
(1956) 06 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 317 of 1955

P. Raman Nair

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 25-06-1956

Acts Referred:

Defence of India Rules, 1962 — Rule 75, 75A
General Clauses Act, 1897 — Section 20, 21, 22

Citation : (1956) 06 KL CK 0008

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : T.K. Narayan Pillai and D. Narayanan Potti, for the Appellant; K.K. Malhew, Annamma Alexander, K. Parameswaran Pillai and C.M. Kuruvilla, Govt. Pleader, for the Respondent

Judgement

M.S. Menon, J.—The Petitioner challenges the validity of Ext. A, an order of the Government of Travancore Cochin dated 1-11-1956. As far as paragraph 2 of the said order is concerned, it is agreed that as no action has been taken in pursuance of the said paragraph 1 need do no more than reserve the right of the Petitioner to move this Court afresh, if and when action is taken on the basis of the said paragraph.

2. Paragraph 1 alone of Ext. A has hence to be considered. It reads as follows:

In the G. P. Ls. 15-175/55/DD, dated 11-2-1955 (Ext. B) sanction was accorded to the Kottanad Panchayat to open and conduct a public market at Vellayil junction in Sy. No. 165/1 of Valiakunnam-kara and in the G. P. Ls. 15-175/55/DD, dated 18-2-1955 (Ext. C) the above orders dated 11-2-1955 were stayed. Government have reviewed the question in all its aspects and are convinced that the site in Sy. No. 133/2 at Kumbalathan junction, Kottanad Panchayat, is the suitable site for the public market. The orders contained in G. P. Ls. 15-175/55/DD, dated 11-2-1955 are hereby cancelled. Sanction is hereby accorded to the Kottanad Panchayat to open and conduct the public market in Sy. No. 133/2 of

Kumbalathanan junction instead of in Sy, No. 165/1 of Vellayil junction.

3. Section 69 (2) of the Travancore-Cochin Panchayats Act, 1950, provides:

The panchayat may with the sanction of Government provide places for use as public markets and may with like sanction close any such market or part thereof."

and the contention of the learned Counsel for rate Petitioner is that once sanction has been accorded as has been done in this case on 11-2-1955 by Government, it fades out of the picture and has no further right to reconsider the question the sanction accorded as they have purported to do by Ext. A.

4. It was not contended that Ext. B will not cover Willie the ambit of Section 20 of the Travancore Cochin Interpretation and General Clauses Act, 1925 (V That Section provides:

"Where, by any Act, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanctions and conditions if any, to add to, amend, vary or rescind" any notifications, orders, rules, or bye-laws so issued." and should be sufficient to sustain the order impugned before me. The section corresponds to of the General Clauses Act 1897. In *Durga Prasad Vs. State of Uttar Pradesh and Another*, it was held that under Rule 75A of the Defence of India Rules release of property from requisition was not possible as Rule 75-A did not expressly provide for such release. The Court said:

It is true that the Defence of India Rule 75 does not expressly provide for the release of property from requisition, but there is no prohibition also in that rule to that effect. We are of opinion that, having regard to the provisions of Section 21, General Clauses Act, 1897, the power to rescind that order of requisition existed. That section provides! that where by any Central Act a power to issue orders is conferred then that power includes as power, exercisable in the like manner and subject to the like sanction and conditions, if any, to rescind that order. On general principles also where an authority has got power to requisition a property, by implication it possesses the power, to cancel the requisition and release the property.

5. In *Bhuban Mohan Basak and Others Vs. Chairman, Dacca Municipality and Others*, the question; was whether u/s 22 of the Bengal General Clauses Act, 1899, which corresponds to Section 20 of the Travancore-Cochin Act, the power to fix a date for election should be taken as including the power to postpone the date so fixed and the Court said that "there can be no doubt that, under Section 22 of the Bengal General Clauses Act, the power to fix a date for election must be taken to include the power to postpone any date so fixed." (See also *Basanta Chandra Ghosh and Others Vs. Emperor*, and *Raj Kishore Vs. State of Uttar Pradesh and Another*,

6. The last sentence of paragraph 1 states the "sanction is hereby accorded to the Kottanad Pandit) to open and conduct the public market in J No. 133/2 of Kumbalathanam junction." It is agreed that I should make it clear which I that

this sentence does not in any way compel Panchayat "to open and conduct" a public mark in Sy. No. 133/2 of Krambalathanam junction unless the Panchayat itself desires to do so.

7. Subject to the observations made above petition is hereby dismissed: but in the circumstances of the case without any order as to costs.