

(1983) 07 KAR CK 0023
In the Karnataka High Court
Case No : WP 25980/81

Prabhudas

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-07-1983

Acts Referred:

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 200

Citation : (1983) 2 KarLJ 474

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. The Petitioner was the owner of a site bearing No. 11 situate within the jurisdiction of the Krishnarajapura Group Village Panchayat at the relevant time. He purchased that site under a sale deed dt. 26-6-1970. Sometime thereafter, he came to realise that he was in possession of an area of 45 feet in excess of what he had purchased under the sale deed. In that circumstance, he made an application to the Village Panchayat which is the 5th respondent herein, which has since merged within the notified area of the Indian Telephone Industries Ltd-6th respondent herein, for regularisation, as the Village Panchayat in many other instances had regularised such occupation of adjoining land to site owners. That application was not acted upon by the Village Panchyat. But, however, without disposing of the application of the petitioner, the Village Panchayat passed a resolution granting the same area to the 7th respondent, one Sri N. Balanagappa who claims to have been an earlier applicant than the petitioner for the same land. Aggrieved by the resolution granting the site in favour of the 7th respondent, the petitioner approached the 4th respondent-Assistant Commissioner, Bangalore, Sub-Dvn. Bangalore, under S. 200 of the Karnataka Village Panchayats and Local Boards Act, 1959, (hereinafter referred to as the Act) praying for suspension of that resolution, as the same was illegal and unjust.

2. The Assistant Commissioner after enquiry refused to suspend the resolution granting the site in favour of the 7th respondent. Aggrieved by that order, the petitioner filed an appeal under S. 206 of the Act before the Divisional Commissioner, Bangalore. There were numerous such appeals pending before the

Divisional Commissioner in similar circumstances. They were all clubbed together and the Divisional Commissioner took the view that a revision was maintainable under S. 207 of the Act against an order made by the Assistant Commissioner under S. 200 of the Act. In other words, the Divisional Commissioner took the view that he was competent to go into the propriety and legality of the order passed by the Assistant Commissioner under S. 200 of the Act.

3. Aggrieved by that order, one of the parties in one of the appeals pending before the Divisional Commissioner took up the matter in revision before the Karnataka Appellate Tribunal, Bangalore. Apparently all interested parties were heard in that revision petition which was taken on file as Revn. Petn. No. 41 of 1978. By an order dated 26th June, 1981, the 2nd respondent-Appellate Tribunal allowed the revision petition of the said K.N. Pillanna, and held that the Divisional Commissioner had no jurisdiction to entertain a revision petition under S. 207 of the Act, in respect of an order passed by the Assistant Commissioner under S. 200 of the Act: K.N. Pillanna v. Panchayat, K.R. Puram, 1982 KLJ Tri 6. The order affects the present writ petitioner as well. The present writ petition is directed against the Appellate Tribunal's order inter alia contending that the order is erroneous on a misunderstanding of the law declared by this Court in the case of Marichannaiah v. Dy. Commissioner, (1964) 1 Mys.L.J. 364.

4. Before the Assistant Commissioner declined to interfere with the resolution, he had stayed the operation of the resolution of the Krishnarajapura Village Panchayat as it then was, granting the site in favour of the 7th respondent. Thereafter, the Divisional Commissioner also appears to have continued the stay of the operation of the resolution. This Court while issuing rule in this writ petition also granted interim relief on 6-11-1981. In other words, the resolution dt. 23-6-1970 passed in favour of the 7th respondent has not been so far given effect to. The only question decided by the Tribunal is that the Divisional Commissioner has no jurisdiction to sit in revision under S. 207 of the Act in respect of an order passed by the Assistant Commissioner under S. 200 of the Act.

5. If the Appellate Tribunal's view is correct then what follows is that the Assistant Commissioner's order dt. 18-10-1976 becomes conclusive. If the view taken by the Tribunal is not sustainable, then the Divisional Commissioner has to dispose of the matters pending before him in the light of the order. I make in this writ petition as to the question of jurisdiction of the Divisional Commissioner under S. 207 of the Act. Therefore, what really falls for determination in this writ petition is the scope and ambit of S. 200 of the Act.

6. The nature of the order and whether a right of appeal or revision or both is available against an order passed by the Assistant Commissioner under S. 200 of the Act is to be decided.

7. In a number of decided cases of this Court both by Division Bench as well as

learned single judges, the scope and ambit of S. 200 of the Act. which corresponds to S. 306 of the Karnataka Municipalities Act, have laid down the law. It would be useful to advert to the decision of the Division Bench in Matichannaiah case (supra), In that case what fell for consideration was S. 199(1) of the Mysore Municipalities Act of 1951. That section is in pari materia with S. 306 of the Karnataka Municipalities Act of 1964. The Division Bench of this Court had this to say in Marichannaiah's case:

"Under Sec. 199(1) and (2) a statutory power is conferred on the Deputy Commissioner to suspend the execution of any resolution passed by a Municipal Council if he is of the opinion that the resolution is likely to cause injury or annoyance to the public or to lead to a breach of peace or is unlawful. It is a discretionary power to be exercised by him alone under certain conditions. The Government cannot control or even fetter the Deputy Commissioner's discretion. The Government comes into the picture only under Sec. 199(2) and that that when the Deputy Commissioner has chosen to suspend the resolution. Even at that stage the Government has to exercise the power conferred on it after complying with the procedure laid down in that sub-section and the proviso thereto. If the Deputy Commissioner chooses not to interfere with the resolution, the Government cannot do anything in the matter. When a statutory discretion is conferred upon an authority, that discretion can only be exercised only by that authority and by no one else."

"The power conferred on the Government under Sec. 211 is a power of superintendence. In the very nature of things it a residual power. It cannot cover fields covered by other statutory provisions."

8. S. 200 of the Act is as follows:

"S. 200. Deputy Commissioner's powers of suspending execution of orders, etc., of Panchayats and Taluk Boards.-(1) Except in respect of cases expressly provided for in any other provision of this Act, if in the opinion of the Deputy Commissioner the execution of any order or resolution of a Panchayat or Taluk Board or any order of any authority or officer of the Panchayat or Taluk Board or the doing of anything which is about to be done, by or on behalf of a Panchayat or Taluk Board, 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, he may, by order in writing under his signature, suspend the execution or prohibit the doing thereof.

(2) When a Deputy Commissioner makes any order under sub-section (1), he shall forthwith forward to the Commissioner and to the Panchayat or Taluk Board affected thereby a copy of the order, with a statement of the reasons for making it; and the Commissioner may after such inquiry as may be necessary rescind or modify the order, as he deems fit."

9. From the enunciation of this Court in Marichannaiah's case, it is clear that the Assistant Commissioner or other authority under the Municipalities Act

empowered to exercise this discretionary power to suspend the resolution for any one or all of the reasons narrated in the section itself has no power to rescind or otherwise set aside or interfere with the resolution of the Village Panchayat. The only power conferred on the Assistant Commissioner (by delegation) is to suspend the operation or render it ineffective for a period during which the Commissioner or the Government as the case may be under sub-sec. (2), makes a final order. The fate of the resolution suspended would therefore depend entirely on the order passed by the Commissioner or the Government under sub-sec. (2) of Sec. 200 of the Act.

10. In other words, the ratio decidendi in Marichannaiah's case is that the Commissioner or the Government as the case may be cannot clutch at jurisdiction unless the Assistant Commissioner actually suspends the resolution of the Town Municipal Council. If he does not suspend the resolution, then, the Commissioner or the Government under the two Acts cannot interfere with the resolution except by other process known to law than Sec. 200 of the Act or Sec. 306 of the Municipalities Act as the case may be.

11. In the instant case, the Assistant Commissioner refused to suspend the resolution on the complaint made by the petitioner. He declined to exercise the jurisdiction vested in him rightly or wrongly. Then the question is what should happen to the complaint in such cases. The Village Panchayat or the Municipalities Act do provide for appellate and revisional jurisdiction to be exercised by the higher authorities. S. 206 of the Act provides for appeals against the original orders passed by the Deputy Commissioner and the Commissioner. If the order is passed by the Deputy Commissioner, then the appeal lies to the Commissioner. If the original order is passed by the Commissioner then the appeal lies to the State Government. Similarly S. 207 of the Act provides for revisional powers to be exercised by the Government or the Commissioner as the case may be. That power is restricted to revise the orders passed by any subordinate officer of the Commissioner or the Government and not in other cases. In other words, there is no direct access to interfere with the resolution of the Village Panchayat by the Government. In the scheme of the Act, the Village Panchayat is not a subordinate officer of either the Commissioner or the Government. It is in this context, that one has to understand the plight of the complainant, as in the instant case, when the Assistant Commissioner fails to exercise his power or act on the complaint in accordance with law.

12. S. 207 of the Act reads as follows:

"207. Revision.-(1) The Government or the Commissioner may call for and examine the record of any proceedings under; this Act of any subordinate officer and after such enquiry as is deemed fit, if the Government or the Commissioner, as the case may be, is satisfied that the order of the subordinate officer is contrary to law and has resulted in a miscarriage of justice, pass such orders thereon as the Government or the Commissioner deems just.

(2) No order under sub-section (1) shall be made to the prejudice of any party unless he has had an opportunity of being heard".

13. The language employed is clear. Proceedings under the Act are subjected to revision, if those proceedings are before officers subordinate to the Commissioner or the Government. Complaint against a particular resolution of the Village Panchayat under S. 200 of the Act, one need not have a doubt, is a proceeding under the Act. If an officer who admittedly is a subordinate officer to the Commissioner and the Government, either wrongfully exercises jurisdiction or in the event he declines to exercise jurisdiction vested in him, the matter becomes one which is subject to the revision of the Commissioner or the Government as the case may be. What is going to be examined by the revisional authority is whether the Assistant Commissioner has acted in accordance with law in not suspending the resolution and no more. If there are justifiable reasons, and the Assistant Commissioner has not suspended the resolution under S. 200 of the Act, then an illegality is committed and that has to be corrected. That can only be done by exercising the revisional powers. As already pointed out, if the Assistant Commissioner does suspend the resolution, then the Commissioner or the Government automatically acquire jurisdiction under S. 200 (2) of the Act itself and the revisional power will not be available. It is only in cases where the Assistant Commissioner has not suspended and illegality persists in the resolution of the Village Panchayat or the Taluk Board that the revisional power comes into play.

14. Somehow, the Tribunal which has depended on the decision of this Court in Marichannaiah's case, (1964) 1 Mys.L.J. 364, has totally misapplied the ratio of that case. When a revisional power is exercised by the Commissioner, he is not clutching at jurisdiction. He is merely exercising his revisional power of corrective jurisdiction to set right what may otherwise remain an illegal act of a subordinate officer. It is true that the Assistant Commissioner need not suspend the resolution, if he has formed the opinion that there is no illegality or that public interest has not suffered or for any of the reasons not being available to him to suspend the resolution. But whether he has examined whether such reasons exist or do not exist in accordance with law, it is a matter open to correction. Thus viewed, Marichannaiah's case does not come in the way, as the Tribunal appears to have understood.

15. In that view of the matter, I am inclined to agree with the reasoning of the Divisional Commissioner who entertained the appeals and revision petitions filed before him in a number of cases.

16. Therefore, for the reasons I have given above, the order of the Tribunal suffers from a clear error of jurisdiction. It has misdirected itself and misunderstood the decided case of this Court, In the result, the order of the Tribunal at Annexure-G is set aside and the order of the Divisional Commissioner is upheld in so far as it relates to the question of jurisdiction. The matter is now before the Divisional Commissioner, he should dispose of it in accordance with

law on merits. The Divisional Commissioner shall dispose of the matter of the petitioner and the 7th respondent as expeditiously as possible soon after receipt of this order.

17. The parties are directed to bear their own costs. Rule is made absolute.