
(1991) 04 KAR CK 0038
In the Karnataka High Court
Case No : W.P. No 5367 of 1984

T.S. Narasamma

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 08-04-1991

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 302(2)

Citation : (1991) 2 KarLJ 124

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The petitioner, who is the owner of the property in Madhavanagar, Bangalore, applied on 19-9-1983 to the Corporation of the City of Bangalore seeking sanction of the plan submitted by her for the purpose of constructing a drawing room by the side of her existing residential building. The Corporation did not sanction the plan or reject the plan within the statutory period of 30 days. After the period expired, the petitioner represented to the Chairman, Standing Committee of the Corporation in accordance with Section 302 of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as "the Act"). The Standing Committee also did not take any action within the statutory period of 30 days. No orders were passed either by the Corporation or by the Standing Committee on the application made by the petitioner. By letter dated 4-2-1984, the petitioner informed respondents that she has taken up construction in accordance with the plan submitted by her to the Corporation and also requested for issue of the sanctioned plan. By the end of February, 1984, the petitioner completed the construction in accordance with the plan which she has submitted to the Corporation.

2. To the surprise of the petitioner, on 1-3-1984, respondent-3 issued a provisional order alleging that the petitioner had unauthorisedly constructed the house and further directed the petitioner to demolish the construction by a show cause notice. The petitioner replied on 5-3-1984 explaining her position. She asserted that she has not contravened any of the provisions of the Act.

3. By an order dated 9-3-1984 passed under Section 321(3) of the Act, respondent-3 confirmed the provisional order dated 1-3-1984. By the final order of the same date, respondent-3 directed the petitioner to comply with the order of demolition within 3 days from the date of receipt of the order of confirmation. Thereafter, the petitioner preferred an appeal before the Standing Committee of the Corporation; but it is stated that, even to this day, no action or decision has been taken by the Standing Committee.

4. In order to stave off the consequences of the order dated 9-3-1984 passed by respondent-3 vide Annexure-F, the petitioner has approached this Court and the petitioner has sought for quashing of the order under Annexure-F dated 9-3-1984 and also for a mandamus directing respondent-2 to issue the sanctioned plan.

5. In the absence of statement of objections of the Corporation and material to the contrary, the facts narrated by the petitioner may be taken as undisputed.

6. The point is whether the impugned order under Annexure-F deserves to be quashed as being contrary to law under the Act.

7. According to Section 301 of the Act, within 30 days after the receipt of any application for grant of permission to execute the work if the application is preferred under Section 299 of the Act, it is open to the Commissioner either to grant such permission or refuse the same on one or more of the grounds mentioned in Section 303 or Section 304 of the Act.

Under Section 302 of the Act, if, within a period prescribed under Section 301 which is 30 days from the date of receipt of the application, the Commissioner has neither given nor refused approval of the proposed construction, the Standing Committee shall be bound, on the request of the applicant, to determine by a written order whether or not such approval or permission should be granted. Under sub-section (2) of Section 302, where the Standing Committee fails to determine whether or not such approval or permission should be granted within one month from the receipt of such written request, the approval or permission, as the case may be, shall be deemed to have been granted and the applicant is entitled to proceed to execute the work. The only rule of caution is that the applicant, while doing so, shall not contravene any of the provisions of the Act or any Rules or bye-laws made under the Act. In the instant case, neither the Commissioner nor the Standing Committee has either granted or refused permission to the petitioner to put up construction. In spite of the application for grant of sanction of the plan, when there is inaction on the part of both the Commissioner and the Standing Committee, with the efflux of stipulated time of 30 days within which an order either granting or refusing permission is not passed, the presumption by operation of law is that the applicant (petitioner) is at liberty to proceed to execute the work without contravening any of the provisions of the Act or any rules or bye-laws under the Act.

8. In the instant case, the petitioner has taken advantage of indecision on the part of the Standing Committee under sub-section (2) of Section 302 of the Act not only before the expiry of 30 days, but also thereafter, and has proceeded to exercise the right vested in her under sub-section (2) of Section 302 of the Act. It is not the case of the Corporation that while executing the work in the circumstances mentioned above, that the petitioner has contravened any of the provisions of the Act or any Rules or bye-laws under the Act. The allegation against the petitioner is that she has put up the construction without a sanctioned plan. No fault is found in the manner of construction of the hall in contravention of any of the provisions of the Act or Rules or bye-laws.

9. Sub-section (3) of Section 321 of the Act contemplates that if the owner or builder fails to show cause to the satisfaction of the Commissioner, the Commissioner may confirm the order passed under Section 321(1) and such an order shall be binding on the owner. Sub-section (3) of Section 321 of the Act, presupposes the failure of the owner in satisfying the Commissioner by showing a valid cause for proceeding with the construction. I do not think that such a condition precedent is in existence in this case to warrant action under sub-section (3) of Section 321 of the Act because the petitioner, as already pointed out, has proceeded to exercise the right conferred on her by virtue of sub-section (2) of Section 302 of the Act on the basis of deemed permission. Unless there is demonstrable proof of contravention of any of the provisions of the Act or any Rules or bye-laws in the construction put up by the petitioner, the impugned action is unsustainable. In the circumstances of the case, I am of the opinion that action under Section 321(3) of the Act is totally unwarranted and illegal. Annexure-F is, therefore, liable to be struck-down. The power exercised under Section 321(3) of the Act is a wrong exercise of power.

10. For the reasons stated above, the writ petition is allowed and the impugned order dated 9-3-1984 passed by respondent-3 in No. AEE/SN/44/CO/71/1983-84 vide Annexure-F is quashed. It follows that the Corporation of the City of Bangalore is duty bound to consider the issue of sanctioned plan to the petitioner as applied for, on merits and in accordance with law.