

Sugil Vs. Sadanandan

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Court : Kerala

Decided On : Sep-05-2005

Reported in : 2005(4)KLT220

Judge : Rajeev Gupta, C.J. and; K.S. Radhakrishnan, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 2, 209, 209A and 209C; Municipalities Act, 1960; Kerala Municipality Building Rules - Rule 2(1)

Appeal No. : W.A. No. 1583 of 2005

Appellant : Sugil

Respondent : Sadanandan

Advocate for Def. : M. Sreekumar,; G. Sudheerkumar Karakonam and; S. Arunraj

Advocate for Pet/Ap. : S.V. Rajan and; S. Arun Raj, Advs.

Judgement :

K.S. Radhakrishnan, J.

1. Writ petition was preferred by respondents 1 and 2 herein seeking a writ of mandamus directing the Grama Panchayat to take appropriate action on Exts.P1, P2 and P5 and for removal of the unauthorised construction and the unauthorised advertisement board erected by the 4th respondent/appellant herein. Direction

was also sought for to the 5th respondent to provide adequate police aid to the Grama Panchayat for removing the unauthorised advertisement board installed by the 4th respondent.

2. Second petitioner in the writ Petitioner had filed a complaint 14-2-2005 to the Grama Panchayat about the illegal erection of hoarding by name 'Coax Computers' without obtaining necessary permission from the Grama Panchayat. Objection was taken note of by the Panchayat and the Panchayat vide letter dated 15-2-2005 directed respondents 2 to 4 to remove the Board which was erected without permission of the Panchayat. No action was taken by the 4th respondent who is conducting 'Coax Computers'. Panchayat informed the Circle Inspector of Police to give adequate protection to remove the Board, but no further follow up action was taken. Hence the present Writ Petition was preferred for removal of the unauthorised advertisement board installed causing obstruction to writ petitioners who are neighbouring property owners.

3. Learned single Judge disposed of the Writ Petition leaving it to the Panchayat to take further action. Aggrieved by the same this appeal has been preferred. Counsel appearing for the appellant Sri. S.V. Rajan submitted that the appellant's right to erect name board in his business premises cannot be questioned by the Panchayat or by the neighbouring property owners. Counsel made reference to the 4th proviso to Section 209 of the [Kerala Panchayat Raj Act, 1994](#) and submitted appellant has got the right to erect name board in his business premises. Counsel referred to the decision of a Division Bench of this Court in Thomas Kurian v. Joseph Thomas, 2002 (2) KLT 625. Further counsel also submitted, he has not received any communication from the Panchayat on the petition filed by the neighbouring property owner. In any view, counsel submitted, the action taken by the Panchayat would violate all principles of natural justice.

4. Counsel appearing for the contesting respondents as well as Grama Panchayat submitted that no permission was obtained by the appellant before erecting the hoarding and therefore Panchayat is justified in directing him to remove the hoarding and also seeking police protection for the same. Identical question came up for consideration before us under the Municipalities Act, 1960 in Vimal Arakkal

v. Corporation of Cochin, 2005 (1) KLT 121 wherein we have taken the view that hoarding put up even in a private land would fall within the definition of the building under Rule 2(1) of the Building Rules. Once it falls within the definition of the building, Corporation has got the right to seek removal of the structure if erected without their permission. This court held that before erecting the hoarding permission has to be obtained from the Corporation. So far as Kerala Panchayat Raj Act is concerned, Section 209 of the Act deals with tax on advertisement, as per which, every person who erects, exhibits, fixes or retains upon or over any land, building, wall hoarding or structure in a Village Panchayat area any advertisement or who displays any advertisement to public view in any manner whatsoever in any place in such area whether public or private shall pay to the Village Panchayat on every such advertisement a tax. Contention was raised by counsel for the appellant Sri. S.V. Rajan placing reliance on the decision in Thomas Kurian's case (supra) that what is provided under that section is only the payment of advertisement tax and no prior permission of the Panchayat is necessary for putting up the hoarding. True, once a hoarding is put up, for payment of advertisement tax, proceedings can be initiated by the Panchayat under Section 209 of the Act subject to the explanations provided therein. Section 209A is prohibition of advertisement without written permission of the Secretary of the Panchayat and Section 209C stipulates that where any advertisement is erected, exhibited, fixed or retained contrary to the provisions of Section 209 or Section 209A or after the written permission for the erection, exhibition, fixation or retention thereof for any period shall have expired or become void, the Secretary may, by notice in writing, require the owner or occupier of the land, building, wall hoarding or structure upon or over which the same is erected, exhibited, fixed or retained to take down or remove such advertisement or may enter any building, land or property and have the advertisement removed.

5. The question that has come up for consideration in this case is whether the appellant can put up a board without the permission of the Panchayat and not paying the advertisement tax. Counsel appearing for the Panchayat submitted that the Municipal Rules have already been made applicable to the Grama Panchayat. Section 2(iii) of the Panchayat Raj Act, 1994 defines the word 'building' which includes a house, outhouse, stable, latrine, shed, hut and any other structure,

whether of masonry, bricks, wood, mud, metal or any other materials whatsoever. Rule 2(1)(i) of the Kerala Municipality Building Rules defines the expression 'building' means any structure for whatsoever purpose and of whatsoever material constructed and every part thereof whether used for human habitation or not and includes foundations, plinth, walls, floors, roof, chimneys, plumbing and building services, verandah, balcony, cornice or projections, part of a building or anything affixed thereto or any wall enclosing or intended to enclose any land or space and signs and outdoor display structures. Hoarding, in our view, would fall within the above mentioned definition clauses contained in the Kerala Panchayat Raj Act as well as in the Kerala Municipality Building Rules. Consequently, even for erecting hoarding in private property permission of the local authority is necessary. No permission has been obtained before erecting hoarding so far as this case is concerned and therefore we find no infirmity in the action taken by the Panchayat in directing the appellant to remove the hoarding.

6. Under such circumstance we find no infirmity in the judgment of the learned single. Judge to be interfered by us. All the same, if the appellant has got any grievance he can file objection before the Panchayat and Panchayat will take note of the same and pass appropriate orders in accordance with law within a period of three weeks from the date of receipt of the objection. With the above direction writ appeal is disposed of.