

(2009) 09 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11782 of 2009

K. Ramachandra Rao

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Andhra Pradesh Gram Panchayat Land Development (Layout and Building) Rules, 2002 — Rule 2, 2(18)
Andhra Pradesh Panchayat Raj Act, 1994 — Section 127(1), 127(2), 127(3), 128, 128(1)
Constitution of India, 1950 — Article 226

Citation : (2009) 6 ALD 142 : (2009) 6 ALT 574

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : P.S. Bhramaramba Devi, for the Appellant; G.P., for Panchayat Raj and Rural Dev. for Respondents 1 to 3, Venugopal, for Badana Bhaskara, Rao, for the Respondent

Judgement

P.S. Narayana, J.—This court issued Rule nisi on 17-06-2009.

2. Counter affidavits had been filed.

3. Though the matter is coming under the caption "Interlocutory", at the request of the counsel on record the Writ Petition itself is being disposed of finally.

4. The writ petitioner, K. Ramachandra Rao, filed the present writ petition for a writ of Mandamus or any other appropriate Writ declaring the impugned action of the respondents, particularly the 1st respondent in passing orders in Revision Petition filed by the petitioner, through Memo No. 29099/Pts.IV/A2/08-5, dt. 22-05-2009, without assigning any reasons and thereby dismissing the Revision Petition filed by the petitioner without following the due process of law as illegal, arbitrary and violative of principles of natural justice and consequently set aside the impugned Memo No. 29099/ Pts.IV/A2/08-5, dt.22-05-2009 and pass such other suitable orders.

5. Ms. P.S. Bhramaramba Devi, learned Counsel representing the petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and also the respective stands taken in the counter affidavits and would maintain that in the facts and circumstances of the case the impugned order cannot be sustained. The learned Counsel also had taken this Court though the different proceedings, the grounds of revision, the order issued by the Secretary, Gram Panchayat and also the order made by the District Panchayat Officer and the representation made by the petitioner before the District Panchayath Officer, permission No. 22/2008 issued by the Gram Panchayat, objection raised by the petitioner before the District Panchayat Officer, Mahaboobnagar District, the representation made by the petitioner before the Gram Panchayat for construction of compound wall along with translated version, pattedar pass book, certified copies of the minutes book, the true copy of Revision Register of House Tax issued by the Gram Panchayat. The learned Counsel also would maintain that the very entertainment of the appeal though the second respondent is not the appellate authority, would go to show that for certain extraneous reasons the second respondent had entertained the said appeal and made the said order. The learned Counsel also would comment that the matter was carried by way of Revision before the revisional authority - the first respondent, wherein the specific ground of the inherent lack of jurisdiction on the part of the second respondent to entertain the appeal had been raised, but for the reasons best known without adverting to all the aspects the said revision also was dismissed. Aggrieved by the same the present writ petition had been filed. The learned Counsel also placed strong reliance on certain decisions. Incidentally The learned Counsel also pointed out to several other factual controversies, which are not well related to the present writ petition.

6. The learned Assistant Government Pleader for Panchayat Raj had taken this Court through the counter affidavit filed by the second respondent and would maintain that it is no doubt true that under certain specified circumstances the second respondent can entertain a second appeal. But however, in the present case the second respondent had only given certain directions as competent authority and hence the order under challenge in the revision and also the revisional order made by the first respondent cannot be found fault. The learned AGP for Panchayat Raj also referred to the relevant material papers, the letter dated 04-08-2009 and the appeal petition filed by the 4th respondent along with the documents, the proceedings of DPO, Mahabubnagar, dated 25-11-2008 in Proc. No. A3/986/2008 and the Government Memo No. 29099/Pts.IV/A2/2008-5, Dt:22-05-2009.

7. Sri Venugopal the learned Counsel representing:

Sri Badana Bhaskar Rao would maintain that inasmuch as the second respondent and first respondent as quasi judicial authorities made these orders, a writ of certiorari alone would lie and a writ of mandamus would not lie and hence the writ of mandamus is a misconceived remedy. The learned Counsel while further

elaborating the submissions would maintain that it is no doubt true that unless the statute provides the remedy by way of an appeal, an appeal cannot be maintained. But, however in the light of the nature of the order which was made by the second respondent since certain directions had been given in pursuance thereof the 4th respondent already had completed the constructions. This aspect also may have to be taken note of. The learned Counsel also further had drawn the attention of this Court to relevant definitions and the relevant Rules under Andhra Pradesh Gram Panchayat Land Development (Layout and Buildings) Rules, 2002 (hereinafter for short referred to "the Rules" for the purpose of convenience) and would maintain that the competent authority to consider this aspect is the Executive Authority and Executive Authority is defined under Rule 2(18) of the Rules. The learned Counsel also would maintain that inasmuch as in pursuance of the orders made by the second respondent and the first respondent construction had been completed especially when appropriate relief had not been prayed for since a writ of mandamus had been thought of by the writ petitioner, it is not a fit matter to be interfered with under Article 226 of Constitution of India and hence the Writ Petition to be dismissed. The learned Counsel also relied on certain decisions. The learned Counsel also had referred to the material papers placed before this Court - copy of sale deed, dated 22-04-2004, copy of certificate issued by Village Secretary, dated 20-04-2004, copy of registered sale deeds, dated 12-05-2008, copy of certificate issued by the Secretary, dated 14-07-2009, copy of refusal order passed by the Gram Panchayat, dated 04-08-2008, copy of order of the Panchayat Secretary, dated 16-12-2008 and copy of complaint given by the 4th respondent dated 30-06-2008.

8. Heard the counsel and perused the respective stands taken by the parties and also the material papers placed before this Court.

9. The relief prayed for in the writ petition already had been specified supra. The relevant portion of the order under challenge, dated 22-05-2009 reads as hereunder:

Government after careful examination of report of District Panchayat Officer, and Revision Petition of Sri K. Rama Chandra Rao, S/o. Late K. Srinivas Rao, R/o. Kondareddypally village, Balmoor Mandal, Mahaboobnagar District, it is observed that there is no illegality, irregularity or impropriety in passing the order by the District Panchayat Officer. Since it is a civil dispute let both the parties seek their redress in an appropriate civil court. The R.P. is disposed off accordingly. The Collector, Mahaboobnagar District is therefore, requested to take necessary action in the matter immediately.

10. It may not be out of context if it is stated that Section 248(2) of A.P. Panchayat Raj Act, 1994 hereinafter for short referred as "the Act" for the purpose of convenience had been referred to in the impugned order dated 22-05-2009 and further the contention that the order made by the District Panchayat Officer is without jurisdiction also had been referred to. But, however for the reasons best known without deciding the crucial question which had been

raised before the first respondent, the first respondent thought of disposing the Revision Petition with certain directions.

11. Be that as it may, the case of the petitioner is that the petitioner is the owner of the property in Sy. No. 409 of Kondareddypally village, Balamur village, Mahabubnagar district bearing door Nos. 1-175, 1-176 and 1-177 and he applied for construction permission for compound wall. He was in peaceful possession of land in the house and the petitioner made an application to the third respondent seeking permission to construct the said compound wall.

12. It is also the specific case of the writ petitioner that the Gram Panchayat issued necessary permission, dated 25-04-2008 and at this juncture the 4th respondent tried to interfere with the construction activity of the petitioner without any right, title or interest over the property and when his authority to objection had been questioned, the 4th respondent failed to produce any document to substantiate his claim.

13. It is also the case of the writ petitioner that behind the back of the writ petitioner it appears the 4th respondent approached the third respondent praying for permission to construct house in the very same property claiming to be the owner. The 3rd respondent rejected the said application by order dated 04-08-2008. It is pertinent to mention that even today the proceedings of the 3rd respondent, dated 25-04-2008 issued in favour of the petitioner is in force and the same is valid. However, aggrieved by the rejection on the request made by the 4th respondent he carried the matter before the 2nd respondent. The second respondent on a totally erroneous view and without considering objections filed by the petitioner while setting aside the said order allowed the appeal. Aggrieved by the said proceedings A3/986/2008 dated 25-11-2008 the petitioner preferred Revision before the first respondent. The grounds of the Revision Petition also had been placed before this Court and the specific ground raised in relation to the incumbency (sic. incompetency) of second respondent to entertain the appeal also had been specifically pointed out.

14. the second respondent in proceedings No. A3/986/2008 dated 25-11-2008 observed as hereunder:

During my personal visit on 10-10-2008 to Kondareddypally at the site, my enquiries revealed that the houses purchased by Sri. . Achutha Reddy were demolished by him for construction of a new house and that the houses and sites sold were owned by the vendors since their ancestors time. Even in the voters list of the village the names of the vendors along with house nos are depicted. Hence, I find that there are no merits in the claim of the 2nd respondent that the site belongs to him.

In the result, I hold that the impugned order dated 04-08-2008 of the Gram Panchayat, the 1st respondent herein, is liable to be set aside. I, accordingly set aside the same and direct the Gram panchayat to accord permission for construction of house as per the plan submitted by the appellant Sri. D. Achutha

Reddy as per the existing rules and regulations vide G.O.Ms. No. 67, PR&RD Dept., dated 22-02-2002. The Gram Panchayat is directed to accord permission and report compliance within a week.

15. It is also stated that in the impugned order the 4th reference indicates that a Telegram dated 20-3-2009 was issued and that the Advocates had represented their respective stands. The same is factually incorrect.

16. Further it is stated that the matter got adjourned to further hearing and also for clarification from the parties. The proceedings of the second respondent dated 04-02-2009 addressed to the petitioner and also to the other respondents showing the hearing to be held on 10-02-2008 before the first respondent also had been placed before this Court. Thus, these aspects would go to show that the first respondent had not applied the mind and made an illegal and an arbitrary order. Further specific stand had been taken that the provisions of Section 248(2) of the Act had been referred to in the order under challenge and the said provisions are not applicable to the facts of the case at all.

17. In the counter affidavit filed by the second respondent it is stated that the 4th respondent filed an appeal dated 30-08-2008 before the 2nd respondent aggrieved by the letter dated 04-08-2008 of the Gram panchayat, Kondareddypally village, wherein the Gram Panchayat rejected his application dated 20-05-2008 for construction of the house. The matter was posted for hearing from time to time by issuing notices to all the parties concerned as well as Sarpanch and Sri. D. Achutha Reddy, the 4th respondent. The 2nd respondent visited the village after giving notices to all the concerned and inspected the site of the proposed construction by the petitioner and also perused the records of the Panchayat.

18. It is also averred that the 4th respondent by his letter dated 09-05-2008 complained that the writ petitioner and his wife Smt. Bhramarambha tried to grab his property which was purchased from Purru Jangaiah and four others about five years back by a registered document vide DOC.No.1218 to 1222, dated 12-05-2008 consisting of houses and other sites on 08-05-2008 and 23-05-2008 and they stated they were attacked by the petitioner's men when they prevented the grabbing of land. It is also stated that the 4th respondent and the petitioner filed criminal complaints against each other before the Police. It is stated that the petitioner submitted plans to the Secretary, Gram Panchayat on 20-05-2008 for construction of new house in the above purchased house after demolishing the old houses.

19. Further it is stated that the vendors were enjoying the property sold for more than 120 years since their ancestors time. But, however, Smt. Hema, the Sarpanch of Kondareddypally colluded with the petitioner and interpolated a resolution in the minutes book of the Gram Panchayat with an old date as if permission was granted to the petitioner for construction in the land of the 4th respondent. Further it is averred that the Sarpanch is creating the record with

old date and that the application is still pending with the Panchayat. It is also stated that the Sarpanch may tamper the Panchayat records so as to help the Petitioner and his wife in their illegal activities. Hence, the 4th respondent requested to cause enquiry into the matter and seize the records and also submitted copies of sale deeds, plan and police complaint lodged by him.

20. It is also stated that a report was called for in the matter of memo dated 18-06-2008 from the Gram Panchayat along with the records and the relevant file of the 4th respondent. Further it is averred that the application of the 4th respondent is under consideration and necessary action will be taken as per the Panchayat resolution after issuing the notice as per law. It is also informed that as per the documents, the property was purchased by the 4th respondent on 12-05-2008 and not five years back. Further it is stated that the 4th respondent by his letter dated 30-06-2008, complained that the Sarpanch and her husband took photographs of his site at 9.30 a.m. on that day in a high handed and unduly manner despite objections from his people.

21. It is also stated that on receipt of the letter dated 04-08-2008 of the Gram Panchayat, the application of the 4th respondent dated 20-05-2008 was rejected on the following grounds:

1. It is submitted that as per the records of the Gram Panchayat, the vendors Buram Bodayya and others were owning 94 Sq. yards of site, but as per the registered documents, the area was 1825 Sq. yards and the vendor cannot passion the title which they do not have.

2. It is submitted that the Petitioner by his objection letter dated 04-07-2008, stated that the site in which the 4th Respondent proposed construction, belongs to him and is forming part of site appurtenant to his house and that he constructed a portion of the compound wall as per the Gram Panchayat dated 05-03-2008.

22. Further it is averred in the counter affidavit of respondent No. 2 that under the above circumstances and after considering all the points, the order dated 04-08-2008 of the Gram Panchayat is set-aside by second respondent and directed the Gram Panchayat to accord permission for construction of house as per the plan submitted by the 4th Respondent as per the existing rules and regulations vide G.O.Ms. No. 67, Panchayat Raj & Rural Development, dated 26-02-2002. The Gram Panchayat is directed to accord permission and report compliance within a week. In view of the above, orders were issued vide Proc. No. A3/986/2008, dated 25-11-2008. The operative portion of the said order already had been referred to above.

23. It is also stated that the second respondent entertained appeal against the orders of the Executive Officer as the same is turned on a resolution of Gram Panchayat dated 02-08-2008 and passed orders u/s 128 of the Act. The order passed by the 2nd respondent is based on the documentary evidence submitted by the 4th respondent during the course of pendency of the Appeal. Aggrieved

by the said order made by the second respondent the petitioner filed revision and the 1st respondent dismissed the revision by order dated 22-05-2009 vide Memo No. 29099/Pts.IV/A2/08 and directed both the petitioner and the 4th respondent to approach appropriate Civil Court as the matter relates to the dispute between the parties with regard to title. Hence, the dismissal of the writ petition had been prayed for. The relevant material papers placed before this Court along with the counter affidavit by the learned AGP for Panchayat Raj already had been referred to above.

24. In the counter affidavit filed by the 4th respondent almost similar averments had been made. Specific stand had been taken that the order was made by the first respondent in accordance with law. It is averred in para 3 of the counter affidavit of respondent No. 4 that it is true that the petitioner is the owner of the property of door Nos. 1-175, 1-176 and 1-177 situated at Kondareddypally Village, Balmoor Mandal, Mahboobnagar District, but they are not situated in Survey Number 409 and they are situated in Grama Kantam. The Grama Kantam has no separate Survey Number and it is evident from the certificate dated 14-07-2009 issued by the Panchayat Secretary, Kondareddypally Village. It is not correct to state that the petitioner made application to the 3rd respondent seeking permission to construct the compound wall nor the Gram Panchayat issued permission on 25-04-2008. The petitioner had not produced any documentary evidence before the 2nd respondent and it is clearly mentioned in the order of the 2nd respondent dated 25-11-2008 in proceedings No. A3/986/2008. It is further stated that even as per the minutes book of Gram panchayat there is no resolution permitting the petitioner to construct the compound wall which is evident from the order of the 2nd respondent and the same was brought on record subsequently with the help of Sarpanch. The permission said to have been granted by the Gram Panchayat on 25-04-2008 is, it seems, created for the purpose of filing of this present writ petition duly hand in-glove with the Sarpanch, who has no authority to issue permission to construct compound wall as per Rule 2(18) of the Andhra Pradesh Gram Panchayat Land Development (Layout and Building) Rules 2002 issued under G.O.Ms. No. 67 PR & RD (PTS-IV), dated 26-02-2002. As such it is evident that the petitioner is trying to misguide this Court with false averments with a view to obtain interim orders of this Court. It is not correct to state that the 4th respondent tried to interfere with the construction activity of the petitioner without any right, title or interest over the property. It is also not correct to state that 4th respondent failed to produce any document to substantiate his claim. In fact the 4th respondent purchased an extent of 1825 Square Yards from Purru Jangayya and 4 others under a sada sale deeds dated 22-04-2004. The vendor of the 4th respondent had handed over the possession of the said property on the same day. Before purchasing the said property, the Secretary, Kondareddypally Gram Panchayat issued a certificate on 20-04-2004 confirming that vendors of the 4th respondent are having houses in Gram Panchayat, Kondareddypally Village and they are situated within the Grama Kantam of the said village. Subsequently to

avoid legal complications the above houses sites were got registered in his name vide registered sale deed Nos. 1218 to 1222 dated 12-05-2008 consisting of houses and appurtenant sites. It is also further stated that it is not out of place to mention that the vendors of the 4th respondent enjoyed the property which was sold to him for more than 120 years since their ancestors time. It is further stated that the petitioner and his wife Smt.Bramaramba, even prior to this episode, failed to occupy his site by using force and he made complaints to the Police and the District Panchayat Office and criminal cases were filed against the petitioner and his wife Smt.Bramaramba and they are pending.

25. It is also averred that on 20-05-2008 the 4th respondent filed an application before the 3rd respondent and plans to the Gram Panchayat for construction of new house in the above purchased property and the same was rejected by the Gram Panchayat by letter dated 04-08-2008 on the ground that his vendors are owning 94 Square Yards of site but not the area of 1825 Square Yards and that there is an objection letter dated 04-07-2008 by the petitioner herein stating that the proposed construction site in Survey Number 409 is forming part of site appurtenant to his house. It is also further stated that it is pertinent to state that the extent of 94 Square Yards referred to in the order dated 04-08-2008 is only the huts constructed by the vendors of the 4th respondent and the extents of vacant sites are not considered and the entire area is not reflected in the records of the Gram Panchayat.

26. It is also averred that there is no procedure or practice to record the open site in the property register of the Gram Panchayat and the authorities recorded only the constructed area and allot door number for the purpose of house taxes. The entire site purchased by the 4th respondent is the houses and vacant sites of his vendors totally comes to about 1890 Square Yards. As such, the Gram Panchayat is not correct in refusing his application vide letter dated 04-08-2008.

27. It is also stated that with regard to the other ground to refuse permission, the 4th respondent stated that the petitioner has nothing to do with the land which belongs to him and he is the absolute owner of the property by purchasing the same under registered sale deeds and the land is in Grama Kantam but not in Survey Number 409. The sale deeds produced before the lower authority with annexed maps clearly shows that the 4th respondent purchased the sites along with houses. The property purchased by him is forming part of Grama Kantam as per certificates dated 20-04-2004 of the Village Secretary. If the site in dispute is part and parcel of Survey Number 409 it cannot form part of Grama Kantam since the Grama Kantam has no separate Survey Number as per the certificate issued by the Panchayat Secretary dated 14-07-2009. Further it is stated that no documentary evidence is produced by the petitioner showing that the land belonged to him except filing his objection letter dated 04-07-2008 and it cannot be construed as gospel truth. It is also further stated that with a view to grab his property the petitioner is filing factious petitions/objections without there being any title over the property. He approached the 3rd respondent seeking

permission to construct house in the property belonged to him. He submitted that the proceedings of the 3rd respondent dated 25-04-2008 are not relating to the property situated in Grama Kantam and it relates to some other property of house No. 1-72 situated in Survey Number 409 of Kondareddypally Village.

28. It is further averred by the 4th resident in his counter affidavit that aggrieved by the orders passed by the 3rd respondent dated 04-08-2008 rejecting his application to accord permission to construct a house, he filed appeal before the 2nd respondent and the 2nd respondent after elaborate enquiry and personal inspection of the proposed site and after verification of the records of the Gram Panchayat and after considering the objections raised by the petitioner herein, passed orders on 25-11-2008 setting aside the order passed by the 3rd respondent and directed the Gram Panchayat to accord permission for the construction of house as per the plan submitted by the 4th respondent.

29. It is also stated that in pursuance of the orders passed by the 2nd respondent dated 25-11-2008, the Secretary, Gram Panchayat accorded permission for construction of house in favour of the 4th respondent vide order dated 16-12-2008. The 4th respondent submitted that aggrieved by the orders passed by the 2nd respondent dated 25-11-2008 the petitioner herein preferred revision petition before the 1st respondent and the same was disposed on 22-05-2009 with an observation that there is no illegality, irregularity or impropriety in passing the order by the 2nd respondent and since the dispute is a Civil nature both the parties to seek their redressal in an appropriate Civil Court. The permission order issued by the 3rd respondent was not challenged. Aggrieved by the said orders passed by the 1st respondent the present writ petition had been filed by the petitioner.

30. Further it is stated that the 1st respondent after hearing both parties passed impugned the order dated 22-05-2009. It is further stated that on 23-01-2009 the matter got adjourned and subsequently a notice of hearing dated 04-02-2009 was issued indicating the date of further hearing as 10-02-2009 and the same was served on both the parties and both the advocates as well as the parties attended the hearing. As such there is no arbitrariness in disposing of the Revision petition. The Revision petition was disposed after giving reasonable opportunity of being heard to the petitioner. All the grounds raised by the petitioner were considered elaborately by the 1st and 2nd respondents while passing orders by giving cogent reasons. There is no illegality or arbitrariness in passing orders by the 1st respondent.

31. Thus, specific stand had been taken that the order under challenge in the present writ petition being in accordance with law, the writ petition to be dismissed.

32. The relevant material papers which had been placed along with the counter affidavit filed by the 4th respondent also had been referred to above.

33. As can be seen from the respective stands taken by the parties, it appears,

permission had been granted in favour of the petitioner and the permission had been rejected as far as the 4th respondent is concerned and it appears aggrieved by the same, the 4th respondent carried the matter by way of Appeal before the 2nd respondent. As already aforesaid, the order made by the 2nd respondent had been challenged before the Revisional authority-1st respondent and it is needless to say that the 1st respondent while exercising the quasi judicial powers had made the order under challenge while exercising the revisional jurisdiction. It is no doubt true that instead of filing a writ of certiorari, a writ of mandamus had been thought of, but however this Court is of the considered opinion that since such other appropriate orders or suitable reliefs can be granted by the writ Court, the Writ Petition need not be dismissed on such ground alone. While drawing a distinction between a writ of certiorari and a writ of mandamus in *Tota Lachhaiah v. District Panchayat Officer, Guntur and Anr.* AIR 1960 A.P. 593 (DB) a Division Bench of this Court observed at para-5 as hereunder:

It is well settled that the division of the Panchayat into wards and the conduct of elections and administrative acts of the Government but that itself is not a ground for rejecting the petition. As is well known, there is an essential distinction between a writ of certiorari and a writ of mandamus. A writ of certiorari is available for the removal of any judicial or quasi-judicial act of an inferior tribunal, whereas a writ of mandamus is issued to compel the performance of duties of a public nature. The condition that the act complained of should be a judicial act applies to the former relief and not to the later.

The Division Bench also while deciding the power to divide village into wards in the light of Sections 9 and 128 of the Madras Village Panchayats Act further observed at paras 6 and 7 as hereunder:

With regard to the first of the contentions raised by the petitioner, it may be stated that the Government have no power u/s 9 of the Act to divide the village into wards. Section 9 in so far as it is material for the present purpose, reads:

9. (1) Division into wards: For the purpose of electing members to a Panchayat, the Inspector shall, after consulting the Panchayat, by notification, divide the village into wards and determine the number of members to be returned by each ward.

The power to divide the village into wards is vested in the Inspector and not in the State Government. So much is conceded. But what is stated by the learned Government Pleader is that u/s 128 of the Act, there is a revisional power vested in the Government in the purported exercise of which, the impugned order has been passed. Section 128 reads:

128. Revision: (1) The Government may, in their discretion, at any time, either suo motu or on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by....

(a) the Inspector or the Collector or any officer or person authorized by the

Inspector or the Collector under Sub-section (2) of Section 127 or;

(b) any authority, officer or person authorized by the Government under Sub-section (1) of that section or any person empowered by them under Sub-section (3) of that Section, or

(c) any other authority, officer or person for the purpose of satisfying themselves as to the legality or propriety of such order, or as to the regularity of such proceeding and pass such order in reference thereto as they think fit.

(2) The powers of the nature referred to in Sub-section (1) may also be exercised by such authority, officer or person as may be empowered in this behalf by the Government.

Learned Counsel for the petitioner, Mr. Koti Reddy has pointed out that the power vested in the Government under the above provision is limited to the examination of the "the record of any order passed or proceeding recorded". He has contended that there was no order passed by any of the subordinate authorities specified in Clauses (1), (b) or (c) of Section 128(1) or "proceeding recorded" by any of them, and that the Government had suo motu entertained the request of the Panchayat Board to divide the village into wards and that, therefore, the exercise of the power u/s 128 of the Act is not warranted.

On the language of the Section, this contention appears to be well founded. But that would not really help him to obtain the relief which he seeks in the Writ Petition. Both the Orders of the Government, that is, the one dated 23-5-1958 and the later order dated 22-6-1959, were both made by them in the purported exercise of the powers of revision vested in them u/s 128 of the Act. If so, both the Orders would be bad and the resultant situation would be that the original division of the village into three wards made in 1953 would remain undisturbed. Therefore, giving effect to the contention of the learned Counsel for the petitioner himself would land him in this difficulty.

34. In *T. Venkateswara Rao v. State* AIR 1958 A.P. 458 (DB) : 1958 (1) An.W.R. 480 it was held that there is an essential distinction between a writ of certiorari and a writ of mandamus and a writ of certiorari is available for the removal of any judicial act or quasi-judicial act of an inferior tribunal whereas a writ of mandamus is issued to compel the performance of duties of a public nature and the condition that the act complained of should be a judicial act applies to the former relief and not to the later.

35. In *U.P. State v. Mohd. Nooh* AIR 1958 S.C. 86 the Apex Court at para-10 observed:

In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (*Halsbury's Laws of England*, 3rd Edn., Vol. 11, p. 130 and the cases

cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior Court in arriving at a conclusion as to whether it should, in exercise of its discretion issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. In the *King v. Postmaster-General; Ex parte Carmichael* 1928 1 KB 291 (E), a certiorari was issued although the aggrieved party had an alternative remedy by way of appeal. It has been held that the superior Court will readily issue a certiorari in a case where there has been a denial of natural justice before a Court of summary jurisdiction. The case of *Rex v. Wandsworth Justices; Ex Parte Read* 1942-1 KB 281 (F) is an authority in point. In that case a man had been convicted in a court of summary jurisdiction without giving him an opportunity of being heard. It was held that his remedy was not by a case stated or by an appeal before the quarter sessions but by application to the High Court for an order of certiorari to remove and quash the conviction. At p. 284 Viscount Caldecote, C.J., observed:

It remains to consider the argument that the remedy of certiorari is not open to the applicant because others were available. It would be ludicrous in such a case as the present for the convicted person to ask for a case to be stated. It would mean asking this Court to consider as a question of law whether justices were right in convicting a man without hearing his evidence. That is so extravagant an argument as not to merit a moment's consideration. As to the right of appeal to quarter sessions, it may be that the applicant could have had his remedy if he had pursued that course, but I am not aware of any reason why, if in such circumstances as these, he preferred to apply for an order of certiorari to quash his conviction, the Court should be debarred from granting his application.

Likewise in *Khurshed Mody Vs. Rent Controller*, it was held that the High Court would not refuse to issue a writ of certiorari merely because there was a right of appeal. It was recognized that ordinarily the High Court would require the petitioner to have recourse to his ordinary remedies but if it found that there had been a breach of fundamental principles of justice, the High Court would certainly not hesitate to issue the writ of certiorari. To the same effect are the following observations of Harries, C.J., in *Assistant Collector of Customs for appraisement and Another Vs. Soorajmull Nagarmull and Another*, (D) at p. 470 (of Cal WN) : (at p. 665 of AIR:

There can, I think, be no doubt that Court can refuse to issue a certiorari if the petitioner has other remedies equally convenient and effective. But it appears to me that there can be cases where the Court can and should issue a certiorari even where such alternative remedies are available. Where a Court or tribunal,

which is called upon to exercise judicial or quasi-judicial functions discards all rules of natural justice and arrives at a decisions contrary to all accepted principles of justice then it appears to me that the Court can and must interfere.

It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari.. If, therefore, the existence of other adequate legal remedies is not per se a bar to the issue of certiorari and if in a proper case it may be the duty of the superior Court to issue a writ of certiorari to correct the errors of an inferior Court or tribunal called upon to exercise judicial or quasi-judicial functions and not to relegate the petitioner to other legal remedies available to him and if the superior Court can in a proper case exercise its jurisdiction in favour of a petitioner who has allowed the time to appeal to expire or has not perfected his appeal e.g., by furnishing security required by the statute, should it then be laid down as an inflexible rule of law that the superior Court must deny the writ when an inferior Court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior Court or tribunal on appeal or revision? The case of 1889-22 QBD 345 (C) referred to in Janardan Reddy and Others Vs. The State of Hyderabad and Others, furnishes the answer. There the manager of a club was convicted under a certain statute for selling beer by retail without an excise retail license. Subsequently he was convicted of selling intoxicating liquor, namely, beer without a license under another statute. Upon hearing of the later charge the Magistrate treated it as a second offence and imposed a full penalty authorised in the case of a second offence by the latter statute. His appeal to the quarter sessions having been dismissed, he applied for a writ of habeas corpus and it was granted by the King's Bench Division on the ground that the Magistrate could not treat the later offence as a second offence, because it was not a second offence under the Act under which he was convicted for the second time. Evidently the point was taken that if there had been any error, irregularity or illegality committed by the Magistrate, the quarter sessions could have on appeal corrected the same and that the quarter sessions having dismissed the appeal the Court of Queen's Bench Division could not issue the writ of habeas corpus. This was repelled by the following observations of Hawkins, J.:

This is true as a fact, but it puts the prosecution in no better position, for if the Magistrate had no power to give himself jurisdiction by finding that there had been a first offence where there had been none, the justices could not give it to him.

36. Reliance also was placed on Kaikhusroo Phirozshah Doctor Vs. State of Bombay, , Mohd. Yunus and Others Vs. Lt. Governor, Delhi and Others, .

37. As already aforesaid, though the relief as couched i.e., issuance of a writ of mandamus, may not be the proper remedy in the facts and circumstances, on this ground alone the Writ Petition cannot be thrown out. However, it is made

clear that a writ of certiorari alone, in the facts and circumstances of the present case, would be the proper remedy.

38. The principal contention which had been argued in elaboration before this Court and also the principal objection which had been raised before the 2nd respondent - the alleged appellate authority, and also the 1st respondent - the revisional authority, is that the very entertainment of the Appeal by the 2nd respondent is incompetent and hence the order made by the 2nd respondent is illegal and one without jurisdiction, for reasons best known, the 1st respondent - revisional authority, though the specific ground had been raised without considering this aspect, virtually dismissed the Revision though the wording used had been "disposed of."

39. Section 128 of the Act dealing with Appeal from the order of executive authority reads as hereunder:

(1) An appeal shall lie to the gram Panchayat from,-

(a) any order of the executive authority granting, refusing, suspending or revoking a licence or permission;

(b) any other order of the executive authority that may be made appealable by rules made u/s 268.

(2) A second appeal shall lie from the decision of the gram Panchayat passed in an appeal under Sub-section (1) to such authority as may be prescribed whose decision thereon shall be final.

40. In *Smt. Ganga Bai Vs. Vijay Kumar and Others*, the Apex Court at para-15 observed:

...There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.

41. Strong reliance was placed on the decision of the Division Bench in *Aljapur Ganga Mohan Vs. District Panchayat Officer, Nizamabad District, Nizamabad and Others*, wherein the Division Bench while dealing with Section 128 of the Act held that where a resolution was passed by the Panchayat Board granting permission to construct, no appeal lies against such order and hence second appeal also is not valid and further the District Collector is not the appellate authority competent to entertain the appeal and dispose of the same.

42. Further reliance was placed on the decision of the Division Bench in *Vasam*

Kotayya and Others Vs. S. Rayavaram Gram Panchayat, S. Rayavaram Mandal, Visakhapatnam District and Others, wherein the Division Bench while dealing with Section 128(1) of the Act, the statutory appeal, held that the power to grant permission for construction is vested in Gram Panchayat and that where the permission granted by the Gram Panchayat by resolution is executed by the Executive Officer, such substantive order is passed by the Gram Panchayat only and hence appeal to Gram Panchayat against its own order does not lie.

43. In the present case, from the nature of the order which was challenged by way of Appeal before the 2nd respondent it is clear that the 2nd respondent is not competent to entertain such Appeal, but for reasons best known, the 2nd respondent entertained the Appeal and further interfered with the order of the original authority by setting aside the same. It is also pertinent to note that on a careful analysis of the reasons recorded by the 2nd respondent, the 2nd respondent recorded several reasons which are prejudicial to the interest of the writ petitioner. No doubt certain submissions were made that the objections also had not been considered. This aspect need not detain this Court any longer for the reason that it is suffice to state that the 2nd respondent is not the competent authority at all to entertain such Appeal. It is needless to say that when the very competency to be negatived the other aspects need not be dealt with in further elaboration. Certain submissions were made by the learned Assistant Government Pleader for Panchayat Raj that this order was made by the 2nd respondent issuing certain directions only. This Court is not inclined to accept the said submission since the operative portion of the order already had been referred to supra.

44. Be that as it may, Rule 2 of the Rules deals with definitions and Rule 2(18) defines "executive authority" as hereunder:

"executive authority" means executive authority of the Gram Panchayat which sanctions and releases the permissions and undertakes to ensure that the construction activity/layout development activity is carried out in accordance with the sanctioned plans etc.,

45. Several of the controversial questions which had been argued in elaboration and several of the documents which had been placed before this Court and several of the proceedings which had been referred to by the learned Counsel representing the writ petitioner and also the learned Assistant Government Pleader for Panchayat Raj and Sri Venu Gopal representing Badena BhaskarfRao representing the 4th respondent also need not detain this Court any longer for the reason that when the 2nd respondent is not competent to entertain the Appeal, since the order made by the 2nd respondent being nonest, automatically the dismissal order made by the Revisional authority - 1st respondent, no doubt the words which had been employed being "disposed of also is incompetent and illegal and one without jurisdiction. However, in the peculiar factsituation especially in the light of the nature of the allegations and counter allegations made and the documents produced before this Court and also in the light of the

respective stands taken by the writ petitioner and also the 4th respondent relating to the initial granting of permission and non-granting of permission and how the 4th respondent carried the matter further and further in the light of the fact that it is stated that in pursuance of these orders made by the 2nd respondent and the 1st respondent, the construction activity had been completed, it would be just and proper to remit this matter to the executive authority of the Gram Panchayat to give opportunity to both the parties to file further objections and to place all the material relating to the respective claims and let the executive authority decide this aspect in accordance with law keeping in view the observations specified supra within a period of four weeks from the date of receipt of this order.

46. Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs.