

(2017) 02 KAR CK 0130
In the Karnataka High Court
Case No : 201881-201883 of 2015 (LB-RES)

SHIVASHARANAPPA & Ors

APPELLANT

Vs

THE DEPUTY COMMISSIONER & Ors

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Karnataka Panchayat Raj Act, 1993, Section 4,
Section 4(3) - Declarati

Citation : (2017) 02 KAR CK 0130

Hon'ble Judges : Rathnakala

Bench : SINGLE BENCH

Advocate : SHIVAKUMAR KALLOOR, A. SYED HABEEB, AMRESH S. ROJA

Judgement

1. The Order of the Regional Commissioner at Annexure-E for transferring Muddadaga Village Panchayat Head Quarters to Madaki village is under challenge in these petitions.
2. The fact is that the Deputy Commissioner under Section 4 of Karnataka Panchayat Raj Act (for brevity, hereinafter referred to as "Act") while forming a new gram panchayat inclusive of Muddadaga, Madaki and Muradi, notified Muddadaga as the head quarters and again vide Annexure-B dated 04.03.2015, the final notification was issued.
3. The writ petitioners being the villagers of Muddadaga were probably apprehending that the head quarters will be shifted to Madaki, filed a revision petition before the Regional Commissioner under Section 4(3) of Act. Vide order dated 10.03.2015, their petitions came to be dismissed on noticing that their petitions were in the form of caveat. However, another revision petition filed by respondent no.3 - Ramratan K. Patil, resident of Madaki village was considered and on the same day vide Annexure-E, head quarters of Gram panchayat was shifted to Madaki.

4. Sri.Shivakumar Kalloor, learned counsel for the writ petitioners submitted that despite appreciating the stand of the writ petitioners that Muddadaga is the appropriate place for the head quarters, without giving opportunity to them on the very same day, the Regional Commissioner has passed the order as at Annexure-C. Had if all the three petitions were clubbed together and heard together, the writ petitioners could have impressed upon the Regional Commissioner with facts and figures how Muddadaga was the appropriate place for the head quarters over Madaki village to which now the head quarters stand transferred vide Annexure-E.

5. In an identical situation, this Court has remanded the matters on noticing that the aggrieved citizens had no opportunity before the Regional Commissioner and were not heard.

6. In reply, Sri. A. Syed Habeeb, learned AGA appearing for respondents no.1 and 2 seeks to sustain the order of the Regional Commissioner and points out that though the writ petitioners are not specifically named in the order, every body concerned were heard as indicated therein.

7. Sri.Amaresh S. Roja, learned counsel for respondent no.3 - the revision petitioner of Annexure-E would submit that basically the petition itself is not maintainable and this Court in identical situations has refrained to exercise its jurisdiction under Article 226 of the Constitution. The controversy pertains to administrative policy. (reliance is placed on 1994(3) KAR.L.J. 240 - JANAB A. RIZWANULLA SHARIFF @ GAUVER VS. STATE OF KARNATAKA AND OTHERS & 1994(4) KAR.L.J.662 - CHICKAMUNISWAMY AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS) . Only in the event of order passed without jurisdiction by the concerned authorities, this Court will interfere to exercise its jurisdiction under Article 226 of the Constitution (reliance is placed on H. Parameswaran Vs. Bangalore Mahanagara Palike - 1994 (4) Kar.L.J. 668) .

8. In the light of the above submissions, I have perused the order of the Regional Commissioner at Annexure-E. It is evident that the all the revision petitions were taken on the same day for consideration. But, the revision petition of the writ petitioners herein came to be rejected with the observation that the revision petition of the writ petitioners is in the nature of caveat, their view point was not considered while allowing the revision petition of the 3rd respondent. What is in violating of Section 4(3) of the Act which contemplates that the Commissioner shall give his audience to the aggrieved persons of the notification. When the revision petition of the writ petitioners were considered, they were not the aggrieved persons, but while the revision petition of the 3rd respondent was taken for consideration, definitely the writ petitioners were the aggrieved persons since the relief sought in the revision petition was to transfer the head quarters from Muddadaga to Madaki. Of course, any decision taken in the public interest on administration side, this Court refrains from exercising its jurisdiction under Article 226 of the Constitution. But here is the case where the order at Annexure-E is passed without reference to the say of the writ petitioners.

9. As per the submission of Sri.Shivakumar Kalloor, learned counsel for the writ petitioners, had if they were given any opportunity by the Regional Commissioner, they would have presented before him the facts and figures to impress upon him that Muddadaga is the better place for the head quarters over Madaki village and that has caused injustice to the writ petitioners, the residents of Muddadaga village. In that view of the matter, it is necessary to hold that the order at Annexure-E is passed in violation of the procedure contemplated under section 4(3) of the Act and needs to be quashed and matter shall be considered by the Regional Commissioner afresh after giving opportunity to the concerned/aggrieved. The Regional Commissioner who confirmed the notification at Annexures-A and B vide his orders at Annexures-C and D, committed an error of jurisdiction in setting aside the very same order. From that angle of the matter also, the order at Annexure-E is not legal. The petitions are allowed.

The orders of 2nd respondent at Annexures-C, D and E are quashed.

The 2nd respondent is directed to consider the matter afresh after giving opportunity to all the concerned and by following the procedure under Section 4(3) of the Act, pass orders in accordance with law, within a period of two months from the date of communication of this order.