SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

V. Rajendranath Vs. State of Kerala, Represented by Public Prosecutor and Others

V. Rajendranath Vs. State of Kerala, Represented by Public Prosecutor and Others

SooperKanoon Citation : sooperkanoon.com/1181529

Court : Kerala

Decided On : Dec-21-2015

Judge : B. Kemal Pasha

Appeal No. : Crl.MC.No. 4022 of 2015

Appellant : V. Rajendranath

Respondent : State of Kerala, Represented by Public Prosecutor and Others

Judgement :

B. Kemal Pasha, J.

1. A building permit was issued after all the legal formalities to the petitioner, for carrying out the construction of a multi-storied building having 13 floors. He has started the construction and completed the construction upto the 6^{th} floor. While so, the District Executive Magistrate, Wayanad stepped in and initiated proceedings as if proceedings under Section 133 Cr.P.C.

2. Initially, Annexure-A4 order dated 30.01.2015 was issued, thereby directing the petitioner to stop the construction forthwith and in case of any objection to obey the order, to appear before the District Executive Magistrate on 05.02.2015 at 3 p.m., to show cause. On 05.02.2015, the petitioner filed an explanation.

3. On the next day to the passing of Annexure-A4, the District Executive Magistrate has passed Annexure-A5 order as if he was invoking the power under Section 142 Cr.P.C., and directed the petitioner to stop the construction forthwith. Annexure-A4 and Annexure-A5 are under challenge.

4. As per Annexure-A15 dated 30.06.2015, the District Executive Magistrate issued prohibitory order for the construction of buildings having total hight above 8 metres (Limited to Maximum Two Floor levels). As the building permit issued to the petitioner was also hit by Annexure- A15, the petitioner had immediately approached this Court challenging Annexure-A15 order. This Court, vide Annexure-A16 judgment, made it clear that the petitioner is free to undertake the construction in accordance with the building permit already issued.

5. The learned Public Prosecutor has pointed out that this is not a case, which is covered by Section 133 Cr.P.C. Section 133(1)(c) Cr.P.C. can be attracted only when the construction of a building is likely to occasion conflagration or explosion, and in such case it can be stopped. Apart from that, Section 133 Cr.P.C. does not contain any provision for stopping the construction work of a building by an Executive Magistrate. Here, the District Executive Magistrate has no case that the building being constructed can occasion conflagration or explosion.

6. Those Executive Magistrates mentioned in Section 133 Cr.P.C. are empowered to pass the conditional order within the meaning of Section 133(1) Cr.P.C., only in cases wherein any of the grounds mentioned under Section 133(1) Cr.P.C. is there. Here, when there is absolutely nothing to invite any of the grounds mentioned under Section 133(1) Cr.P.C., Annexure-A4 conditional order passed by the District Executive Magistrate is not legally sustainable.

7. Regarding Annexure-A5, it seems that the learned District Executive Magistrate has exceeded his jurisdiction in passing such an order. Executive Magistrate is empowered to pass an interim order of injunction by way of immediate measure under Section 142 Cr.P.C., only when the case is covered by the provisions contained in Section 133 Cr.P.C. Matters being so, Annexure-A5 order is also not legally sustainable.

In the result, this Crl.M.C. is allowed and Annexure-A4 and Annexure-A5 orders passed by the District Executive Magistrate are quashed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com