Court.

7. As we have quoted earlier the order passed by the learned Single Judge the Appellant preferred the appeal against the finding recorded in paragraph 16 thereof whereby it was held that the counsel on either side could not point out any provision in the Municipalities Act empowering the Government to review its own Order passed u/s 410 of the Act read with Rule 5 of the rules and, therefore, if the same power is not vested in the Government under the Act the District Collector being the delegate could not exercise that power. The learned Single Judge rightly noticed the decision of the Supreme Court rendered in the case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, that the power of review is not an inherent power and it must be conferred by law either specifically or by necessary implication and on this ground alone, Ext. P-3 Order passed by the District Collector was quashed.

8. The same point has been raised by the 6th Respondent in this appeal. We find it difficult to accept the same position and reject the contention of the 6th Respondent. Here in the present case, the power to review has been specifically conferred by the Government on the District Collector. The Kerala Building Rules, 1984 contain a Notification relating to the delegation of the powers of the Government to the District Collectors and in relation to that the Order was

passed by the Local Administration (D) Department by Order of the Governor. The Order may be read:

NOTIFICATIONS (1) GOVERNMENT OF KERALA

Abstract.-Kerala Building Rules-Exemption from the Rules- Delegation of the powers of the Government to the District Collectors-Orders issued.

Local Administration (D) Department

G.O. (Ms.) No. 70/95/LAD Thiruvananthapuram dated, 29th April 1995

Read. -Notification G.O.(P) No. 229/LAD, dated 26th September 1994.

ORDER

Government are in receipt of a large number of applications for exemption from the Kerala Building Rules, 1984 and the Zoning Regulations. A long time is taken to process those applications in the various offices and to issue final orders thereon by the Government. With a view to disposing of the applications for exemptions within a reasonable period, and thus redressing the difficulties being experienced by the public in this regard, Government are pleased to delegate the power to grant exemption from the Kerala Building Rules and the Zoning Regulations (except Coastal Zone Regulations) to the District Collectors in so far as it relates to any building with total floor area not exceeding 500 sq. metre (including the floor area of cellar, if any), and with not more than three storeys (excluding cellar, if any).

* * * * * 7. Detailed guidelines with regard to the processing of the applications at the office of the District/Regional Town Planner and at the Collectorate will be issued separately.

By order of the Governor, K. Mohan Das, Secretary to Government.

9. In accordance with Clause 7 above, the guidelines were issued by the Government in the Local Administration (D) Department by issuing a circular dated 29th April 1995 as regards the exemption from the Rules and the processing of the applications under the Kerala Building Rules. The same may be noticed:

CIRCULAR

Sub.-Kerala Building Rules-Exemption from the Rules--Processing of the applications-Guidelines issued.

Ref.-G.O.(Ms) No. 70/95/LAD, dated 29th April 1995.

As per the G.O. cited, Government have delegated the power to grant exemption from the Kerala Building Rules and the Zoning Regulations (except Coastal Zone Regulations) to the District Collectors in so far as it relates to any building with total floor area not exceeding 500 sq. meters (including the floor area of cellar, if

any) and with not more than three storeys (excluding cellar, if any). The following guidelines are issued with regard to the disposal of the applications for exemption by the District Collectors.

* * * * * (viii) The District Collector will have the power to review his own orders on receipt of a review petition and on valid grounds. The review petition should also be scrutinised by the District/Regional Town Planner. The review will be done only once.

10. In view of this position in law, the District Collector was delegated the power of review and the power to grant exemption. In exercise of that power, the Order under Ext. P-3 was legally and validly passed by the District Collector. We find no reason in the contention that the power to review was not conferred specifically by the Government. On the contrary as it appears from the Notification and the Circular noticed above, the Government had specifically laid down the guidelines for the District Collector to follow in regard to disposal of applications for exemption under the Act and rules and further that the District Collector had the power to review his own orders.

11. Having rejected the same contention, we do not accept the ancillary argument that while exercising his power he did not consider the relevant factors u/s 410 of the Act, in other words, that while granting exemption, the District Collector did not have in mind to give consideration and due regard to the right of privacy, the, right to light and air and the right of easement of the neighbour and the right of the public in general, and the problems of traffic, flood and rain. No such allegation was raised by the Respondent No. 6 in the pleadings either before the Munsiff's Court while claiming injunction or before this Court when the writ petition was filed. We cannot overlook the fact that the 6th Respondent (the original Petitioner) was a purchaser of 1 cent of land adjacent to the property of Appellant, who had legitimately sought sanction from the authorities for construction of his building and it was not pleaded at all by the 6th Respondent as to in what manner the light, air, passage or easement of his own was being affected by the exemption granted. It appears that from the whole facts of the case that the 6th Respondent being an influential person had to his credit even to the extent of taking law in his own hand being a subsequent purchaser much later after the sanction had been granted to the Appellant. At every stage the obstruction was put even to extent of hiring the criminals as his agents to trespass into the lawful property of the Appellant causing damage to the construction by demolishing it leaving the Appellant at the mercy of the Police Officers who also never came to his rescue. The First Information Report lodged by the Appellant was the only solace for his relief. But that also went in vain and the Police authorities are still sitting idle over to the matter in not even completing investigation on the First Information Report lodged by the Appellant. We, therefore, direct the Police authorities to take immediate steps and complete the investigation on the First Information Report lodged by both the parties. We further direct that the suit pending before the Munsiff must be taken up forthwith

so as to conclude the proceedings finally one way or the other in accordance with law, after hearing the parties concerned.

12. With these observations, we allow this appeal and set aside the judgment of the learned Single Judge and uphold the validity of Ext. P-3. In the nature of the events before us, we have no option but to award cost against the 6th Respondent and we direct that he shall pay cost of Rs. 3,000 to the Appellant within a period of two weeks.