

(1980) 10 KAR CK 0011
In the Karnataka High Court
Case No : WP. 16087/80

Pundalika Pai K.

APPELLANT

Vs

Udupi Town Municipality and Others

RESPONDENT

Date of Decision : 06-10-1980

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 187(9)

Citation : (1981) 1 KarLJ 281

Hon'ble Judges : N. D. Venkatesh, J

Judgement

1. The petitioner is putting up a structure in his site situated within the limits of Udupi Town (Dakshina Kannada Dist.) For this purpose he has obtained the necessary licence from the Udupi Town Municipality, Udupi, (1st respondent herein). The Chief Officer of the Municipality (2nd respondent herein) has issued a notice cilling upon the petitioner, for the reasons mentioned in the notice (Annexure-A) dated 8-8-1980, to stop the construction work and to intimate the Municipality of haying obeyed the said order. In this connection the Administrator of the Municipality (3rd respondent herein) had directed the 2nd respondent to examine and take appropriate action against the petitioner in the matter of this construction and the Administrator had issued this direction (as per Annex. B) on a complaint he had received that the petitioner had violated the terms and conditions of the licence granted to him in executing the work in question.

2. The petitioner in this petition, filed under Arts. 226 and 227 of the Constitution of India, seeks an appropriate writ, order, or direction quashing Annexures "A" and "B" on the ground that they, Annexures A and B, were illegal, arbitrary in nature, had been issued with ulterior motive and mala fide intention, and, therefore deserved to be struck down.

3. One Laxmi, wife of of U. Ramappa Thimmappa, residing at Udupi, and said to own a house on a site adjoining the site wherein this building is being built, has filed an application (I.A. II) to get herself impleaded as one of the respondents to the petition contending that she was interested in opposing the petitioner's claim

in the petition and therefore, she too may be heard in the matter. The Municipality is represented by its Counsel.. It has also filed its statement of objections.

4. Though the learned Counsel for the petitioner opposed Laxmi being impleaded as one of the respondents, having heard the learned Counsel appearing for all the parties and having perused the reasons assigned by Laxmi in her application to get herself impleaded, I am of the view that she deserves to be heard in the matter. From the beginning she had a grievance that this petitioner was trying to encroach on a portion of her site adjoining his site while making preparations to build a house in his site. She had also filed a suit against him in O.S. No. 298 of 1978 on the file of the Munsiff Udupi, complaining that he was trying to interfere with her possession and enjoyment of her property and that he should be restrained from doing so. Admittedly she had also complained to the Municipality at various stages against the manner in which the petitioner was proceeding with the construction in violation of the terms and conditions of the licence granted to him. Whether her grievances are genuine or not is required to be considered, while dealing with the matter on merits, at an appropriate stage. But, it cannot be said that, in the circumstances, she is a total stranger, and has no locus standi to intervene in this proceeding. Therefore, I.A. II allowed. She will be treated in this petition as the 4th respondent. The learned Counsel appearing for her has been heard in the matter and on her behalf also statement of objections has been filed.

5. The learned Counsel appearing for respondents argued that neither Annexure-A nor Annexure B is contrary to law; that Annexure-A was issued after providing adequate opportunity to the petitioner to correct the deliberate deviation he had made in the matter of construction of this building; and that he had to be issued with Annexure-A as an ultimate resort when he did not obey the directions given by the Municipality.

6. Counsel appearing for the 4th respondent further submitted that since the petitioner has been constructing the building in violation of the licence conditions, which violation also had adversely affected her interest, she had complained to the Administrator, who, in turn, had merely forwarded the same to the Chief Officer as per Annexure-B for appropriate action.

7. The four main grounds of attack made by the learned Counsel for the petitioner against Annexures "A" and "B" are that;

(i) they were violative of S. 187 of the Karnataka Municipalities Act, 1964 (the Act);

(ii) they had been issued in violation of the principles of natural justice;

(iii) in the matter of issuing the notice, Annexure-A, the respondent had not applied his mind, but, on the other hand, had simply obeyed the directions of the Administrator, respondent-3; and (iv) in the matter of issuing the notice in

question the 2nd respondent and other officials of the Municipality had acted in a malafide manner at the instigation and in collusion with Laxmi,

8. The learned Counsel appearing for respondents have denied these allegations. They have also produced, along with the statement of objections, some annexures in order to impress upon the Court that Annexure-A had not suddenly appeared at somebody's instance, but preceding its issuance several notices had been issued to the petitioner drawing his attention to the strict terms of the licence conditions, and the Municipality's apprehension that, in spite of that, he was acting in a high handed manner and was proceeding with the construction contrary to building licence conditions.

9. Though certain allegations have been made to the effect that the Chief Officer (2nd respondent) and the Town Planning and Building Inspector (not a party to this proceeding) are close associates of the husband and sons of Laxmi, and in collusion with them are acting contrary to his interest, I may say that the materials available on record do not show of either the 2nd respondent or any other official of the Municipality having acted in collusion with the husband and sons of Laxmi or at their instance or with any malafide intention. The allegation made appears to be unfounded and baseless.

10. The other allegations that the 2nd respondent had not applied his mind and had simply obeyed the directions of the Administrator and thereby had failed to exercise his powers as a statutory authority etc., are also baseless. If one goes through the correspondence between the parties and the several annexures, not merely the ones produced along with the statement of objections but also those produced along with the petition, they do indicate of the Chief Officer having taken into consideration all that correspondence, the previous instructions issued to the petitioner and several warnings administered to him in this matter. The Administrator, on receiving the complaint against the manner of the construction of the building by the petitioner had merely forwarded it to the Chief Officer for appropriate action. Action did not emanate only on that complaint but preceding that action, which came in the form of Annexure-A, there had been several notices to the petitioner as stated above to which reference will be made a little later. It cannot, therefore, be said that the Chief Officer had not applied his mind and had acted only mechanically. So also there is no substance in the allegation made by the petitioner that, in the matter of issuing Annexure-A, the Chief Officer had violated the principles of natural justice. Enough opportunity had been given to him to have his say in the matter, and in Annexure-A itself there have been references to the previous notices issued to him and to the other correspondence.

11. After referring to the previous notices issued to him (the petitioner) on 26-4-1979 (Annexure-D), 25-7-1979 (Annexure-E) and to the original suit O.S. No. 298 of 1978 pending on the file of the Munsiff at Udupi, to the report of the Town planning and Building Inspector dated 4-8-1980, to the complaints of Laxmi dated 6-8-80 and 8-8-80 and also to the Administrator's direction in this

regard dated 8-8-1980, it is mentioned in Annexure-A that he, the petitioner, was proceeding with the construction work of the building without following the instructions given previously and that doing so would be contrary to law and the directions given by the Municipality, and, therefore, he should stop further construction and intimate the Municipality of having done so. Let us see what those previous notices, Annexures "D" and "E", to which reference is made at Annexure-A contain. In Annexure-D reference is made (i) to the licence given by the Municipality and the terms and conditions therein (vide Annexure-3 produced along with the statement of objections of respondents 1 and 2); (ii) to the notices dated 14-12-1978, 10-1-1979 and 6-2-1979 of the Municipality issued to him (vide Annexures 4, 6 and 7 produced along with the statement of objections of respondents 1 and 2); (iii) to the petitioner's representation to the Municipality dated 11-4-1979 (vide Annexure-8 produced along with the statement of objections of respondents 1 and 2); and (iv) to all the other correspondence between the petitioner and the Municipality in this connection. After thus referring to the aforesaid facts it is stated at (Annexure-D) that the petitioner, Pundalika Pai, had applied for permission to construct the building as per a modified plan; that as per the licence already granted a condition is stipulated that he should leave an open space of 1.50 meters between Laxmi's site and the petitioner's building; that without doing so he had put up the RCC beam and projections; that he had been instructed to remove all of them; that he had not thus far intimated the Municipality of having obeyed its instructions, and that until he complies with the directions he should not proceed with the further construction. According to the Municipality, since he had not complied with any of the previous notices, action as per Annexure-A has been taken against him. Licence had been issued and permission granted to the petitioner to put up this new construction under S. 187 of the Act Counsel for the petitioner argued that once a licence is granted it cannot be cancelled and, according to him Annexure-A precisely purports to do that He submitted that putting a stop to the construction work virtually amounts to the cancellation of the licence issued, and to do so, the Municipality had no authority. In this connection he places reliance on a decision of this Court in *Abdul Lateef v. The Corporation of the City of Bangalore*, (1980) 1 Kar.L.J. 172 and also on a decision of the Supreme Court in *Commissioner of Police, Bombay v. Gordhandas Bhanji*, AIR 1952 SC. 16.

12. In his submission that the 2nd respondent, the Chief Officer, had no powers to issue a notice, as per Annexure-A, directing his client to stop the construction of the building, the learned Counsel for petitioner is not correct. Subsection (9) (a) of S. 187 of the Act, which confers powers on the Municipal Commissioner or the Chief Officer to issue, under certain circumstances, to the person contracting a building, an order to stop the construction, reads as follows:

"(9)(a) If the Municipal Commissioner or Chief Officer is satisfied,- (i) that the construction, reconstruction, or erection of a building- (A) has been commenced without obtaining the permission of the Municipal Council; or (B) is being carried on, or has been completed otherwise than in accordance with the plans or

particulars on which the permission was granted; or (6) is being carried on, or has been completed in breach of any of the provisions of this Act or of any rule or bye-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or bye-laws, or (ii) that any alterations required by any notice "issued under sub-sec. (8) have not been duly made, he may make a provisional order requiring the owner or the builder to demolish the work done, or so much of it as, in the opinion of the Municipal Commissioner or Chief Officer, has been unlawfully executed, or make such alterations as may, in the opinion of the Municipal Commissioner or Chief Officer, be necessary to bring the work into conformity with this Act, rules, bye-laws, direction or requisition as aforesaid, or with the plans or particulars on which such permission was based, and may also direct that until the said order is complied with, the owner or builder shall refrain from proceeding with the building."

As can be seen from what is extracted above, the Chief Officer can direct the party to refrain from proceeding with the work, if he, the Chief Officer, is satisfied that the construction or erection of a building is proceeding otherwise than in accordance with the plan or particulars of the plan and licence, or that the construction is being carried on in breach of any of the provisions of the Act, rules, bye-laws, or direction. One of the conditions in the sanction given by the Municipality to put up the structure (Annexure-3 filed with the statement of objections of respondents 1 and 2) is that 1.50 meter width clear open space should be left on the southern side in between the proposed building and boundary of the adjoining plot belonging to S Laxmi as shown in the approved plan (This is condition No. 4). Stating that, in violation of this condition, the petitioner has put up an RCC. beam and that was contrary to the approved plan and the licence and that he should remove it, he had been issued with notices previously as per Annexures 4, 6 and 7 (produced along with statement of objections of respondents 1 and 2) and to these Annexures, as already stated, reference has been made at Annexure-D, and to Annexure-D there is a reference in Annexure-A. If it is a fact that the petitioner has violated the terms and conditions of the licence granted to him, the authorities of the Municipality, and, in particular, the Chief Officer, is empowered, under the provision of the Act referred to above, to take appropriate action against him which includes the power to put a stop to proceed with the construction.

13. In Abdul Lateef's case (supra) this Court was considering the scope of S. 443(4) and the provisions of Chapter XV. of the Karnataka Municipal Corporations Act, 1976. Placing reliance on a decision of this Court in D. Achiah Setty v. The City of Bangalore Municipal Corporation, AIR 1972 Mys. 203, the learned single Judge has held that "a building licence once granted cannot be revoked by that authority, or any other authority" and "that sub-section (3) of S. 443 cannot be read as conferring an independent power of refusal, suspension, cancellation, or modification of the licence if the same is not conferred by other appropriate provision that regulates the grant of building licence under the Act" (The Karnataka Municipal Corporation Act, 1976). The ratio of this decision or the

observations made by a Division Bench of this Court in Achaiah Setty's case (supra) cannot be relied upon by the petitioner to contend that the Chief Officer of the Municipality under the Act had no powers to put a stop to the further construction of the building under any circumstances. In Abdul Lateef's case, the learned single Judge was construing only S. 443(3) of the Corporation Act and in that context has stated that the provision cannot be said to confer an independent power of suspension, cancellation etc., of a licence and that the authorities cannot do so unless such a power is conferred on them by other appropriate provision that regulates the grant of building licence under that Act. Even in Achaiah Setty's case, while examining the scope of S. 248A of the City of Bangalore Municipal Corporation Act, 1949, this Court had noticed that the authorities of the Corporation had powers of cancelling a licence in the event of any breach of any of the conditions of the licence as provided under S. 385(4) of that Act. The two decisions do not lay down any law that under no circumstances a licence once granted can be cancelled under any of the provisions of the Act.

13a. In Commissioner of Police Bombay's case (supra) the facts were that though the Commissioner of Police, Bombay, had powers under the City of Bombay Police Act (No. 4 of 1902) of cancelling a licence granted to build a cinema house, the licence granted in that case had been cancelled by the State Government and the Commissioner had acted only as a transmitting agent of that order. In the light of the facts of that case the Supreme Court held that there was no valid cancellation in accordance with the rules. The facts in the instant case, as already stated, are entirely different, and therefore, the ratio of Commissioner of Police, Bombay's case cannot be applied to the facts of this case.

13b. As is clear from sub-section (9)(a) of S. 187 of the Act the Chief Officer, acting under the said sub-section and for the reasons mentioned by him, has directed the petitioner not to proceed further with the construction work. In the circumstances, it cannot be said that he does not have any powers under the Act at all to issue such a direction. He (the Chief Officer) has proceeded on the basis that the petitioner, while constructing the building, had proceeded with the construction in violation of the terms and conditions granted to him and unless he rectifies the same, he should not be permitted to further construct the building. It is also stated that his (Petitioner's) revised plan will not be approved until he complies with the various directions already issued to him in this connection. It is beyond the scope of this proceeding to factually investigate into the correctness or otherwise of the opinion formed by the Chief Officer and his subordinates that the petitioner had violated the conditions of the licence. But, if he has violated, as respondents 1 and 2 appear to be of the view that he had done so, the Chief Officer does have powers under the Act to stop him from proceeding with the work.

14. It was argued by the learned Counsel for the respondents that the petitioner has an alternate remedy, instant he could have approached the Administrator,

who is functioning the Municipal Council, against the order of the Chief Officer as provided under the Karnataka Municipalities (Appeal and Revision) Rules, 1966. Counsel for the petitioner submits that that remedy was not available to his client, in the instant case because the Administrator had himself directed the Chief Officer to take action against his client, and that the Chief Officer had merely obeyed the Administrator's direction. I have stated above that what the Administrator had done, as per Annexure-D, was that he had forwarded the complaint made against the petitioner to the Chief Officer for appropriate action in accordance with Rules. It is left to the petitioner to avail himself of the remedy of an appeal, if, in law, he is entitled to it.

15. For the reasons mentioned above, I am of the view that the petitioner is not entitled to any of the reliefs sought for by him. Therefore, this petition is dismissed and the Rule issued is discharged. No costs.