

(2012) 02 SC CK 0103
In the Supreme Court Of India
Case No : C.A. No. 3855 of 2003

P.R. Narahari Rao

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Kerala Building Rules, 1984 — Rule 5, 5A
Kerala Municipal Corporation Act, 1961 — Section 263A
Kerala Municipalities Act, 1994 — Section 407, 410

Citation : (2012) 2 SCALE 515 : (2012) 12 SCC 451

Hon'ble Judges : Sudhansu Jyoti Mukhopadhyaya, J;G.S. Singhvi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is representative of the large number of cases which are filed in the Courts across the country and which consume valuable time of the Courts without any tangible justification. The very fact that the Division Bench of the High Court devoted time to record an order running into 56 typed sheets and also the fact that this Court has devoted many hours including two hours hearing of today indicates how a purely civil and private litigation, camouflaged as a public interest litigation, puts unnecessary burden on the Courts and results in wastage of time which could otherwise be devoted for those who are waiting for years together with the hope that some day they will get an opportunity of hearing. This case is also illustrative of how a litigant pursues two remedies simultaneously and takes chance of getting favorable result from one or the other judicial forum.

2. The Appellant and Respondent No. 6 are close relatives. Respondent No. 6 (since deceased) is the real uncle of the Appellant. Respondent No. 7, of which Respondent No. 6 was the Managing Director availed loan of rupees five crores from the Tourism Finance Corporation of India for the construction of a three star hotel on a piece of land belonging to Respondent No. 6 and applied for

exemption under the Kerala Municipal Corporation Act, 1961 (for short, 'the 1961 Act') read with Kerala Building Rules 1984 (for short, 'the 1984 Rules') and succeeded in convincing the competent authority to grant exemption. The first exemption was granted by an order issued sometime in 1990. Two other exemption orders were issued in 1991 and 1996.

3. On 3.1.1995, the Appellant filed Original Suit No. 17 of 1995 in the Court of Subordinate Judge, Ernakulam (hereinafter referred to as 'the trial Court') for grant of the following substantive reliefs:

A) allowing the Plaintiff to realize a sum of Rs. 25000/- by way of damages from Defendants 1 to 6 and their assets for damages caused to the Plaintiff's eastern compound wall and the plaint schedule property.

B) a permanent prohibitory injunction restraining the Defendants 1 to 6 for their agents from trespassing upon or committing waste in the plaint schedule property or from causing the subsidence or collapse of the soil and structures therein by removing or weakening the lateral support.

C) a mandatory injunction compelling Defendants 1 to 6 to restore the collapsed portion of the eastern boundary wall of the plaint schedule property and the platform and to fill up the subsided area with soil under the supervision of the court and to restore and maintain lateral support to the plaint schedule property or in the alternative allow the Plaintiff to carry out this work at the Defendant's cost.

D) A mandatory injunction compelling the seventh Defendant to restrain Defendants 1 to 6 from carrying out any further constructions at Woody's Hotel, M.G. Road, Ernakulam in violation of the Kerala Building Rules and the approved sanction and plan and to demolish all constructions already made therein violation thereof.

E) allowing the Plaintiff to realize an amount of Rs. 75000/- from the Defendants 1 to 6 and their assets in lieu of damages caused to the Plaintiff's residential house in the plaint schedule property.

F) a permanent prohibitory injunction prohibiting the Defendants 1 to 6 from carrying out any construction using pile drivers and from operating heavy generators in the plot of land immediately to the east of the plaint schedule property.

4. The Appellant also applied for temporary injunction but could not persuade the trial Court to entertain his prayer.

5. The Court Commissioner appointed by the trial Court submitted report, which was not favorable to the Appellant. This prompted him to institute a petition under Article 226 of the Constitution of India for grant of relief which included a declaration that Sections 407 and 410 of Kerala Municipality Act, 1994 and Section 263-A of the Kerala Municipal Corporation Act, 1961 are violative of

Article 14 of the Constitution and that Rules 5 and 5A of the 1984 Rules are ultra vires the provisions of the Act. The Appellant also prayed for quashing the three exemption orders exhibited as P2, P3 and P7. The other prayers made by the Appellant were almost identical to prayer Nos. B, C and D of the civil suit. In 1997, the Appellant amended the prayer clause and sought demolition of the building already constructed by Respondent Nos. 6 and 7.

6. Even after filing writ petition in October, 1995, the Appellant continued to prosecute the suit which, as per the information made available by learned senior counsel appearing on his behalf, remained pending till the filing of the SLP before this Court. According to Learned Counsel for Respondent Nos. 6 and 7, the suit was dismissed for non-prosecution.

7. Although, the High Court did not find any significant violation of the statutory provisions in the construction of the building, yet in the concluding portion of the impugned order it made an observation about some construction having been made in violation of the exemption orders and directed Respondent Nos. 6 and 7 to pay a sum of rupees one lac as fine and deposit the same with the Kerala High Court Legal Services Authority.

8. Shri v. Giri, learned senior counsel appearing for the Appellant made a strenuous effort to persuade us to examine the correctness of the findings recorded by the High Court on the legality of the exemption orders and entertain the Appellant's prayer for issue of a direction to the municipal authorities to demolish the hotel building on the ground that the same has been constructed in gross violation of the provisions of the 1961 Act and 1984 Rules but we have not felt persuaded to agree with him. Rather, we are convinced that the writ petition filed by the Appellant was wholly misconceived and the High Court should have dismissed the same at the threshold. At any rate, once the Learned Counsel for the Appellant made a statement before the High Court that he does not want to press challenge to the constitutionality of the provisions of the Act and the Rules, the High Court should have directed the Appellant to prosecute the civil suit which he had filed 9 months before invoking the High Court's jurisdiction under Article 226 of the Constitution.

9. The parameters for exercise of jurisdiction by the superior Courts in public interest matters have been succinctly laid down in the recent judgment in State of Uttaranchal Vs. Balwant Singh Chaufal and Others, and, in our considered view, the Appellant cannot, by any stretch of imagination, be treated as a person pursuing remedy under Article 226 in public interest. It was plain and simple a private interest litigation camouflaged as public interest litigation.

10. It is also apposite to note that first exemption order was passed by the competent authority in 1990 and the Appellant's challenge to that order was clearly barred by limitation. If in the suit filed by him, the Appellant had made a prayer for quashing the exemption order issued in 1990, Respondent Nos. 6 and 7 could legitimately contend that the suit was barred by time to that extent. It

appears that having realised that he will not be able to succeed in the suit and, as a matter of fact, the trial Court declined his prayer for temporary injunction, the Appellant filed the writ petition which, as mentioned above, was wholly misconceived. In any case, the High Court should not have entertained the same keeping in view the fact that the suit was still pending and the prayer for quashing the exemption order issued in 1990 was liable to be negated in view of the proposition laid down by the Constitution Bench in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, and *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*,

11. In the result, the appeal is dismissed.