

**(1979) 02 KAR CK 0003**  
**In the Karnataka High Court**  
**Case No : WP. 1336/75**

Doddegowda

APPELLANT

Vs

Divl. Commr., Mysore and Others

RESPONDENT

**Date of Decision :** 23-02-1979

**Acts Referred:**

Constitution of India, 1950 — Article 226(1)

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 53

**Citation :** (1979) 1 KarLJ 435

**Hon'ble Judges :** Puttaswamy, J

## **Judgement**

1. Before the case was taken up for hearing it was noticed that the Assistant Commissioner, Mysore Sub-Division, Mysore, who had passed the order dated 22-3-73 in case No. VPA. 1/71-72, the validity of which had been assailed by the petitioner, had not been impleaded as a party respondent and there was no specific prayer made for quashing the said order. Sri B.T. Parthasarathy, learned counsel for the petitioner submitted that the petitioner had not impleaded the Assistant Commissioner, Mysore Sub-Division Mysore and had not specifically sought for quashing his order, dated 22-3-73 by over-sight. He therefore sought for my permission to implead the Assistant Commissioner as a party respondent and include a specific prayer to quash his order, dated 22-3-73. I have permitted Sri Parthasarathy to implead the Assistant Commissioner as a party respondent and include a specific prayer for quashing his order. Accordingly, he has effected the necessary amendments.

2. At my request Sri M.R. Suvarna, learned High Court Government pleader who is appearing for respondent No. 1, has taken notice for respondent No. 3. He is permitted to file his memo of appearance for respondent No. 3 within 15 days from this day. As agreed to by all sides, I have heard this writ petition on merits.

3. In this writ petition, under Art. 226 of the Constitution the petitioner has challenged the order, dated 24-2-75 of the Divisional Commissioner Mysore, in Case No. VPA. 42/72-73 (Exhibit "C") reversing the order, dated 22-3-73 of the

4. Among others, the petitioner claims to be the owner and occupier of a vacant site bearing No. 88 of Sangarasettyhally village, Bettadapura Hobli, Periyapatna Taluk, Mysore District. His case is that on 23-11-70 he submitted an application to respondent No. 2 seeking for permission or a license for construction of a residential building on the land duly enclosing the plan and other necessary documents. His case is that he submitted his application to respondent No. 2 on 23-11-70 under Certificate of Posting and the same was received by respondent No. 2 on the next day. He has further asserted that respondent No. 2 did not either grant or refuse permission for a period of 60 days from the date of receipt of his application for permission and therefore he, proceeded with the construction after waiting for more than 60 days proceeding on the basis that the permission sought for by him has been granted to him under sub-section (1) of S. 53 of the Karnataka Village Panchayats and Local Boards Act 1959 (hereinafter referred to as the "Act"). Some time after the petitioner started construction of his building respondent No. 2 started various proceedings obstructing the construction of the building. After issuing a notice to the petitioner, respondent No. 2 instituted a criminal complaint in C.C. No. 784 of 71 in the court of the Munsiff-Magistrate, Hunsur for an offence alleged to have been committed by the petitioner under S. 233 and 235 of the Act. Before the criminal court respondent No. 2 specifically complained that the petitioner had started the construction of the building without obtaining its permission and therefore he had committed an offence punishable under S. 233 and 235 of the Act. Before the Munsiff-Magistrate the petitioner entered appearance and denied the accusations levelled against him. Before the criminal court the petitioner, who was the accused, raised a plea that he had sought for permission as early as on 23-9-70 and that since respondent No. 2 who was the complainant had not accorded its permission within 60 days from the date of receipt of his application, he, had not violated the provisions of the Act. Accepting the defence of the petitioner the learned Munsiff-Magistrate, by his judgment, dated 5-7-1973 acquitted the petitioner (Ext. B). When the proceedings were pending before the Criminal Court, respondent No. 2 filed a petition styled as an appeal petition under S. 53 of the Act before the Assistant Commissioner, Mysore Sub-Division, Mysore which came to be registered before him as Case No. VPA. 1/71-72. In that petition respondent No. 2 sought for a direction from the Assistant Commissioner to demolish the portion of the building already constructed by the petitioner and stop further construction of the building. After hearing the parties and on a consideration of the record, the Assistant Commissioner, by his order, dated 22-3-1973 (Ext. "A") reached the conclusion that the petitioner had made his application for permission on 23-11-1970 and that respondent No. 2 had not intimated its refusal within a period of two months from the date of receipt of his application and, therefore the construction started by the petitioner was not violative of the provisions of the Act and in that view he dismissed the appeal

petition filed by respondent No. 2. In that order, the Assistant Commissioner issued a direction to the respondent to issue a licence for the construction of the building. Against the order, dated 22-3-75 respondent No. 2 filed a revision petition purporting to be under S. 207 of the Act before the Divisional Commissioner, Mysore, seeking for the very relief it had sought before the Assistant Commissioner. Before the Divisional Commissioner the petitioner appeared and contended that the findings recorded by the Assistant Commissioner were correct and there was no ground to interfere with his order though the appeal petition filed by respondent No. 2 was itself incompetent. After hearing the parties, the Divisional Commissioner, Mysore by his order, dated 24-2-1975 (Ext. "C") has concluded that the petitioner had not applied for a license and therefore he was not entitled to construct or proceed with the construction of the building and therefore directed its demolition, the validity of which is challenged by the petitioner in this writ petition. In justification of the order passed, the Divisional Commissioner has entered appearance through the learned Government Pleader and has filed a detailed statement of objections supporting his order though the Supreme Court as early as in the year 1964 in Syed Yahood v. K.S. Radhakrishnan, AIR 1964 SC. 477, deprecated such a practice when authorities exercise judicial and quasi-judicial functions, for in this case the Divisional Commissioner was undoubtedly exercising quasi-judicial functions. In his petition, the petitioner has not alleged any mala fides against the Divisional Commissioner. I am therefore of the opinion that it was wholly inappropriate to Divisional Commissioner to have entered appearance through the learned Government Advocate and should have chosen to file statement of objections supporting his order. In a separate return respondent No. 2 has justified the order passed by the Divisional Commissioner. In its return respondent No. 2 has asserted that the petitioner had not made his application for permission to construct a building on the site.

5. Sri Parthasarathy, learned counsel for the petitioner strenuously contended that the appeal petition filed by respondent No. 2 before the Assistant Commissioner purporting to be under S. 53 of the Act was itself not maintainable and the order passed by him thereon was wholly incompetent for which very reason, the revision petition filed by respondent No. 2 purporting to be under S. 207 of the Act was equally incompetent.

6. Elaborating his contention Sri Parthasarathy maintained that S. 53 of the Act provides for issuing directions and orders by a panchayat to a person to carry out its directions and if any person is aggrieved by any such direction, he alone is entitled to file an appeal under sub-sec. (4) of S. 53 of the Act and not a panchayat as in this case, Sri B.M. Krishna Bhat, learned counsel for respondent No. 2 refuted this contention and urged that sub-sec. (4) permit an appeal being filed by the panchayat also,

7. In order to examine the rival contentions of the parties, it is necessary to read S. 53 of the Act and the same reads thus:

"53, Control of the erection of buildings: (1) Subject to such rules as may be prescribed, no person shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Panchayat. Such permission shall be presumed to have been granted if not refusal of such permission is communicated within two months of the receipt of the application.

(2) Whenever any building is created, altered, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under sub-sec. (1) or any conditions imposed by the permission granted, the Panchayat may, whether any action is taken or not against such person under S. 235- (a) direct that the building, alteration or addition be stopper; or (b) by written notice require, within a reasonable period to be specified therein, such building, alteration or addition to be altered or demolished as it may deem necessary for the promotion of public health or the prevention of danger to life or property.

(3) In the event of non-compliance with the terms of any notice under clause (b) of sub-sec. (2) within the period specified in the notice, it shall be lawful for the Panchayat to taken such action as may be necessary for the completion of the act thereby required to, be done, and all the expenses therein incurred by the Panchayat shall be paid by the person or persons upon whom the notice was served and shall be recoverable as if it were a tax imposed under S. 73.

(4) An appeal shall lie to the Assistant Commissioner from any order or direction or notice of the Panchayat under sub-sec. (1), (2) or (3) and the decision of the Assistant Commissioner on such appeal shall be final."

Sub-sec. (1) of S. 53 provides that no person should erect any building, alter or add to any building or reconstruct any buildings without the written permission of the Panchayat and that such permission if sought shall be presumed to have been granted if no refusal of such permission is communicated to him within two months of the receipt of the application. Sub-sec. (2) authorises the Panchayat when any person proceeds to construct, alter, add or reconstruct a building without obtaining permission of the Panchayat in any manner contrary to the Rules made under sub-sec. (1) or violates any conditions imposed in the permission granted to him notwithstanding the power conferred on it to take such action under S. 235 of the Act, to direct such parson to stop the construction of the building or demolish the construction of the building Sub-sec. (3) authorises the panchayat after issuing the necessary direction or notice to the person to take action for stopping the construction or the demolition of the building and recover the amounts that may be incurred by it as if it is the tax imposed under S. 73 of the Act. An analysis of sub-sec. (1), (2) and (3) of S. 53 of the Act would shew that the panchayat is empowered to take seme positive action against a person under sub-secs. (2) and (3) to his detriment or prejudice. Sub-sec. (4) provides for an appeal being filed by a person who has received any order or direction or notice of the panchayat under sub-secs. (1), (2) and (3) of S. 53 of the Act, A plain reading of sub-sec. (4) itself shews that

the person that is entitled to file an appeal is the person who has received an order or direction or a notice by the panchayat under sub-secs. (1)(2) and (3) of S. 53 of the Act and does not provide for an appeal by the authority that has exercised the power under sub-secs. (1), (2) and (3) of S. 53 of the Act. In my opinion, the Legislature for very good reasons did not provide for an appeal being filed by the very authority that had issued an order or a direction or a notice to any person under sub-secs. (1), (2) and (3) of S. 53 of the Act. In case the Legislature intended that an appeal can be filed either by the person against whom a notice has been issued or by the very panchayat which had issued an order, direction or notice, the language of sub-sec. (4) would have been entirely different and would not have provided only for an appeal being filed by the person against whom an order or direction or notice has been issued by the panchayat. For the foregoing reasons, I am of the opinion that Sri Parthasarathy is right in his submission that the appeal filed by respondent No. 2 before the Assistant Commissioner was not maintainable and was wholly incompetent and the order passed by him thereon was therefore wholly without jurisdiction.

8. Admittedly respondent No. 2 considering himself as being aggrieved by the order of the Assistant Commissioner which I have held to be without jurisdiction, filed a revision petition under S. 207 of the Act before the Divisional Commissioner. In the revision petition filed by it, respondent No. 2 sought for a direction to allow the application made by it before the Assistant Commissioner purporting to be under S. 53 of the Act. As I have already held that the appeal petition or application made, by respondent No. 2 was wholly incompetent and the order passed thereon by the Assistant Commissioner was wholly without jurisdiction, it has to be held that the revision petition filed by respondent No. 2 before the Divisional Commissioner, against the order of the Assistant Commissioner was also incompetent and was wholly without jurisdiction. In this view, the order of the Divisional Commissioner and the order of the Assistant Commissioner are liable to be quashed.

I will also assume that the revision petition filed by respondent No. 2 before the Divisional Commissioner under S. 207 of the Act was an original petition and examine whether it was competent for the Divisional Commissioner to entertain that petition and grant any relief to respondent No. 2. Admittedly in the course of his order, the Divisional Commissioner does not say that the order passed by the Assistant Commissioner has resulted in, miscarriage of justice to respondent No. 2. Sub-section (1) of S. 207 directs the Government or the Divisional Commissioner to interfere only with an order passed by a subordinate officer which is contrary to law and has resulted in miscarriage of justice to the person that has approached him. Even after hearing Mr. Krishna Bhat at length, I have not been able to appreciate as to how the order of the Assistant Commissioner has resulted in any miscarriage of justice to respondent No. 2. Without recording a finding that the order has resulted in miscarriage of justice to respondent No. who was the petitioner, the Divisional Commissioner had no jurisdiction to interfere with the order passed by the Assistant Commissioner even assuming

that the revision petition filed by respondent No. 2 was maintainable before him. In this view, also I am of the opinion that the Divisional Commissioner committed a manifest error of jurisdiction and illegality resulting in failure of justice to the petitioner and his order is therefore liable to be quashed.

10. A perusal of the judgment of the learned Munsiff-Magistrate Hunsur in C. C. No. 784 of 1971 and the order of the Assistant Commissioner Mysore Sub-Division, Mysore would show that respondent No. 2 has been needlessly pursuing this matter against the petitioner without much justification.

11. In the light of my above discussion, I hold that the, impugned orders are liable to be quashed. I therefore quash the impugned orders.

12. Rule made absolute.

13. In the circumstances of the case, I direct the parties to bear their own costs.