

(2009) 04 KAR CK 0053

In the Karnataka High Court

Case No : Writ Appeal No's. 1195, 1196, 2274, 2275 and 2276 to 2279 of 2008

P. Thimmanaiak and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 209

Citation : (2009) 4 KarLJ 173

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : R. Subramanya, for Ashok Haranahalli, Associates, for the Appellant; B. Veerappa, A.G.A. for Respondents-1 to 4 in W.A. Nos. 1196 and 2276 to 2279 of 2008 and for Respondents-1 to 3 in W.A. Nos. 1195, 2274 and 2275 of 2008, P. Nataraju Associates for Respondent-4 in W.A. Nos. 1195, 2274 and 2275 of 2008 and Chandru and S. Shekar, Associates for Respondents-5 to 8 in W.A. Nos. 1195, 2274 and 2275 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—Since both the appeals arise out of a common order dated 18th June, 2008 made in W.P. No. 17199 of 2005 connected with W.P. Nos. 22999 of 2005 and 545 of 2006, by consent both the appeals are heard and disposed of together.

2. The unsuccessful writ petitioners are appellants herein. For the purpose of convenience the parties are arrayed as per the ranking in the writ petition.

3. In the writ petitions, the petitioners have challenged the cancellation of the allotment of sites to the petitioners who claim to be landless, by proceedings dated 5th September, 2005 under the following facts and circumstances of the case:

The 4th respondent-Grama Panchayat issued a public notice on 9th November, 1998 proposing to dispose of certain sites belonging to the Grama Panchayat, to

which, the petitioners offered the highest bid. Based on the highest bid offered, the Taluk Panchayat by order dated 11th January, 1999 confirmed the bids, but the same came to suspended by the Zilla Panchayat by proceedings dated 16th March, 1999, as a result, the matter reached the Government and the Government by order dated 7th June, 2005 confirmed the order of suspension of Zilla Panchayat suspending the public notification issued proposing to sell the impugned property, the allotment and the consequential disposal of sites to the petitioners by impugned proceedings dated 5th September, 2005. Hence the writ petitions.

4. The petitioners contend that they having got confirmed the bid in their favour by resolution of the Taluk Panchayat dated 11th January, 1999, they are entitled for an opportunity of being heard before cancelling the same.

5. The respondents contend that the petitioners are not entitled for any notice or an opportunity of being heard as the very proposal to sell the property by the Grama Panchayat by issuance of public notice itself is illegal and contrary to the provisions of the Karnataka Panchayat Raj Act, 1993 (for short hereinafter referred to as the "Act"). The issuance of notice to sell the property and the proposal to allot and the consequential resolution proposing to dispose of the property of Grama Panchayat are all nothing but nullity in the eye of law as there is a gross violation of Section 209 of the Act.

6. The learned Single Judge after hearing both the parties dismissed the writ petitions. Hence, the present writ appeals.

7. Both the learned Counsel for the petitioners and the learned Additional Government Advocate reiterated the submissions that were made before the learned Single Judge. The learned Counsel for the petitioners also brought to our notice the proceedings of the Taluk Panchayat dated 11th January, 1999 where the Taluk Panchayat by resolution No. 4 approved the proposal for disposing of the impugned properties as per resolution dated 9th November, 1998, which reads as follows.-

----- 4. Details of The meeting considered the proceedings of applications the Trinive Gram Panchayat Meeting received from dated 10-9-1998, and approved the Grama Panchayat resolution to distribute sites and also proceedings of the Ripponpete Grama Panchayat dated 25-11-1998, wherein the resolution to allot sites in alienated Survey No. 41 was also considered and approved and Secretaries of both the Gram Panchayats are required to again examine and take further action (Action: Secretaries, Grama Panchayat, Trinive and Ripponpete) -----

8. We have given our careful consideration to the submission of the learned Counsel appearing for the parties.

9. It is an admitted fact that Grama Panchayat proposed to dispose of the

property owned by the Grama Panchayat by issuing a public notice dated 9th November, 1998 and pursuant to the said notice, the petitioners offered their sale consideration and the same was accepted by resolution dated 11th January, 1999 by the Taluk Panchayat. But the Zilla Panchayat by order dated 16th March, 1999 suspended the proposal for disposal of immovable property in favour of the petitioners by the Grama Panchayat.

10. Section 209 of the Karnataka Panchayat Raj Act, 1993 deals with the procedure to be followed in the matter of acquiring, holding and disposing of the property both movable and immovable property of Grama Panchayat, which reads as hereunder:

Section 209. Grama Panchayat may acquire, hold and dispose off property, etc.- The power of the Grama Panchayat to acquire, hold and dispose off property both movable and immovable whether within or without the limits of the area over which it has authority, to lease, sell or otherwise transfer any movable or immovable property which may have become vested in or been acquired by it, and to contract and to do all other things necessary for the purpose of this Act, shall be subject to the Rules made by the Government in this behalf:

Provided that no lease of immovable property for a term exceeding five years and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer shall have been made with the previous sanction of the Taluk Panchayat.

(emphasis supplied)

11. The proviso to Section 209 was deleted by Amendment Act 37 of 2003 but on the date of the impugned initiation of action to dispose of the immovable property owned by the Grama Panchayat the proviso was very much in operation.

12. It is true that the learned Counsel for the petitioners brought to our notice the resolution of the Taluk Panchayat dated 11th January, 1999 approving the notification issued by the Grama Panchayat dated 9th November, 1998 proposing to sell the sites owned by the Grama Panchayat but as per the proviso to Section 209 what is required is the prior sanction of the Taluk Panchayat before initiating any action for the disposal of the property both movable and immovable and not a post approval. It is only in this regard, we are of the considered opinion that the very initiation of the proposal to dispose of the properties owned by the Grama Panchayat is without jurisdiction as rightly held by the learned Single Judge.

13. In those circumstances where the very initiation of action to dispose of the property owned by the Grama Panchayat is without jurisdiction as the same is contrary to the proviso given to Section 209 of the Act, the learned Single Judge held that they are not entitled to claim any opportunity of being heard, of course, following the decision of the Apex Court in the case of Union of India and another Vs. W.N. Chadha, wherein, it is held as follows.-

The rule of audi alteram partem is not attracted unless the impugned order is shown to have deprived a person of his liberty or his property. The rule of audi alteram partem is a rule of justice and its application is excluded where the rule will itself lead to injustice. There is exclusion of the application of audi alteram partem rule to cases where nothing unfair can be inferred by not affording an opportunity to present and meet a case. This rule cannot be applied to defeat the ends of justice or to make the law lifeless, absurd, stultifying and self-defeating or plainly contrary to the common sense of the situation" and this rule may be jettisoned in very exceptional circumstances where compulsive necessity so demands. There are certain exceptional circumstances and situations whereunder the application of the rule of audi alteram partem is not attracted.

13.2 Therefore, we are convinced that the petitioners are not entitled to have an opportunity of being heard before cancelling the bid which is contrary to the proviso to Section 209 of the Act.

13.3 However, taking into consideration the subsequent amendment to Section 209 of the Act, the learned Single Judge has reserved liberty to the Grama Panchayat to redo the entire process of securing necessary permission for the formation of the layout, and disposal of the sites strictly in accordance with law and the rules and if the petitioners stand to benefit, the Grama Panchayat shall accordingly adjust the amounts deposited by the petitioners in the auction in the year 1998 and if they do not stand to the benefit, the Grama Panchayat is directed to refund the monies in deposit to such of those petitioners, with interest at 12% p.a. on the said sum, without any delay.

14. In those circumstances, we do not see any reason to interfere with the order of the learned Single Judge. Hence, both the writ appeals fail and accordingly, they are dismissed.