
(1953) 03 KAR CK 0001

In the Karnataka High Court

Case No : Civil Petition No's. 98 of 1950-51 and 155 and 163 of 1951-52

Sampu Gowda Hanume Gowda and Others

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 30-03-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 221

Constitution of India, 1950 — Article 33 (1)

Mysore Land Revenue Code, 1888 — Section 201, 233

Citation : AIR 1953 Kar 156 : (1953) ILR (Kar) 440 : (1954) 32 MysLJ 12

Hon'ble Judges : Venkata Ramaiya, J; Vasudevamurthy, J; Balakrishnaiya, J

Bench : Full Bench

Advocate : M.P. Somasekhara Rao, S.K. Venkatarangiengar, C. Nagappa and C.K. Narayana, for the Appellant; Add. General and A.C. Nanjappa, for the Respondent

Judgement

Venkataramaiya, J.—These are three petitions filed under Article 226 of the Constitution of India for issue of writs in the nature of Mandamus, certiorari or appropriate directions to the Government of Mysore on grounds which are substantially the same. These were heard together and may be conveniently disposed of by one order as the principal question raised in it whether Government can review orders regarding grant of agricultural lands. The facts which may be taken as undisputed are that the Petitioner in C. P. 155 of 51-52 was granted 3 acres in S. NO. 24 in Narsipur village, Arsikara Taluk, Hassan District on payment of Rs. 75/-, the appeal preferred by some persons to the Revenue Commissioner objecting to the grant was dismissed on 27-11-1944, that Government also dismissed on 22-2-1946 the appeal filed against the order of the Revenue Commissioner, that the application filed subsequently for review of the order was rejected by Government on 21-12-1949 but on a second petition for review, Government passed on 20-9-1951 an order setting aside the grant of the land to the petitioner and it is alleged that this order was passed without hearing the petitioner.

2. In the other two cases the petitioners were in the first instance permitted to cultivate certain lands under the rules framed for the "Grow more food" scheme and later on these were given to the petitioners for upset prices. The petitioners in C. P. 98 of 50-51 were required to pay Rs. 100/- per acre by an order of Government dated 8-2-1951 and the amount payable for 5 acres in S. No. 109 Naganahally village, Malur Taluk, Kolar District, at this rate was deposited by him in Malur Taluk Treasury on 2-3-1950. A saguvali chit dated 25-3-1950 was thereupon issued to him. The grant of 5 Acres has been since modified by an order of Government on 9-9-1950 restricting it to only 2 Acres and directing the sale of remaining 3 Acres in public auction.

3. The lands at first in the temporary cultivation of petitioners in C. P. 163 of 51-52 were on 29-4-1949 ordered to be granted to them on payment at Rs. 375/- an acre. The amount was accordingly paid on 24-5-1949. On a petition presented to the Chief Minister subsequently an order purporting to prevent the grantee from entering on the lands is said to have been served on them. The petition is treated as one for review of the previous order by which the grant was made and is still pending.

4. The contention of the petitioners is that as Government has no power to review orders once made for grant of lands, the orders which rescind or modify the grant are ultra vires and further offend Article 31 of the Constitution of India. The learned Advocate General on the other hand urged that the petitions should be dismissed as the conditions necessary for issue of any of the writs are not made out; that the orders in question are quite valid, just and in the interests of the public.

5. The grants in favour of the petitioners are evidenced by documents, terms of which as set forth in Appendix E of the Rules under the Land Revenue Code which bears the heading "certificate of grant" are

"Whereas under the rules for disposal of unoccupied Government land for cultivation and the grant of occupancy rights the land specified in the schedule hereunder written has been sold and A has purchased it in open auction or for upset price and the sale has been duly confirmed and A declared the purchaser thereof and whereas A has paid into the Government treasury the full amount of the purchase money Rs. Now I, "Amildar" -- Taluk

Assistant Commissioner -- Sub Division Deputy Commissioner -- District do permit A to enter into occupation of the said land and hereby grant and confirm subject to cancellation or modification in appeal or revision under the provisions of the Land Revenue Code the said land to the said A, His heirs, personal representatives and assigns under the terms of the Survey Guarantee Rule and subject to the regular payment of the Land Revenue Assessment".

6. It then provides for recovery of the dues in the manner prescribed by the Land Revenue Code in the event of default, for enforcement of other obligations such as maintenance of boundary marks and tank, for existing rights of way being

unaffected and for reservation of rights to minerals, sandal trees. It concludes with the statements "that the grant shall be subject further generally to the provisions of the Land Revenue Code and the Rules thereunder or any other law for the time being in force"

and is followed by the schedule of the land with date and designation of the office whose signature is affixed at the end.

7. Section 210, Land Revenue code allows appeals to Government against orders regarding grants of land and u/s 217 these may be revised by it. In view of the absence of a specific provision in the Code for review of such orders and of anything in the certificate to suggest the possibility of the grant being disturbed except in appeal or revision, the petitioners have reason to complain, on the analogy of what has been held in cases under similar enactments that the orders of review are without jurisdiction. Thus, in criminal cases, judgments once delivered cannot be altered or modified except to the extent of rectifying clerical errors or minor omissions as allowed by the Criminal "Procedure Code see "35 C. C. R. 398". Review of orders made on a reference under the Income Tax Act was considered to be not permissible in -- 30 Mys C. C. E. 221", and a similar view with respect to orders under the Workmen's Compensation Act was expressed in --"40 Mys H. C. R. 198 (C)", as these laws do not provide for it. On the same ground an application for review of an order passed on a reference made under the Land Revenue Code, was rejected in -- "39 Mys H. C. R. 942 ". Rule 102 of the Rules under Land Revenue Code which states : "As regards the details in conducting the investigation of cases, framing of complaints and petitions of appeal and other matters not provided for by the Code or Rules, the provisions of the CPC in force for the time being shall be followed as far as possible". cannot be construed as conferring on Government the powers of review available under the CPC as it is only in regard to "details" such as issue of processes, the regulation of hearing examination of witnesses, adjournments and formalities incidental to the conduct of the case the procedure prescribed therein is to be adopted and review cannot be considered to be a "detail" of procedure but stands almost on the footing of an appeal, which is a substantive right. Review is a remedy to be sought for and applied under special circumstances. It may involve the rehearing of the appeal when, without a statutory provision a right of appeal cannot be claimed and appeal is definitely provided for in the Code, the jurisdiction or power to review cannot be assumed or imported in the absence of any specific provision therefore or of even indication of the conditions for the exercise of it.

8. In "Anantharaju Shetty v. Appu Hegade" AIR 1919 Mad 244 , dealing with powers of a District Judge in a case under the Religious Endowments Act, it was observed that he is not competent to review his own order and Section 141, Civil P. C., does not confer on Courts acting under special enactments power to review. In -- "Pryag Lal v. Jai Karayan Singh", 22 Cal 419 , also it was pointed out "Provisions of the C. P. C. relating to review of judgments have not been extended to proceedings under the Bengal Acts and so the orders passed on

review are ultra vires and of no effect"

with a further significant remark

"I cannot admit that such a power of review is inherent in every judicial or Revenue Officer. It is a power expressly given to judicial officers under certain conditions and therefore it cannot be assumed that when not so given It is inherent in every officer. If this had been so. there need not have been any legislation on the subject".

See also -- "Baijnath Ram Goenka v. Nand Kumar Singh" 34 Cal 677 . Lord Esher M. R. in --"Drew v. Wills" (1891) 1 Q. B. 450 , expressed

"This is not an appeal against the granting of the charging order but it was an application to rescind the order....No court has such a power of setting aside an order which has been properly made unless it is given by statute".

14 I. A. 44 (PC)", cited on behalf of the Government may be taken to lay down that if proceedings authorised by a Court are found to be void it may not give effect to those. The proceedings in these cases cannot be said to have been vitiated by lack of authority on the part of Government to make the orders in favour of petitioners as the grants are cancelled or modified not on account of any doubt about power of Government in this behalf but on consideration of desirability, expediency or suitability. These are vague considerations varying from time to time, and between person and person without any standard of test and if in spite of the absence of express or explicit provision either in the Code or the certificate of grant, Government can at their will, deprive the holders of lands which are paid for and in their possession, regardless of lapse of time there will be neither finality nor security in regard to any grant under the Code, The Court is not concerned with the reasonableness of the order or the consequences entailed by it but it is necessary to see whether the power is vested in Government under any law to reopen proceedings concluded by previous orders and deprive persons of properties held by them on the faith of such orders. The fact that the existence of such power has been assumed and unquestioned so far cannot afford justification for the continuance of the practice unless it stands the test of strict scrutiny.

9. Relying on some sections of the Land Revenue Code and the General Clauses Act, the learned Advocate General argued that Government as the guardian of public interest has unfettered discretion to take away the lands given whenever it is deemed fit and however long it is after the grant. The sections in the Code 011 which emphasis was laid are 58, 60 and 233. Section 58 requires :

"Any person desirous of taking up unoccupied land which has not been alienated, must previously to entering upon occupation obtain the permission in writing of the Amildar or Deputy Amildar or as may be provided under Rules made in this behalf u/s 233".

Section 60 states:

"It shall be competent to the Deputy Commissioner subject to such orders as may from time to time be made by the Government to require the payment of certain price for the occupancy, or to sell that right by auction and to annex such conditions to the occupancy as he may deem fit before permission to occupy is granted u/s 53".

Under Section 233, the Government may from time to time, make and from time to time vary or rescind rules or orders not inconsistent with this Act :

.....

(h) regulating the grant of permission to occupy unoccupied land u/s 58"

Rules made under any of the above clauses....

(h).....may be made either "generally or in any particular instance."

10.While "Rules" and "Orders" are both mentioned in Section 233, only "Rules" are referred to in Section 58 & "orders" in Section 60. On the basis of the relative signification of "Rules" and "Orders", the generality of the former and the application of the latter to particular cases, it was contended that the order for the grant in any case is by virtue of the words "subject to such orders as may be made from time to time by Government" in Section 60 liable to be withdrawn or modified and this must be deemed to be implicit in the grant. This would mean that no order of Government passed at any time can be treated as final and that the grantee can never claim to have acquired a full title to the land, since it is exposed to the risk of being impaired by fresh orders of Government. But Section 66 states :

"An occupant is entitled to the use and occupation of his land for the period if any to which his occupancy is limited or if the period is unlimited, in perpetuity conditionally on the payment of the amounts due on account of the land Revenue for the same according to the provisions of this Act or if any rules made under this Act or of any other law for the time being in force and in the fulfilment of any other terms lawfully annexed to his occupancy."

11.Section 70 declares :

"The right of occupancy shall be deemed an inheritable & transferable property subject to the provisions of Section 54 or otherwise proscribed by law and shall immediately pass to the per-son whose agreement to become an occupant shall have been accepted by the Deputy Commissioner".

Section 54 only provides for arrears of land Revenue being a first charge on the holding and recovery thereof.

12.In consonance with these, Section 60 has to be understood as requiring the Deputy Commissioner to be guided in making the grant by orders of Government in similar instances, treating them as precedents or by the order of Government if any in the particular case and in any event the orders are those passed prior to

or at the time the grant is determined. The section cannot be taken to contemplate a series of orders concerning a grant during an indefinite future period of time. Such orders would be repugnant to Section 233 as It warrants only those which are not inconsistent with the Act and cannot serve to extend the provisions of the Code. In " Mys 48 H. C. R." cited by the learned Advocate General to show that Government cannot be deemed to be a "court", it was held that a rule which enables Government to purchase property in proceedings governed by Chapter XI of the Code is ultra vires and beyond the powers conferred u/s 233. The sale set up by Government was therefore treated as a nullity. What applies to "Rules" applies to "Orders" and for .similar persons the orders now in question must be considered invalid.

13. Section 21, of the General Clauses Act gives Government power to rescind or modify orders which it has power to make. The power is confined u/s 233 to passing orders in keeping with codal provisions and. Section 21 does not enlarge the scope or degree of such a power.

14. The decisions at page 113 (J) and at page 116 (K) of 19 Bombay -- "Badaricharia v. Ram chandra Gopal" & -- "Ramsingh v. Babu Kisansingh", to which our attention was drawn are not authorities to show that orders can be reviewed though; the law governing the case does not provide for it. Both these were cases under the Dekkan Agriculturists Relief Act in which orders concerning, status of defendant as an agriculturist were reviewed. The legality of the review was not doubted but the competency of the Judge who did it was raised in the light of Section 74 of that Act which is in the following terms :

"Except in so far as it is inconsistent with this Act the CPC shall apply in all suits and proceedings before the subordinate Judges under this Act".

The Mysore Code does not contain a similar provision.

15. In -- "David Nadar v. Pandara Sannadhi". 33 Mad 65 (L), the point for determination was "whether the Collector after declining to interfere with the sale was entitled to review his own order". It was held

"The power of review is not granted by any statute and we are not aware of any principle on which it can be held he has power to review his own order".

16. A consideration of all this leads to the con-elusion that there is no inherent power or statutory authority vested in Government to review orders passed for grant of land under the Land Revenue Code. The order in one case purports to be a review of dismissal of an earlier application for review and in another the Chief Minister is said to have passed "stay order". Successive applications for review are not allowed even under the CPC and it is difficult to see how the grant completed by issue of the saguvali chit and acceptance of payment can be stayed at all.

17. The orders are attacked also on the ground of being repugnant to Sub-section (1) of Article 31 of the Constitution of India which enunciates that no

person shall be deprived of his property except by authority of law. Though the criticism seems at first sight to be well-founded and the observations in -- Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , seem to lend support to it, doubt is raised in later cases about its applicability to cases other than those of acquisition of property without invoking the aid of the article, what has been said is enough to hold that the orders are-passed without jurisdiction.

18. The next and more important point is whether this is sufficient for the issue of a writ. Of the writs specified in Article 226, the suitability of certiorari in the circumstances disclosed was canvassed. The exact conditions necessary to be satisfied for granting the writ are not defined in the Constitution but are analysed by Kanla C. J. in

-- Province of Bombay Vs. Kusaldas S. Advani and Others, , to be : a body of persons (1) having legal authority (2) to determine questions affecting legal rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority. As regards the duty to act judicially it is said

"Prescribed forms of procedure are not necessary to make an inquiry judicial provided in coming to the conclusion the well recognised principles of approach are required to be followed"

after referring to the observations of May C. J. in

-- "Regina (John M. Eray) v. Dublin Corporation" (1878) 2 LR Iris 371.

"The term "judicial" does not necessarily mean, acts of a Judge or legal tribunal sitting for the determination of matters of law, but for the purpose of this question a judicial act seems to be an act done by competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights of others"

and of Seruttoa L. J. in -- "The King v. London County Council", (1931) 2 KB 215 :

"It is not necessary that it should be a "Court" ill the sense that this Court is a Court if it is a tribunal which has to decide rights after hearing evidence and opposition it is amenable to the writ of certioravi".

The opinion expressed in -- "48 Mys 96 (Q)", that proceedings under Chap. 11 of the Land Revenue Code are not those of a "Court" and referred to on behalf of the Government does not affect the present case as the question now is not whether Government is to be regarded as a Court but whether its acts are of judicial character & also because the proceedings relating to the grants are governed by provisions in other chapters of the Code. The decision does not affect the issue of a writ and in a way helps the petitioner in showing that rights claimed by Government on the strength of a rule which is ultra vires are to be negated. In -- "Toronto City Corporation v. York Township Corporation" (1938) A. C. 415, it was held that though a Municipal Board may be primarily an

administrative body there may be provisions in the Act by which it was constituted which clothe it with the functions of a Court and vest in it judicial power. Rule 102(A) makes notice to the party whose interest would be affected, obligatory, before an order of a subordinate officer is modified or reversed. Section 96 of the Code provides for appeals to this Court against orders of a revenue officer in certain cases and inquiries of a summary or formal character are required by Section 200 to be in accordance with the provisions of the Civil Procedure Code. To evict a person from a land given to him temporarily a summary enquiry is necessary u/s 66A. All these are some of the important features of a judicial proceeding and cannot be disregarded when title to and possession of lands are sought to be disturbed.

19. It was argued that even if the conditions laid down by Kania C. J. are made out, the granting of the writ is discretionary and these are not fit cases for the exercise of discretion in favour of petitioners as the objections must be taken to be only technical without any substance on the merits. The possibility of having a remedy by other means and the authority whose act is questioned being Government were urged as additional factors against the granting of the writ. For the purpose of these proceedings, it is not pertinent to find out what led the Government at one time to order the grant and at another to withdraw or modify it, as the question now for decision is not the reasonableness but only the legality of the orders. It is highly doubtful whether a writ which is the only other remedy suggested, will lie at all for adjudication of petitioners' rights under the original grants, in view of Section 221 of the Code by which

"No Civil Court shall exercise jurisdiction as to (f) claims against Government respecting the occupation of waste or vacant land belonging to Government". (See also -- 14 Mys C.C. R. 225

A Full Bench of the Allahabad High Court has in -- Ravi Pratab Narain Singh Vs. The State of Uttar Pradesh and Another, expressed that the existence of an adequate specific legal remedy would affect a writ of mandamus but not of certiorari. An alternative remedy is not considered to be always, an absolute bar to the issue of a writ, though it may be a ground for reluctance to issue it, (see -- Buddhu Vs. Municipal Board and Others, . Article 225 does not forbid the issue of writ against Government but only limits it to appropriate cases. Whatever may be the effect of the provisions of the Land Revenue Code or other law as regards maintainability of suits, the power conferred by Article 226 for issue of writs does not admit of any doubt.

20. In -- Ram Charan Lal Vs. The State of Uttar Pradesh, , a Division Bench held that even administrative orders could be interfered with under Article 220 if these were in defiance of mandatory provisions of law and quashed a declaration by Government that property was to be acquired for a public purpose. The grants, viewed as sales or contracts, can be set aside under the ordinary law only on certain defined grounds and the party who seeks to get rid of the transaction has to establish the facts necessary for it. Resort to the Land Acquisition Act will

also enable the Government to acquire the lands if it serves a public purpose. The position, therefore, so far as petitioners are concerned is that the availability of an alternative remedy against deprivation of lands is at best doubtful but there are other courses open to Government for resuming the lands. In these circumstances and in order to safeguard stability and security of title to property against interference by means of orders based on consideration shifting from time to time it is appropriate that the orders passed in the applications for review should be quashed as being without jurisdiction.

Balakrishnaiya , J.

21. I agree.

22. VASUDEVAMURTHY J.: The first point that arises for consideration is whether the Government had power to review and alter their earlier decision in the cases concerned. A large number of reported cases have been cited before us by counsel for the petitioners and the Advocate-General.

23. In the earliest Mysore Case -- "30 Mys C. C. R. 221, which was a case of a reference under the Mysore Income Tax Act an application for the review of an earlier order of the High Court was held not maintainable. Plumer C. J. then observed that the decision of the High court u/s 66(2) of the then Income Tax Act was not an order which could be reviewed under the provisions of the Code of Civil Procedure. He pointed out relying on -- "AIR 1919 Mad 244", that very special circumstances are needed to justify the invoking of any inherent power to review its own order and that such special circumstances must be of a nature similar to those which existed in the case in -- "Syud Tuffuazool Hussain Khan v. Rughoonath Pershad" 14 Moo Ind App 40, where it was necessary in the ends of justice and equity that a Court "should cancel its own invalid order," or where a fraud has been committed upon the Court. Subbanna. J. pointed out that the Income Tax Regulation under which the reference was made to the High Court does not lay down that the provisions of the CPC are applicable to the proceedings before that Court, or that a review can be had of any order passed by the Chief Court and that the High Court was not at liberty to manufacture any procedure which docs not exist under the law. 35 Mys C. C. R. 396 ", lays down that the High Court had no power to review its former judgment in a criminal case by virtue of Section 369, Criminal P. C. as amended by Act 6 of 1927. As there is a clear bar to review provided by that section that decision may not be useful. - 39 Mys H. C. R. 217", was a case under the Legal Practitioners Act. The petitioner who had been suspended by the High Court for professional misconduct applied for a review of the order. Mahadevayya C. J. held that the review petition was not maintainable. He said that :

"The question whether a Court has or has not a right to interfere as a Court of appeal, review, reference or revision in any given instance must be determined, not by invoking the aid of inherent power or general principles but by the express provisions contained in the particular enactment of law applicable to the matter.

A right of review like that of appeal is a creature of Statute. In the absence of a specific provision allowing a review in the Legal Practitioners' Regulation which is a consolidated law relating to legal practitioners, a review petition does not lie."

24. In -- 40 Mys H. C. R. 198 ", Reilly C. J. and A. S. R. Chari, J. held that a Commissioner for Workmen's Compensation has no power to review his own order made u/s 8(1) of the Workmen's Compensation Act; see "In re, Karim Dad" AIR 1930 Lah 657 . In -- 39 Mys H. C. R. 942 ", the question arose in connection with certain proceedings under the Mysore Land Revenue Code Section 223 of that Code provides reference by the Government to the High Court for its decision any question which might have been tried or investigated by a Civil Court but for the bar contained in Section 221 in respect of some matters referred to therein. The High Court had, in the exercise of their jurisdiction u/s 226, Land Revenue Code, given a decision on the question referred to it. A review was sought of that decision by one of the parties affected before Mahadevayya C. J. and Ramachandra Rao J. who held, following -- 30 Mys C. C. R. 221" and -- 39 Mys H. O. K. 217", that such an application for review did not lie. The learned Chief Justice then observed :

"It is conceded that the Land Revenue Code under which the Government made the reference does not contain any provisions empowering this Court to grant a review to a party affected by a decision of this Court on the reference. Nor is there anything in the CPC to support the petitioner's claim for a review in such cases."

25. In -- "41 Mys H. C. R. 414 ", it was urged that Section 561-A, Criminal P. C. conferred an inherent power on a Court to alter or review its own judgment in a criminal case and that the earlier cases of this Court in -- "28 Mys C. C. R. 60 " and -- 35 Mys C. C. R. 434 , the latter based on Section 309, Criminal P. C., which were decided before the enactment of Section 561-A needed reconsideration. This contention was negatived and it was observed that the High Court had no power even under that section to review its own judgment once it has been pronounced and signed, except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on merits or to correct a clerical error.

26. 50 Mys H. C. R. 8 ", was a case arising under the Mysore Co-operative Societies Act. It was held there by Nagesvara Iyer and Singara-velu Mudaliar JJ. that the power of a tribunal or Court to review its own order is a substantive right. This could be conferred only by the legislature and as Rule 25(h) of the Mysore Co-operative Societies Rules 1920 which purported to empower a liquidator appointed u/s 43, Co-operative Societies Act to review from time to time his own order determining the amount of contribution was "ultra vires" of the Government's rule making powers. They pointed out that it could not be disputed that a right of revision like the right of appeal is a substantive right and relied on the observation of Venkataramana Rao J. in-- "Ramchandra Massdaraj Deo Gom v. Beero Pollai" AIR 1933 Mad 531 FB , that

"Generally no Court has got the power of revising its own appellate orders nor has a Court the power of review unless specially conferred on it."

27. In -- AIR 1919 Mad 244 ", old field and Seshagiri Iyer JJ. held that as there was no" explicit provision in the Religious Endowments Act for a review, a District Judge who had passed an order u/s 10 of that Act had no power to review an order passed by him; nor had he any such power u/s 141, Civil P. C. The power to review was not inherent in a Court and could only be exercised if it is permitted by statute. old field J. observed at page 245 :

".....the rule that a Court cannot review its own decision except so far as it is permitted to do so by Statute, is of general authority, since it is recognised alike in England, for instance in -- "(1891) 1 QB 450 " and in India in -- 33 Mad 65 " 22 Cal 419 and "Bajinath Ram v. Nand Kumar Singh" 40 Cal 552 (PC) ."

Seshagiri Iyer J. observed at page 246 :

"It is settled law that a case is not open to appeal unless the Statute gives such a right. The power to review must also be given by the Statute. "Prima facie" a party who has obtained a decision is entitled to keep it unassailed, unless the Legislature has indicated the mode by which it can be set aside. A review is practically the hearing of an appeal by the same officer who decided the same. There is at least as good reason for saying that such power should not be exercised unless the Statute gives it, as for saying that another tribunal should not hear an appeal from the trial Court unless such a power is given to it by Statute."

He has referred in addition to -- "Charles Bright & Co. Ltd. v. Sellar" (3904) 1 KB 6 and --34 Cal 677 ", in which Atkinson L. J. had declared that the power to review is not inherent in a Court. He has referred to and distinguished certain cases which "sound the other way" as being cases wherein the original order was invalid and which the Court had no jurisdiction to pass or to correct errors caused by inadvertence or deliberate misrepresentation or fraud.

28. In -- "Mt. Sharfon v. Mt. Bholi" AIR 1922 Lah 395 , which was a case under the Guardians & Wards Act & -- AIR 1942 8 (Nagpur) , which was a case under the Debt Relief Act, a power to review has been negated on the ground that there was no such power given under those Acts. In -- Mt. Abhilakhi Vs. Sada Nand and Others , the Full Bench of the Allahabad High Court have held that no review lies in a case decided by a Bench in an appeal under the Letters Patent as there is no provision for the same in the Letters Patent. The CPC could not supply the power they said as "procedure was one thing and jurisdiction another; There is a clear distinction between the two".

29. In -- 33 Mad 65 ", some lands were purchased by the plaintiff at an auction for arrears of revenue. The sale was confirmed in August 1901 by the Deputy Collector and the plaintiff was put in possession. An application was made in 1902 to set aside the sale, but the Collector declined to interfere. Subsequently

on a review petition he passed an order cancelling the sale and the defendant applied for and obtained restitution of possession. The plaintiff then sued to recover possession of the lands. Munro & Shankaranayar JJ. held that the Collector had no power to review his own order refusing to interfere with an order passed by his subordinate confirming a sale for arrears of land revenue. They observed

"is not granted by any Statute and we are not aware of any principle on which it can be held that he has powers to review his own order."

30. In -- "K. Sreeramulu v. K. Ramireddy" 1929 Mad W N 140 ", a District Munsiff had passed an order rejecting a plaint under Order 7, Rule 11, Civil P. C. On a subsequent application to his successor in office the order of rejection was set aside and the plaint was admitted to be registered as a suit, the second District Munsiff purporting to do so u/s 151, Civil P. C. On revision it was held that neither under that section nor under the provisions relating to review he had" jurisdiction to override orders passed by his predecessor-in-office, and as it was an order passed without jurisdiction it must be set aside.

31. In -- M.J. Kutinha Vs. Mrs. Nathalal Pinto Bai and Another, , a Panchayat Court acting under the Madras Village Courts Act dismissed a suit on its merits though as the plain-tiff was absent, it should have dismissed it for default. The successor of the Panchayat Court on the plaintiff's application set aside the decree and restored the suit on the ground that the plaintiff had good cause for non-appearance. On appeal this last order was quashed by the District Munsiff, It was held by the High Court on a revision against his order that the order restoring the suit was without jurisdiction and could not be treated as an order passed in review of the first order inasmuch as the Madras Village Courts Act made no provision for reviews. It was pointed out that it has been made clear in many decisions AIR 1919 Mad 244", is one of them) that unless a Statute provides a remedy by way of review a Court could not review its own judgment except in any exceptional circumstances such as for example where it passed an order inadvertently or on accounts of some false representation by the officers of the Court.

32. In -- "(1891) 1 QB 450 ", Lord Esher M.R. has pointed out at page 452 that no Court has a power of setting aside an order which has been properly made unless it is given by Statute.

33. The learned Advocate-General has relied strongly on cases in 19 Bom 113" and "19 Bom 116 ". In these cases an Assistant Sessions Judge had passed an order holding that the defendant in a suit pending before him was an agriculturist under the Deccan Agriculturists' Relief Act. On review his successor reversed that order. There is no discussion there on the principles involved. The learned Judge merely held that the CPC was not applicable and as the Assistant Sessions Judge had granted the review on grounds of mistake and had exercised his discretion reasonably, the High Court which was approached to exercise what

they have styled as its extraordinary jurisdiction refused to interfere with the order. These cases are therefore of no help to the Government.

34. The learned Advocate-General has in this context put forward another argument in support of the power of the Government to review its own order and for effect being given to such subsequent order. He represents that the subsequent order of the Government is really not passed on a review strictly so called, but merely in the nature of a fresh order which the Government can pass from time to time as contemplated by Section 61, Mysore Land Revenue Code and according to which the Deputy Commissioner has to act. That section provides that when it appears to the Deputy Commissioner, that the occupancy of any alluvial land which vests under any law for the time being in force in Government, may with due regard to the interests of the public revenue be disposed of in perpetuity or otherwise as the Government may direct by rules or orders made in this behalf u/s 233. Section 233 provides for Government making from time to time rules or orders not inconsistent with the Act regulating the grant of permission to occupy unoccupied land u/s 58 and for the disposal of occupancy of alluvial land u/s 61. Section 234 provides for all general rules or orders made by the Government u/s 233 being published and when published having the force of law till they are cancelled or amended. It is urged by the learned Advocate-General that the order contemplated by Sections 233 and 234 is such order as is sought to be impugned in this case and that the effect of those sections is that the Government can always and at any time lawfully cancel, alter or amend its previous orders. It is to be observed that u/s 233 the rules and orders cannot be inconsistent with the Land Revenue Code and if the Code does not authorise or permit the review of any order already passed by Government any rule or order to the contrary will be null and void as decided in -- "50 Mys H. C. R. 8".

Moreover it is difficult to follow much less accept this contention. Such disposal can obviously govern only prior orders and not the orders which may be passed in future. It would also mean that the Government can keep on altering or cancelling its previous orders at any time and every subsequent order passed in the same or any other case after, however long a period, would have to be given effect to by the Deputy Commissioner u/s 61. There would then be hopeless confusion and absolute lack of finality to Government orders. The proper meaning and construction to be placed on the word "orders" occurring in Section 233 is that they can only mean orders of a general application which are to be in the nature of precedents or guides and are to be followed as such in subsequent cases. Such orders would be laying down standards or directions for the guidance of the lower Revenue Officers, and explain or interpret the provisions of the Land Revenue Code. They would be analogous to case-law or precedents with which Courts are so familiar. Obviously such a direction as is contained in Section 61 is necessary to ensure that the lower Revenue Courts or Officers carry out all lawful directions of Government laid down either in the form of rules or published by Government Orders as provided by Section 233 and if there is to be certainty

and consistency in the working of the Land Revenue Regulation or Act.

35. The learned Advocate-General has in this connection referred to some passages in -- "38 Mys H. C. R. 467 ", in the judgment of Mahadevayya J. to urge that an order which is illegal in its inception cannot become valid by mere lapse of time and that there is nothing to prevent the Government from reconsidering the question in all its aspects. The decision of this Court in that case really rests on the finding that the duty of regulating the supply of water to wet lands from a Government source in Mysore rests exclusively in Executive Officers of Government and owners of lands classified as dry in the settlement have no preferential right over holders of wet lands under the source, and that a grantee of "nirasardi" rights which was in the nature of a licence for the use of the water subject to payment of water rate could not claim any indefeasible right as against Government, to the use of the water, by his enjoyment. I do not think that that observation by Mahadevayya J. is anything more than mere obiter and in any event has no application to the facts of the present cases where nobody has even suggested that the previous orders of the Government were illegal and therefore absolutely null and void.

36. On the other side it has been strenuously contended for the petitioners that if the word "orders" in Section 60 is to be interpreted in the way suggested by the learned Advocate-General it would lead to "injustice" and "absurdity" as every order passed either by the Deputy Commissioner or Government would never be final but would remain and be uncertain for all time and reliance has been placed on Maxwell's Interpretation of Statutes 1946 Edn. pp. 207 where that learned author says :

A sense of the possible injustice of an interpretation ought not to induce Judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two reasonable interpretations. Whenever the language of the Legislature admits of two constructions, and if construed in one way would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words..... in Sections. 112 and 198 Bankruptcy Act, 1849 (c. 108), which protected a bankrupt from arrest by his "creditors", this word was construed as limited to those creditors who had debts provable under the bankruptcy, for it would have been obviously unjust and was therefore presumably not intended, that his certificate should protect a bankrupt not only against those creditors who had or might have proved under the bankruptcy, but also against creditors whose claims were not barred by it.

and at pages 212-215 where he says :

"The same argument (the presumption against injustice or absurdity) applies where the consequence of adopting one of two interpretations would be to lead to an absurdity. Thus Section 3 (now repealed) of the Newspaper Libel Act, 1881 (c. 60), which enacted that no criminal prosecution should be commenced

against a newspaper for libel without the fiat of the Director of Public prosecutions, was held not to apply to a criminal information, for to hold otherwise would lead to the absurd and scandalous result that that officer, who was to act under the superintendence of the Attorney-General, might not only overrule the latter, but also the Queen's Bench Division in the exercise of their power to give leave to file such information."

There is considerable force in this contention. If we accept the argument on behalf of the State then there would be no ascertained or final rights to property in alluvial lands which have already been granted by the duly authorised & empowered officers of Government & even after confirmation on appeal to Government. This is

directly opposed to Section 70 of the Act which declares that the right of occupancy is a heritable and transferable right subject to the payment of land revenue to Government. The learned Advocate-General when pressed to say if this would not be the result if we accepted the interpretation canvassed for by him had to admit that it may be so and suggested that if that was the policy of the Land Revenue Code the Courts were bound to accept such a construction. But I do not think that the policy of the Act which was enacted so far back as 1888 with a view to codify and place on an efficient, clear and solid statutory foundation the rights both of the State and its subjects was to render by Sections 61 and 233 its operation so nebulous, ambulatory, uncertain and arbitrary. Doreswami Iyer C. J. has pointed out in 38 Mys H. C. B. 467", that the Mysore, Land Revenue Code is a complete Code in itself and embodies the whole of the Revenue Law in force in Mysore. It makes express and elaborate provision for appeals and revisions against orders made by the subordinate Revenue Officer in administering the Act and it makes no provision for a review. Indeed in Chap. 13 of the Land Revenue Code which provides an elaborate and detailed machinery for correction of wrong orders through appeals and revision, it has expressly provided that no appeal shall lie to Government from an appellate decision or order passed by the Revenue Commissioner except on a point of law or usage having the force of law. Short periods of limitation are prescribed for such appeals and power expressly granted to admit belated appeals only if the appellant satisfies the appellate authority he had sufficient cause for not preferring an appeal in time. The Legislature has nowhere either in that chapter or elsewhere provided for any appeal or review or revision against any orders passed previously by Government itself.

37. The petitioners have in this connection relied on a case reported in -- The State of Madras Vs. Nadimpalli Subbaraju, a decision of a single Judge of the Madras High court where following -- "Secy, of State v. Kasturi Reddi" 26 Mad 268 (Z14), it has been held that where a valid assignment is made under darkhast rules and patta granted to the applicant the title becomes complete and vested in such assignee, and the Government cannot revoke or change it, that it is as if the Government through its agent the Collector or the Revenue Divisional

Officer or the Tahsildar has sold away or assigned the rights in certain lands and that the Collector has no power to cancel an earlier order, nor has the Government got any such power to set aside an order of a lower authority when it has become final, or any all-pervading or supervening power to interfere in the orders passed by the subordinate revenue authority, in accordance with the Board's Standing Orders in the grant of Dark-hast, In 26 Mad 268 ", Bhashyam Iyengar J. has observed at page 283 that when there is a valid contract and disposal of a land by an officer duly authorised under the darkhast rules, unless the grant was procured by fraud, misrepresentation or mutual mistake the grant cannot be annulled or revoked by the officer who made the grant or by his successor-in-office or even by the Governor in Council. It must therefore be held that the Government had no powers to review their previous orders in those cases and that if they did so it is wholly without jurisdiction.

38. The powers of this Court to issue writs against the Government in a matter like this and the propriety of doing so next falls for consideration. A large number of decisions have been cited by the learned Counsel on either side in this matter. I think, however, it is unnecessary to refer to most of them as the broad principles governing the issue of such writs are now fairly settled or known.

39. It is contended by the learned Advocate-General that this Court can issue writs only to inferior tribunals and that Government is not such an inferior tribunal and not even a tribunal. Whatever may have been the room for difference as regards the question of Government being an inferior tribunal, in respect of whose orders and actions a High Court as a Court of Record could issue writs before the Constitution, I think Article 226 of the Constitution makes it clear that a High Court has now power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Government within those territories directions, orders or writs, including writs in the nature of "habeas corpus" "mandamus", "prohibition" "quo warranto" & certiorari", or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose. It has been held by the other High Courts in the Indian Union that the words "for any other purpose" should not be read as "ejusdem generis" with the earlier kinds of writs and that such writs can be issued for the enforcement of any of the rights not only conferred by Part III but also in suitable cases for the protection and enforcement of other rights of the citizens in relation to the State. Neither in that article nor in Article 227 which provides that every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction is any distinction mentioned about superior and inferior tribunals, and I think it unnecessary for the purpose of deciding this matter to hold that the Government is an inferior tribunal. So long as, and whenever it exercises judicial and quasi-judicial powers and gives final judgments between two parties which has legal sanction by its own force, the Government or any tribunal within the jurisdiction of the High Court, is in my view, subject to the writs which may be issued under Article 226 and to the

superintendence contemplated under Article 227.

40. The learned Advocate-General has argued that because Article 227(2) contains certain provisions for calling for returns and making of rules and prescribing forms and books only from Courts the word "tribunal" cannot include Government from whom such returns etc., cannot be called for. I do not think that any such construction can be placed on the circumstances that the High Court may have power to call for certain returns from Courts alone and not from tribunals as being in any way indicative that they have no power of superintendence over tribunals from whom they cannot and need not call for any such returns. As pointed out in -- "G.D. Karkare v. T. L. Bhevde", AIR 1950 Nag 330, the power under Article 226 is given not only for the enforcement of the fundamental rights conferred by Part III of the Constitution but also for any other purpose; and the words "for any other purpose" must receive their plain and natural meaning, viz., for any other object which the Court considers appropriate and call for the exercise of the powers conferred upon it.

41. The powers of the Indian Courts under the Constitution are much wider and are not confined to issuing prerogative writs only. Article 226 empowers the High Court to issue to any person or authority any directions, orders or writs. The High Court therefore has power to interfere even in the case of administrative orders which are made in defiance of the articles of the Constitution or the mandatory provisions of law and without any jurisdiction; see -- Rashid Ahmed Vs. The Municipal Board, Kairana, ; -- Ram Charan Lal Vs. The State of Uttar Pradesh, " and -- Avadhesh Pratap Singh Vs. State of Uttar Pradesh and Others, . The words "any person or authority" include Courts and tribunals whether under the appellate jurisdiction of the High Court or not; see -- Motilal Vs. State, . In -- "Trimbak Prasad v. State of Hyderabad" AIR 1952 Hyd 10 , a writ was issued against a Revenue Minister. In that case the Revenue Minister had cancelled a patta which had been duly granted over 30 years ago. The Hyderabad High Court held that the order of the Minister was not a Ministerial Act. It affected rights of property. The Revenue Minister had no jurisdiction to decide the matter in dispute and pass the order referred to. Even assuming he had jurisdiction it was not competent for him in law or natural justice to deal with the matter since he should not sit in judgment and overrule the previous orders and action by high senior officers and the President in Council in respect of the same dispute, in -- Elbridge Watson Vs. R.K. Das, , Das Gupta J. has pointed out that the High Court can interfere with the action of the executive if the act complained of does not come within the four corners of the authority given him by the Act though the Court cannot question the rightness or wrongness of the order complained of. That was a case arising under the Income Tax Act. That decision has no doubt been reversed on another point, vide - Union of India (UOI) and Another Vs. Elbridge Watson, . In -- "Galodoo v. S. Rajan" AIR 1953 Nag 1 , a writ was applied for in respect of an order passed by a member of the Board of Revenue in respect or proceedings taken u/s 40, C. P. Tenancy Act. It was found that he had given way to extraneous considerations and exercised jurisdiction not vested

in him by law u/s 40, C. P. Tenancy Act. It was held that the High Court could issue a writ quashing the order not only because the order passed by him was not in accordance with law laid down in Section 40 but also because he had exceeded the limited powers of second appeal conferred by Section 33, Land Revenue Act. The last ground may probably be not fully acceptable but it shows how thin sometimes the line is between want of jurisdiction and the irregular exercise of it.

42. It is a well-known proposition of law that before a writ of certiorari can issue it must be shown that the authority which passed the order without jurisdiction or in excess of it or in violation of the principles of natural justice. The issue of such a writ or any other suitable writ which this Court can issue under Article 226 or order that it can make under Article 227 cannot, I think, be avoided by merely calling a particular order or action as in the nature of an executive order or action. Though some of the High Courts have expressed themselves to the contrary, acts which are purely executive in their nature, that is depending upon the discretion of the authority making it, may not be amenable to correction by this Court. But I have no doubt that where the orders are passed or action is taken under a statute or an Act of the legislature by a Court or tribunal which is vested with the power to take and enforce decisions regarding the rights between rival parties who appear before the tribunal or between them and the State, their proceedings, orders and actions cannot be said to be "executive". They would really be in the nature of judicial or quasi-judicial proceedings and orders and where it is shown that the authority or tribunal has acted contrary to or has not observed the provisions of such Act or statute or has during the course of so doing not observed the rules of natural justice, I think this court has ample jurisdiction to issue the necessary writs. There are various Acts under which the Government and Officers thereof who exercise executive acts also are called upon to decide rights between the parties and between the party and the State; e.g., under the Workmen's Compensation Act, the Land Acquisition Act, the Religious Endowments Act, Motor Vehicles Act etc. While administering these Acts the members of Government and their officers are bound to observe and carry out the terms of the Acts governing these "matters. This would not of course mean that any party who thinks that a wrong order has been passed under any of those statutes can come up to this Court and ask that it should convert itself into a Court of appeal sitting in judgment over such orders. If the authority had jurisdiction to pass those orders and those orders fell within the ambit of such jurisdiction and powers, the mere fact that the order is wrong in the opinion of this court may not justify this Court to issue writs. But where jurisdiction is totally wanting or is not exercised or is exercised without reference or contrary to the statutes under which such jurisdiction is given I think this Court can and ought to interfere. The Constitution has, I think, laid onerous and responsible duty on this Court as on the Supreme Court under Arts. 226 and 227 and this Court is bound to take action in suitable cases under those Articles.

43. It has been pointed out in -- "Rex v. Electricity Commissioners" (1924) 1 KB

171 , that the operation of writs which in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a Court of Justice has extended to control the proceedings of bodies which do not claim to be and would not be recognised as Courts of Justice; and that wherever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs. The conditions laid down by Atkin L. J. in "(1924) 1 KB 171 ", are : (1) that the tribunal or body of persons should be vested with legal authority; (2) that the authority should determine questions affecting rights of persons; (3) that in determining these questions the tribunal should be under a duty to act judicially and (4) that in determining those questions there should be excess of jurisdiction. I do not think it can be denied that a Minister of Government is, while exercising powers under the Land Revenue Code, vested with legal authority to determine questions affecting the rights of other persons; that while determining those questions that the Government is under a duty to act judicially also admits of no doubt. In -- P.V. Rao Vs. Khushaldas S. Advani, , Chagla C. J. has stated, what in his opinion was a judicial or quasi-judicial act as distinguished from a purely administrative or executive act thus :

"In the first place, a duty must be cast by the Legislature upon the person or persons who is empowered to act to determine or decide some fact or facts. There must also be some "lis" or dispute resulting from there being two sides to the question he has to decide. There must be a proposal and an opposition. It must be necessary that he should have to weigh the pros and cons before he can come to a conclusion. He would also have to consider facts and circumstances bearing upon the subject. In other words, the duty cast must not only be to determine and decide a question, but there must also be a duty to determine or decide that fact judicially."

That case went up in appeal to the Supreme Court and in -- Province of Bombay Vs. Kusaldas S. Advani and Others, ", Kania C. J. defined judicial act as:

"When the law under which the authority is making a decision, itself requires a judicial approach the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an enquiry judicial, provided in coming to the decision the Well recognized principles of approach are required to be followed."

and Fazi Ali J. observed :

"To act as a Court or a Judge necessarily involves giving an opportunity to the party who is to be affected by an order to make a representation, making some kind of inquiry, hearing and weighing evidence, if any, and considering all the facts and circumstances hearing on the merits of a controversy, before any decision affecting the rights of one or more parties is arrived at. The procedure

to be followed may not be as elaborate as in a Court of Law and it may be very summary, but it must contain the essential elements of judicial procedure as indicated by me."

Dass J. said that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a "lis" and "prima facie", and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act. This is so even if there are no two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it.

44. I fully agree with my learned brother Venkata Ramaiya J. that these are cases in which this Court ought to issue a writ, writ of "certiorari" pointing out that the Government has or had no power to review its own order, and that any orders which they may have passed contrary to the same must be quashed.

45. A small piece of land was granted to the petitioner, who has filed C, P, No. 155/51-52, for consideration by way of a darkhast sale in 1942 by the Revenue Commissioner and a saguvali chit was also issued. An appeal to the Revenue Commissioner by respondent 2 for himself and on behalf of the other villagers was dismissed. Respondent 2 and others appealed to Government and the Government by an order dated 22-2-1946 rejected their appeal. Three years later they filed a petition to Government for reviewing their order. That review petition was dismissed after hearing both parties and holding that the order already passed by Government was correct and there were no valid grounds to interfere with the same. Subsequently a second review application was filed and this was allowed and the grant was cancelled in September 1951. These earlier proceedings were all under the provisions of the Land Revenue Code conducted a long time back and the grant had become final. In the other two cases the grants were properly made under solemn agreements and in pursuance of the powers vested in Government and its responsible Revenue Officers under the Mysore Land Revenue Code and the rules thereunder and duly confirmed by the Government. Now they are sought to be cancelled on applications for review.

46. I think Article 33(1) of the Constitution of India also which lays down that no person shall be deprived of his property save by authority of law and that no property moveable or Immovable shall be taken possession of or acquired even for public purposes, without paying compensation, are clearly against the Government resuming the lands or disposing of them contrary to the original grants except in accordance with law. Order quashed.