Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 14/08/2026

(1952) 08 AP CK 0003

In the Andhra Pradesh High Court

Case No : Application No. 296 of 1951-52

Rani Shankeramma APPELLANT

Vs

Government RESPONDENT

Date of Decision : 12-08-1952

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19(1), 225, 226
Court of Wards Act — Section 53, 8
Hyderabad Atiyat Inquiries Act, 1952 — Section 13
Jagir Abolition Regulation — Section 21

Citation : (1952) 08 AP CK 0003

Hon'ble Judges : Mir Siadat Ali Khan, J;Manohar Pershad, J

Bench : Division Bench

Advocate : Akbar Ali Khan and Sadasniva Rao, for the Appellant; Anand Swaroop Choudhri and Ram chandra Rao Nandapurkar, for the Respondent

Judgement

Manohar Pershad, J.—This is an application on behalf of Rani Shankaramma for the issue of Writs of Certiorari, Mandamus and Prohibition under Constitution of India - Article 226, to quash the order of the Revenue Minister, Hyderabad State, dated 19-6-1951, by which he rejected the petition of Rani Shankaramma for the release of the estate and allowed the appeal of Ramchandra Reddy and directed the Nazim-e-Atiyat to prepare an amended succession statement of Raja Durga Reddy declaring Ramchandra Reddy as the successor to Raja Durga Reddy, and for an order against Respondents Nos. 1 to 5 restraining them from enforcing the said order of the Revenue Minister, dated 19-6-1951, and prohibiting them and Respondents Nos. 6 and 7 from taking any proceeding in pursuance of the said order. Notice of this petition was given to the other side to show cause why this petition should not be admitted. After hearing the arguments of the parties, the petition was admitted and the other party was directed to file their counters.

2. Mr. Vaidya, on behalf of the Respondents Nos. 1-5 and Shri Nandapurkar Advocate on behalf of the Respondents Nos. 6and 7 filed their counters, after which the petition was posted for arguments. We heard the arguments of the

learned Advocates.

3. Shri Sadashiv Rao, Advocate, appearing on behalf of the Petitioner has raised various points :

(1) It is contended first that the nature of the decision of the Revenue Minister is quasi-judicial and as such amenable to the issue of prerogative writ;

(2) that the decision of the Revenue Minister on the point of what is a pending case is absolutely wrong in law and cannot be supported by any precedent. Further he had no jurisdiction to hear and decide the appeal in the matter of virasat :

(3) that the learned Revenue Minister has wrongly decided about the commutation money to be recovered from the Jagir Administrator; the only person legally entitled to get the commutation is the person in whose name Virasat was sanctioned. In flagrant contravention of thin final order, he has divided the amounts into three equal shares, which is beyond his jurisdiction;

(4) that the virasat sanctioned by His Highness could not have been cancelled by any authority according to the existing laws. The Revenue Minister has gone against the established principles of law and equity and has exercised a jurisdiction which he is not competent to do, that is, cancelling the Firman of the late His Highness passed in 1903;

(5) that the learned Revenue Minister has usurped the functions of the grantor and directed the Inam Commissioner to sanction the succession in favour of Ramchandra Reddy while the Petitioner in whose favour the virasat is sanctioned, is alive;

(6) the principle of Hindu Law relating to X surrender and other matters have also not been correctly laid down by the Revenue Minister. The decision in question is ultra vires;

(7) that the learned Revenue Minister without sending the application to the Atiyat Court for necessary action has erroneously usurped the functions of the trial Court and decided the case on merits; whereas the trial Court had only dismissed the application of Respondent No. 7 on a preliminary issue;

(8) that the learned Revenue Minister in not deciding the issue of the release of the estate in favour of the Petitioner has miserably failed to exercise a jurisdiction vested in him. The decision asking the parties to go to the Court of law in regard to non-Atiyat property so far as this Petitioner is concerned is against the principles of law of the Court of Wards and against natural justice. It was incumbent on the Revenue Minister to release the estate in favour of the Petitioner who is admittedly the ward on whose behalf the estate was held under the supervision of the Court of Wards for the last fifty years;

(9) that the finding of the learned Revenue Minister violates the fundamental rights of the Petitioner as guaranteed under the Constitution of India - Articles

13, 14, 19(1)(f) and 31 and the other provisions, relating to the functions of judiciary and the superintendence of the High Court according to Section 227;

(10) that the Jagir Abolition Regulation is ultra vires, and if it is held intra vires, then in so far as the present case is concerned, it does not come within the definition of pending proceeding;

(11) that Ramchandra Reddy''s adoption which is alleged to have been sanctioned by the Government has not been proved valid according to Hindu Law;

(12) that adoption of this kind does not mean that the succession is also admitted;

(13) that Ramchandra Reddy, does not succeed Ipso facto unless virasat proceedings are complete; and,

(14) that the judgment of the Atiyat Appellate Court is final. In view of this, the question cannot be opened again.

4. On behalf of the Respondents Nos. 1-5 Sri Anand Swarup Choudhury conceded that the nature of the decision of the Revenue Minister is quasi-judicial but contended that the Revenue Minister acted with (SIC) and in view of this, this Court ought to be reluctant to go into either the question of law or of fact. Reliance was placed upon the cases, L. Har Saran Dass and Others Vs. Mukandi Lal and Others, ; Parry & Co. v. C. E. Assocn. AIR 1952 Supreme Court 179; 1 All English Reports 449; Basu on Constitution 2nd. Edition pg. 1, 558 and 561; Flowing up the contention, it was urged that (SIC) if no adequate remedy is open, Writ of (SIC) would not lie. Reliance was placed by the case of - The Province of Bombay v. Khushal Doss S. Advani 1950 SCJ 451.

5. The second contention is that CI. 2 of Section 13 of the Atiyat Enquiries Act, No. X of 1952 has been given retrospective effect and as such an order passed cannot be challenged. The third contention is that the decision of the Revenue Court in so far as the adoption is concerned, is res judicata and thus it cannot be questioned at this stage. Reliance was placed upon the case of Harichand v. Mela Ram AIR 1932 Lah 523 : 6 Nazair Mai 524. Lastly, it is argued that this is not a fit case for the issue of a Writ of Certiorari.

6. On behalf of the Respondents Nos. 6 and 7, it is contended that as the petition before, the Nazim Atiyat was not for the Virasat of Raja Durga Reddy, but for an amendment of the ''Takhta Virasat? it cannot be said that the Revenue Minister had no jurisdiction. Relying on the ''Gashti 10 of 1338 F'' and 19 of 1332 F.'' and ''4 Nazair-Mal 93 and 785 it is contended that two Virasat proceedings in respect of one and the same deceased person are competent on the Intezami side. It is further contended that an application for sanction of Virasat in the name of another heir is permissible and all such proceedings would not only be deemed to be Intezami, but would be valid. Fourthly, it is argued that the judgment of the Atiyat Committee is res judicata in so far as the question of adoption is concerned and the same cannot be agitated again. Lastly, it is contended that as

the estate is still in the name of Raja Durga Reddy, whatever accretions are made to the estate, they would be deemed to be of Durga Reddy''s.

7. In order to understand and appreciate the arguments advanced on behalf of the parties, a brief reference to the facts of the case is necessary.

8. Raja Durga Reddy, the holder of the Papannapet Samasthan died on 2nd April 1900 leaving behind his widow, Rani Venkata Lakshraamma and a daughter Rani Shankaramma. The estate was taken under the supervision of the Court of Wards on 26th April 1900, and both the mother and daughter were placed, under its guardianship which continues upto this day. Succession proceedings were started in the Atiyat Department and after- a submission of an Arz-e-dasht by the then Madar-ul-Maham (Prime Minister) to the effect that Raja Durga Reddy has left no male issue, and has neither adopted any son, nor has given any permission to adopt, virasat may be sanctioned in the name of the daughter, with provision for the maintenance of Rani Lakshmamma; a Firman was issued by the late His Highness the Nizam on 29th May 1903 sanctioning the succession in the name of Rani Shankaramma, the daughter of late Raja Durga Reddy. This was formally announced in the Gazette Extra ordinary No. 35 dated 16th Azur 1313 F.

On 3-9-1903, Rani Lakshmamma sent a letter to the Revenue Secretary thanking him for the sanction of virasat in the name of Shankaramma. On 26-6-1908, Rani Lakshmamma submitted an application to the Revenue Secretary asking permission for the marriage of Rani Shankaramma with Pratap Reddy, according to the wishes of the late Raja Durga Reddy. This application was sanctioned by His Exalted Highness through a Firman dated 15th October, 1909, and accordingly, Rani Shankaramma was married to Pratap Reddy.

9. On 24-2-1919 Rani Lakshmamma as guardian of Rain Shankaramma started proceedings for the release of the estate from the Court of Wards. The Joint Secretary, the Revenue Secretary and the Revenue Minister all recommended that the estate should be released in favour of Rani Shankaramma. His Exalted Highness the Nizam refused to sanction the release of the estate. Again on 16th June 1922, a memorial was presented to His Exalted Highness by Rani Lakshmamma for the release of the estate, but this was also rejected. On 5th May 1927, a Commission was appointed to look into the question of the release of the estate On 13th March 1928, the Commission expressed its opinion for the release of the estate on condition that a man of the rank of First Talukdar should be appointed. On 19th March 1928 Vankat Pratap Reddy, husband of Rani Shankaramma died. Rani Lakshmamma put in a petition requesting that the estate Should not be released in favour of Shankaramma, but should be continued under the supervision of the Court of Wards.

After this, a petition signed by both Rani Lakshmamma and Shankaramma was filed before the Nazim-e-Court on 22-7-1929 requesting that permission be given to adopt. Rani Lakshmamma put a separate application to His Exalted Highness for permission to adopt a son to the late, Raja Durga Reddy. Rani Shankaramma objected to this petition, on which a regular, enquiry was directed to be made in Atiyat Department about the right of adoption. On 4-1-1934, the Atiyat Appeals Committee decided in favour of Rani Lakshmamma, On the basis of this, permission was granted by His Exalted Highness and Shri Ramchandra Reddy was adopted on 6th April 1934. The controversy as to the sanction of the adoption continued in the Courts of Subedar, Nazim Atiyat and in the Atiyat Appeals Committee. The final decision in this controversy was given by judgment dated 29th Amardad 1343 F., and a Firman was issued on 28-6-1934 sanctioning the adoption of Ramchandra Reddy by Rani Lakshmamma, the Senior Rani and mother of Rani Shankaramma. Five years after the sanction of the adoption, Ramchandra Reddy appeared in the Inam proceedings and requested that he may be made a party and the ''muntaqab'' should be issued in his name. This application was rejected by the Inam Commissioner. An appeal also was dismissed on 28th February 1938.

10. On 27th August 1941, Rani Shankaramma again put a petition for the release of the estate. This application was opposed by Rani Lakshmamma and Ramchandra Reddy. The Revenue Minister recommended that the estate be released in favour of Shankaramma which was assented to by Sir Mirza Ismail as Chief Minister. In the meantime, on 22-2-1947, Rani Lakshmamma filed a petition to the Revenue Minister which was rejected. Again, on 29th April 1947 another petition was presented which was heard by Mr. Qureshi, the then Revenue Minister, who gave his opinion against Shankaramma. The then Chief Minister approved the same. Against this, Shankaramma (SIC) petition; before Mr. Pradhan, the then Revenue Minister on 27th October 1948 stating that Mr. Laik Ali, as Chief Minister, had no right to go against the decision of the previous Chief Minister, Sir Mirza Ismail, This application .was, sent to the Revenue Board by the order His Exalted Highness.

11. After the Jagir Abolition Regulation came into force, the Nazim-e-Court of Wards presented a note to the Director General of Revenue inquiring whether the estate of Rani. Shankaramma should be released. This also came up before Shri Ramlal, Member of the Board of Revenue, who after hearing the arguments of the parties decided in favour of Rani Shankaramma. On 13-3-1950 Shri Sheshadri as Revenue Minister agreed with his opinion. Aggrieved by this, both Rani Lakshmamma and Ramchandra Reddy filed a petition which came up for hearing before Shri B. Ramkishen Rao the then Revenue Minister and now the Chief Minister. In the meantime, on the Atiyat Side, Ramchandra Reddy filed a petition to the Inam Commissioner, on 22nd June 1948, that is nearly ten years after the previous decision, of the Inam Commissioner, to reopen the virasat of Durga Reddy and order the payment of commutation amount to him. This application was rejected. After the enforcement of the Jagir Abolition Regulation, yet another application was filed by him who was also dismissed. Against this decision an appeal was-filed before the Revenue Minister. This appeal and the petition of Rani Lakshmamma and, Ramchandra Reddy on the Court of Wards" side were both heard by Sri B. Ramkishan Rao, the then Revenue Minister and

now the Chief Minister who has passed the order which has-given rise to this writ petition.

12. Before discussing the arguments of the parties, I would like to mention some of the admitted facts: (1) It is admitted that after the death of Raja Durga Reddy, on the recommendation of the Madar-ul-Maham (Prime-Minister) Virasat was sanctioned in the name-of Rani Shankaramma, the present Petitioner. (2) That the estate was taken under the Court of Wards; (3) that Ram Shankaramma was. married to one Pratap Reddy with the consent of Rani Lakshmamma; (4) that Pratap Reddy" died issueless and till the adoption of Ramchandra Reddi, Rani Lakshmamma, as guardian of Rani Shankaramma, tried to get the estate released in favour of Rani Shankaramma; (5) that the estate is still under the Court of" Wards'' supervision, and (6) that there were two-proceedings; one on the Court of Wards'' side and the other on the Atiyat side.

In the light of these admissions, I will consider the arguments of the learned Advocate one by one. Though the learned Advocates have raised many points, in my opinion, they can be grouped under four heads:(1) Whether the Revenue Minister had jurisdiction to hear the appeal as well as the petition filed on, behalf of Ramchandra Reddy and Rani Lakshmamma respectively; (2) What is the effect of the judgment of the Atiyat Appeals Committee dated 26th Farwadi, 1347 F. and CI. (2) of Section 13 of the Atiyat Enquiries Act No. 3 of 1952; (3) whether the Jagir Abolition Regulation is ultra vires the legislative authority of Hyderabad State; and (4) what is the effect of the adoption of Ramchandra Reddy.

12A. I would deal with the question of jurisdiction first, for, if it is held the Revenue Minister had no jurisdiction- to hear the appeal or the petitions on the Court of Wards'' side, it would be, in my opinion a fit case for the issue of a writ of certiorari, and if I hold that the Revenue Minister had jurist diction then in that case, the petition would be dismissed. Thus, the question of jurisdiction is most crucial in this petition. It is admitted by the parties that there were two proceedings in the Revenue Court: one on the Atiyat side and the other on the Court of Wards'' side. The proceedings on the Atiyat side originated first on the application of Rani Shankaramma dated the 14th Bahman, 1337 F., for the sanction of Inam situated in the jagirs and samasthans. Ramchandra Reddy and Rani Lakshmamma also appeared and claimed that the ''Munthaqah'' be issued in their name. On 15th Azur, 1347 F., the Nazim Atiyat decided that so long as Rani Shankaramma Is alive, the other party has no locus standi. An appeal was filed before the Committee Atiyat, which upheld the judgment With certain amendments.

12B. After this, Ramchandra Reddy filed two petitions before the Revenue Minister on 24th March 1949 and 26th April 1949. The petition of 24th March 1949 appears to relate to the question of compensation. On this, the Revenue Secretary, Sethu Madhava Rao, endorsed that "no action is necessary for the present on the Court of Wards'' side: we are not competent on the Atiyat Side." The Revenue Secretary and the Revenue Minister, both agreed with this.

Accordingly, a Fahmaish was issued to the Petitioner to the effect that parties should appear in the Atiyat Court and get their claims decided. The second petition of 26th April 1949 relates to the sanction of the virasat and the release of the estate It Appears that no action was taken on this petition.

13. After this on 22nd June 1949, a petition was filed by Ramchandra Reddy before the Nazim Atiyat. This petition was rejected by the Assistant Secretary on 11th Aban 1358 F., o n the preliminary issue that virasat cannot be sanctioned when the ''mashdar'' (holder) is alive It was further held that in view of the present Jagir Abolition Regulation, the question of possession does not arise. Shri Ghulam Hyder, the then Nazim agreed with this opinion. The second application of 24th October 1949 which was for re-hearing, was also project by Naizim. An appeal was filed before the Revenue Minister which was allowed by order dated 19-6-1951 which is the subject of this petition. On the Court of Wards'' side proceedings were first started by Rani Lakshmamma as guardian of Rani Shankaramma for the release of the estate. His Exalted Highness rejected this petiton. Again in the year 1922, Memorial was submitted to His Exalted Highness by Rani Lakshmamma as guardian for the release of the estate; this too was rejected. Later a Commission was appointed to look to the question of release. This Commission commended that the estate should be released, (SIC) man of the rank of a Taluqdar should be appointed.

In the meantime, Rani Shankaramma''s husband Pratap Reddy died, after which it appears that relations between the mother and daughter became strained and when Rani Shankaramma applied again for the release of the estate Rani Lakshmamma opposed this and (SIC) that the estate should be continued under the supervision of the Court of Wards. (SIC) the meantime Ramchandra Reddy was (SIC) by Rani Lakshmamma and when Rani (SIC) in a petition for the (SIC) of the estate, both Rani Lakshmamma and Ramchandra Reddy opposed the same. The Revenue Minister expressed his opinion, that the estate should be released and this was assented to by the then Chief Minister, Sir Mirza Ismail, but before a Firman could be obtained, Rani Lakshmamma put in a petition again before the Revenue Minister against the decision, and the then Revenue Minister decided in favour of Rani Lakshmamma and against Rani Shankaramma; this decision was approved by the then Chief Minister Mir Laik Ali.

After the Police Action, Rani Shankaramma, put in a petition before the Revenue Minister, staling that Mir Laik- Ali was not competent to go against the previous decision, on which His Exalted Highness ordered that the case be sent to the Revenue Board for decision. Shri Ramlal, the member of the Revenue Board, decided the case in favour of Rani Shankaramma: the Revenue Minister, Mr. Sheshadri agreed with this opinion. Ramchandra Reddy and Rani Lakshmamma put in a petition again which came up for hearing before the then Revenue Minister, Shri B. Ramkishan Rao, now the Chief Minister.

14. Shri Sadashiv Rao, Advocate appearing on behalf of the Petitioner very candidly conceded before us that so far as the release of the estate is concerned,

the Revenue Minister had jurisdiction to hear the petitions, but his objection is that as Sir Mirza Ismail had given his approval to the opinion of the Revenue Secretary for the release of the estate, that question had become ''res judicata'' and cannot be agitated over again. Secondly, it was urged that the Revenue Minister has absolutely failed to exercise a jurisdiction vested in him in not deciding the issue of the release of the estate in favour of Rani Shankaramma who is admittedly the ward on whose behalf the estate was being held under the supervision of the Court of Wards.

15. So far as the first argument is concerned, Shri Sadashiv Rao, however, admits that the order of the Chief Minister was not approved by His Exalted Lightness and that no Farman was issued in that regard. Once it is admitted that the Chief Minister''s orders did not receive the assent of His Exalted Highness it cannot be said that that matter became final. It was His Exalted Highness at that time that was the final authority regarding Crown Grants, and as no Farman was issued it cannot be said that the matter rested there. It follows, therefore, that in so far as the release of the estate is concerned, it cannot be said that the Revenue Minister had no jurisdiction to hear the later petitions filed on behalf of Ramchandra Reddy and Rani Lakshmamma. It is contended that the Chief Minister had given his approval to the decision of the Revenue Minister, as such it cannot be now questioned.

It should be remembered also that Mir Laik Ali as Chief Minister too had given his assent to the opinion of the then Revenue Minister against Shankaramma. In view of this, the later application of Rani Shankarmma after the Police Action could not be entertained. As discussed above, the final authority was the His Exalted Highness and as there is no Farman either for the release of the estate or for its retention, each party as of right was entitled to agitate the matter till it was finally decided.

16. with regard to the other contention which refers to the failure of the exercise of jurisdiction Shri Sadashiv Rao, advocate, contends that as virasat was sanctioned in the name of Rani Shankaramma and she is still alive any question of succession would be premature; the only person entitled to the release of the estate being Rani Shankaramma. Thus, the Revenue Minister has failed to exercise his jurisdiction in not releasing the estate in her favour.

17. On behalf of Shri Ramchandra Reddy and Rani Lakshmamma, it is argued that Ramchandra Reddy has been adopted by the authority of His Exalted Highness and the virasat sanctioned in the name of Rani Shankaramma would be cancelled and he would divest her of the estate which had vested in her, The Revenue Minister has held that the decision on the question of the release of the estate and the title to compensation depends upon the fundamental issue as to who was entitled to the succession of the Samasthan and Ramchandra Reddy as the adopted son of Rani Lakshmamma can divest Rani Shankaramma of the estate which came to vest in her as an intermediate heir. Thus, in the opinion of the Revenue Minister, the virasat sanctioned in the name of Rani Shankaramma

was not final, but as an intermediate heir, and would automatically be cancelled on the adoption of Ramchandra Reddy or according to him it ment that the virasat sanctioned in the name of Rani, Shankaramma was subject to the sanction of adoption.

18. In order to appreciate this point, I have to consider the question of the adoption of Ramchandra Reddy and its effect. On behalf of the Petitioner it is urged in the first place that Raja Durga Reddy had given no authority to Rani Lakshmamma to adopt and as such, Rani Lakshmamma could not adopt at all. His second contention is that if Ramchandra Reddy''s adoption is based on the authority of His Exalted Highness, such an adoption would not be valid according to Hindu Law, and would not entitle him to the other property. It is next contended that an adoption of this kind cannot relate back to the death of the father nor can it have the effect of divesting the estate which had vested in her. Fourthly, it is (SIC) that in the very Farman sanctioning the adoption of Ramchandra Reddy, it is stated that Ramchandra Reddy would be entitled to the estate later which means, after the death of Rani Sankaramma, and therefore, the question of his succeeding in her life-time does not arise.) it is contended that Rani Lakshmamma by her own admission and acts had completely surrendered her rights in favour of her daughter which amounts to civil death, thus debarring her from claiming any right to succession, In view- of this, she was not entitled to, adopt Ramchandra Reddy nor would such an adoption give any right to the adoptee.

19. On behalf of Respondents Nos. 6 and 7. It is contended that Raja Durga Reddy had given authority to Rani Lakshmamma to adopt and it was on the basis of such authority that Rani Lakshmamma adopted Ramchandra Reddy and the adoption is valid according to Hindu Law it is further contended that the opposite party cannot raise this point as this question of sanction was not argued before the Revenue Minister, and further it has been finally decided by a competent authority and that judgment is final as between the parties. With regard to the rights of the adopted son, if is contended that it relates back to the death of the adoptive father and as such he would divest Rani Shankaramma of the estate which vested in her. On the question of surrender, it is contended that there was no valid surrendear both the surrender or and the surrendered were minors at the time the succession opened. It was further contended that it was not a valid surrender because it was not a voluntary act of Rani Lakshmamma, but a decision given by the ruler on the recommendation of the Government.

20. I would first take up the question whether Rani Lakshmamma had the requisite authority to adopt. On behalf of the Petitioner, our attention was drawn to the Arz-e-dasht of 31st March 1933 presented to His Exalted Highness by the then Madarul-Maham (Prime Minister) and it is urged that the Arz-e-dasht does not state that Raja Durga Reddy had left any male issue or that he adopted a son or gave permission to adopt. In view of this and in the absence of any other evidence the adoption cannot be held to be valid.

21. On behalf of Ramchandra Reddy it is contended that Rani Lakshmamma had permission to adopt and this fact was not only alleged but evidence was also led, and it has been finally decided by a competent court and cannot be challenged now. Reliance is placed on the case of Rani Shankaramma v. Rani Lakshmamma and Ors. 6 Nassir pages 524

22. On behalf of the Petitioner, it is urged that the evidence referred to was recorded ex parte and she was not given any opportunity to cross-examine those witnesses; in other words, it is contended that such evidence is not according to law nor can it be used against the Petitioner.

23. In reply it is however urged on behalf of Ramchandra Reddy that even assuming that Raja Durga Reddy had not given any authority to adopt, the permission of the Ruler can be deemed to be sufficient authority and, as His Exalted Highness has given such permission, it cannot be said that the adoption is without any authority. It may be pointed out here that in the Arz-e-dasht of the then Madar-ul-Maham dated 31st March 1933, it is clearly stated that Raja Durga Reddy has not given any authority to his widow. This is a strong piece of evidence both against Rani Lakshmamma and Ramchandra Reddy. Now I have to see whether there is sufiicient material, on record to rebut the statement of the Madar-ul-Maham in the Arz-e-dasht. The learned Advocate for the other side relied on the evidence led by them. From a perusal of the record, I find that this evidence has been recorded ex parte and the other party was not given any opportunity either to cross-examine those witnesses or produce any evidence.

The learned Advocate for Ramchandra Reddy and Rani Lakshmamma also concede this point. This evidence cannot, therefore, be deemed to be according to law nor can it be used againift Rani Shankaramma. This fact is sufficiently borne out by the judgments of Nawab Rahraat Yar Jung the then Nazim Atiyat dated 9-9-1943 and the judgment in the case of Rani Shankaramma v. Rani Lakshmamma 6 Nazair Mai 540, relied upon by Rani Lakshmamma and Ramchandra Reddy. In the later judgment, it has been laid down that so (SIC) as the question of the authority to adopt is concerned, the enquiry had not been completed and if the judgment were to be based on this point alone, then in that case, the case would have been remanded to the court below, thus, it follows that the members constituting, the Bench were also of the opinion that there was no sufficient material on record regarding the husband''s authority.

24. The learned Advocate for Rani Lakshmamma and Ramchandra Reddy could not satisfy us whether there was any other sufficient material on record to prove the fact of the husband''s authority. I find that the Revenue Minister has also not adverted to this point. It is urged that this point was not raised before the Revenue Minister and it cannot be raised here. I am afraid, I cannot accept, this contention for, Rani Shankaramma''s plea all along has been that Rani Lakshmamma had no authority of her husband to adopt. Thus, she cannot be debarred from raising the question before us. In the absence of which (sic) the question could not have been decided without further enquiry. On behalf of

Ramchandra Reddy and Rani Lakshmamma, it is contended that the judgment of the Atiyat Committee is final. I am afraid I cannot agree with the contention in toto. What has been decided in the said case is that so far as Jagir was concerned the authority given by the Ruler is sufficient. The question whether Rani Lakshmamma had the requisite authority of her husband has not been decided and so this fact cannot be said to be final.

In the result, on the present material on record, it cannot be held that Rani Lakshmamma had her husband''s authority to adopt. This does not however mean that Ramchandra Reddy would be debarred from establishing the validity of his adoption in a proper court of law. After this I have to see whether the authority given by the Ruler would be sufficient and whether such an adoption would relate back to the death of the father.

25. Shri Sadashiv Rao, Advocate, very candidly conceded that so far as the Atiyat property is concerned, the authority given by the E. H. would be deemed to be sufficient but contends that such an adoption is not valid ling to Hindu Law and would not entitle adoptee to the non-atiyat property. Accord-Hindu Law, an adoption by a widow only be valid if the widow had the requisite authority to adopt. Shri Nandapurkar raised a novel point that there being no (SIC) of Durga Reddy in existence at the time of the adoption, whose assent could be (SIC) Rani Lakshmamma had an Inherent authority of her own volition. I am afraid I cannot accept this contention. The parties admittedly belong to the Madras School of Law, and according to that school the does not have any residuary power to in the absence of the sapindas. I cannot with him that if there are no sapindas In existence, a widow could adopt without any (SIC) under the Madras School of Hindu If that were the meaning, then there be no, difference between the Madras and the Bombay School.

26. As stated above, the adoption has taken on the authority of His Exalted Highness and not under the authority of Raja Durga Reddy and as such it cannot be said to be valid according to Hindu Law. A valid adoption according to that law would relate back to the death of the father. The Revenue Minister has held that the adoption of Ramchandra Roddy relates back to the death of his father and that as such he could divest Rani Shankaramma of the estate which came to her. The Revenue Minister has come to this conclusion basing his arguments on the fact that after Raja Durga Roddy Rani Lakshmamma was the rightful owner, and the object of the authorities in recommending Rani Shankaramma as successor appears to be to save the Samasthan from being resumed by the Ruler, and Rani Shankaramma would be expected to continue the line of Raja Durga Reddy through a son born to her. Thus, this deviation from the personal law was made for continuing the line of Raja Durga Reddy. I regret I cannot agree with the opinion of the Revenue Minister. No authority has been cited on behalf of Ramchandra Reddy to show that adoption of this type relates back to the death of his father.

The question of divesting Rani Shankaramma would only arise if Ramchandra

Reddy''s adoption was valid according to Hindu Law or if Rani Shankaramma''s virasat was sanctioned subject to any adoption by Rani Lakshmamma. At the time of the sanction of the virasat, there was no question of Ramchandra Reddy''s adoption. On the contrary, in the very Farman sanctioning the virasat in the name of Rani Shankaramma, there is a positive direction that a son born to Rani Shankaramma would be the next heir. Even in the Afz-e-dasht (subsequently sanctioned by a Farman) relating to the adoption of Ramchandra Reddy it is specifically stated that he would be entitled to the samas than after the death of Rani Shankaramma. Thus I fail to understand how Ramchandra Reddy could divest Rani Shankaramma of the estate vested in her. The Revenue Minister has held that Rani Shankaramma was an intermediate heir. This is not borne out by the record; on the contrary, the Farman sanctioning the virasat is clear. Admittedly virasat is sanctioned in the name of Rani Shankaramma, and as she is still alive, no question of succession can arise. Further, mere adoption by itself, does not entitle the adoptee or clothe him with any rights to property unless he appears in the virasat proceedings and gets his virasat sanctioned.

27. The Revenue Minister has held that Ramchandra Reddy as an adopted son can claim the commutation amount of the samas-tlian as well as the release in his favour, of such non-jagir property of Raja Durga Reddy as is under the supervision of the Court of Wards., I regret I cannot agree with his opinion. Ramchandra Reddy''s adoption, on the records now before us, does not appear to be valid according to Hindu Law virasat stands sanctioned in the name of Rani Shankaramma and during her life-time Ramchandra Reddy can neither be entitled to commutation amount nor the release of the other non-jagir property. The estate was taken under the supervision of the Court of Wards for the benefit of Rani Shankaramma, the Ward and if at all it has to be released it can only be released in her favour as the ward and none else. Thus, in my Opinion, the Revenue Minister has failed to exercise the jurisdiction vested in him in not ordering the estate to be released in her favour, failure to exercise jurisdiction has been held to be a good ground for the issue of a writ of certiorari, vide Mohsin Ali v. State of Bombay 1951 Bombay 353. In view of the above findings, I think it is unnecessary to decide, the- question of the surrender of the state though much stress was laid on this paint before the Revenue Minister and his judgment deals with this point at considerable length.

28. Now I turn to the question which relates to the nature of the proceedings on the Atiyat Side: whether they were virasat pro, feedings or proceedings for an amendment of the ''Muntaqab''. At the outset it may be made clear that the Nazim-e-Atiyat has a two-fold function on the Intezami (Administrative) side his position is that of a Joint Secretary and against, his order an appeal lies to the Revenue Minister (Saidar-ul-Maham). On the regular & original (ptedayi or Infesali) side, that is, in regard to virasat and Inam enquiries, his position is that of a Nazim against whose decision Slit -appeal lies to the Atiyat Appeals Committee

29. The contention of the learned Advocate for the petioner is that the petition of Ramchandra Reddy dated the 22nd June 1949 before the Nazim-e-Atiyat was for the virasat and therefore, an appeal against the decision of the Nazim ought to go before the Committee Atiyat and not before the Revenue Minister and so the Revenue Minister was not competent to hear the appeal.

30. Secondly, it is argued that after the Hyderabad Jagir Abolition Regulation of (SIC) F came into force, no proceedings either before the Nazim-e-Atiyat or before the Revenue Minister could go on and it was the civil court that was competent under CI. (2) of Section 21 of the said Regulation. He, therefore, contends that the Revenue Minister had no jurisdiction to hear the petition and his judgment should be quashed.

31. The learned Advocate for the Respondent while conceding that the Nazim-e-Atiyat has a two-fold function, contends that as the petition of Ramchandra Reddy was for the amendment of the ''Muntaqab'' the Revenue Minister was competent to hear the appeal. As regards CI. (2) of Section 21 of the Jagir Abolition Regulation it is replied that as the proceedings had already started before the Regulation came into force, CL (2) of Section 21 would not apply but the. proviso to that section would govern the case.

32. It appears that there was a two-fold Contention on behalf of Rani Shankaramma before 1 the Revenue Minister. The first conception was that the Nazim-e-Atiyat had no jurisdiction'' to entertain the application filed by Ramachandra Reddy afer the Jagir Abolition ''Regulation, came into force, and it was only the Civil Court that was competent under CL (SIC) 21 of the Regulation and no appeal could lie against this decision. The second contention that the order passed by the Nazim-e-Atiyat was on the virasat side and therefore the Revenue Minister was not competent to the appeal and decide it, but only the Atiyat Appeals Committee.

33. On behalf of Ramchandra Reddy, it was contended there (and before us also) that his petitions were filed respectively on 24-3-1949 and 26-4-1949, while the Jagir Abolition Regulation came into force only on 15-8-1949 and therefore, CL. (2) of Section 21 of the Jagir Abolition Regulation would not apply, but the proviso(SIC) to Section 21, CI. (2) of the said Regulation would apply and according to it all pending cases would be completed in accordance with the existing law "as if this Regulation had not'' been enacted". The Revenue Minister, agreeing with this contention of Ramchandra Reddy, held that the proceedings out of which the appeal before him arose, were started about four months prior to the date of enforcement of the Jagir Abolition Regulation, they would, therefore, (according to him) be covered by the proviso to Section 21, CI. 2. That being so (he held), the proceedings were pending on the date of the enforcement of the Jagir Abolition Regulation "and there can be no doubt, therefore, that the Atiyat Court as well as he, the Revenue Minister, as the appellate authority has jurisdiction to hear and dispose of these petitions".

34. He further held that as the order passed by the Nazim-e-Atiyat is on the Atiyat Intevzami (Administrative) side, an appeal lies to the Revenue Minister, and as such, he is competent to hear it. Thus, it would appear from this that the Revenue Minister claims to have jurisdiction on the ground that the proceedings were pending proceedings and also because he thinks that the order passed by the Nazim-e-Atiyat was on the Intezami (Administrative) side.

35. I would first consider the question whether the proceedings started by Ramchandra Reddy were pending proceedings, having been started before the Jagir Abolition Regulation came into force. The Jagir Abolition Regulation dame into force on 15-8-1949. The petition before the Nazim-e-Atiyat is elated 22nd June 1949: the two other petitions before the Revenue Minister were filed on 24-3-1949 and 2C-4-1949 and the fourth petition before the Nazim-e-Atiyat for, rehearing is dated 24th October.

36. Clause (2) of Section 21 of the Jagir Abolition Regulation runs thus:

All claims relating to Jagir or to any share of the income thereto whether arising under the regulation or otherwise shall, subject to this Regulation, but notwithstanding, any existing law, be filed in, and decided by, the appropriate Civil Court: provided that any; proceedings pending at the commencement this Regulation before an Atiyat Court of before a Commission or any other authority shall be completed in accordance with the existing law, as if this regulation had not been enacted.

37. On the petition of 22nd June 1949, the Assistant Secretary endorsed his opinion. 11th Aban 1358 F. (11th September 1949) to the effect that the petition should be dismissed because virasat cannot be opened when the ''mashdar'' is alive. On the same day, Shri, Ghulam Hyder, the then Nazim-e-Atiyat, agreeing with the opinion of the Assistant Secretary dismissed the petition. No action seems to have been taken against this order of the Nazim.

38. On the petition of 24th March 1949, to the Revenue Minister, the Assistant Secretary Sethu Madhava Rao, endorsed: "no action is necessary on the application for the present on the of Wards'' side; we are not competent Atiyat Side". The Revenue Secretary the Revenue Minister both agreed with opinion. The Revenue Minister further directed that suitable endorsement be sent to the party. Accordingly, on 19-8-1358 F. a (SIC) (intimation) was issued stating that parties should go to the law court and get their claims decided.

On the other petition of 26th April 1949, ears that no action was taken. On the of the ''Fah-e-maish'' dated 19-8-1358 F., petition was filed by Ramchandra on 24th October 1949 to the Nazim-e-Atiyat for rehearing and this was dismissed on 25-1-1949 by Shri Ghulam Hyder, against Which an appeal was filed before the Revenue f Minister which was allowed on 19-6-1951.

40. Thus, the petition of 22nd June 1949 to the Nazim-e-Atiyat and the petitions dated 4-3-1949 and 26-4-1949 to the Revenue Minister were it appears, all filed

along before the Jagir Abolition Regulation came into force. The petition of 22nd June 1949 was dismissed on the September 1949, and apparently no action was taken against this order, nor does any action seem to have been taken on the petition of 26th April 1949. The Jagir Abolition Regulation came into force on 15-8-1949 as stated already, and though the petition of 22nd June 1949 was dismissed on 11th September 1949, the party did not take any action and under the circumstances it can hardly be said that there was any proceeding pending when the Regulation came into force. No doubt, the second petition before the Nazim-e-Atiyat dated 24th October, 1949 was filed after the Jagir Abolition Regulation, but this petition is neither for the amendment of the Taqt-e-Virasat nor for the Virasat itself, but a mere petition for rehearing. If the previous petitions had not been dismissed or if after the dismissal some action by way of appeal or review had been taken, and in the meantime, the Jagir Abolition Regulation had come into force, then it could be said that they were pending proceedings started before- the Jagir Abolition Regulation came into force and proviso to Section 21, Clause 2 would have applied. The petition of 24th October 1949 is a petition for rehearing and such a petition cannot be said to be a continuation of the proceedings started before. In view of this, I regret I cannot agree with the opinion of the Revenue Minister that the proceedings were pending proceedings. When the proceedings were not pending proceedings, CI (2) of Section 21 (and not the proviso thereto) of the Jagir Abolition Regulation would clearly become applicable and so neither the Nazim-e-Atiyat nor the Revenue Minister could dispose (SIC) the petitions or the appeal and it was only the civil Court which would be competent.

41.We have now to consider the nature of (SIC) petitions filed by Ramchandra Reddy and (SIC) purpose a glance at their contents becomes necessary.

(a) In Para 1 of the petition 22nd June 1949, it is stated that the Petitioner had filed two petitions to the Revenue Minister; Para IV avers that the petitions may fed as part of the present petition; Para (SIC) recites that the virasat of the late Raja Durga Reddy was sanctioned in the name of Rani Shankaramma his daughter. In Para VII it is claimed that the effect of the virasat of the late Raja Durga Reddy was sanctioned in the name of Rani Shankaramma was not to make her entitled to possession of any mash in view of the distinct and express opinion "contained in the Farman of His Exalted Highness. Para 10 contains the prayer to the effect that the virasat of late Raja Durga Reddy be sanctioned in his name and possession of the same be granted to him.

(b) The petition dated 24th March 1949 is however, for compensation: in this petition also it is admitted that Raja Durga Reddy''s virasat was sanctioned in the name of Rani Shankaramma. The prayer is that compensation may be given to him. In this petition also there is no mention of any amendment of the ''muntaqab''.

(c) In the petition of 26th April 1949 also, it is recited and admitted that virasat was sanctioned in the name of Shankaramma while the request is that as he is the adopted son, the virasat of Durga Reddy may be sanctioned in his name.

(d) The petition of 24th October 1949 is a mere petition for rehearing.

42. In all these petitions there is no prayer at all for the amendment of the ''muntaqab''. On behalf of Ramchandra Reddy, it is contended that though there is no clear prayer for an amendment of the Takhta Virasat, still there is a prayer that possession may be given to him, and as Shankaramma is alive and in her lifetime no virasat proceedings could start, once virasat had been sanctioned, it is argued, all other proceedings either relating to them or arising out of them, would be deemed to be Intezami (administrative) and would be dealt with on the Intezami (Administrative) side. The petition would, therefore, it is urged, be deemed to be a petition for an amendment of the ''muntaqab'' on the Intezami (Administrative) side. In this connection our attention was drawn to Section 13 of Gashits (Circular) Nos. 10 of 1338 F. and 19 of 1332 F. and two cases reported in pages 93 and 785 of Nazair Mal Vol IV.

43. Clause 1 of Section 13 of Gashti No. 10 of 1338 F. may be rendered in the English version as follows:

In Inam and Virasat proceedings the shares of the sharers would be determined and it will be incumbent on the holder of the mash to pay the shares of the respective share-holders, and if he fails to do so, the Taluqdar would be entitled to act according to Section 73 of Gashti 26 F., that is, by confiscating the revenue." Clause (b) of Section 13 enjoins: "If any Hissedar dies and his virasat proceedings are pending before a competent authority and the other ''guzareyab'' (maintenance holders) or the sharers complain that they are not receiving the amount of their share, then their complaint would be heard by the said authority.

44. Clause (c) refers to the payment and sanction of the ''guzara'' during the pendency of the Inam and Virasat ''Tahqiqat'' (enquiry).

45. The contention of the learned Advocate for the Respondent is that as during the lifetime of Rani Shankaramma no virasat proceedings could be started, any proceeding other than that would be deemed to be administrative and would be dealt with on the administrative according to this Gashti. It is true that proceedings of the type mentioned in Section 13 of the Gashti 10 of 1338 F. are administrative in nature and would be dealt with on the Intezami side, but it does not follow from this that any proceedings not inherently administrative in nature and would also be deemed to be administrative and would be dealt with administrative. This contention is not brone out by anything, contained in Section 13 of Gashti 10

46. The object of Gashti No. 19 of 1332 F. is to show what class of cases would be dealt with by the Nazim-e-Atiyat and the Sadar-ul-Maham. The learned Advocate for the Respondent drew our attention to item No. 42 of this. Gashti which refers to the amendment of the Taqt-e-virasat and would only apply if the

proceedings are for the amendment of the Taqt-e-virasat. The ruling cited in support, namely, Khaja Bi v. Mohd. Shabberali 4 Nazair Osmania 93 is a case where there was no question of any Virasat or Inam enquiry. It was a case of restitution of possession on the basis of a decree of a civil Court. It was, therefore, correctly held in that case that as the proceedings did not relate either to the Virasat or the Inam enquiry, the Nazim-e-Atiyat had no right to hear the appeal. This is not so in the present case and so this ruling does not help the contention of the learned Advocate. The case of Vilas Rao v. Riasat Begum 5-4 Nazair 785 also cited before us is equally of no help to the learned Advocate. This is a case where proceedings were started on a ''muqabarri'' (informant proceedings) after virasat proceedings had closed and so it was held that the proceedings were administrative in nature

47. The Revenue Minister has held in the present case that the order passed by the Nazim-e-Atiyat to be on the Intezami (Administrative) side. I have gone through the whole judgment but I regret, I could not find any reasons given for such an assumption.

48. After going through the petitions and after giving a careful consideration to the arguments, I came to the conclusion that proceedings before the Nazim-e-Atiyat could not be held to be either on the Intezami (Administrative) side or for an amendment of the Taqt-e-wasat. The amendment of the Taqt-e-virasat only be done when there is any mistaket in the Taqt-e-virasat, or the taqta has been issued against the sanction. It is not the case of Ramchandra Reddy, that there is any mistake the Taqt-e-virasat or that the taqta has been issued against any sanction. The petitions of adoption Reddy are to the effect that his option has been sanctioned and that therefore the virasat of Raja Durga Reddy should W; Sanctioned in h}s name and that the commotion amount be given to him. In these (SIC) it is . admitted that Durga Reddy''s virasat was sanctioned in the name of Rani Shankaramma. It does not appear that this virasat was sanctioned subject to the right of any adopted son. Thus I cannot hold that the petitions were for the amendment of the Taqt-e-virasat. The contention is that as Rani Shankaramma is alive no virasat proceedings would arise and proceedings after the virasat would be deemed to be miscellaneous and administrative in nature. As a general proposition of law it may be true that once virasat proceedings terminate, all miscellaneous proceedings which do not relate either to virasat or Inam enquiry would be administrative in nature and would be dealt with according to Gashti 10 of 1338 F. and Gashti 19 of 1332 Fasli

49. The fact whether the nature of the proceedings is administrative or not has to be determined according to the contents and the prayer and not on any general principles. In the petitions, the prayer is for the sanction of the Virasat. In view of this the argument that as no Virasat proceedings could start in the life-time of the mashdar the petitions may be treated to be for amendment, does not hold good. It is true that in the lifetime of the ''mashdar'' virasat cannot be opened but merely on this account the nature of the petitions would not change.

To my mind the proceedings started before the Nazime-Atiyat, were regular virasat proceedings and not for any amendment of the Taqt-e-virasat, that is administrative and any decision given by the Nazim-e-Atiyat would be subject to an appeal before the Atiyat Committee and not the Revenue Minister. The Revenue Minister is only competent to hear appeals of the Nazim-e-Atiyat on the Intezami (administrative) side and not on the regular side. No specific provision of law was shown to us justifying the assumption of jurisdiction in a case like this. The Gashtis (Circulars) and the cases cited on behalf of Ramchandra Reddy and Rani Lakshmamma are not applicable to the facts of the present case and the Circulars do not confer such jurisdiction. Jurisdiction is-not conferred on grounds of natural justice. Jurisdiction has to be specifically conferred by statute and more so in the case of administrative bodies exercising judicial or quasi-judicial functions. Such bodies have to keep themselves strictly within the four corners of jurisdiction that is specifically conferred upon them, otherwise, their orders become null and void. I am, therefore constrained to hold the order of the Revenue Minister is beyond jurisdiction and that he assumed a jurisdiction not conferred on him by law and passed the order under question.

50. The next question that I have to consider is whether a writ of certiorari would lie. It has not been disputed that the decision of the Revenue Minister is a quasi-judicial act. The jurisdiction which the High Court exercises in issuing writs is a limited jurisdiction. The Court is not a court of appeal nor is it a court of revision. It has no power to correct either findings of fact or even errors of law.'' Its sole function is to correct persons or tribunals exercising judicial or quasi-judicial functions when they assume jurisdiction wetted) they do not possess or when they refuse to exercise jurisdiction which is vested in them by law, or when in the exercise of their jurisdiction they violate the principles of natural justice. This is the gist of the rulings cited by Shri Anand Swarup Choudhury and I completely agree with them and these do not need any detailed discussion.

51. Finally it is urged on behalf of the State by Shri Anand Swarup Choudhury, that the decision of the Revenue Minister has been accepted, by the then Chief Minister and is thus final and cannot be questioned in any Court of law, as per CI. (2) of Section 13 of the Hyderabad Atiyat Enquiries Act No. X of 1952 and her therefore, contends that this is not a fit case for the issue'' of writ of certiorari.

52. On behalf of the Petitioner it is urged that when the Revenue Minister had inherently ho jurisdiction, any amount of sanction by the Chief - Minister would not validate it.

53. It was further urged that according to Gashti 10 of 1338 F. only such orders would be I (SIC), to the Chief Minister which need confirmation, and when the contention of the resents is that the order passed by the Revenue (SIC) was on the administrative side, no question of confirmation arises at all.

54. Thirdly, it is contended that the Act does in any way take away the extraordinary (SIC) of the High Court which are given to it under the Constitution

of India - Article 226, Reliance was placed on Halsbury''s Laws of and, Vol. 9 paras 1455, 1458 and 1575 and he rulings cited in and Ravi Pratab Narain Singh Vs. The State of Uttar Pradesh and Another, Section C. 222

55. Lastly it is contended that the Act was passed after this petition was filed in this Court and after a notice was served on the respond-s Ito show cause and the object in passing Act seems to be to defeat the object of the Petitioner.

56. (Shri Anand Swarup Choudhury, Advocate on behalf of the Government, very candid(SIC) conceded before us that if it is held that Revenue Minister had no jurisdiction, then lai case, the sanction of the Chief Minister Id not be valid.

57. Shri Nandapurkar, Advocate for Ram-LCTO Reddy and Lakshmamma, contends that I though the order of the Revenue Minister (SIC) be valid, yet when sanction has been given by the Chief Minister, such sanction must (SIC)to be valid. Following up the contention it is argued that the very object of passing Act was to validate what was otherwise

58. In order to appreciate the view points of the reference to CI. (2) of Section 13, the Hyderabad Atiyat Enquiries Act, No. X of is necessary, which runs as follows:

(2) The orders passed in cases relating to Atiyat Grants including Jagirs on or after the 18th September 1948 and before the com(SIC) of this Act by the Military Governor the Chief Civil Administrator, or the chief Minister of Hyderabad or by the Revenue Minister by virtue of powers given or I- purporting to be given to him by the Chief E; chief Minister shall be deemed to be the final Orders validly passed by a competent authority under the law in force at the time when order was passed and shall not be questioned in any court of Law.

59. Recording to the above provisions therefore "the orders of the Military Governor, the chief Civil Administrator, or the Chief Minister shall be final and will not be questioned", as regards the Revenue Minister an exception has been made that his orders would be final if they are given by virtue of powers given or purporting to be given to him by the chief Minister. As the other side has not pressed the point of the finality of this order of the Revenue Minister do not wish to discuss that point and confine myself to the question ;of the finality of the order of the Chief Minister.

60. While discussing the question of the nature of the proceedings it has been held that the orders of the Revenue Minister were without jurisdiction. There is no doubt that the Petitioner is challenging the legality of the sanction and it is clear that the jurisdiction of this Court to consider the validity of the sanction would not be barred if the orders passed or the action taken was without jurisdiction. Any order passed or any action taken in excess of jurisdiction or in improper exercise thereof would not be an order or action contemplated by CI. (2) of Section 13 of the said Act. Therefore, if the order passed was in excess of jurisdiction or was passed in violation of the fundamental principle of natural

justice then that order would be cancelled by the issue of a writ of certiorari by this Court,. exercising its extraordinary jurisdiction. No authority has been, cited on behalf of Ramchandra Reddy, to show that, an order passed without jurisdiction would be valid by such a sanction. Thus I do not agree with the contention on behalf of Ramchandra Reddy that the sanction given by the Chief Minister would validate an inherently invalid judgment.

61. The next point which deserves consideration is whether the said Act has in any way curtailed the powers of the High Court in issuing a writ of certiorari.

62. In this connection, it is necessary to bear in mind Article 226 of the Constitution of India. That Article not only confers wider powers upon the High Court but also declares the powers already enjoyed by the High Court. Article 226 of the Constitution, while declaring the powers of the High Court, and making, those powers part of the Constitution, has placed those powers beyond the challenge of the legislature. Before the Constitution came into force, the powers of the High Court to issue various writs could have been affected or modified by the appropriate legislature. Now inasmuch as these powers form part of the Constitution itself, they cannot be altered or affected by any legislature. These powers of the High Court can in any way be touched by means of the amendment of the Constitution. Thus, to the extent that any legislation seeks to take away the powers of the High Court to issue any writ, direction or order contemplated by the Constitution of India - Article 226, that legislation would be ''ultra vires'' and, therefore, even if CI. (2) of Section 13 of the Atiyat Enquiries Act, No. X of 1952 is construed to bar the jurisdiction of the Civil Court to challenge any order or any action however illegal or without jurisdiction, to the extent that this clause seeks to oust the jurisdiction of the High Court to issue appropriate writs under Article 226 of the Constitution, that clause must be considered to be ''ultra vires''. Therefore, the power of the High Court to correct any order made by any executive officer cannot be assailed or challenged by any legislation, and the power of the High Court which now arises under Article 226 of the Constitution must be exercised if the Petitioner is entitled to the writ, notwithstanding, any provision in the said Act which seeks to oust the jurisdiction of the Civil Court.

63. It is urged on behalf of Ramchandra Reddy that an order which is made final by an Act cannot be challenged even though in excess of jurisdiction. This contention seems to me to be contrary to what is now well-established as the ambit, within which the legislature can make orders of officers conclusive and final. As discussed above, that ambit must be restricted to orders passed with jurisdiction, and it cannot be extended to cover orders which are found to be without jurisdiction or in excess of such jurisdiction. I am supported in my view by the case of Abdul Majid v. Haji Mohd. AIR 1951 Bom. 441, where - certain orders passed by the Custodian of Evacuee property were challenged on the ground that they were in excess of jurisdiction upon the Custodian and also as violet the fundamental principles of natural justice In the connection a question

had arisen (SIC) Section 43 (6) it is open to (SIC) question the legality of any action (SIC) custodian under the Ordinance. (SIC) Tendolkar J. held that Article (SIC) Constitution of India declaring the (SIC) the High Court and making these if part of the Constitution has placed those powers beyond the challenge of the legislature and even if Section 43(C) is construed to bar the jurisdiction of the Civil Court to that extent, the Section must be considered ''ultra vires''.

64. Similar discussion had arisen in the case of Ravi Pratab Narain Singh Vs. The State of Uttar Pradesh and Another, . In that case the Contention was that a writ of certiorari could not be issued in--view of the provision of Section 11 of the U.P. court of Wards Act 1912 which lays down:

(11)No declaration made by the Provincial Government u/s 8 or by the Court of Wards u/s 10 shall be questioned in any civile:Court."

Mustaq Ali and Bhargav, JJ. have held that High Court in exercising its powers of issuing a writ under the Constitution of India - Article 226 cannot be said to be a Civil Court. Civil and Criminal jurisdiction of the High Court is exercised by virtue of the Constitution of India - Article 225. Article 226 gives an additional power which is exercised by virtue of this provision of the Constitution of India and not by virtue of the High Court being either a Criminal or a Civil Court. There is also the second reason that even if the High Court could be deemed to be a Civil Court. Section 11 of the U.P. Court of Wards Act, 1912 could not take away the power of the High Court to issue a writ under the Constitution of India - Article 226 because no law made by State Legislature can in any way curtail the powers granted to the High Court by the Constitution.

64. In Halsbury''s Laws of England (Hail- sham Edn.),Vol. 9 there is a reference to this point, vide paras 1455 and 1458. Para 1455 runs thus:

Certiorari is said to be ''taken away by such Statutes. Certiorari can only be taken away by express negative words. It is not taken away by words which direct that certain mater shall be ''finally determined'' in the in fever or court nor by a proviso, that no other frcdujrt shall intermeddle with regard to certain matters as to which jurisdiction is conferred on the inferior court.

The rule that Certiorari can only be taken Seaway by express negative words" is limited to cases in- which certiorari is available at common aw. It does not apply where certiorari is the creature of Statutes.

66. Para 1458 reads:

Although certiorari is taken away it may be granted even on the application of the Defendant where the inferior court has acted without or in excess of jurisdiction: for, in such a case, the court has not brought itself within the terms of the Statute taking away Certiorari. Thus, certiorari will lie, although taken away where the subject-matter of the inquiry was beyond the scope of the authority of the inferior court either by reason of its nature or by reason of the absence of some essential preliminary; and it will also lie where, by reason of interest or prejudice the inferior court was improperly constituted and; was therefore, without jurisdiction to entertain the cause.

Thus, I am of the opinion that the powers of the High Court for issuing a writ of certiorari are in no way affected by the said Act and this is a fit case in which a writ of certiorari should be issued.

67. After, this I have to consider the other prayer of the Petitioner which relates to the issue of writs of mandamus and prohibition.

68. Shri Sadashiv Rao, Advocate, appearing on behalf of the Petitioner urges that Raja Durga Reddy''s virasat has been sanctioned in the name of Rani Shankaramma and this has not been cancelled, and the estate was taken in the supervision of the Court of Wards for the benefit the ward as she was a minor then. All the authorities, excepting Shri Qureshi (one of the Revenue Board Members), had given their opinion for the release of the estate in favour of Rani Shankaramma. After the abolition of the jagirs, the Nazim-e-Court of Wards, submitted a report to the Director General of Revenue seeking his opinion regarding the release of the estate. Shri Ramlal a member of the Revenue Board on 11-3-1950 recommended that the estate be released in favour of Rani Shankaramma. This was approved by the then Revenue Minister, Shri Seshadri. Thus he contends the previous view of the Government was that the estate should be released and this is in conformity with the provisions of CI. (a) of Section 53 of the Court of Wards Act which enjoins that after the ward attains majority, the estate should be released in her favour. In spite of this, the Revenue Minister did not release the estate in her favour but on the contrary, has held that Ramchandra Reddy who is legally entitled to be the successor of late Raja Durga Reddy

would be entitled to receive commutation of the jagir villages comprising the Samasthan formerly, as well as to be in possession and management of the estate of Raja Durga Reddy minus the jagir villages that have been integrated with the Diana, and the widow of Raja Durga Reddy and the daughter'' of Raja Durga Reddy are both entitled to an allowance to the extent of one-third of the net income of the property comprising both the commutation amount, the Maqta and the Resume which is realized from, the different Tassels including, the ex-jagir and sari Khas villages and the estate in the supervision of the Court of Wards would be released in favour of Ramchandra Reddy

As regards the non-atiyat property the Revenue Minister has made a suggestion to the parties to divide the property among themselves In equal proportions.

69. Shri Sadashiv Rao contends that the Revenue Minister by acting in this manner has failed to discharge an obligation and this would entitle the Petitioner to writs of mandamus and prohibition. Following up the contention he urges that in issuing a writ of mandamus, the Court has got to consider two questions: The first question to be considered is whether the Petitioner has a right and the second question is whether the officer has any statutory obligation to discharge.

His contention is that in so far as the right of the Petitioner is concerned, it cannot be disputed as admittedly, till now the virasat of Raja Durga Ready stands sanctioned in the name of Rani Shankaramma. As regards the obligation of the officer he contends that the Revenue Minister is the Minister-in-charge of the Court of Wards and having regard to the previous view of the Government as well as the provisions of the Court of Wards (SIC) it was the duty of the Revenue Minister to have released the estate in favour of the Petitioner. He, therefore, contends that this is a fit case for the issue of a writ of mandamus and prohibition as well, for, if such writs were not issued, the other party may take proceedings to execute the order of the Revenue Minister and thus defeat her rights.

70. Reliance is placed on the case of Metropolitan Bank v. Pokey 1185 A.CC. 224; Satyendra Kumar Vs. Hind Constructions Ltd., ; Chotey Lal Vs. The State of Uttar Pradesh and Others, ; Makhan Lal Vs. State of Uttar Pradesh and Others, ; Calsbad Mineral Water Mfg. Co. v. H. M. Jagtiani R 1952 Cal. 315 Extraordinary Legal Remedies by Ferris, Sections 212 and 217 1923 PC 138 Alcock Ashdown & Co. v. Revenue Authority and Chowdhry on High Prerogative Writs Vol. I page 469.

71. On behalf of the Government Shri Anand Swarup Coudhury conceding the principle of mandamus could be issued by (SIC) when the Petitioner has a right and is under an obligation to discharge the duty, contends that a writ of mandamus would not be issued when the title or denied or is under dispute, for title to property would not be tried in mandamus proceedings, and further a writ of mandamus be issued when it is necessary to Led complicated or extended question or facts. Thus, he contends, in the pre the title, of Rani Shankaramma is in dispute and the questions are complicated facts, writ of mandamus should not be issued.

72. Reliance was placed on the case of Keshav Pershad Singh v. The Board of Revenue ILR Cal. 553; In Re: Jitendra Mohan 40 Cal. L. J. 44 and Surya saving Factory v. The Industrial (SIC) of Bombay 52 B. L. R. 53.

73. Before dealing with this question it is necessary to have a clear concept of what is exactly the scope of the writs of mandamus (SIC) and the conditions which must be fulfilled before they are granted by this (SIC)

74. In FERRIS, Extraordinary Legal (SIC) 207and 212 to 217 MANDAMUS has discussed in the following words:

MANDAMUS may properly be invoked where (SIC) failure or refusal to perform some (SIC)from an office. Mandamus is a supplementary remedy to be used where the party has a clear legal right and no other appropriate redress to prevent the failure of justice. Its use is confined to those occasions where the law has established no specific remedy. The other remedy to supersede Mandamus must be competent to afford relief upon the subject matter of the application and be equally convenient, beneficial and effective.

75. Chowdhury on High Prerogative Writs in Vol. 1 Chapter 7 at page 465 says:

A WRIT OF MANDAMUS is, in general a command issuing in the King''s name from the Court of King''s Bench and directed to any person, corporation or inferior court of jurisdiction within the King''s Dominions, requiring them to do some particular thing therein specified which appertains to their office and duty, and which the court of King''s Bench has_ previously determined or at least supposes to be consonant to right and justice.

MANDAMUS is an action or judicial proceeding of a civil nature, extraordinary in the sense that it can be maintained only when there is no other adequate reined, prerogative in its character to the extent that the issue is discretionary to enforce only clear legal rights and to compel a court to take jurisdiction or proceeding, exercise the jurisdiction or to compel officers to exercise their jurisdiction or discretion and to perform ministerial duties which duties result from an office. It is a prerogative WRIT introduced to prevent disorder from a failure of justice and defect of procedure and, therefore, ought to be used on all occasions where the law has established no specific remedy and wherein justice and good government there ought to be one.

76. In Rex v. Dunsheath 1950 All. E. R. 743 it has been stated similarly:

MANDAMUS is neither a WRIT of course, nor a WRIT of right but that it will be granted ii the duty is in the nature of a public duty and specially affects the rights of an individual provided there is no more appropriate remedy.

77. As the principle of the issue of a writ of mandamus has been accepted by the parties, I do not wish to enter into a detailed discussion as to when a writ of mandamus has to be issued. It would be sufficient for my purpose if I refer to the following rulings:

78. Chotey Lal Vs. The State of Uttar Pradesh and Others, was a case where the Petitioner had challenged the Zamindari Abolition and the Land Reforms Bill which had deprived the Petitioner of the property to hold and dispose of, and claimed a writ of mandamus against the State of Uttar Pradesh, the Minister of Revenue and the Chief Minister, restraining them from bringing into existence any law which shall take away or abridge his right.

79. Sankar Saran and Agarwal JJ. held:

MANDAMUS is neither a WRIT of course nor a WRIT of right but that-it-will-be granted if the duty is in the nature of''public duty and specially affects the rights of an indivi-dual provided there is no more appropriate remedy.

80. Makhan Lal Vs. State of Uttar Pradesh and Others, is a case under the Motor Vehicles Act, challenging the Region Transport Authority (sic) and praying for the issue of writ of mandamus. The Petitioners'' case was that they used to ply motor vehicles with permits. On the expiry of the period of the permit, the Petitioners made an application for its renewal. Instead of granting a regular permit, the

Regional Transport Authority issued a temporary permit, and in the meantime, notice was served on them slating that "M. R. W. is going to take route of Saharanpur Hardwar, you are requested to stop implying your vehicles with effect from midnight."

81. Sapru and V. Bhargav JJ. giving the - judgment of the Court held:

Where the Regional Transport Authority has not been discharging in an independent manner the obligations which the Motor Vehicles Act has cast-upon it, in granting permit and has been deliberately following disruptions priory; tactics a WRIT OF MANDAMUS can be issued to the Authority directing it to (SIC) application for the grant of permit in accordance with law.

82. In the case of Carlsbad Mineral Water Mfg. Co. Ltd. v. H. M. Jagtiani AIR (SIC)Cat 315, the Petitioner had come for a WRIT OF MANDAMUS to compel the Respondent H.M. Jagtiani as General Manager of the East, Indian Railway, to issue to the applicant license or licenses for the period 1.6.1950 to 31-3-1951 for sale throughout the railway system of ice, mineral waters and cordials and to direct the Superintendent of Railway to permit the applicant to use the premises thereto used by them and the Depots and Stalls for the sale of their products.

It was-held by J. P. Mitra J.

The grant of an order or WRIT OF MANDAMUS is on a general rule, a matter in the discretion of the Court. Some of the conditions precedent to the issue of a Mandamus are:

(i) the applicant for a WRIT OF MANDAMUSS must show that there resides in him legal right to the performance of a legal duty by the party against whom the Mandamus is

(ii) the court will not interfere to enforce the land by the extraordinary remedy of a WRIT OF MANDAMUS in case mere in action at law will lie at complete satisfaction. In order, therefore, that a MANDAMUS may issue to compel something to be done, it must be shown that the statute imposes a legal duty

(iii) the WRIT is only granted to compel the performance of duties of a public nature

(iv) the Court will as a general rule and in fine exercise of its jurisdiction refuse to issue a WRIT OF MANDAMUS when there is an alternative specific remedy at law which is not less convenient, beneficial and effective, and

(V) when MANDAMUS is refused on the ground that there is another special remedy It is a remedy at law that is referred to.

83. In Re Jitendra Mohan Sen Gupta 40 C.L. J. 44, C. C. Bose J. has held:

the WRIT OF MANDAMUS is a high prerogative WRIT and is granted to ampliate in Justice and to preserve the right where there is op specific .legal remedy. The court in the exercise Of this authority to grant the WRIT OF MANDAMUS will render it as far as 1 it can be the suppletory means of substantial justice in every case where there is no other specific legal remedy, for a legal right will provide as effectively as it can that others exercise their duty wherever the subject-matter is properly within its control. The issue of a WRIT OF MANDAMUS is in the discretion of the court. The person applying must show that he has a real and special interest in the subject-matter and special legal right to enforce. In addition to these conditions precedent to the issue of the WRIT, there must be a sufficient demand to perform the acts sought to be enforced and a refusal to perform it; It is not necessary that the word refuse or any equivalent to it should be used, but that there should be enough to show that the party withholds compliance and distinctly determines not to do what is required of him. Refusal may be inferred from conduct.

84. In Surya Prakash v. The Industrial Court of Bombay 1952 Bom. L. R. 52 page 53/ Chagla C.J. has held that:

There must be a specific provision in the Statute making it incumbent upon a person holding the public authority to forbear from doing an act. It is sufficient if the Statute casts the duty upon the person holding the public authority; then it is incumbent upon that person to discharge that duty; if in discharging the duty he acts unauthorized or irregularly or improperly then the court will interfere u/s 45 of the Specific Relief Act, because it could be said that it was incumbent upon him to forbear from discharging his duty in any manner other than laid down by the Statute. If that duty is not discharged in the manner provided by the law, then the Court will assume that there is a forbearance cast upon him to act otherwise in the manner laid down in the Statute.

85. From the above discussion of the case law on the subject it is clear that the grant of an order or the issue of a WRIT OF MANDAMUS is as a general rule a matter for the discretion of the Court. Some of the essential conditions relevant for the present purpose for the issue of such a WRIT are:

(i) the person applying must show that be(has a real and special interest in the subject-matter and a specific legal right'' to enforce;

(ii) he must show that there resides in bluff a legal right to the performance of the} legal duty by the party against whom such a WRIT is sought, and:

(iii) that there is no other equally effective, J convenient and beneficial remedy.

86. Prohibition on the other hand was a WRIT which used to be issued by the King''s Bench Division primarily to prevent a Court or Tribunal or a quasi-Tribunal from exceeding the jurisdiction or acting contrary to rules of natural justice. It is well settled that the WRIT OF PROHIBITION can only be against a body exercising public functions of a judicial or quasi-judicial character and cannot in the very nature of things be utilised to restrain legislative powers.

87. Applying the tests laid down in the above rulings I shall consider whether the present case is a fit one for the issue of write of (SIC) and prohibition. In this

connection, (SIC) have to see first whether the Petitioner (SIC)got a real and specific interest in the sub(SIC) matter and a legal right to enforce. Admittedly virasat was sanctioned in the name (SIC) Rani Shankaramma and as she was a minor (SIC) the estate was taken in the supervision of the Court of Wards. Ramchandra Reddy after his adoption, appeared in the Nazamat praying for the Virasat to be sanctioned in his name. Till now the Virasat sanctioned in the name of Shankaramma stands and she continues till today the ward of the Court of Wards. Kin the Farman dated 6 Zihadji 1352 F. granting permission to Rani Lakshmamma to adopt there is a direction to the effect that Rani Lakshmamma can apply for permission through the Court of Wards for adopting a son to her husband for the spiritual benefit of her husband which would not in any way affect the Atiyat property. The Revenue Minister has also held: that Rani Shankaramma would be entitled to t on third (SIC) in the income along with Rani Lakshmamma and Ramchandra Reddy. In Connection with the adoption of Ramchandra Reddy it has been held earlier that on the material on record, Ramchandra Reddy has failed to establish that Raja Durga Reddy had given ; authority to his widow to adopt, and his adoption has been held to be net valid according to the Hindu Law. Thus, Ramchandra Reddy, could not claim any rights .superior to those of - Rani Shankaramma. Rani Lakshmamma also cannot claim any right as admittedly, the Virasat of Raja Durga Reddy was sanctioned in the name of Rani Shankaramma with her consent. In view of this, it cannot be said that Rani Shankaramma has no real or specific interest in the property. Thus, I do not agree with the contention of Shri Anand Swaruo Choudhury that her title is in dispute

88. After this I turn to the other aspect whether the Revenue Minister had any obligation to discharge. Admittedly, the Revenue Minister is in-charge of the Court of Wards. As Minister-in-charge of the Court of Wards it is the duty, not only to carry out the obligation of the Government but act in accordance with provisions of the Court of Wards Act. The (SIC) of the Government seems to be quite (SIC) that the estate should be released. The Revenue Minister also has to a certain extent admitted this point. At page 5 of his judgment (SIC) has stated that his predecessors and His Excellency the President favoured the release Samasthan in favour of Rani Shankaramma.

89. Clause (2) of Section 53 of the Court of Wards Act also is to the effect that the estate (SIC) be released after "the ward" attains (SIC). Admittedly Rani Shankaramma has only attained majority but has perhaps even grown old and there is no reason why the estate should be withheld from her without being released. The Revenue Minister has (SIC) Ramchandra Reddy is entitled to the (SIC) the estate as well as the commutation (SIC) It has been held earlier that this (SIC) of the Revenue Minister is without jurisction Ramchandra Reddy''s adoption has (SIC) to be not valid according to Hindu (SIC)Revenue Minister ought to have (SIC) release of the estate in favour of (SIC) Shankaramrna when it was taken in the (SIC)of the Court of Wards as she was a minor then and as he has not done so, the order of the Revenue Minister has to be quashed and he has

to be directed to effect the release. It may be noted here that these findings would not, in any way, prejudice the right of the parties in any proceedings that may be taken in any court of law.

90. Thus, after giving a careful consideration to the facts and the authorities cited, I am it the opinion that this is a lit case in which writ of mandamus should also be issued. After this there does not appear to be any need for issuing a writ of prohibition. I, therefore, quash the order of the Revenue Minister dated 19-6-1051 and direct the Respondents Nos. 2 and order to release the entire estate in favour of Rani Shankaramma. In the result, the Respondents Nos. 1 to 7 would be bound and shall abide by the above orders. Having regard to the fact of the case I do not wish 10 pass any order regarding costs.

91. M. Section ALI KHAN J.: This is Papanna-pait Samsthan case. Rani Shankaramma has filed a petition with a prayer that the order of the Honorable the Revenue Member (as he then was) dated 19th June 1951 should be set aside by a writ of certiorari, and he should be directed by a mandamus to release the estate in her favour and prohibited from releasing it in that of Ramchandra Reddy. The impugned order rejects the Petitioner''s petition to release the estate in her favour; allows the appeal of Ramchandra Reddy to recognize him as successor of Raja Durga Reddy and, interalia, directs that one-third of the commutation amount and other income be paid each to Ramchandra Reddy and to Rani Lakshmamma.

92. The order under consideration is challenged and the writ of certiorari prayed both on the grounds of want of jurisdiction and excess of jurisdiction. Mandamus and Prohibition are sought on the ground that the execution, of the order will deprive the Petitioner of her just rights.

93. This is an incredibly long drawn out case with a span of over half a century and a brief reference to its facts is necessary to make the points at issue intelligible. Raja Durga Reddy, the last male holder of the Samasthan, died on 2nd April 1900 A. D.(leaving surviving himself an under teen widow Rani Lakshmamma of 16 years and a daughter, the Petitioner Rani Shankaramma of hardly 16 months. Raja Durga Reddy''s succession was sanctioned by a Farman of His Late Highness the Nizam on 29th May, 1903 by which Shankaramma was declared to be his heir and this was notified in Jarida No. 25 of 22nd October 1903. As both the Petitioner and her mother were minors, the estate was taken under the supervision of the Court of Wards. The Farman allowed the mother to act as guardian of the person of the Petitioner and accordingly she brought her up, married her with the sanction of His Late Highness the Nizam to a scion of Damkonda family and prayed several times for the release of the estate to the Petitioner unsuccessfully. Unfortunately, the Petitioner''s husband Raja Venkat Pratap Reddy died without issue on 19th March 1928 A. D.

Both mother and daughter prayed for permission to adopt. His Exalted Highness permitted the mother, but, on a submission of the petnr. directed an inquiry by the Atiyat Appeal Committee as to who was entitled to adopt.

The decision of the Committee went in favour of the mother and Raja Ramchandra Reddy was adopted by her. His adoption was finally sanctioned by Farman dated 28th June 1934 A. D. Sometime after his adoption, Ramchandra Reddy joined his adopted mother in resisting (the Petitioner''s applications on the Court of Wards'' side for the release of the estate to her and also initiated proceedings before the Inam Commissioner to set aside the grant of succession in the Petitioner''s name. I will mention these petitions below, as the impugned order is based on two of them and, all the objections of the learned advocate of the Petitioner, whether as to jurisdiction or otherwise, are in respect of the impugned order passed on them on 19-6-1951 A. D.

94. As already stated, the Petitioner was for years petitioning for the release of the estate from the Court of Wards. It is not necessary to mention these petitions or the order passed on them; suffice it to say that, though, in spite of opposition most of them were granted by the Revenue Members of the time and once by the president of the Executive Council also, yet no ''arzdasht'' was submitted to H. E. H. the Nizam and hence no final orders were passed on them. Only once her application (SIC) 27-10 -45 A. D. was brought to the notice of H.E.H. and he referred it to the Board of Revinue 0n this reference as well as on a note submitted "by the Director, Court of Wards, after the "Jagir Abolition Regulation as to whether the Estate along with all other estates prider the supervision of the Court of Wards should: not be released, Sri Ramlal, Member, g Board of Revenue, expressed the opinion that should be released. Shri Seshadri, the then Revenue Member, disagreed with Shri Ramlal in the Petitioner''s file, but agreed with him on 1950 A. D. in the general file. Before orders for the release of the estate could be issued, however, Rani Lakshmamma filed a petition and the Honorable Revenue Member minuted on 12-6-1950 A. D. that this petition should be heard in the presence of the parties In the meantime, the Congress Ministers joined the Hyderabad administration and Shri B. Ramkishan Rao became Revenue Member. In this way he came, to hear this application and decided it by the order now in dispute along With two other petitions on the Atiyat side which I will presently mention

95. After the grant of succession to the Samasthan, the Petitioner was taking action for the grant of Inam lands situated in various 5 in her name. I have already stated above that in these regular Inam proceedings Ramchandra Reddy and his adopted mother opposed Petitioner. They did not mince matters and the prayer was explicitly stated that, owing to the adoption adoption, the succession of Raja Durga Reddy should not be sanctioned in Ramchandra Reddy''s name and the previous sanction in favour of the Petitioner should be set aside. The first application in this regard was dated 12-6-1937 A.D. and was nearly five years after the adoption and it was promptly rejected by the Inam Commissioner, who held that as succession has been sanctioned in the name of the Petitioner and 4 she was alive, Ramchandra Reddy had no locus standi, as no succession can be

opened in the life-time of a appeal was lodged by Ramchandra Reddy before the Atiyat Committee and it was dismissed on 28th February 1938. Ramchandra Reddy however, filed a similar application on 22-6-49 A. D., i.e., about ten years of his first application and this again was summarily dismissed by Shri Ghulam Hyder, the then Nazim-e-Atiyat or Inam Commissioner on 11th September 1949.

It should be noted that no appeal was filed in the regular Atiyat side before the Atiyat: Appeal Committee against this decision; nor is there any mention of it in the impugned order under consideration. This order, however, takes notice of the two petitions of Ramchandra Reddy dated 24-3-49 and 24-4-49 and states that the first petition contained the prayer that the commutation amount should be given to Ramchandra Reddy and the second prayed That succession of Raja Durga Reddy should be sanctioned in his name. It states further that the petition was dismissed by the Nazim-e-Atiyat, as being contrary to any statutory provisions and an appeal from it was filed before the Honorable the Revenue Member It is this appeal that has also been disposed of by the impugned order under consideration

96. Objection was taken before the Honorable Revenue Member (as he then was) that he had no jurisdiction to entertain the petitions mentioned in paragraphs 4 and 5 above, that is the petition of Rani Lakshmamma filed after Shri Seshadri''s order of 13-3-1950 and the petitions of Ramchandra Reddy dated 24-3-1949 and 24-4-1949; but he held that he had jurisdiction. I cannot hold his decision on the first mentioned petition of Rani Lakshmamma to be erroneous. The petition opposed the release of the estate to Rani Shankaramma and no reference to the standing orders or circulars of the Atiyat Department or to the provisions of the Court of Wards Act is necessary to show that the Honorable the Revenue Member was fully competent. In fact the argument before him was confined to technicalities that as Shri Seshadri''s order of 13-3-1950 had become final for want of a regular review or revision petition, the matter could not be reagitated. But evidently as Shri Seshadri himself fixed a date for rehearing, these objections do not hold water. I shall, therefore, now pass on to the petition on the Atiyat side, for that is a more controversial matter.

97. The objection against hearing Ramchandra Reddy''s petitions on the Atiyat side was that owing to the promulgation of the Jagir, Abolition Regulation 1358 Fasli all disputes about succession, etc., now pertained to the civil courts and, therefore, under its Section 21(2) neither the Nazim-e-Atiyat nor the Hon''ble the Revenue Member had jurisdiction to entertain them. The Honorable the Revenue Member (as he then was), however, relied on the proviso to Sub-section (2) of Section 21 of the said Regulation and held that as the petitions of 24-3-49 and 24-4-49 were filed before the promulgation of the Regulation on 15-8-49 A.D. they were pending proceedings and he had jurisdiction. It is not free from doubt whether the proviso is good law vis-a-vis the provision of the Constitution of India; but assuming it is, it should be noted that it saves the existing law for the pending proceedings. It is for consideration whether any proceeding was really

pending and whether even according into the existing law, i.e., the Atiyat Law, a Revenue Member was competent to hear appeals from the decisions of the Nazim-e-Atiyat given (SIC) the regular Atiyat Side. The point need (SIC) laboured that the Nizamat-e-Atiyat has (SIC)executive. or administrative side also and (SIC)that capacity its Nazim is a Joint-Revenue (SIC), and any orders passed by him in the (SIC) capacity are appealable before the t (SIC), therefore, comes to whether (SIC) Ramchandra Reddy''s applications (SIC) of 24th March and 24th April 1949 (SIC) were considered in the order under (SIC) or of 26th June and 24th October which were not mentioned in it, were of an administrative or executive nature and (SIC) there from lay to the Revenue Mem-(SIC) these four applications which appear a ill the applications filed by Ramchandra Reddy in this regard, those of 26th June, 1949 for grant of succession of Raja Durga Reddy in his name. I need not summarise them here; for the first mentioned is summrized in the order under consideration a perusal of it will leave no doubt about prayer being as stated above. Now whether to look the provisions of Circular No. 10 of 1338 Fasli or those of No. 19 of 1332 Fasli proceedings regarding succession pertain to the Atiyat Nazim in his Judicial capacity of an officer on the regular Atiyat side, and not in his executive capacity of a Joint Secretary and appeals from his decisions on succession proceeding lie to the Atiyat Appeals Committee and not to the Revenue Member. This is so evidently true that I need hardly quote chapter and verse from the above circulars or from the Inam Regulation. Indeed this was admitted at the Bar.

It was, however, argued that the above petitions should be deemed to be for the amendment of succession statement. A perusal of the applications will show that they do not ; contain any such prayer. Evidently, the nature S of a proceeding is determined by the content [and prayer of the application: when neither I the prayer nor the content of the application ''showed that what was sought was amendment j to-the succession statement, it would be out Herding the record to hold that the Applica-t 1-5--- were for the amendment. Reliance was placed by the Bar on Section 13 of the Circular No. t 1338 Fasli, Circular No. 19 of 1332 Fasli 4 Naza-er-e-Mal 93 and 785. I have care considered these circulars and the author ''No useful purpose will be served by (SIC) to them at any great length. Suffice (SIC) say that they do not support the contention these applications can be deemed to be (SIC) of the succession statement. (SIC) that when the applications themselves (SIC) not so either in form or content I cannot (SIC) them so. Moreover, even assuming, that (SIC) applications were for amendment of suc(SIC) statement, serial (7) in List A of Cir-(SIC) 19 of 1332 Fasli provides that in case (SIC) prayer for amendment is contested, the (SIC) -Member should send them to the Nazim-e-Atiyat. As the applications were (SIC) contested,'' it is evident that the Hon''ble (SIC) Revenue Member (as he then was) could leave no jurisdiction.

Again I think, I will have to consider what (SIC) the effect of the granting of these (SIC) will it only result in amendment (SIC) succession statement granted to the Petitioner, Rani Shankaramma, or result in its total abrogation. Obviously, it will be the latter & not the former & though the Hon''ble the Revenue Member (as he then was) has, in the operative portion of his order under consideration, himself used the word ''amendment yet he has also used, the words that Ramchandra Reddy should be recognized in it as successor to Raja Durga Reddy. This, in all conscience, cannot be a mere amendment. It is obviously a setting aside ''cancellation'' and ''abrogation'' of the succession certificate granted in the name of the Petitioner in May 1903, i.e., 48 years ago.. If things settled long ago can be upset in this; manner, there will be no finality in the affairs-of men or solemn proceedings of courts or authorities. The justification for this is sought in the supervening events of the death of Raja Venkat Pratap Reddy without issue and the adoption of Ramchandra Reddy.

I will consider the effect of the adoption presently, but I will state here, that it is evident from the Farman sanctioning the adoption of Ramchandra Reddy that the Grantor himself was alive to the undesirability of reversing the succession of Rani Shankaramma, as he was careful to make it clear that the adoption will not affect the property comprised in the Crown grant. Thus what Ram Chandra Reddy initiated was a succession proceeding; it was so understood by the Nazim-e-Atiyat and rejected; the Atiyat Appeal Committee also understood it similarly and dismissed the appeal. Ten years after a mere petition to the same effect and towards the same objection cannot make it an administrative proceeding.

Quite evidently, it remained a succession proceeding and was, as held by the Nazim-e-Atiyat on 1st February 1950, not in accordance with any legal or procedural provision for it was not at all entertain able. A corollary of this is the at in the eye of law there were no pending proceedings, with the result that proviso to Section 21(2) of the Jagir Abolition Regulation cannot, be invoked to confer jurisdiction. Section 13 of the Hyderabad Atiyat Enquiries Act 1952 only validates orders of certain persona designate, the Hon''ble the Revenue Member (as he then was) does not come in them, and hence argument from the Act is not relevant. Again, the contents of the order will have to be examined, as already stated, they show lack of jurisdiction. Moreover, it is clear Atiyat Law that a Revenue Member: has no jurisdiction to hear appeals from the decision of Nazim-e-Atiyat on the regular or original side. No consideration of natural justice can confer a right of hearing appeal on him. Such a right will have to be conferred by law and it was not so conferred. Hence want of jurisdiction on his part is as clear as anything can be, and I hold accordingly.

98. I have observed above that it appears to, me that considerations of natural justice have been at the back of the impugned order now under consideration. This is evident from what has been said in it about the adoption of Ramchandra Reddy and its effect. It is pointed out that on the death of Raja Durga Reddy, his widow was a preferential heir, but she was passed over in favour of her daughter, as the Government of the time desired that the line of Raja Durga Reddy should be continued by Rani Lakshmamma adopting the son that Would be born to the daughter; that unfortunately this expectation was belied by the untimely death of

Raja Venkat Pratap Reddy Without leaving any issue; that not only H.E.H. the Nizam but the Atiyat Appeal Committee (SIC) that Rani Lakshmamma (SIC)permitted to adopt in preference to (SIC)as the heir that would come into (SIC) adopting a son will be (SIC) compared to the son ()SIC that in this (SIC) Rani Shankaramma, can only be regarded as an interim heir; that there is good authority for holding that owing to the well established theory of adoption relating back, it he adopted son divests the interim heir; that even assuming that Rani Lakshmamma by her ''several acts of unrestricted renunciation in favour of her daughter in the period before the death of her son-in-law, surrendered her estate, it can only be of her right to succession and cannot be of her right to adoption and that, therefore, the adoption of Ramchandra Reddy approved by the Grantor himself, surely and effectively divests Rani Shankaramma, and invests Ramchandra Reddy with the title to succeed Raja Durga Reddy.

These findings are copiously illustrated with and well supported by references to works of authority and to undisputed record. The only few appeal to be that they have not taken account of the possibility of the adoption being join Confidence with Hindu Law owing to absence permission of Raja Durga Reddy to adopt. The Government of the day preferred Rani Shankaramma actuated possibly by the desire to continue'' the line by a grandson, but that is a matter for conjecture; what appears to be more .probable is that they found it as a fact that Raja, Durga Reddy had not given permission to adopt and after recording it in the Arzdasht dated 31st March 1903, they had no alternative but to recommend succession in favour of Shankaramma; for had they recommended the widow, the estate would have been in grave danger of escheating after her death. Is this finding in the Arzdasht about lack of permission to adopt correct? It is argued that it is not; for the Nazim-e-Atiyat found on 9th September 1943 that permission to adopt was given, as will be seen by a perusal of his judgment in 6 Nazaer-e-Osmania page 540, and m appeal from this finding the Atiyat Appeal Committee also held the same in 6 Nazaer-e-Osmania_524

But it is clear that the Nizamat-e-Atiyat''s (SIC) was based on evidence which was (SIC) ex parte: no time was allowed for (SIC) inquiry in the presence of the parties (SIC). wanted a report on the matter in (SIC) appellate judgment also men-(SIC) this fact and expressed the opinion that (SIC) recording evidence in the presence (SIC) parties would have been necessary (SIC)were not of the opinion that permission (SIC) to adopt was sufficient in so far (SIC) Crown grant property was concerned. (SIC) go to show that it is not proved (SIC) Reddy permitted his wife to (SIC) argued; that as there were no (SIC) Hani Lakshmamma did not require (SIC) and was herself competent to (SIC)The parties belong to the Madras school (SIC)proposition is not in. accordance with (SIC) boils down to this that the adoption of Ramchandra Reddy cannot be deemed to be in accordance with Hindu Law. It cannot, therefore, relate back to the death of Raja Durga Reddy and cannot, therefore, divest Rani Shankaramma. It may be asked, however, what then is the effect of the Royal permission and is it wholly infructuous. My reply will be that whatever efficacy it may have, it will not divest the Petitioners as H. E. H. the Nizam has himself directed in the Farman dated 12th December 1939 already referred to above, that it will not agilest Crown grant and that Ramchandra Reddy will inherit, after the Petitioner.

99. The above will show that the impugned order cannot be supported for want of jurisdiction (a) to hear appeals from orders of the Nazim-e-Atiyat and (b) to divest the'' Petitioner of her succession and because it failed to direct the release of the estate in spite of the provision of Section 53 (a) of the Court of Wards Act (No. 12 of 1350 F.) that an estate should be released on the attaining of majority by the ward. No doubt this very section also enacts that an estate placed in the supervision of the Court of Wards by the orders of H. E. H. can be released on his orders only. But circum stances have changed and it is stated in the impugned order itself that these powers are, now exercisable by the Chief Minister, The Hon''ble the Revenue Member (as. he then was) therefore, could have recommended the release of the estate but he has not done so. I need quote no authority to show that in such, substances a writ of certiorari lies for want of jurisdiction and failure to exercise jurisdiction. There appears to be no reason why I should not direct its issue and thus set aside the impugned order under consideration and I, therefore, direct that the same may be issued.

Further the Petitioner has prayed for writs of Mandamus and Prohibition also. Generally, a Mandamus does not lie where another legal remedy is available, but that is when that remedy is "equally convenient, beneficial and effective". A law suit for the release of the slate after all these protracted litigations of more than half a century cannot be deemed to be convenient. In my opinion, therefore, a Mandamus for the release of the estate should issue in this case, as u/s 53 of the Hyderabad Court of Wards Act the right and duty to release and get it released are clear and Mandamus is the more effective & more beneficial remedy. After setting aside the impugned order by writ of Certiorari and directing the release of the estate by a Mandamus, there remains no need for prohibiting the enforced mint of the impugned order. Moreover, the Writ of Prohibition restrains a tribunal from proceeding further in excess of jurisdictions when it is about to act in excess of jurisdictional. As the impugned order has been passed more than a year ago, a writ of Prohibition will be obviously useless. With these words, I agree I with my learned brother in the order proposed by him. I wish to mention the effect of our order explicitly. It sets aside and quashes the impugned order dated 19-6-1951 and directs Respondents Nos. 2 and 5 to release the entire estate in favour of Rani Shankaramma. In the result, the Respondents Nos. 1 to 7 would be bound and shall abide by the above orders.

100. No order as to costs.

