

(1969) 06 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 2380 of 1966

T.S. Krishnamurthy Shetty

APPELLANT

Vs

M. Bharamappa and Others

RESPONDENT

Date of Decision : 03-06-1969

Acts Referred:

Mysore Village Panchayats and Local Boards Act, 1959 — Section 207, 53 (2), 53 (2) (b), 53 (3), 53 (4)

Citation : AIR 1970 Kar 10 : AIR 1969 Kar 10 : (1969) 2 MysLJ 234

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : R.P. Hiremath, for the Appellant; T. Venkanna, for the Respondent

Judgement

Somnath Iyer, J.—The petitioner before us is the village panchayat of Ujjini in Bellary district. When respondent 1 constructed a house in the year 1961 without the permission of the village panchayat, a notice was issued to him by that Panchayat on March 9, 1964 calling upon him to demolish the unauthorised construction. He was intimated that in his failure to do so, that demolition would be made by the panchayat.

2. The Assistant Commissioner, to whom respondent 1 preferred an appeal u/s 53 (3) of the Mysore Village Panchayats and Local Boards Act, directed the village panchayat to desist from the demolition which it proposed to make, and the revision petition presented by the village panchayat to the Divisional Commissioner u/s 207 of the Act was dismissed as not maintainable.

3. The panchayat asks us to quash the orders made by the Assistant Commissioner and the Divisional Commissioner in that way.

4. Mr. Hiremath is right in contending that the view taken by the Divisional Commissioner that the revision petition was not maintainable could no longer be supported after the pronouncement of this Court in Village Panchayat v. T. Butchiah (1968) 1 M (1968) sLJ in which it was held that the finality of the order

of the Assistant Commissioner u/s 58 (3) of the Act, about which that section, speaks, does not affect the independent revisional jurisdiction bestowed on the divisional commissioner by Section 207. That enunciation is equally applicable to the decision of the assistant commissioner in the case before us u/s 53 (4) and so the divisional commissioner was not right in declining to entertain the revision petition on the mistaken view taken by him that revisional jurisdiction could not be exercised in respect of an order made by assistant commissioner u/s 53 (4).

5. But Mr. Venkanna appearing for respondent 1 advanced the plea that even so, this is not a case in which we could exercise our writ jurisdiction having regard to all the facts and circumstances of the case. He submitted that respondent 1 made the construction as early as in 1961 and the impugned direction for demolition was not made by the panchayat until March 9, 1964.

6. Although Mr. Hiremath, for the first time, produced before us a document which purports to be an agreement executed by respondent 1 in the year 1962 that he would demolish the unauthorised construction within twenty-four hours failing which the panchayat could take action against him, the panchayat took no action for more than two years after the date of that agreement, the genuineness of which is not admitted by Mr. Venkanna appearing on behalf of respondent 1. So even if that agreement is taken as a genuine agreement, and on that question we express no opinion, nor would it be necessary for us to do so there is unexplained delay on the part of the Panchayat to take any action with respect to the demolition for a period of more than two years even after the execution of that agreement though respondent 1 did not within the period of twenty-four hours specified in that agreement remove the unauthorised construction.

7. Moreover, the Assistant Commissioner was of the view that the demolition was not within the competence of the panchayat since there was no application of the mind of the panchayat to the question whether the demolition was necessary for the promotion of public health or the prevention of danger to life and property which are the indispensable ingredients on which Section 53 (2) (b) of the Act insists before any demolition could be either demanded or made.

8. From the records made available to us by Mr. Hiremath, appearing for the village panchayat, it is seen that the notice by which the petitioner was called upon to make the demolition u/s 53 (2) of the Act did not allude to the promotion of public health or the prevention of danger to life and property as reasons which impelled such demolition. The panchayat produced before the assistant commissioner no other material on the basis of which he could reach a conclusion contrary to that which he reached and there is no statement in the affidavit accompanying the writ petition produced before us that what the assistant commissioner stated in the course of his order is factually not correct. If the assistant commissioner was, therefore, right as we can see that he was, in the view that he took that there was no application of the mind of the village panchayat to the question whether the demolition was necessary for the

promotion of public health or for the prevention of danger to life and property the demolition directed by the panchayat was clearly beyond its competence.

9. Moreover, the divisional commissioner pronounced his order in December 1965 and this writ petition was not presented until November 1966 and no reason has been assigned in the application produced before us in justification of the delay in the presentation of this writ petition.

10. Having regard to all these circumstances, and also having regard to the fact that what is alleged to be an unauthorised construction was made as early as in 1961 and no action was taken by the panchayat until March 1964, we decline to exercise our jurisdiction especially since the order of the assistant commissioner, the validity of which is called in question in this writ petition is unexceptionable. That being so, and since Mr. Hiremath appearing on behalf of the panchayat did criticise the validity of the assistant commissioner's order, and we see no reason to think that there is any point in his criticism, it would be quite unnecessary for us to make the divisional commissioner waste public time and money in hearing the revision petition against the assistant commissioner's order which has been demonstrated to be irreproachable. So we dismiss this writ petition without making any order as to costs.

11. Writ petition dismissed.