

(2014) 05 KL CK 0035
In the High Court Of Kerala
Case No : W.A. No. 386 of 2014

Vanaraj

APPELLANT

Vs

Santhanpara Grama Panchayath

RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Citation : (2014) 2 KHC 674 : (2014) 3 KLJ 81 : (2014) 2 KLT 958

Hon'ble Judges : Manjula Chellur, C.J;P.V. Asha, J

Bench : Division Bench

Advocate : George Sebastian and Byju Kuriakose, Advocate for the Appellant;
Molly Jacob, Aysha Youseff and Ajith Prakash, Advocate for the Respondent

Judgement

Dr. Manjula Chellur, C.J.—Present appeal is directed against judgment of learned Single Judge dated 8.1.2014. Appellant is none other than writ petitioner who approached learned Single Judge challenging Exts. P2(a), P3 (a) and P4(a). It is not in dispute that appellant petitioner is also an elected member of first respondent Grama Panchayat. First respondent Grama Panchayat apparently has constructed first floor of Poopara Shopping Complex belonging to first respondent Panchayat by putting up four rooms. Various institutions approached first respondent with a request to let out the said rooms on lease basis to them. Ultimately, by virtue of a resolution, respondents 1 and 2 decided to hand over all the four rooms to third respondent Co-operative Bank. However, admittedly petitioner was a descending member so far as the above said resolution concerned. According to petitioner, this decision of first and second respondents to lease property to third respondent Co-operative Bank is without adhering to procedure contemplated under R.11 of Kerala Panchayat Raj (Acquisition and Disposal of Property) Rules, 2005. When petitioner approached learned Single Judge, respondents raised objections contending that Writ Petition itself is not maintainable as petitioner also took part in decision making process. Therefore, he is not entitled to challenge resolution in question. They also refer to S. 191(1) of Act to contend that remedy open to petitioner was to approach Government

challenging the decision of the local body, i.e., Panchayat in question. Learned Judge, after considering merits of both the parties, ultimately opined that R.7(1) provides that Panchayat is authorized to construct buildings and to give them on rent to public in accordance with the provisions of Act and Rules and therefore third respondent not being a public, there is no lapse on the part of first and second respondents. So far as maintainability, he opined that Writ Petition is not maintainable and accordingly Writ Petition was dismissed. Aggrieved by the said judgment of learned Single Judge, appellant is before us. Learned counsel for appellant has brought to notice of bench original Rules which are in Malayalam and also pointed out defect crept in so far as English translation of above said Rules. On reading English version and Malayalam version of Rules, there is apparently mistake so far as translation into English. R. 11 as per English version reads as under:

Rule 11: Transfers to be either in public auction or through tenders:-The transfers of the property of the Panchayat through sale, except renewal of licences, rehabilitation of licensees, granting of lease, letting out on rent, shall either be in public auction or by inviting tenders.

2. The above Rule clearly indicates that except sale, Panchayat has no obligation to follow transfer of property either in public auction or by inviting tenders. In other words, it says so far as renewal of licenses, rehabilitation of licensees and granting of lease, there is no need to follow the procedure of transfer by public auction or by inviting tenders. When we go through Malayalam version it reads as follows:

3. It clearly indicates that only for renewal of licenses and for rehabilitation of licensees, there is no need to follow the procedure of transfer by public auction or by inviting tenders. But transfers of property of Panchayat through sale, granting of lease and letting out on rent shall either be in public auction or by inviting tenders. Learned Government Advocate also accepts said mistake crept in English version of Rules in the gazette. By reading Malayalam version, it is very clear if property is transferred by way of lease for first time it has to be either by public auction or by inviting tenders. Apparently said procedure is not followed by respondent Panchayat as they have fixed rent by following rates adopted by Public Works Department. Apparently, it is not the case of respondents 1 and 2 that they are not bound by the procedure to be followed as contemplated under R. 11, that is either by auction or by inviting tenders. By going through the facts and material on record, a case is clearly made out that procedure contemplated under R.11 is not at all followed by respondent Panchayat. There is no other provision which indicates that only in case of transfer to a public such procedure is contemplated. R. 11 says transfers to be either in public auction or through tenders whenever property of Panchayat is let out either on lease or letting on rent or by sale. Therefore, we are of the opinion that opinion of learned Single Judge that third respondent not being a public no such procedure is applicable is erroneous.

4. Coming to maintainability of Writ Petition, S. 191(1) of the Act reads as under:

191. Power of cancellation and suspension of resolutions etc.--(1) Government may either suo motu or, on a reference by President, Secretary or a member, or on a petition received from a citizen, cancel or vary a resolution passed or decision taken by the Panchayat if in their opinion such decision or resolution--

(a) is not legally passed or taken; or

(b) is in excess of the powers conferred by this Act or any other law or its abuse; or

(c) is likely to endanger human life, health, public safety, communal harmony or may lead to riot or quarrel; or

(d) is in violation of the directions or provisions of grant issued by Government in the matter of implementing the plans, schemes or programmes.

Reading of above Section makes it clear that even a member of Panchayat can challenge decision of Panchayat or seek modification or cancellation of decision. As a matter of fact, any citizen aggrieved by such decision of Panchayat can approach Government seeking remedy as contemplated under S. 191(1) of the Act. Accordingly, petitioner taking part in decision making process will not disentitle him to challenge said decision when a third party can challenge such a decision. In the present case, challenge is not on the ground that there was no proper decision making process. Challenge is based on statutory provisions i.e., violation of R. 11 of above said Rules.

In the light of above observation, we are of the opinion, Writ Petition was not maintainable and petitioner ought to have approached Government as provided under S. 191(1) of Act. Accordingly, appeal is dismissed observing that petitioner appellant can approach Government seeking cancellation of resolution in question. Learned counsel for appellant undertakes to approach authorities concerned as contemplated under S. 191(1) of Act within two weeks from the date of receipt of a copy of judgment. Respondent State shall dispose of representation or application, if any made by appellant, within two months from the date of receipt of application. Till a decision is taken by Government, first and second respondents shall not hand over premises to third respondent.