
(2013) 07 KAR CK 0061

In the Karnataka High Court

Case No : Regular First Appeal No. 532 of 2010

The Commissioner and The Assistant Executive Engineer

APPELLANT

Vs

Smt. Muni Akkayamma

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 321(2), 321(3), 444

Citation : (2013) 07 KAR CK 0061

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : I.G. Gachchinamath, for the Appellant; G. Chandrashekaraiah, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—It is noticed that the suit was filed at a point of time when the respondent was issued with a notice under Sections 321(2) and (3) of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as "the KMC Act", for brevity). The suit having been filed immediately thereafter, the court below had granted an order of temporary injunction and had confirmed the same after a full-fledged trial. It is that which is under challenge in the present appeal. The learned counsel for the appellants would contend that a pure question of law is involved as regards jurisdiction. It was required that the respondent if she was aggrieved by any notice issued as above, to prefer an appeal under the provisions of the KMC Act, and therefore, the suit was misconceived. The court below has not addressed this aspect of the matter though it had framed several issues and the primary issue was not considered even though a contention has been raised by the appellant before the Trial Court itself. The learned counsel would draw attention to the amended Section 443-A of the KMC Act, which reads as follows:

443-A. Appeal to Karnataka Appellate Tribunal or District Court.- (1) Any person aggrieved by any notice "issued, action taken or proposed to be taken by the

Commissioner under sections 308, 309, 321(3) may appeal,-

(i) to the Karnataka Appellate Tribunal in case of the Bruhat Bangalore Mahanagara Palike;

(ii) to the District Court having jurisdiction in case of other Corporations.

(2) The decision of the Karnataka Appellate Tribunal or as the case may be the District Court shall be final.

(3) All appeals made against any notice issued or other action taken or proposed to be taken by the Commissioner under sections 308, 309 and 321(3) and pending before the standing committee on the date of commencement of this section shall stand-transferred to the Karnataka Appellate Tribunal, or as the case may be, District Court and such appeals shall be disposed off by them as if they were filed before them.

He would submit that the appropriate remedy was for the respondent to prefer an appeal and the suit was misconceived.

2. However, the learned counsel for the respondent would point out that Section 443-A was incorporated by way of amendment on 20.08.2003, whereas the suit was filed on 9.5.2003. Therefore, there was no error committed in the respondent having sought a remedy provided in law.

3. The learned counsel for the appellant however would point out that even as on the date of the suit, the provision 444 did provide that an appeal would lie before the Standing Committee of the Corporation and even then, the suit was barred as there was an alternative remedy of appeal available to the respondent. Therefore, there is clearly an error committed by the Trial Court in entertaining the suit when the plaintiff ought to have been relegated to an appeal. Accordingly, the appeal would have to be allowed. However, as the respondent will be left with no remedy if indeed there is a case on merits, it would be open for him even now to prefer an appeal against the order notwithstanding the lapse of time, since the Trial Court by an error or default had allowed the suit to be adjudicated and shall finally decide in favour of the respondent. Therefore, the question of limitation may not be held against the respondent if she should even now file an appeal. However, the respondent would have the option of filing an appeal within 30 days from the receipt of a copy of this judgment. The appeal however, is formally allowed as in law, there is an error committed by the Trial Court in entertaining the suit. The appeal is allowed. The judgment of the court below is set aside subject to the observation made hereinabove and the liberty granted to the respondent.