
(1994) 01 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 11936 of 1991-U

V. Raman

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-01-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 246
Kerala Building Rules, 1984 — Rule 5
Kerala Municipal Corporation Act, 1961 — Section 238, 238(4), 367, 367(5)

Citation : AIR 1994 Ker 393 : (1993) 1 ILR (Ker) 857

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; M.B. Kurup, General and K.P.G. Menon and P.K. Ibrahim, for the Respondent

Final Decision : Dismissed

Judgement

Jagannadha Rao, C.J.—This writ petition raises a question of law relating to the power of the Government to grant exemptions in the matter of construction of buildings under the provisions of the Kerala Municipal Corporations Act, 1961, read with the Kerala Building Rules, 1984. This writ petition was heard along with O. P. No. 12929 of 1991, which related to a building in Ernakulam Corporation. The building in the present case with regard to which exemption was granted by the Government is located in Kozhikode Corporation. In this case, the Government passed various orders of exemption under Rule 5 of the Kerala Building Rules, 1984, which confers power on the Government to grant exemptions. The Kerala Building Rules, 1984 were issued in exercise of the powers conferred u/s 367 read with Section 238 of the Kerala Municipal Corporations Act, 1961 and also in exercise of the powers conferred under" Section 344 read with Section 222 of the Kerala Municipalities Act, 1960. In the present case, we are concerned with the above said Kerala Building Rules, 1984, in so far as they are traceable to the powers under the Kerala Municipal Corporations Act, 1961.

2. In this original petition, which relates to the building in Kozhikode Corporation, the petitioner is one V. Raman, who claims to be the Secretary of the Kozhikode District Committee of the Kerala Kshethra Samrakshna Samithi (Temple Protection Committee). The said Samithi is registered under the Societies Registration Act. The Samithi owns and is in possession of lands and temple situated in Nagaram amsom desom in Kozhikode Town. The property owned by the Samithi is located in the Kiliparamba Hindu Temple. Respondents 5 to 8, namely, Sri Kozhiparambathu Abubacker Haji and three others purchased the property on the front side of the temple from one Velayudhan between whom and the above said Samithi, there was considerable litigation which ended in favour of the Hindu Samithi in S.A. No. 284 of 1990. The purchase by respondents 5 to 8 from Velayudhan was in respect of 8 cents of land in RuleS. No. 208/5 of Kozhikode Nagaram amsom desom. The 8 cents was purchased on 24-8-1989. Even before the construction was started respondents 5 to 8 submitted a representation to the Government seeking exemption from the various provisions of the Kerala Building Rules, 1984. This was submitted through the office of the Calicut Development Authority and the office of the Corporation of Calicut in regard to the construction of three stoned "shop-cum-lodge" building. On 23-1-1990, the Calicut Development Authority made its remarks on the proposal for construction of "shop-cum-lodge" building in T.S. No. 243 in Ward No. 13 stating that the area is reserved for public and semi-public use as per the sanctioned detailed Town Planning Scheme for Ward No. 13 of the Calicut Corporation. On 5-3-1990 the Commissioner of the Corporation rejected the application of respondents 5 to 8, as the proposal as per the plan submitted by respondents 5 to 8 was in violation of various provisions of the Kerala Building Rules. On 29-3-1990, the petition of respondents 5 to 8 for exemption above mentioned was referred to the Government. On 29-5-1990, the Chief Town Planner, Trivandrum, recommended exemption from the Zoning Regulations of the Master Plan and the relevant provisions of the Kerala Building Rules, subject to certain conditions, vide reference No. D4-5773/90/K.Dis. dated 26-5-1990. The said recommendation was accepted by the Government, which issued G.O.Rt. No. 2368/90/LAD dated 6-6-1990 granting exemption from the operation of Rules 15(7), 35(1), 22(6)(b), 17(2) and 20 of the Kerala Building Rules, and also granting exemption from Zoning Regulations of sanctioned Master Plan.

3. Thereafter, respondents 5 to 8 did not start construction, but felt that some minor exemptions could also be got, so that the construction could be made within the area in their possession. They, therefore, made a further representation, which was received by the Government on 13-7-1990. In that representation, since the Calicut Corporation considered the building as a residential category building, respondents 5 to 8 requested for exemption from Rule 15(3)(b) and (c) of the Kerala Building Rules, and in the alternative sought for a direction to treat the lodge building as a commercial building. On that, the Government wrote a letter on 3-11-1990 to the Corporation of Calicut for its

remarks. On 14-11-1990, the Corporation also received petition from respondents 5 to 8 for permission to construct the building with endorsement dated 30-10-1990 of the Secretary, Calicut Development Authority granting development permit: This would also show that respondents 5 to 8 did not start construction immediately after the issuance of G.O. Rt. No. 2368/90/LAD dated 6-6-1990. On 7-1-1991 the Commissioner of Calicut Corporation wrote a letter to the Government forwarding his remarks. This was received by the Government on 14-1-1991. On 16-1-1991 the Government addressed a further letter to the Chief Town Planner vide letter No. 36315/M3/90/LAD dated 16-1-1991, and called for his remarks. On 2-2-1991 the Chief Town Planner as per his letter No. D4-1161/91/K.Dis. recommended grant of exemption from Rules 15(3)(b), 15(3)(c) and 15(2) of the Kerala Building Rules, 1984. On 13-2-1991 the Government issued G.O.(Rt.) No. 684/91/LAD, dated 13-2-1991 granting exemption from the above said Rules as recommended by the Chief Town Planner.

4. After getting these two G.Os. respondents 5 to 8 applied to the Commissioner of Calicut Corporation on 19-2-1991 for permission to construct the building in view of the two Government orders granting exemption. On 4-4-1991 the Commissioner of Calicut Corporation granted permission, subject to the conditions mentioned in the order granting permission.

5. It was contended for the petitioners that Rule 5 of the Kerala Building Rules, 1984 providing for grant of exemption is a bad piece of delegated legislation and conferred an arbitrary and unguided power on the Government to grant exemption and should be struck down. It was also contended that, even if the Rule is valid, the exercise of power under the Rule by the issuance of the two G.Os. is bad on facts. It was also argued that respondents 5 to 8 started construction, violated the Rules and then asked for exemption and secured the GOs and that this was bad.

6. These contentions were refuted by learned counsel for respondents 5 to 8 both on fact and on law.

7. On the basis of the above contentions, the following points arise for consideration :

(1) Whether Rule 5 of the Kerala Building Rules, 1984 is ultravires of the Kerala Municipal Corporation Act, 1961 and confers arbitrary powers on the Government and is bad ?

(2) Whether, even if Rule 5 is valid, the exercise of powers under Rule 5 by the Government, by issuance of the two G.Os, GO(Rt) 2368/90/LAD, dated 6-6-1990 and GO(Rt) 684/91/LAD, dated 13-2-1991 granting exemption from various provisions of the Building Rules is, on facts, bad ?

(3) Whether the respondents 5 to 8 first made constructions contrary to Rules and had then applied for exemptions and got the two G.Os?

8. Point No. 1 :-- This point concerns the validity of Rule 5 of the Kerala Building

Rules, 1984 which enables exemptions to be granted by Government. These rules are issued by the Government in exercise of their powers u/s 367 of the Kerala Municipal Corporations Act, 1961 read with Section 238 thereof and also under the corresponding provisions of the Kerala Municipalities Act. In other words, these Rules are common for the Corporations and the Municipalities, but, in this case before us, we are only concerned with the validity of Rule 5, vis-a-vis, the Corporations Act.

9. Section 367 of the Kerala Corporations Act, 1961 deals with the power to make Rules. It states :

"Section 367 :-- Power of Government to make Rules :--

(1) The Government may make Rules to carry out all or any of the purposes of this Act not inconsistent therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may--

(a) provide for all matters expressly required or allowed by this Act to be prescribed;

(b) provide

.....

(5) All rules made under this Act shall be laid before the Legislative Assembly for a period of not less than fourteen days and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following."

10. Again, Section 238 deals with "Building Rules" specifically in Chapter X which deals with "Building Regulations". Section 238(1) states" that the Government may make rules :

"(a) for the regulation or restriction of the use of sites for building, and

(b) for the regulation or restriction of building."

11. Section 238(2) states that "without prejudice to the generality of the powers conferred by Sub-section (1), Clause (a)", rules made under that clause may provide for various matters referred to in the sub-clause of Section 238(2). Then Section 238(3) similarly states that, "without prejudice to the generality of the powers conferred by Sub-section (1) Clause (b)", rules may provide for the various matters referred to in the sub-clause of Section 238(3). Section 238(4) says that no piece of land be used as a site for construction of a building, and no building shall be constructed or reconstructed otherwise than in accordance with the Act and of any rules or bye laws.

12. The Kerala Building Rules, 1984 are divided into Chapters 1 to V -- Chapter I (Rules 1 to 5A) dealing with general matters, ChapterII (Rules6 to 13) with

"permit and enforcement", Chapter III (Rules 14 to 25) dealing with "general sites and building requirements", Chapter IV (Rules 26 to 31) dealing with "building service" and Chapter V (Rules 32 to 41) dealing with "special provisions in the case of certain occupancy groups". Rule 5 is in Chapter I. Rule 2 contains definitions in Sub-clauses (1) to (120). Rule 3 deals with applicability of the Rules, Rule 4 with conformity to National Building Code of India and Rule 5 with the power of Government to exempt buildings and Rule 5 A with "Regularisation of unlawful construction and reconstruction of buildings and digging of wells".

13. It will be noticed that while the Act, in Ss. 367 and 238 enables "building rules" to be made, Section 238(4) says that no piece of land be used as a site for construction of a building, and no building shall be constructed or reconstructed otherwise than in accordance with the Act and Rules. The Act does not go into the various details as to the method and manner in which a building site could be used for construction or a building could be constructed. The entirety of these details, including various measurements, are all set out in the Building Rules and its Appendix. Rule 5 is part and parcel thereof and provides for grant of exemption. It reads :

"5. Power of Government, to exempt buildings :--

The Government, in consultation with the Chief Town Planner exempt any building from the operation of all or any of the provisions of these rules, subject to conditions, if any, to be stipulated in the order, granting such exemptions.

Provided that such exemption shall be considered on individual application forwarded to Government through the authority and the Chief Town Planner with their specific recommendations.

Provided further that such exemptions shall be considered only if the individual application for exemption from building rules is forwarded to Government along with a Challan"

Thus Rule 5 is fitted by the rule-making authority into the integrated scheme of the Building Rules which specify all the details of the manner in which sites are to be used for building construction and as to how the buildings are to be constructed. This view of the rule-making authority is obviously based upon the realisation that in various congested cities or towns etc. -- while, no doubt, the buildings and sites are generally to conform to certain specifications --, it may be necessary, in some genuine cases, to permit construction of buildings even though the owner or builder is not able to fully conform to the specifications in the Building Rules. As long as the owner or builder is not offending any known right of neighbours, is conforming to general requirements of public health and sanitation, and as long as the deviations inside the building or site are not likely to affect the general requirements of light and air for the inmates, there must be some method of putting best use of building site for residential, commercial or industrial or other lawful purposes. The regulation of and restrictions over use of land and buildings must be consistent with the right of ownership of land and

buildings. While, no doubt, right to property has ceased to be a fundamental right, the ordinary right to property as per the common law and the Transfer of Property Act, has not been abolished. While regulation and restriction of land use is necessary in a Welfare State, it should be consistent with the right of the owners/builders to put their property to the best use they can. The power to grant exemption as incorporated in Rule 5 is to be viewed as part and parcel of an integrated scheme of regulation and restrictions imposed on land owners/builders consistent with the latter's right to property. The prohibition contained in Section 238(4) that no construction can be made unless it is in accordance with the Act and Rules has, therefore, to be read, along with any order of exemption granted by the Government under Rule 5, for Rule 5 is part of an integrated scheme.

14. Provisions for grant of exemptions are contained in various statutes in our Country as well as in other democratic countries where individual rights and public rights or public purposes are to be balanced one against the other. Building and Zoning Rules are, among these statutes, universally containing exemption provisions. This is because, from time to time, building activity must be allowed to increase, balancing individual and public rights, -- so as to conform to the national policies of housing and accommodation. As long ago as 1926, the American Supreme Court, in *Gorrie v. Fox* (1926) 71 Law Ed 1228 (at p. 1230) (followed in *S. Kandaswamy Chettiar Vs. State of Tamil Nadu and Another*, was dealing with an Ordinance which related to the establishment of a building-line on public streets, and the Ordinance contained a reservation of power in the City Council to make exceptions and permit the erection of buildings closer to the street. It was contended that this reservation rendered the Ordinance invalid as denying the equal protection of the laws. Negating the contention, it was pointed out by Sutherland, J. (at page 260 of AIR SC) :

"The proviso evidently proceeds upon the consideration than on inflexible application of the Ordinance may, and in some circumstances, result in unnecessary hardship. In laying down a general rule such as the one with which We are here concerned, the practical impossibility of anticipating in advance and providing in specific terms for every exceptional case which may arise, is apparent. And yet, the inclusion of such cases may well result in great and needless hardship, entirely disproportionate to the good which will result from a literal enforcement of the general rule. Hence the wisdom and necessity here of reserving the authority to determine whether, in specific cases of need, exceptions may be without subverting the general purposes of the Ordinance. We think it entirely plain that the reservation of authority in the present Ordinance to deal in a special manner with such exceptional cases is unassailable on constitutional grounds."

15. A survey of the provisions relating to exemptions would disclose that such provisions are contained sometimes in the main statutes made by the Legislature itself and sometimes in the statutory rules made by the delegated authority. The

statutes or the rules, as the case may be, either themselves provide for exemptions in regard to certain class of persons or class of properties etc. or these statutes and rules leave it to the Government or other authorities to specify the class of persons or properties in regard to which exemptions could be granted. It is true that the power to lay down in what class of cases exemptions could be allowed from the operation of law is a legislative power. But, it may not, however, be possible for the Legislature to anticipate all the circumstances in which such exemptions might be necessary. It is obvious that the authority entrusted with the administration of the law may be more competent to ascertain, from its experience gathered from the working of a law or similar laws, as to the situations which require exemption from the operation of the law. Therefore, if the Legislature lays down the policy of the law and the norms of standard to be applied in the administration, the Legislature could authorise the executive to make subordinate rules and regulations prescribing the classes in which relief might be granted. Similarly, subordinate legislation could itself provide for grant of exemption provided the policy of the law or the standards are to be laid down, in the statutes made by the Legislature. ,

16. In *State of Bombay v. F. N. Balsara* AIR 1951 SC 318 : 52 CrLJ 1361, the Supreme Court was referring to Section 139(c) of the Bombay Prohibition Act, 1949. That Section provided that the State Government may, by general or special order, exempt any person or class of persons or institution or class of institutions from the observance of all or any of the policy or any rule or regulations or order made thereunder. Referring to the validity of such a provision, the Supreme Court (in paragraph 23) pointed out that such a provision was valid. The Legislature while legislating cannot foresee and provide for all future contingencies. The Section enables the duly authorised officer to meet contingencies and deal with the various situations as they may arise. In *P.J. Irani Vs. The State of Madras*, the Supreme Court was considering the validity of Section 13 of the Madras Buildings (Lease and Rent Control) Act, 1949 which states that notwithstanding anything contained in the Act the State Government may by a notification in the Gazette exempt any building or class of buildings from all or any of the provisions of the Act. Their Lordships observed that enough guidance was provided by the preamble and operative provisions of the Act for the exercise of discretionary power vested in the Government u/s 13 of the Act so as to render the impugned Section not open to attack as a denial of equal protection of laws under Article 14 of the Constitution of India. But, their Lordships, however, pointed out that if any individual order of exemption passed by the Government was violative of Article 14, the same could be dealt with by the Court under Article 226 of the Constitution of India. In *Mohmedalli and Others Vs. Union of India (UOI)* and Another, , the Supreme Court was dealing with Section 17 of the Employees Provident Fund Act, 1952. Under the said Act, Section 17 gave power to the Government to notify, subject to such conditions as may be specified in the notification, exempt from the operation of all or any of the provisions of any scheme by various types of establishments. On the

question of validity of Section 17, the Supreme Court observed that exemptions were to be granted by the appropriate Government only if in the opinion of the Government the exempted establishment had provisions made for Provident Fund, in terms of at least equal to, if not more favourable to its employees. The provisions of Section 17 read with Section 1(3) could not be said to have conferred uncontrolled and uncanalised power on the appropriate Government. Again, in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, the Supreme Court was dealing with Section 36 of the Payment of Bonus Act, 1965 which gave power for grant of exemption to establishments from the operation of the Act provided the Government was of the opinion that having regard to the financial position and other relevant circumstances of the establishment, it could not be in the public interest to apply all or any of the provisions of the Act. Their Lordships observed that the conditions for exercise of that power was the opinion of the Government that it was not in the public interest to apply or any of the provisions of the Act to an establishment or class of establishments and that opinion was founded on a consideration of the financial position and other relevant circumstances. Therefore, Parliament had clearly laid down principles and had given adequate guidance to the appropriate Government in implementing the provisions of Section 36. The powers so conferred do not amount to delegation of legislative authority. Section 36 amounts to conditional legislation and was not void. Whether in a given case, power had been properly exercised by the appropriate Government would have to be considered when that occasion arises. Again Section 3 of the East Punjab Urban Rent Restriction Act, 1949 provided that the Central Government may direct that all or any of the provisions of the Act shall not apply to any particular building or rented land or any class of buildings or rented lands. Rejecting the condition that the said Section enabled the Central Government to exempt certain building or class of buildings suffered from the vice of excessive delegation of legislative power, the Supreme Court pointed out that said section was valid. (See : *Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others*, : following *State of Madhya Pradesh v. Kanhaiyalal*, 1970 MPLJ 973 : 1969 UJ (SC) 428 and *Sadhu Singh v. The District Board, Gurdaspur*, (1969) 1 SCWR 139 : 1969 Ren CR 156.

17. The question of validity of Section relating to exemption in the Act itself came up for detailed consideration in *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, . There, Supreme Court was dealing with Section 60 of the Madras Co-operative Societies Act, 1932 which provided as follows :

"The State Government may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order."

The Supreme Court observed that the exemption provision was intended to

further the objectives set out in the preamble Chinnappa Reddy, J. pointed out that :

"But, numerous as the provisions are, they are not capable of meeting the extensive demands of the complex situations which may arise in the course of the working of the Act and the formation and the functioning of the societies. In fact, the too rigorous applications of some of the provision of the Act may itself occasionally result in frustrating the very object of the Act instead of advancing them. It is to provide for such situations that the Government is invested by Section 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the object of the Act."

The observations of the Supreme Court underlined above would reflect the same point mentioned in the judgment of the Supreme Court of the United States of America in *Gorib v. Fox* (1926) 71 Law Ed 1228 wherein Sutherland, J. observed :

"And yet, the inclusion of such cases may well result in great and needless hardship, entirely disproportionate to the good which will result from a literal enforcement of the general rule."

As noted earlier, the above said decision of the American Supreme Court was noticed by our Supreme Court in *Section S. Kandaswamy Chettiar Vs. State of Tamil Nadu and Another*, . In that case, our Supreme Court was dealing with Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. That Section provided that notwithstanding anything contained in the Act, the Government may, subject to such condition as they deem fit, by notification, exempt any building or class of buildings from all or any of the provisions of the Act. While upholding the validity of the Section and of the notification issued under the said Section, the Supreme Court referred to the above said American case in *Gorib v. Fox* (supra).

18. In *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, wherein the exemption provision in the Uttar Pradesh Coal Control Order, 1953 was struck down by the Supreme Court because of the provisions of Article 19(1) (f) and (g) of the Constitution read with Article 19(6) of the Constitution. It was observed that unrestricted power had been given to the State Controller to make exemptions even if he acts arbitrarily or from improper motives, and there was no check over it and no way of obtaining redress. Clause 3(2)(b) of that Order was held to be unreasonable. That case is, in our view, distinguishable inasmuch as their Lordships observed that they did not find anything in the preamble or in other provisions of the Control Order as giving enough guidance to the Controller to grant orders of exemption.

19. We shall next deal with cases where the statute granted power to the Central Government to make rules for grant of exemptions. Such a provision is contained in Section 37(2)(xvii) of the Central Excises and Salt Act, 1944. That Section empowered the Central Government to make rules to exempt any goods from

the whole or any part of the duty imposed by the Act. The exercise of that power by the Central Government, by Rule 8, stating that the Central Government may from time to time by notification exempt, subject to such conditions as may be specified in the notification, any excisable goods from the whole or any part of the duty leviable on such goods, was upheld by the Supreme Court in *Orient Weaving Mills v. Union of India* (1963) 1 SCA 278 (quoted in Basu's *Administrative Law*, 1993, at p. 54).

20. On a same parity of reasoning, we do not find anything obnoxious if a Statute gives sufficient guidance for the rule-making authority to make a set of rules, say, building rules in order to provide for various detailed specifications for purposes of construction of buildings and if as part and parcel of the said rules, the rule making authority makes a rule empowering the Government to grant exemptions subject to such conditions as the Government may deem fit. Therefore as long as there is enough guidance in the Act, the Building Rules which go into the minute details regarding construction will be valid and if a power of relaxation is part of the said Rules, the same will also be valid, for the Legislature must be deemed to have noticed that, in Municipalities or Corporations today, it may be difficult to comply with every bit of the Buildings Rules, if the owner is to make best out of his property or provide for accommodation for others on rental basis. It is part of the policy on housing and accommodation that the power to exempt must be part and parcel of the scheme of the Building Rules.

21. As to whether the Corporation Act gives sufficient guidance in this behalf, we are satisfied that it does. Chapter X of the Act deals with Building Regulations. Sections 238 to 264 are contained in this Chapter. Section 238(1) permits Rules to be made by the Government, (as already stated) (a) for the regulation or restriction of the use of sites for building and (b) for the regulation or restriction of building. Sub-clause (2) enumerates specified matters in regard to which Rules could be made. Section 239 deals with the power of the Corporation to regulate future construction of certain classes of buildings in particular streets or localities. It contains five sub-clauses. Section 240 deals with construction of buildings at corner of streets. Section 241 refers to the prohibition against use of inflammable materials for buildings, etc., without permission. Sections 242 to 253 deal with "Buildings other than huts". Section 242(1) deals with application to construct or reconstruct building and ground plan, elevation, sections of the building and specification of the work are to be provided therein. Section 242(2) states that the application shall contain such particulars and be prepared in such manner as may be required under rules or bye-laws. Section 243 states that the Commissioner shall not grant permission to construct or reconstruct a building unless and until he has approval of the site. Section 244 prohibits construction or reconstruction of a building unless and until the Commissioner has granted permission for the execution of the work. Section 245 prescribes a period during which the Commissioner has to specify approval or disapproval and Section 246 prescribes the period within which the Commissioner is to grant or refuse to

grant permission for execution of the work. The Standing Committee may, u/s 247, step in case there is delay on the part of the Commissioner to grant or refuse approval or permission. Section 248 is important. It mentions eight grounds on which the approval of site for or permission to construct or reconstruct a building could be refused. Sub-clause (1) deals with violation of any law, order, rule, declaration or bye-law in the specifications in the site-plan, ground-plan, elevations, sections, etc. Sub-clauses (2) to (16) give other grounds. Sub-clause (7) says that if the site does not abut on a street or a projected street and there is no access to such building from any such street, by a passage or pathway appurtenant to such site and not less than twelve feet wide at any part, approval of site or permission to construct may be refused. Section 249 permits suspension of permission to construct buildings. u/s 250 the permission granted will lapse if not acted upon. The Commissioner could, u/s 251, inspect the property and u/s 252 require alteration of work or u/s 253, order stoppage of work. Section 261 deals with external walls, alterations and additions, Section 263 deals with demolition or alteration of building and Section 264 deals with exemptions of buildings intended for purposes of plant-house, meter house, or summer-house (not being a dwelling house) poultry house or aviary. In addition, there are various provisions dealing with sanitation, public health, safety and convenience in Chapter IV. These are all broad provisions in the Act itself and they, in our opinion, give sufficient guidance to the rule-making authority to prepare an integrated set of building rules and Rule 5 which grants power of exemption to the Government is part of the Scheme. The Building Rules do not, therefore, suffer from any vice of excess delegation in the Act.

22. In addition, the provision in Section 367(5) requires "all Rules made under this Act", to be laid before the Legislative Assembly for a period of not less than 14 days and shall be subject to such modifications as the Assembly may make during the session in which they are laid or in the session immediately following. In *D.S. Garewal Vs. The State of Punjab and Another*, and in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, it has been held by the Supreme Court that the procedure prescribed in the Act for making rules that they were to be laid on the Table of Parliament before they could come into force and were open to modification on a motion of Parliament, was sufficient control over the delegate. In fact, in this case, after the laying procedure was followed, no modification to the rules or to Rule 5 was suggested by the Uegislative Assembly.

23. Yet another consideration for holding that Rule 5 of the Building Rules is valid is the fact that Rule 5 requires the Government to "consult" the Chief Town Planner before granting exemption from main provisions of the Building Rules. It is also to be noticed that Rule 5 provides for the imposition of such "conditions", if any, which the Government might stipulate for grant of the exemption. The first proviso requires that the application for exemption is not to be processed till the Chief Town Planner has given his recommendations. In our view, these considerations are also a check oh arbitrariness on the part of the Government. No doubt, learned counsel for the petitioners have invited our attention to certain

observations in *In Re: The Special Courts Bill, 1978*, , at 517 (paragraph 96), The accused persons there were to be tried under the Special Courts Bill, when it became law, and would have the safeguard of a sitting Judge (or retired Judge) whose appointment could not be terminated without having consultation with the Chief Justice of India. In that context, it was observed by the Supreme Court (at page 517):

"It is said on behalf of the Government that if the appointment has to be made in consultation with the Chief Justice of India, the termination of the appointment will also require similar consultation. We are not impressed by that submission. the process of consultation has its own limitations and they are quite well known. The obligation to consult may not necessarily act as a check on an executive which is determined to remove an inconvenient incumbent. We are therefore of the opinion that Clause (7) of the Bill violates Article 21 of the Constitution."

In our view the above observations made in the context of Article 21 of the Constitution have no application to the facts of the case where we are concerned with Building Rules.

24. We may, in this context, point out that in 1986 KLT 519, Paripoornan, J. has upheld the validity of the exemption provision in the Building Rules, which were in force immediately before the present Rules. It is true that the said rule used the words "for sufficient reason". But in those rules, there was no provision for consultation with Chief Town Planner as in the present Rule 5. The same learned Judge, in O.P. No. 5620 of 1987, dated 2-1-1991 upheld the present Rule 5. We are in entire agreement with the said judgment.

25. Reliance for the petitioners is placed upon *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, , wherein the Municipality granted a licence for building a cinema hall in violation of the Town Planning Scheme, the Supreme Court held that where the Municipality abuses its powers and sanction is given contravening a building bye-law, the Court could interfere and declare the sanction as illegal. An illegal grant of sanction for a cinema hall in a residential area could be questioned by local residents. In our view, that decision has no application to the case on hand. Nor is the decision of the Supreme Court in *Bangalore Medical Trust Vs. B.S. Muddappa and others*,) relevant. That was a case of conversion of a public park into a private nursing home by the Government and was held to be illegal.

26. For all the aforesaid reasons, we hold that Rule 5 of the Building Rules is perfectly valid and is not bad either on account of excessive delegation of legislative power or on the ground that it confers arbitrary or unguided power on the Government. Point 1 is decided accordingly.

27. Point No. 2 : This point deals with the validity of the exercise of powers under Rule 5 by the Government, in issuing the two G.Os. on 6-6-1990 and on 13-2-1991, granting exemptions to the respondents 5 to 8. We have set out the

facts of the case in sufficient detail earlier. The respondents purchased the 0.08 cents of property in Kozhikode Nagaram amsom desom on 24-8-1989. They submitted representation for exemption through the Office of the Calicut Development Authority and the office of the Corporation of Calicut for construction of a three-storied shop-cum-lodge building. It is true that the Calicut Development Authority made remarks regarding the area being reserved for public and semi-public use and that on 5-3-1990, the Commissioner of the Corporation rejected the application as per plan as being in violation of rules. On 29-3-1990, the petition was referred to the Government for grant of exemption. On 29-5-1990, the Chief Town Planner, Trivandrum, who was consulted as required by Rule 5 of the Rules, recommended exemption from Zoning Regulations of the Master Plan and the relevant provisions of the Building Rules, subject to conditions, (vide Ref. D4-5773/ 90/K.Dis., dated 26-5-1990). The Government issued G.O. Rt. No. 2368/90/LAD, dated 6-6-1990, granting exemption from the operation of Rules 15(7), 35(1), 22(6)(b), 17(2) and 20 of the Rules and also from the Zoning Regulations of the Master Plan. Rule 15(7) deals with projections into and construction on open spaces; Rule 35(1) deals with the size of the shop in a commercial area; Rule 22(6)(b) deals with the structure design of the foundations. The proceedings of the Government read with the recommendations of the Chief Town Planner would show that both the authorities applied their mind to the question of the grant of exemption and the opinion of the Chief Town Planner is entitled to great weight. He is a person with great technical knowledge and years of experience and once we are satisfied that the authorities applied their mind to the relevant rules and the relevant facts and granted exemption, it will not be for this Court under Article 226 of the Constitution of India to say that there is an error of law apparent on record.

28. Now the respondents 5 to 8 found, on receipt of the above G.O., that certain consequential small internal deviations must also be permitted or otherwise the construction is not possible. They did not proceed with the construction -- (as accepted in the Corporation's latest counter) -- and so they again represented it to the Government. This was received by the Government on 13-7-1990. We have referred to the relevant correspondence in this behalf, in paragraph 3 above. On that the local authorities at Kozhikode as well as the Chief Town Planner were again consulted by the Government as accepted by the Rules and the Chief Town Planner recommended the grant of incidental or consequential exemptions from Rules 15(3)(b), 15(3)(c) and 15(2) of the Building Rules and the Government accepted the same. Rule 15(3)(b) relates to the rear-yard width, Rule 15(3)(c) to the side-yard width and Rule 15(2) distance between the street and building. The Government accepted the same by G.O. Rt. No. 684/91/LAD dated 13-2-1991. What we have said in regard to the earlier G.O. applies equally well to this G.O. It will be noticed that the second exemption was asked for as the total area was only 8 cents. Further, as pointed out in the counter-affidavit filed by respondents 5 to 8 on 3-11-1993, there is no blanket exemptions in two G.Os., Exts. R5(a) (and Ext. Rule 5(b)), and the exemptions

are subject to conditions. The imposition of conditions while granting exemptions is a clear indication that the Chief Town Planner and the Government have applied their mind.

29. It was contended for the petitioners that the conditions as permitted by the G.Os. would result in the front set back as required by the Rules, becoming far less than what was necessary. On this issue, learned counsel produced before us on 23-11-1993, by affidavit, the plan, Ext. R5(f), as finally exempted and the plan shows that, consequent to the exemptions granted on the rear side, the set back or open area on the front side has not suffered any diminution. In fact, we are satisfied that the width of the open area on the front side is 4.5 metres. In fact, it was conceded before us that the set back on front side as per Rules is only 3 metres, while the respondents 5 to 8 have actually left a width of 4.5 metres odd. It was also noticed from the approved plan that the actual width of the road on the front side of this structure is 18 metres or about 58 feet and with the set back of 4.5 metres available within the front compound of the structure, there is also, if necessary, scope for widening of the road. This would show that interest does not suffer. We are, therefore, satisfied that the exercise of power of exemption by the Government in granting Ext. R5(a) and Ext. R5(b) G.Os. is not arbitrary and is valid and does not suffer from any infirmity. Point 2 is found accordingly.

30. Point No. 3 : A contention was raised by the petitioner's counsel that even before the grant of exemption order under the two G.Os. respondents 5 to 8 started construction and that they applied for exemption half way through. It is now conceded by the Corporation that no construction was made before grant of exemption and we are, in fact, fully satisfied about this. This is also clear from the additional counters, now filed by the Corporation and respondents 5 to 8. The scope for this contention has arisen because of the language used by the local authority at Kozhikode in its remarks. We finally found that the remark that the construction is not according to plan was only bad English and what was meant was that the construction, if made, according to plan, would violate the Rules. Therefore, the petitioner's contention is clearly wrong. Point 3 is held so.

In the result, the O.P. is dismissed. No costs.