

(1988) 11 KAR CK 0021
In the Karnataka High Court
Case No : W.P. No. 15364/1988

R. Gurulingaiah

APPELLANT

Vs

Director of Municipal Administration and Another

RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 374(2)

Citation : (1989) 1 KarLJ 103

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

Judgement

Chandrakantaraj Urs, J.-The petitioner is aggrieved by the order passed by the Director of Municipal Administration, Bangalore. The order is dated 11th October 1988 and purports to be one passed in exercise of the power conferred on the Director by Section 309 of the Karnataka Municipalities Act, 1964 (hereinafter referred to as "the Act"). By the said order, the petition dated 18-12-1987 filed by the petitioner before the Director-1st respondent herein has come to be set-aside and the matter remanded for fresh disposal after giving a reasonable opportunity as laid down in section 374(2)(a) of the Act.

2. The facts leading to the order may be briefly stated and they are called out in the preamble to the order at Annexure-B. The Municipal Commissioner of the City of Tumkur by an order dated 21-10-1986 suspended the licence granted to the petitioner to construct a compound erected with granite slabs in view of the complaint of the public as the said compound obstructed free movement on the road. Aggrieved by that order, the petitioner preferred a petition as aforementioned to the Director, Municipal Administration, who is delegated the powers of the Commissioner under the Act, inter alia, contending that the Revenue Officer who was only in-charge Commissioner had no authority to pass the order suspending the licence and therefore the same was liable to be set-aside. The first-respondent-Director after hearing the Counsel has reached the conclusion that without affording an opportunity as contemplated under sub-section (2)(a) of Section 374 of the Act, the Commissioner could not have passed the order dated 21-10-1986 at Annexure-A and therefore set-aside the same

directing the Commissioner, City Municipal Council, Tumkur-second respondent herein to dispose of the complaint afresh after giving a reasonable opportunity to the petitioner to be heard in the matter as contemplated under Section 374(2)(a) of the Act.

3. In this Court what is contended is Section 374(2) does not enable the municipal Commissioner to cancel the licence except for the reasons stated in sub-section (2) of Section 374. Proviso (a) to that sub-section provides that before making . order of suspension or revocation a reasonable opportunity should be afforded to the grantee of written permission to show cause why the licence should not be suspended or revoked. For the very reason of not complying with the proviso (a) of sub-section (2) of Section 374 the order of the Municipal Commissioner, Tumkur, at Annexure-A has come to be set-aside by the Director of Municipal Administration. Once the order is set-aside, the public complaint on which it was founded is still at large and that is yet to be disposed of by the Commissioner. Therefore, the direction that the matter may be heard afresh after giving a reasonable opportunity and disposed of cannot be said to affect the rights of the petitioner. The effect is, licence granted to him is revived by setting-aside the order. Therefore, his licence is not at the moment suspended or revoked. It is yet to be suspended or revoked in terms of sub-section (2) of Section 374 after a reasonable opportunity in order to comply with the requirements of proviso (a) of sub-section (2) of Section 374 of the Act is given. Therefore, the petitioner cannot be said to be aggrieved. It is only when an order is passed under Section 374(2) of the Act adverse to the interest in regard to the licence granted the petitioner can agitate in an appropriate forum.

4. Therefore, there is no merit in this petition. It is rejected.

Writ Petition rejected.