

(2000) 06 KAR CK 0091
In the Karnataka High Court
Case No : Writ Petition No. 31518 of 1999

Sri. K.S. Nagaraja Rao

APPELLANT

Vs

Chickmagalur Zilla Panchayat and Others

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Panchayat Raj Act, 1993 — Section 237, 237 (1), 237 (2), 237 (3), 237 (4)

Citation : (2000) 4 KCCR 2547

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : T.N. Raghyopathy, for the Appellant; Vaishali Hegde, for Sri Mohandas N. Hegde, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Tirath S. Thakur, J.—A short, but interesting question of law falls for consideration in this Writ Petition. The answer turns on a true and correct interpretation of the provisions of Section 237 of the Karnataka Panchayath Raj Act, 1993 which inter alia empowers the Adhyakshas of Zilla Panchayats to suspend the execution of any order or resolution passed by the Taluk Panchayats or any authority or officer of such Panchayaths or restrain the doing of any act in pursuance of any such resolution or order. The question arises in the following circumstances:

A house situate in Sy. No. 124 of Kumbarakoppa Village of Koppa Taluk, was according to the Petitioner registered in his name from the year 1959 till 1988 under khata No. 131 assigned by the Grama Panchayath concerned. The said khata it appears was re-assigned in favour of Sri Ananthapadmanabha Udupa, husband of the third Respondent in the year 1988-89, pursuant whereto, the Panchayath started collecting house tax from Sri Ananta Padmanabha Udupa as also the Petitioner who was assigned khata No. 132 for the very same property. Aggrieved by the change, the Petitioner appears to have made an application to

the Panchayat in which he asserted that khata No. 1131 related to the property in his ownership and occupation and that the same could not have been changed or re-assigned in favour of Sri Padmanabha Udupa. The Grama Panchayath found merit in that grievance and passed a resolution on 14.6.1996 cancelling khata No. 132 and reassigning khata No. 131 in favour of the Petitioner. Aggrieved by the said order, the third Respondent filed an appeal before the Chief Executive officer of the Zilla Panchayath, invoking his powers u/s 237(1) of the Karnataka Panchayath Raj Act, 1993. Consequent upon the amendment of the said provision and substitution of the Adhyaksha of Taluk Panchayat in place of a Chief Executive officer of the Zilla Panchayath, the matter was transferred to the former for orders. The Adhyaksha of the Taluk Panchayat did not however find any reason to interfere with the resolution passed by the Grama Panchayat and dismissed the appeal filed by the third Respondent by his order dated 20th of October, 1998. Dissatisfied, the third Respondent preferred a further appeal before the Adhyaksha of the Zilla Panchayat invoking the provisions of Section 237(3) of the Act which empowers the Adhyaksha of the Zilla Panchayat to suspend the execution of any resolution or order of the Taluk Panchayat or any Authority or officer of the said Panchayat in case any such order is found to be unlawful, unjust or improper in law. The Adhyaksha of the Zilla Panchayat found favour with the grievance made by the third Respondent and by order dated 28.7.1999 impugned in this petition set aside the order passed by the Adhyaksha of the Taluk Panchayat and directed necessary steps to be taken for the change of khata in favour of Respondent No. 2. The present Writ Petition has assailed the correctness of the said order.

2. Sri T.N. Raghupathy, learned Counsel for the Petitioner, strenuously argued that the Adhyaksha of the Zilla Panchayat had no jurisdiction to interfere with an order passed by the Adhyaksha of the Taluk Panchayat under Sub-section (1) of Section 237 of the Act. He submitted that the scheme of the said provision envisaged suspension of only such orders as were found to be unjust, unlawful or improper or likely to cause injury or annoyance to the public or lead to breach of peace. The Adhyaksha of the Zilla Panchayat could not, according to the learned Counsel, interfere with an order passed by the Adhyaksha of the Taluk Panchayat whereby the latter had simply declined to interfere with the resolution passed by the Grama Panchayat. The impugned order was in that view incompetent, hence liable to be quashed.

3. Section 237 of Karnataka Panchayat Raj Act deals with the suspension of unlawful orders and resolutions passed by any Grama, Taluk or Zilla Panchayat or any Authority or officer of any such Panchayat. It runs as follows.

Power of suspending execution of unlawful orders or resolution.-

(1) If in the opinion of the Adhyaksha of Taluk Panchayat, the execution of any order or resolution of a Grama Panchayat, or any order of any authority or officer of the Grama Panchayat or the doing of anything which is about to be done, or is being done, by or on behalf of a Grama Panchayat 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 peace, he may by order suspend the execution or prohibit the doing thereof.

(2) When Adhyaksha of Taluk Panchayat makes an order under Sub-section (1), he shall forthwith forward to the Adhyaksha of the Zilla Panchayat and the Grama Panchayat affected thereby a copy of the order with a statement of the reasons for making it, and the Adhyaksha of the Zilla Panchayat may confirm or rescind the order or direct that it shall continue to be in force with or without modification permanently or for such period as he thinks fit:

Provided that no order of the Adhyaksha of Taluk Panchayat passed under Sub-section (1) shall be confirmed, revised or modified by the Adhyaksha of the Zilla Panchayat without giving the Grama Panchayat concerned a reasonable opportunity of showing cause against the proposed order.

(3) If in the opinion of the Adhyaksha of the Zilla Panchayat, the execution of any order or resolution of a Taluk Panchayat or any order of any authority or officer of the Taluk Panchayat or the doing of anything which is about to be done, or is being done, by or on behalf of a Taluk Panchayat 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 peace, he may by order suspend the execution or prohibit the doing thereof.

(4) When the Adhyaksha of the Zilla Panchayat makes an order under Sub-section (3), he shall forthwith forward to the Government and the Taluk Panchayat affected thereby a copy of the order with a statement of the reasons for making it, and the Government may confirm or rescind the order or direct that it shall continue to be in force with or without modification permanently or for such period as he thinks fit:

Provided that no order of the Adhyaksha of the Zilla Panchayat passed under Sub-section (3) shall be confirmed, revised or modified by the Government without giving the Taluk Panchayat concerned a reasonable opportunity of showing cause against the proposed order.

(5) If the Government is of the opinion that execution of any order or resolution of Zilla Panchayat or the doing of anything which is about to be done or is being done by or on behalf of a Zilla Panchayat 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, it may, by an order suspend the execution or prohibit the doing thereof.

(6) When the Government makes an order under Sub-section (5), it shall forthwith forward to the Zilla Panchayat affected thereby a copy of the order with a statement of reasons for making it and the Government may confirm or rescind the order or direct that it shall continue to be in force with or without modification permanently or for such period as it thinks fit:

Provided that no order under this Sub-section shall be passed by the Government without giving the Zilla Panchayat concerned a reasonable opportunity of showing cause against the said order.

4. A careful reading of the above would show that the Adhyakshas of Taluk Panchayats are empowered to suspend any order/resolution of a Grama Panchayat or any order of an Authority or officer of such Panchayat or forbid the doing of any act in pursuance to the same, if in his opinion any such order or direction is unjust, unlawful, improper or likely to cause injury or annoyance to the public or lead to breach of peace. It is evident from the language employed that the power conferred upon the Adhyaksha under Sub-section (1) of Section 237 is limited to the suspension of any such resolution or order. The Adhyaksha cannot himself set aside the resolution, order or direction, no matter in his opinion, the execution of any such order may be vitiated for any one of the reasons stated earlier. Sub-section (2) requires the Adhyaksha to forthwith forward to the Commissioner and the Grama Panchayat a copy of the order made by him under Sub-section (1) with a statement of reasons for making it and empowers the Adhyaksha of the Zilla Panchayat to confirm or rescind the order or direct that it shall continue to be in force without any modification permanently or for such period as he deems it.

5. To the same effect is the scheme underlying Sub-sections (3) and (4) of Section 237 which empower in similar circumstances, the Adhyaksha of the Zilla Panchayat to suspend any resolution or order passed by the Taluk Panchayat or any Authority or officer of such Panchayat in circumstances similar to those referred to in Sub-section (1) of Section 237. In Sub-section (4) exists a provision similar to Sub-section (2) requiring the Adhyaksha of the Zilla Panchayat to forward to the Government for confirmation the papers (sic) who may in turn confirm or rescind the order or direct the continuance of the same with or without modifications permanently or for such period as it may deem fit.

6. It would thus appear that the scheme of the Act does not envisage either an appeal or revision against an order passed by the Adhyaksha of the Taluk Panchayat in exercise of the powers vested in him u/s 237(1) of the Act or against the order of the Adhyaksha of the Zilla Panchayat in exercise of the powers that are vested in him under Sub-section (3) of Section 237 of the Act. The emphasis in the provisions of Sub-sections (1) and (3) is on resolutions and orders passed by the Grama Panchayats or the Taluk Panchayats or an Authority or officer of any such Panchayat. It is only if the execution of any resolution or order is found by the Adhyaksha of the Taluk Panchayat in the case of Grama Panchayats and Adhyaksha of the Zilla Panchayat in the case of Taluk Panchayats to be bad for the reasons stated earlier that the powers vested in terms of Sub-sections (1) or (3) would be invoked. In situations where the Adhyaksha of the Taluk Panchayat cannot interfere with any such resolution or order, passed does not provide for any remedy by way of offer an appeal or revision to any higher Authority. It is only in cases where the Adhyaksha of the Taluk Panchayat does

not find favour with the resolution or order of the Grama Panchayat that the Adhyaksha of the Zilla Panchayat can exercise the powers vested in him under Sub-section (2) of Section 237 to either confirm or rescind any such order or direct its continuance with or without modification. Suffice it to say that the power to interfere with any resolution or order of the Taluk Panchayat conferred upon the Adhyaksha of the Zilla Panchayat in Sub-section (3) does not include within its fold the power to interfere with an order made by the Adhyaksha of the Taluk Panchayat under Sub-section (1) of Section 237.

7. In the instant case, the Adhyaksha of the Taluk Panchayat had not either interfered with the resolution of the Grama Panchayat or otherwise made any reference to the Adhyaksha of Zilla Panchayat. The order passed by the Adhyaksha of the Taluk Panchayat was an order of dismissal of the grievance made against the resolution of the Grama Panchayat. It simply declined to interfere with the order/resolution passed by the Grama Panchayat. The Adhyaksha of the Zilla Panchayat could not have therefore, invoked the provisions of Section 237(3) or set aside the order as he appears to have done.

To sum up.-

(a) The Adhyaksha of Zilla Panchayats can interfere with an order or resolution of the Grama Panchayat or any officer or authority only when the Adhyaksha of the Taluk Panchayat makes a reference to him u/s 237(2) of the Act.

(b) The Adhyaksha of the Zilla Panchayat can interfere with an order passed by the Taluk Panchayat, or an officer or Authority of such Panchayat which expression should include the "Adhyaksha of Taluk Panchayat also only if any such order is capable of execution. An order of the Adhyaksha of the Taluk Panchayat refusing to interfere with the resolution of the Grama Panchayat not being one such order cannot be interfered with by the Adhyaksha of Zilla Panchayat.

8. Counsel for Respondent, Ms. Vaishali Hegde, submitted that if the third Respondent did not have the right to invoke Section 237(3) she should be given the liberty to question the correctness of the resolution of the Grama Panchayat and the order of the Adhyaksha of the Grama Panchayat in appropriate proceedings before this Court. There is no gain said that if the statutory provisions do not provide any alternate remedy to a person aggrieved of an order passed by any authority exercising jurisdiction under the Act, the aggrieved person can take resort to proceedings under Article 226 of the Constitution. The third Respondent shall therefore have the liberty to seek redress in writ proceedings if so advised.

9. In the result, this Writ Petition succeeds and is hereby allowed. The impugned order dated 28th July, 1999 passed by the Adhyaksha of the Zilla Panchayat shall stand quashed reserving liberty to the third Respondent to seek appropriate redress against the resolution of the Panchayat and the order of the Adhyaksha of the Taluk Panchayat in appropriate proceedings in accordance with law. No costs.