
(2005) 09 BOM CK 0073
In the Bombay High Court
Case No : Writ Petition No. 4687 of 2005

Sunil Aparadhe	Vs	APPELLANT
State of Maharashtra and Others		RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 308, 308(1), 308(3)

Citation : (2006) 2 ALLMR 207 : (2006) 2 MhLj 185

Hon'ble Judges : S.T. Kharche, J;D.D. Sinha, J

Bench : Division Bench

Advocate : A.J. Thakkar, Rajeev Madkholkar, for the Appellant; T.R. Kankale, Assistant Govt. Pleader for respondents No. 1 and 2, for the Respondent

Judgement

D.D. Sinha, J.—Rule, made returnable forthwith by the consent of the parties.

2. Heard Mr. Rajeev Madkholkar, learned Counsel for the petitioner, Mr. T.R. Kankale, learned Assistant Government Pleader for respondents No. 1 and 2 and Mr. A. J. Thakkar, learned Counsel for the intervener.

3. The instant writ petition is directed against the order dated 17-8-2005 issued by the Collector in exercise of power u/s 308 of the Maharashtra Municipalities, Nagar Panchayat and Industrial Township Act, 1965 (for short, Municipalities Act) whereby resolution No. 7 passed in the General Body of Municipal Council, Akot dated 17-5-2005 granting approval to the tender for repairs and maintenance of street light, tender for electrification under the Integrated Urban Development Scheme and tender for lifting debris, etc. was set aside/cancelled.

4. Mr. Madkholkar, learned Counsel for the petitioner challenged the impugned order primarily on the ground that the Collector does not have either power or jurisdiction to cancel the said resolution passed by the Municipal Council. The power which is vested in the Collector is only to suspend the resolution. Learned counsel further contended that the impugned order cannot be sustained in law in

view of the provisions of Section 308 of the Municipalities Act, and therefore, needs to be quashed and set aside.

5. Mr. Kankale, learned Assistant Government Pleader, on the other hand contended that as per the provisions of Sub-section (3) of Section 308 of the Municipalities Act, the Municipal Council has already forwarded the statement to the Regional Director of Municipal Administration for modification and the same is pending before the Regional Director for taking decision in this regard. Learned A.G.P. further prayed that in the instant case the Regional Director of Municipal Administration may be directed to take a decision as per Section 308(3) of the Municipalities Act.

6. Mr. Thakkar, learned Counsel for the intervenor adopted the contentions canvassed by Mr. Kankale, learned Assistant Government Pleader and in order to substantiate the contentions, reliance is placed on the judgment of this Court in the case of Syed Kasim v. Additional Commissioner, Amravati reported in 2003 (1) Mh.L.J. 246.

7. We have considered the contentions canvassed by the respective counsel for the parties, perused the provisions of Section 308 of the Municipalities Act as well as the judgment referred to hereinabove.

8. It is not at all in dispute that in view of Section 308, the Collector is only entitled if, in the opinion of the Collector, the execution of any order or resolution of the Municipal Council is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace or is unlawful, for the reasons given in writing under his signature is only vested with the power to suspend the execution of such resolution or order. The plain reading of Sub-section (1) of Section 308 makes it crystal clear that the jurisdiction vested in the Collector in view of Sub-section (1) of the Section 308 of the Municipalities Act is only to suspend the order/resolution in case of contingencies mentioned in Sub-section (1) exist and it does not give power to the Collector either to cancel or set aside the resolution.

9. In the instant case it is not in dispute that in exercise of power u/s 308(1) of the Municipalities Act, the Collector vide order dated 17-8-2005 set aside/cancelled the resolution No. 7 passed in the General Body of Municipal Council, Akot on 16-5-2005. The order passed by the Collector is without jurisdiction and is completely inconsistent with the provisions of Sub-section (1) of Section 308 of the Municipalities Act, and therefore, cannot be sustained in law. The statement forwarded by the Municipal Council for modification, which is pending before the Regional Director of Municipal Administration does not validate illegal action of the Collector of cancelling resolution of the Municipal Council since the Collector does not have jurisdiction to do so. In the instant case since we have quashed and set aside the order of the Collector cancelling resolution passed by the Municipal Council, proceedings initiated under Sub-section (3) of Section 308 of the Municipalities Act by the Municipal Council before the Regional Director of

Municipal Administration do not survive.

10. So far as the decision cited and relied on by the learned Counsel for the intervenor in this regard referred to above is concerned, in para 14 this Court has clearly observed that; "...It is no doubt true that provisions of Section 308(1) of the Act does not empower the Collector to set aside the resolution but he is entitled only to suspend the same and therefore, the Additional Commissioner was justified in modifying the order of the Collector to that extent vide order dated 29-6-1991...."

11. The conclusions recorded by us in the present judgment are completely consistent with the law laid down by this Court in the above referred judgment. Hence, for the reasons stated hereinabove, the order dated 17-8-2005 passed by the Collector is quashed and set aside. It is open to the Collector to reconsider the issue afresh and pass appropriate order according to the powers vested in him u/s 308(1) of the Municipalities Act.

12. Rule is made absolute in the above terms with no order as to costs.