

**Bhanwarlal Vs. State**

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**Court :** Rajasthan

**Decided On :** Oct-19-1995

**Reported in :** 1996(1)WLC710; 1995(2)WLN653

**Judge :** P.K. Palli, J.

**Appeal No. :** S.B. Civil Writ Petition No. 2264 of 1989

**Appellant :** Bhanwarlal

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. M.S. Singhvi

**Disposition :** Petition allowed

**Judgement :**

**P.K. Palli, J.**

1. The petitioners applied for No objection for conversion of their khatedari land to the Municipal Council and the same was granted, Respondents No. 4 and 5 moved on application to the Collector under Section 285 of the Rajasthan Municipalities Act, 1959 (referred to hereinafter as 'the Act') for suspending the execution of No objection and the matter came to be placed before the Additional Collector who on 28.3.1989 passed a preliminary order staying the operation of the No Objection Certificate granted by the Municipal Council. This order has been

placed as Annex. 3. The matter was then referred to the Collector for passing appropriate orders under Section 285(2) of the said Act. The petitioners were not given any notice of opportunity by the Additional Collector to meet the allegations against them levelled by respondents No. 4 and 5. Notices were received by the petitioners from the Collector, where after the objections were filed by them placed as Annex. 10. It was objected that the Collector has no jurisdiction to issue the notices. The petitioners only raised preliminary objections before the Collector relating to jurisdiction and apprehending that no time would be granted to them after the hearing of the preliminary objections and that the Collector is likely to confirm the order passed by the Additional Collector, this writ petition has been filed.

2. Before appreciating the arguments raised by the learned Counsel appearing for the parties, it would be appropriate to reproduce hereunder the provisions of Section 285 as contained in the said Act:

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 or resolution of a board, or the doing of anything 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 thereby 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;

Provide 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.

3. Mr. M.S. Singhvi, learned Counsel for the petitioner contends that the provisions of Section 285 are not even remotely attracted to the facts of the present case as nothing remained to be done at the level of the Council after the No objection Certificate. According to the learned Counsel, Section 285 would apply only in the facts and circumstances where the execution of an order or resolution or the doing of anything which is about to be done or is being done by or on behalf of the board and is causing or likely to cause injury or annoyance to the public. The same can be suspended by an order in writing. Mr. Singhvi, thus, contends that the notices could not be issued under Section 285(2) and once the Additional Collector has exercised the jurisdiction in passing an order, the same could not be sent to the Collector for confirmation as the order passed by the Additional Collector shall be deemed to be one having been passed by the Collector. Learned Counsel further proceeds to submit that under Sub-section (2) of Section 285 the officer making the order has to forward the same to the State Government with the statement of reasons and it will be in the discretion of the State to rescind the order or to direct that it shall continue in force with or without modification.

4. Mr. Jangid and Mr. S.K. Vyas, learned Counsel appearing for the respondents submit in reply that the Vice President while acting as President granted No Objection Certificate in favour of the petitioners but later a communication was sent to the Collector requesting him to cancel the No Objection Certificate as an error had crept in the issuance of the No Objection Certificate on the misguided proposal of the then Commissioner. Learned Counsel stated that it is not denied that the Additional Collector has passed the order Annex. 3 while exercising the powers under Section 285(1) of the said Act. According to the learned Counsel, the District Collector was fully competent and justified in issuing notices to the petitioners in exercise of the powers under Section 285(2) of the Act and it is only this provision which is applicable in the instant case and the said provision is fully attracted. It has not been denied that the Addl. Collector did not give any notice to the petitioners and according to the learned Counsel it was the District Collector who has given the opportunity of hearing to the petitioners where the objections have been filed.

5. After hearing the learned Counsel for the parties and on perusal of the pleadings and other material placed on record by the parties I find that the petition deserves to be allowed.

6. A reading of the section as reproduced above makes out that it is only under the peculiar circumstances mentioned therein that the execution of an order or resolution is to be suspended. That is all what can be done under Sub-section (1) by the officer authorised by the Government in that behalf. under Sub-section (2) the said officer has to forward to the State Government the statement of reasons for making such an order and it is for the State Government to accept or not to accept it with or without modification. It is not understood as to how the matter came to be enquired into by the Additional Collector and if he had proceeded to examine the matter how could then the papers be forwarded to the Collector for final orders in the matter because the final order has to be made only by the State Government. No where in the reply filed on behalf of the respondents it has been said that the statement of reasons was forwarded to the State Government and what happened thereafter. It is again a strange situation that the notices were issued to the petitioners after the report had been submitted by the Addl. Collector to the Collector. No notice or opportunity was afforded to the petitioners by the Addl. Collector before passing the impugned order i.e. Annex 3. The District Collector is not the authority under Sub-section (2) for confirmation of the order passed by the Addl. Collector. The procedure, thus, adopted is not in consonance with the provisions of the section even if the said provision is accepted to apply for the sake of argument. So much so the petitioners were even not impleaded as parties before the Addl. Collector. Mr. Singhvi appears to be right in his submission that the act of granting the No Objection Certificate was complete in itself and nothing further remained to be done at the level of the Municipal Council. The phraseology employed in the section, in my opinion, will not be attracted to apply to the facts and the circumstances of the present case. The respondents can be well within their right to take such other appropriate proceedings against the petitioners as may be permissible for them order the conversion rules or any other law on the subject where the No Objection granted can be set aside or' the grant of permission for conversion can be recalled. A reading of the written-statement filed on behalf of the respondents No. 1 to 3 makes it more than clear that the

respondents are labouring under a misconception it has been said time and again in several paragraphs that the final authority lays with the District Collector who has given ample opportunity to the petitioners I am not prepared to accept this submission in view of the language employed in Sub-section (2) where it is the State Government alone which has to consider the statement of reasons made by the authorised officer exercising the powers under Sub-section (1) and the proviso to Sub-section (2) clears that no order shall be confirmed or revised or modified without giving opportunity of showing cause against the said order.

7. I am further supported in my view on the strength of the case law cited by the learned Counsel at the Bar.

8. In *Municipal Board, Kannau v. The State of U.P. and Ors.* : [1972]1SCR193 which is a case relating to the U.P. Municipalities Act, the provision of which are para materia with the provisions of the present Act, it has been observed that:

All that could be done under Section 34(1-B) is to prohibit the execution or further execution of the resolution or order, or the doing or continuance by any person of any Act in pursuance for under cover of such resolution or order does not require any acts to be performed or steps to be taken for the execution or further execution of the resolution or order of the Board or of its officers, there is really nothing to prohibit.

9. The next decision relied upon by Mr. Singhvi is reported in *Likhmichand v. State of Rajasthan and Ors.* 1978 WLN (UC) 271 a decision rendered by Hon'ble Mr. Justice S.C. Agrawal, as his lordship then was. In this decision the provisions of Section 285 have been examined. It has been observed therein that after the grant of permission to the petitioner to make construction, nothing remained to be done by it and, therefore, the powers conferred by Section 285 of the aforesaid Act could not be invoked and the order passed by the State Government could not be sustained.

10. Consequently, the directions contained in the notices Annexs. 4 to 9 issued by the Collector are quashed. The order passed by the Additional Collector dated 28.3.1989 Annex. 3 is also quashed as wholly illegal, without jurisdiction and

against the principles of natural justice and equity. The respondents are, however, at liberty to proceed against the petitioners in accordance with law.

11. The petition thus, stands allowed in the aforesaid terms. No orders as to costs.

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