

(1994) 08 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No's. 4885 to 4889 of 1994

S.V. Venkataswamy

APPELLANT

Vs

Assistant Commissioner

RESPONDENT

Date of Decision : 17-08-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) ILR (Kar) 3101 : (1994) 4 KarLJ 591

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Chandrasekaraiah, for P. Krishnappa, for the Appellant; B.J. Somayaji, HCGP for R-1 and Muddappa, for C.M. Basavarya, for R-4 to R-6, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—By this Petition, the petitioner has prayed for issuance of a Writ of Certiorari or Writ Order or direction in the nature of a Writ of Certiorari quashing the order dated 24-1-1994, passed by Assistant Commissioner/Sub-Divisional Officer, Bangalore Sub-Division, in Village Panchayat Case (V.P.C.) No. 15/1993-94, with the description of case and its parties as Sri B. Srinivasa and Ors. v. Secretary & others and for setting aside the endorsement V.P.C.No. 26/79-80 dated 20-2-1980, issued by the Chairman of the Panchayat concerned after having held the same to be contrary to law.

2. The facts of the case in brief are that in favour of petitioners 1 to 5, Village Panchayat had made allotments of the property in dispute - vide the Endorsement V.P.No. 26/79-80 dated 20-2-1980. The opposite parties to this present Writ Petition having felt aggrieved from the order of allotment which had been made in favour of the Writ petitioners 2 to 5 in the year 1980 (as mentioned above) preferred V.P.C. Appeal No. 15/1993-94, before the Assistant Commissioner u/s 200 of the Village Panchayat and Local Boards Act, 1959 (for short, "Local Boards Act, 1959") and the Assistant Commissioner has set aside

the order of allotment - vide Annexure-D to this Writ Petition - and an English translation whereof has been annexed to the counter statement filed on behalf of the respondent Nos. 4, 5 and 6 supported by an affidavit sworn to by Sri B. Srinivasa

3. Sri Chandrashekaraiah, brief holder for Sri P. Krishnappa, learned Counsel for the petitioner earlier sought adjournment of the case on the ground that he should be allowed time to file the counter-affidavit to the application for vacation of stay order which request was opposed by the Counsel for the respondents 4 to 6 and thereupon parties submitted that let matter be heard.

Sri Muddappa, holding brief for Sri C.M. Basavarya, learned Counsel for respondents 4 to 6 was heard and it appeared that Writ Petition should be disposed of instead of going on mere application for vacating of a stay order and the objections have already been filed to the Writ Petition and it appeared during the course of hearing this Petition can be disposed of on short point as well as it is the question of jurisdiction of Assistant Commissioner. Sri Chandrashekaraiah holding brief for the Counsel for the petitioner submitted that Assistant Commissioner had acted in excess of jurisdiction in setting aside the allotment order passed by the Village Panchayat Chairman and that u/s 200 of the Local Boards Act, 1959 the Assistant Commissioner firstly could not go into the question of title relating to the property in dispute and question of title has got to be decided by the Civil Court. He has further submitted that u/s 200 of the Local Boards Act, 1959 the Assistant Commissioner is, if the impugned order appears to be suffering from some illegality or if any of the grounds provided for exercise of certain power of Assistant Commissioner exists or is shown to exist, then Assistant Commissioner has got only the power to suspend the implementation of the order impugned and thereafter, he can only recommend the matter for proper orders to the Deputy Commissioner, but Assistant Commissioner himself is not competent to pass any final order setting aside the impugned order of allotment and in this view of the matter, the learned Counsel for the petitioner submitted that the order impugned suffers from jurisdictional error.

4. On behalf of the respondents, Sri Muddappa, holding brief for Sri C.M. Basavarya, the learned Counsel for respondents submitted on the same lines as it is submitted by the learned Government Pleader, Sri Somayaji, that any observation which has been made on question of title may be taken to have been made only tentatively for the purpose of decision of the question or matter whether allotment could be made, but that is not final and it is really for the Civil Court to decide matter relating to title. It has further been submitted by the respondents' Counsel as well as the learned Counsel for the petitioner that order impugned is not to be taken as final as made out by the Assistant Commissioner, it has got to be confirmed by the Deputy Commissioner and as such the learned Counsel for the respondents submitted that the Petition is liable to be dismissed. The learned Counsel for the respondents further submitted that the present Writ Petition is not maintainable as the petitioner has got an alternative remedy of

filing an appeal against the order of the Assistant Commissioner in view of the provisions of Section 206 of the Local Boards Act, 1959 and on this ground as well the respondents" Counsel submitted that the Writ Petition should be dismissed.

5. I have applied my mind to the contentions made by the learned Counsel for the parties. I think it would be proper on my part to make a reference to the provisions of Section 200 of the Local Boards Act, 1959 and before I proceed to examine the merits of the Writ Petition, I think it would be appropriate on my part to first dispose of the preliminary objection with respect to the maintainability of the Writ Petition. It is right principle of sound exercise of jurisdiction as regard to the power of this Court under Article 226 of the Constitution of India that alternative remedy is no absolute bar in the matter of entertainment of Writ Petition. This Court can even inspite of the existence of alternative remedy, exercise its power under Article 226, in certain circumstances. As a sound principle for exercise of jurisdiction under Article 226, no doubt, this Court can refuse to exercise the jurisdiction under Article 226 in cases where alternative remedy is available, but it cannot be taken to be creating an absolute bar.

6. The basic principle of law in this regard has been laid down in a leading Decision of the Hon"ble Supreme Court in the case of The State of Uttar Pradesh Vs. Mohammad Nooh, as under :

"In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury"s Laws of England, 3rd Edn., Vol.11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

7. Their Lordships have been further pleased to observe that:

"If, therefore, the existence of other adequate legal remedies is not per se a bar to the issue of certiorari and if in a proper case it may be the duty of the superior court to issue a writ of certiorari to correct the errors of an inferior court or tribunal called upon to exercise judicial or quasi-judicial functions and not to relegate the petitioner to other legal remedies available to him and if the

superior court can in a proper case exercise its jurisdiction in favour of a petitioner who has allowed the time to appeal to expire or has not perfected his appeal, eg., by furnishing security required by the statute, should it then be laid down as an inflexible rule of law that the superior court must deny the writ when an inferior court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior court or tribunal."

After having placed this question, their Lordships of the Supreme Court laid down in very clear terms after making reference to the Authorities referred to above:

"On the authorities referred to above it appears to us that there may conceivably be cases and the instant case is in point where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and ad accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned."

8. The above principle of law laid down by their Lordships of Supreme Court clearly lays down that the alternative remedy or refusal to exercise jurisdiction under Article 226 on the ground of alternative remedy is a rule relating to rule of policy and convenience and not of law, which may assist the Court in the exercise of discretion and even in cases where alternative remedy exists, it is open to this Court to interfere with the order of subordinate or Tribunal, particularly in the circumstances which have been indicated in the above observations. This view of the Supreme Court has been reiterated in another case, namely, Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, There are many other cases also in which a case of Ram and Shyam Company Vs. State of Haryana and Others, their Lordships of Supreme Court have been pleased to lay down as under:

"Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226, where a party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate, it does not oust the jurisdiction of the Court."

In fact, the very Decision relied upon by the Supreme Court in the case of *BABURAM v. ANTARIM ZILLA PARISHAD*, in the State of Uttar Pradesh v. Mohammed Nooh, it is observed that there is no rule with regard to certiorari as there is with mandamus that Writ Petition will lie only where there is no other equally effective remedy. It should be made specifically clear that where the order complained of is alleged to be illegal or invalid as being contrary to law, Petition at the instance of persons adversely affected by it would lie to the High Court under Article 226 and such a Petition cannot be rejected on the ground that an appeal lies to higher officer or the State Government. An appeal in all cases cannot be said of provided in all situations, an alternative effective remedy.

9. Thus, a perusal of the above authorities per se indicate that Rule of alternative remedy is a Rule of discretion and not a Rule of Law. No doubt, it provides a principle of guidance which has ordinarily got to be complied with in cases where the question is of exercise of powers under Article 226, but it is not a Rule of Law which may be said to have curtailed the power or the jurisdiction of this Court under Article 226 and in particular cases, where order appears to be without jurisdiction, it appears per se to be null and void or where it appears to be in violation of the principles of Natural Justice and Rules of procedure. A person challenging the orders suffering from such errors cannot be relegated and need not be relegated to the statutory remedy.

10. Before proceeding further, I think it would be most appropriate on my part to make reference to the provisions of Section 200 of the Local Boards Act, 1959. Section 200 of the Local Boards Act, 1959 reads as under:

"200: Deputy Commissioner's powers of suspending execution of orders, etc., of Panchayats and Taluk Boards, --

(1) Except in respect of cases expressly provided for in any other provision of this Act, if in the opinion of the Deputy Commissioner the execution of any order or resolution of a Panchayat or Taluk Board or any order of any authority or officer of the Panchayat or Taluk Board or the doing of anything which is about to be done, or is being done by or on behalf of a Panchayat or Taluk Board, is unjust, unlawful or improper, or is causing, or is likely to cause, injury or annoyance to the public or to lead to a breach of the peace, he may, by order in writing, under his signature, suspend the execution or prohibit the doing thereof.

(2) When a Deputy Commissioner makes any order under Sub-section (1), he shall forthwith forward to the Commissioner and to the Panchayat or Taluk Board affected thereby a copy of the order, with a statement of the reasons for making it; and the Commissioner may after such inquiry as may be necessary rescind or modify the order, as he deems fit."

That a perusal of Section 200 per se shows that under this Section if in the opinion of the Deputy Commissioner, the execution of any resolution or any order or doing of anything which is about to be done or which has been done or has been done by or on behalf of the Panchayat or Taluk Boards is unjust or unlawful

or improper or is causing or is likely to cause injury or annoyance to the public or it may lead to breach of peace, then in those cases, the Assistant Commissioner has been conferred power to suspend the execution or implementation of that resolution, order or of doing of that thing.

11. Under Sub-section (2) of Section 200 of the Local Boards Act 1959, it is provided that while making orders under Sub-section (1) of suspending the implementation or execution of that order the Deputy Commissioner shall immediately forward to the Commissioner as well as to the Panchayat, a copy of the order with the statement of reasons in support of his order of suspension and this sub-section confers the power on the Commissioner to pass orders rescinding or modifying the orders or resolution as if he has thought fit, but after making such enquires as may be necessary. Thus, prima facie and as the unambiguous language of Section 200 (1) of the above Act 1959 indicates the power of the Deputy Commissioner in cases which may be said to be covered by any of the grounds under Sub-section (1), suspend the execution of the resolution or order or he can prohibit the doing of that thing or that resolution but he himself has not got any power or jurisdiction to cancel or to set aside that resolution of Panchayat or order passed by an authority or by an officer of Panchayat or Taluk Board. The order of Panchayat or the Taluk Board can, on reference being made by the Deputy Commissioner, be rescinded, modified or altered by the Commissioner only. This being the position of law in the present case, the order impugned per se appears to be illegal, null and void and it appears to have been passed in exercise of powers not vested in the Assistant Commissioner or in other words in excess of its authority or jurisdiction, firstly for the reason that as Deputy Commissioner or Assistant Commissioner has no power to set aside the order or execution of Panchayat or Taluk Board or any orders passed on behalf of the Panchayat or Taluk Board and secondly the grounds on which it can be looked into or interfered with is impropriety or illegality or it can be suspended by the Deputy Commissioner/Assistant Commissioner and be cancelled by Commissioner, if the execution or implementation of the said resolution or order is likely to disturb the public peace or it may cause annoyance to public or the like. But it does not confer any power primarily to record a final decision on the question of title of the parties as to the property in dispute. May it be that for limited purpose that Commissioner may look into the prima facie case or the case of prima facie title, while exercising the power vested in it but the Deputy Commissioner cannot set aside that order or resolution on any ground.

In the present case, the resolution of the Panchayat has been set aside by the Sub-Divisional Officer, Bangalore Sub-Division, Bangalore, vide Annexure-0 by taking the view that the site belongs to the private person. In my opinion, as such the order impugned is illegal, perse illegal and without jurisdiction.

12. Before parting with this Judgment, I may point out that Section 200 does not use the word "appeal". No doubt, it confers power on the Deputy Commissioner

to suspend execution of the order or resolution or order of the Panchayat and confers power on the Commissioner to modify or to rescind the resolution or order as it deems fit. Learned Counsel for the petitioner tried to raise a contention that there has been delegation of power of Commissioner on the Deputy Commissioner and powers of Deputy Commissioner has been delegated to Assistant Commissioners of Sub-Divisions. Even if that be so, here, in the present case the power has been exercised by the Assistant Commissioner of the Sub-Division, that is, Sub-Divisional Officer, who has passed the impugned order and even if it be that the power of Deputy Commissioner has been delegated to Assistant Commissioner, the Assistant Commissioner could not pass any order beyond the scope of jurisdiction of Deputy Commissioner u/s 200(1) of the Local Boards Act, 1959 and therefore, the order passed by the Sub-Divisional Officer cannot be said to be valid. I may also clarify that Section 197 of Sub-section (2) provides that Government notification delegates to the Deputy Commissioner any of the powers conferred under this Act on the Commissioner. The legislative intent appears to be that powers of Commissioner can be delegated to Deputy Commissioner, as Deputy Commissioner, that is, the Deputy Commissioner appointed either initially or by promotion from the post of Assistant Commissioner to that of Deputy Commissioner, but there cannot be any delegation of power of Assistant Commissioner to whom powers under Sub-section (2) of Deputy Commissioner have been delegated. Therefore, I do not find any substance in the contention of the learned Government Pleader. The order impugned, in my opinion, has been passed by the Deputy Commissioner in excess of jurisdiction and so it is void and therefore it is liable to be quashed.

13. Having thus considered the matter as a whole as mentioned above, in my opinion, the Writ Petitions deserve to be allowed and are hereby allowed by issuance of Writ of Certiorari and by quashing the order dated 24-1-1994. After having held the order to be illegal, null, void and inoperative and liable to be quashed, I may make it clear that it will be open to the authorities to act in accordance with law and pending the final decision in the matter by the highest authorities, the petitioners' possession, if any, over the property in dispute, shall not be disturbed.

14. Let the Writ of Certiorari be issued quashing the order impugned dated 24-1-1994 passed in V.R.C. Appeal No. 15/1993-94 and the Mandamus be issued to the opposite parties not to interfere with the petitioners' possession, if there is any, on the basis of the allotment order issued by the Village Panchayat.

15. It will be open to opposite parties to consider the matter afresh u/s 200 of the Act keeping in view the passage of time from the date of allotment proceedings and developments, if any, have taken place, in the light of law applicable, if any party so approaches.