

(1991) 08 MAD CK 0066
In the Madras High Court

R. Antony Doss and Another

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 16-08-1991

Acts Referred:

Tamil Nadu Town and Country Planning Act, 1971 — Section 79(1)

Citation : (1991) 2 LW 525 : (1991) 2 MLJ 486

Hon'ble Judges : Mishra, J

Bench : Division Bench

Judgement

Mishra, J.—This appeal has been listed after notice of motion. Since we intend to interfere with the judgment of the learned single Judge as well as with the impugned order purported to be that of the prescribed authority u/s 79(1) of the Tamil Nadu Town and Country Planning Act, 1971 on the question whether the latter order is one by a competent authority or vitiated on account of sub-delegation of the statutory power to a so - called Appeal Committee, we think it is not necessary to wait for any counter affidavit or to discuss any other contention raised before us by learned Counsel for the parties.

2. It appears for the alleged violation of the provisions of the Tamil Nadu Town and Country Planning Act, 1971, and rules and regulations framed thereunder in deviating and making construction of and in a building from the approved plan, etc., a proceeding was initiated against the petitioners-appellants under the Act. The petitioners-appellants in the meanwhile applied for a planning permission before the competent authority under the Act, and when the permission was not granted, appealed u/s 79 of the Act before the prescribed authority. The impugned order dated 29.5.1991 in G.O.Rt. No. 288, Housing and Urban Development Department, however shows that the competent authority in the Housing and Urban Development Department disposed of the appeal in the light of certain recommendations of a certain Appeal Committee. The order reads:

The appeal has been examined u/s 79 of the Tamil Nadu Town and Country Planning Act, 1971; based on the remarks of the Member-Secretary, Madras

Metropolitan Development authority in his letters second and fourth made by the appellant in the reference third read above and placed before the Appeal Committee meeting held on 26.4.91 for its recommendation on the appeal portion. 2. The Appeal Committee considered the appeal petition carefully and found that the appellant's proposal violates the following development control rules:

1. 9(d)(i) floor space index 2.00 2.23 Excess by 0.23.
2. O-b I(ii) 3(i) front set back 3.50 m. 0.18 m. less by 3.32 m.
3. 19-b (ii) 3(ii)(1) side set back 4.50 m. 1.29 m. less by 3.21 m. 0.83m. less by 3.67 m.
4. 19-b - I(ii) 3(iii) Rear set back 3.00 m. Nil. Less by 3.00 m. due to main columns in the rear boundary.
5. 20 parkings cars 4 Nos. Nil. Less by 4 Nos. Office area exceeds the permissible limit of 9.40 Sq.m. Plan does not reflect the site condition.

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Though in approved plan, the appellants have given sufficient set backs, during construction they have completely deviated from the original approved plan. There is large scale violation of front set back, floors space index and parking space. In view of the above facts, the appeal committee recommended for rejection of the appeal.

Concluding on the said basis, the impugned order said that the Government accepted the recommendation of the Appeal Committee and accordingly rejected the appeal preferred by the petitioners. The petitioners appellants herein then moved this Court in W.P. No. 8838 of 1991 questioning the validity of the said order on various grounds.

3. The learned single Judge of this Court, however, has dismissed the writ petition saying that the petitioners - appellants attempted to get the new construction regularised by filing an application before the Madras Metropolitan Development Authority, which was rejected, and they preferred an appeal, but the appeal was rejected by the State Government for the reasons stated therein. The only contention raised on behalf of the petitioners that rules of natural justice were violated because a personal hearing was not given to them, however, was found to be devoid of merits, because Section 79 of the Act never contemplated a personal hearing.

4. The learned single Judge, however, rejected the contention that no Appeal Committee had been contemplated u/s 79 of the Act, saying that it is not as if the Government cannot appoint an Appeal Committee to assist it in the matter of deciding whether the deviated constructions could be regularised or not, and that the Government is at liberty to arrange its affairs so as to facilitate easy disposal on pending matters before it. The learned single Judge also held it is not as if the

Government is blindly accepting the report of the Appeal Committee, and that the Government examines the report of the Appeal Committee independently, applie (sic) and takes a decision, which is evident from the impugned orders. The learned single Judge further observed that merely because the Appeal Committee was not constituted in deciding the appeal preferred by the petitioners and it had submitted its report, it would not violate Section 79 of the Act.

5. Section 79 of the Act reads as follows:

79. (1) Any person aggrieved by any decision or order of the planning authority u/s 49 or Sub-section (1) of Section 54 may appeal to the prescribed authority.

(2) An appeal under Sub-section (1) shall be preferred within two months from the date on which the decision or order was communicated to him in the manner prescribed, but the prescribed authority may admit an appeal preferred after the said period of two months if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(3) In disposing of an appeal, the prescribed authority may, after giving the parties an opportunity of making their representations, pass such order thereon as the prescribed authority may deem fit.

(4) The decision or order of the prescribed authority on such appeal shall be final.

(5) the prescribed authority may pass such interlocutory orders pending the decision on such appeal as the prescribed authority may deed fit.

(6) The prescribed authority may award costs in proceedings under this section to be paid either out of the Fund Account or by such party to such appeal as the prescribed authority may deem fit.

The plain meaning which this provision conveys is that the prescribed authority empowered to hear the appeal has to act quasi judicially and decide in accordance with law, whether to accept the representations or to reject them. The expression "prescribed authority" will mean the authority prescribed under the Act or the rules framed thereunder. If, however, the State Government is the prescribed authority, and it seems it is so for the purpose of Section 79 of the Act, it can delegate its powers under the Rules of the Executive Business upon an officer or authority to exercise any of the powers vested in them. Such delegation of power will make the delegate the prescribed authority, and he shall be required to act quasi judicially.

6. It is well settled that a statutory authority shall act within the limits of the statute and exercise its discretion only within such prescribed limits, and not beyond. A delegate under a statute will have no power to sub-delegate, and the maxim "delegatus non potest delegare" will be attracted if any function assigned to such an authority under the Act is found to have been delegated to any other person.

7. In the case of *Mangal Chuni Lal Vs. Manilal Maganlal and Another*, a provision in Section 481 of the Bombay Provincial Municipal Corporations Act was considered which empowered the Commissioner to take or withdraw from proceedings against any person who is charged with any offence against the Act or any rule, regulation or by-law, etc. There was another provision in Section 69 of the said Act which empowered the Commissioner to delegate power duties or functions conferred or imposed upon him or vested in him to a municipal officer. The Commissioner delegated his powers to the Deputy Health Officer. The Deputy Health Officer, however, allowed the Licence Inspector to take proceedings against the accused under Sub-clauses (b), (c), (d), (f), (g), (h) and (i) of Section 488(1). The Supreme Court, relying upon the observations of *Hidayatullah, J.*, in the case of *Ballavdas Agarwala v. J.C. Chakravarty* AIR 1950 S.C. 576, held that the sub-delegation by the delegate, Deputy Health Officer, was not permissible.

8. We do not propose to multiply the decisions. A distinction is to be drawn between an authority delegating its power to some other authority, and employing assistants to help it in discharging its functions. Whether in a particular situation it is a case of sub-delegation or merely of employing assistants would depend upon the degree of control and supervision exercised by the delegating authority over the subordinate agency. If the control and supervision over the subordinate is substantial, if the delegating authority lays down detailed instructions as to how routine cases should be disposed of by it, and reserves the power to always deal personally with new and important cases itself, then it may be a case not of delegation but of employing assistants to help the authority in discharging its statutory power. Such assistance, however, shall always be ministerial in nature for collection of evidence or gathering informations. There can be no assistance taken in the quasi judicial function, because if that is allowed, there shall be a division of statutory discretion. Such division of statutory discretion will render the function not only ineffective, but also non est.

9. We have taken care to compare the language in Section 79 of the Tamil Nadu Town and Country Planning Act, 1971, with that of Section 91, where delegation of powers is contemplated. Section 91 says that the Government or the Director may, by notification, authorise any officer or authority to exercise any of the powers vested in them or him by this Act, except the power of the Government to make rules and the power of the Director to hear any appeal preferred u/s 76. Whereas in Section 76, the power to hear appeal is vested in the prescribed authority, and not the State Government. So, there is no authority, and not the State Government. So, there is no authority given to the State Government to hear any appeal u/s 79 of the Act. The State Government may become the prescribed authority only when by prescription of law or notification issued in exercise of the rule-making powers of the State Government, the appellate power to hear appeals u/s 79 is given to the State Government. That is how the Courts in India have distinguished between the power vested by an Act and the

power vested under an Act. Be that as it may, we are satisfied that the instant case is one in which Appeal Committee had no jurisdiction to but in and since the impugned order is based upon the report of the Appeal Committee, the same is without jurisdiction.

10. For the above reason alone, we are inclined to set aside the order of the learned single Judge in W.P. No. 8838 of 1991, dated 28.6.1991 and quash G.O.Rt. No. 288, Housing and Urban Development Department, dated 29.5.1991. On the facts of this case, however, we remit the case to the prescribed authority for rehearing and disposal in accordance with law. While saying so, we make it clear that we are in agreement with the view expressed by the learned single Judge that Section 79 of the Act does not contemplate an oral hearing. With the direction as above, the appeal is accordingly allowed. There will be no order as to costs.