(1998) 10 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No. 13482 of 1993

Sri Tuljabhavani Devasthana Kendra Pancha Samithi, Hubli APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 444 (2), 72, 98, 98 (2)

Citation : AIR 1999 Kar 182 : (1999) ILR (Kar) 143 : (1999) 6 KarLJ 637

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Sri R.U. Goulay, for the Appellant; Sri R.G. Devadhar, for the Respondent

Judgement

1. The petitioner is a Religious" Trust registered under the Bombay Public Trust Act, 1950. It is stated that the Trust is utilising the amount collected for the development of the temple and for the construction of buildings. The Trust has got property at Chattnimath on Chanpet Road, Hubli, District Dharwad and constructing buildings to accommodate the visitors. For the purpose of augmenting the income of the Temple the Trust started the construction work after applying for the licence to the 2nd respondent-Corporation. The said construction was sought to be removed on the ground that it was an unauthorised construction and without obtaining the proper sanctioned plan.

2. Thereafter, the petitioner applied as per Annexure-A requesting the Corporation to regularise the construction. In pursuance of the said representation the matter was referred to the Standing Committee of the Municipal Corporation in Item No. 789 on 21-10-1991. The same was resolved to the effect that the construction of the temple be regularised by accepting a fine of Rs. 3,000/- and executing the necessary documents as per Annexure-B. In pursuance of the said decision, an intimation came to be issued to the trust on 18-11-1991. Subsequent thereto the Municipal Corporation by its resolution No. 723 had resolved that the construction made by the petitioner in the property at

Chattnimath in Chanpet, Hubli should be regularised by paying a sum of Rs. 3,000/-. The construction made by the petitioner was sought to be regularised by the decision of the Standing Committee.

3. The Commissioner referred the matter to the Corporation u/s 444(2) of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as the ''Act''). The matter was placed before the Corporation. The Corporation confirmed the regularisation and enhanced the fine from Rs. 3,000/- to Rs. 4,000/-, and the said amount was also paid by the Trust.

4. When the matter stood thus, the Commissioner had sought to act u/s 72 of the Municipal Corporations Act for cancelling the resolution No. 723. The Government of Karnataka in pursuance of the same had issued notice to the Commissioner of Hubli-Dharwad Corporation to reply within ten days. The Commissioner did not submit any reply. Since no reply was sent by the Municipal Corporation the Govern- ment by Annexure-D, dated 30-3-1993 cancelled the resolution made by the Municipal Corporation. Section 98 of the Act reads as follows.--

"98. Submission of copies of resolution to Government and Government''s power to cancel resolution and orders.--

(1) The Commissioner shall submit to the Government copies of all resolutions of the Corporation.

(2) If the Government is of opinion that the execution of any resolution or order of the Corporation or of any other authority or officer subordinate thereto or the doing of any act which is about to be done or is being done by or on behalf of the Corporation is in contravention of or in excess of the powers conferred by this Act or of any other law for the time being in force or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons or is prejudicial to the interest of the Corporation it may by order in writing, suspend the execution of such resolution or order, or prohibit the doing of any such act after issuing a notice to the Corporation to show cause within a date to be specified which shall not to be less than fifteen days why.--

(a) the resolution or order may not be cancelled in whole or in part, or

(b) any bye-law or regulation concerned may not be repealed in whole or in part:

(3) Upon consideration of the reply, if any, received from the Corporation and after such enquiry as it thinks fit, Government may pass orders cancelling the resolution or order or repealing the bye-law or regulation and communicate the same to the Corporation.

(4) Government may at any time, on further representation by the Corporation or otherwise, revise, modify or revoke an order passed under sub-section (3)".

5. A perusal of Section 98(2) clearly indicates that the Government should give notice of not less than fifteen days, if any resolution is sought to be cancelled, to

the Corporation. In this case, admittedly, there was only ten days notice. Even from that point of view the order of the Government in cancelling the resolution is erroneous. When the Municipal Commissioner and the Standing Committee had on certain terms regularised the unauthorised construction of the petitioner on payment of fine, it would be appropriate that the principles of natural justice would have to be complied with and the aggrieved party who has benefited from the resolution should also be heard before any adverse order is passed against the aggrieved party.

6. In this case, admittedly, the aggrieved party is not only the Commissioner but also the present petitioner who had the benefit of the regularisation on payment of fine. Without notice to the aggrieved party and without hearing the aggrieved party it would not be fair to cancel the resolution by the Government. (See Olga Tellis and Others Vs. Bombay Municipal Corporation and Others,).

7. In that view of the matter, the order dated 30-3-1993 at Annexure-D stands quashed. The matter is remitted back to the Government to enable the Government to proceed in accordance with Section 98 of the Act and pass orders in accordance with law. The writ petition is disposed of accordingly. No costs.

