

Krishanlal and anr. Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-13-1983

Reported in : 1983WLN(UC)168

Judge : G.M. Lodha and; K.S. Lodha, JJ.

Appeal No. : D.B. Civil Special Appeal No. 220/83

Appellant : Krishanlal and anr.

Respondent : The State of Rajasthan and ors.

Disposition : Appeal allowed

Judgement :

Lodha, J.

1. The special appeal is directed against the order of a learned single Judge in S.B. Civil Writ Petition No. 2292/82 dated 5.5.83.

2. The dispute relates to the construction of bus stand and it appears that the appellant who was petitioner in the writ petition, objected to it. The Sub-Divisional Officer was moved and exercising powers Under Section 285 of the Rajasthan Municipalities, 1959 (here in after referred to as 'the Act of 1959'), the Sub-Divisional Officer passed an order staying the construction. After this order was passed staying the constuction, it appears that the Sub-Divisional Officer did not

make a reference to the State Government but later on by a subsequent order recalled the order of stay. This order of recall was challenged before the Single Bench.

3. Before the Single Bench when the case was taken up, it appears that both the parties did not elaborately argue the points involved in respect of the jurisdiction of the Sub-Divisional Officer in passing Annexure A 9, which was the impugned order although attention was invited to it as per the mention made in the second paragraph of the order.

4. However, it appears that after the stay order passed by the learned single Judge was recalled, a request was made by the petitioner that it would be open to the Sub-Divisional Officer to refer to the State Government to dispose of the matter under the provisions of Section 285 of the Act. There was no controversy as the counsel for the respondent, did not challenge the requirement of the law, for making a reference, when the State Government was already seized of the matter, In view of the above uncontroverted position of law, the learned single Judge directed that in case the State Government is not seized of the matter the Sub-Divisional Officer may make a reference and same may be decided within two months by the State Government.

5. Before this Court, a show cause notice was issued to the respondents. When the special appeal was taken up, earlier on 19-5-83, Mr. Deed wania appeared for nonpetitioners no. 2 and 5 agreed to maintain the status quo. This Court then directed the maintenance of the status quo in view of the statement of Mr. Deedwania.

6. During the course of arguments for admission stage today, Mr. Singhvi, Mr. Deedwania and Mr. Bhati made a joint request that since the point involved is a short one, the appeal may be decided at this stage. Therefore, the main appeal is decided at this stage. We have considered this joint request of the learned counsel for the parties and since the matter relates to construction of bus stand which is of vital importance to the traveling public, it is in the interest of the justice that the case should not be prolonged, and every effort is to make effective adjudication of the points involved. We have, therefore, accepted the joint request of the learned

counsel and proceed to decide the main appeal at this stage.

7. In view of the facts, we may mention that the main controversy is, regarding the jurisdiction of the Sub-Divisional Officer, who is a delegated authority Under Section 285 of the Act after he takes cognizance of a dispute and passes an order suspending the resolution as contemplated by Section 285 of the Act.

8. Section 285 reads as under:

285. Power of suspending execution of order etc, of Board--(1) If in the opinion of any such officer as may be appointed or authorised by the State Government in this behalf the execution of any order of resolution of a Board, or the doing of any thing which is about to be done or is being done by or on behalf of a Board, is causing or is likely to cause injury or annoyance to the public or a breach of the peace or is unlawful, he may by order in writing under his signature, suspend the execution or prohibit the doing thereof.

(2) When any such officer makes any order under this section, he shall forthwith forward to the State Government and to the Board affected there by a copy of the order, with a statement of the reasons for making it, and it shall be in the discretion of the State Government to rescind the order or to direct that it shall continue in force with or without modification, permanently or for such period as it thinks fit:

Provided that no order of such officer passed under this section shall be confirmed, revised or modified by the State Government without giving the Board reasonable opportunity of showing cause against the said order.

9. In *Chouthmal v. Truck Union*, Jaipur 1969 RLW 197 this Court had occasion to consider and interpret the provisions of Section 285 and more particularly Sub-clause (2). It was observed as under:

In what ever way the question may be looked at the conclusion is; irresistible that the Collector should have brought the matter to the notice of the State Government in the manner laid down by Section 285 of the Act. In my view, the matter is such as should be brought to the notice of the Government by the Collector concerned under Section 285(2) of the Act and then it will be for the

State Government to examine the legality of the resolution of the Municipal Board and then to either rescind the order of the Collector or to direct that it shall continue that order without modification permanently or for such period as it thinks fit. I ought to mention that once he had passed an order of suspension of the resolution, Section 285 of the Act does not confer any power on the Collector to himself rescind that order of suspension which could only be done by the State Government under Sub-section (2) of Section 286 of the Act.

10. No arguments have been addressed before us by any of the learned counsel in respect of the maintainability of the proceedings Under Section 285 of the Act before the Sub-Divisional Officer and it has been assumed that the Sub-Divisional Officer was competent to take cognizance Under Section 285 and also passing the said order of suspension. We. therefore, proceed on the assumed competence of the Sub-Divisional Officer in the facts and circumstances of this case.

11. Once it is assumed and held that the Sub-Divisional Officer was competent to an pass an order of suspension under Section 285 of the Act, the legal corollary of it is that after passing of the order under Sub-clause (1), he has to forthwith forward to the State Government a copy of the order, the statement of reasons for ordering it. The action of forwarding the copy of the State Government has been treated and termed in law as making a reference. The legislature has use words 'forthwith forward to the State Government', which means that as soon as the suspension order is passed Sub-clause(1) staying the execution of the order, or of the resolution of the Board of any thing which is about to be done or is being done by or on behalf of a Board, then so far as the authority acting Under Section 285 is concerned, it normally becomes functus officio and the State Government becomes seized of the matter. The forwarding of the copy of the order to the State Government does not require any application or adjudication of legal rights thereof, because the 'adjudication is to be done by the State Government after hearing the parties. It would be for the State Government to adjudicate the dispute. In case the State Government would have confirmed the order or recalled or modified it, after hearing the parties.

12. In view of the clear words used in Section 285 and Sub-sections(1) and (2), it is obvious that the officer authorised by the State Government in in this behalf Under Section 285 is not competent to adjudicate the matter finally but that is required before so holding is that once he is convinced that the execution of any order or resolution of the Board or the doing of any thing which is about to be done or is being done by or on behalf of a Board, is causing or is likely to cause injury or annoyance to the public or a breach of the peace or is unlawful, then he may suspend the execution or prohibit the doing thereof and along with it forward a copy of that order to the State Government.

13. In the instant case, it is not in dispute that by order (Ex. 7) and copy of the suspension as provided by Sub-clause (1) of Section 285 was passed by the Sub-Divisional Officer. That being so, the Sub-Divisional Officer was required to forward the copy of that order to the State Government forthwith and not to pass any further order like Ex. 9.

14 We have got no hesitation in holding that normally after passing the order of suspension under Sub-clause (1) of Section 285, the authority empowered would not pass any further order but forward a copy of the order forthwith to the State Government and thereafter it was for the State Government alone who would hear the parties and confirm, modify or rescind that order of suspension.

15. We are not deciding the question as to what should happen if in a given case, the Sub-Divisional Officer issues a notice after passing the earlier order and after passing an order of suspension, because that is not directly in controversy before us. We are also refraining from deciding the question whether in a given case, if on account of misrepresentation or fraud or mistake or any such important reason, an order of suspension is obtained by a party, then whether the other party will be entitled to point out to the authority under Sub clause (1) immediately thereafter, who instead of forwarding to the State Government the order can rescind it having been passed on the basis of mis-representation of fraud, That circumstance has not been convassed before us and, therefore, our judgment would not be an authority on the question, which is not involved in such a situation.

16. We are inclined to hold that normally once an order is passed for suspension Under Section 285, Sub-clause (1) by a competent authority in a legal manner in the legal proceedings, thereafter that authority would become functus officio and was not empowered to make enquiry after for confirming or rescinding that order.

17. In the instant case, it appears that before learned single Judge, neither of the parties invited the attention to this important aspect of Section 285 and, therefore, that question remained without any specific adjudication. Now since we have held that the Sub-Divisional Officer was not competent to pass recalling the order of suspension, there is no option left to us but to set aside the order (Ex. 9) dated 1-12-82 as it was passed without authority and is a case of patent lack of jurisdiction.

18. The result of the above discussion is that the order of remand by the learned single Judge to the Sub-Divisional Officer for making a reference is confirmed, but the order (Ex. 9) dated 1-12-82 is quashed.

19. It would be open to the State Government to pass an order Under Section 285(2) and this judgment would not debar the State Government from making any interim arrangements, if jurisdiction so warrants in the facts and circumstances of case. The special appeal therefore, succeeds to the above extent. Both the parties would bear their own costs.