(1951) 08 AP CK 0003

In the Andhra Pradesh High Court

Case No : Civil Writ Application No. 54 of 1951

Trimbak Prasad APPELLANT

Vs

State of Hyderabad and another RESPONDENT

Date of Decision : 06-08-1951

Acts Referred:
Hyderabad Land Revenue Act, 1317 — Section 74, 87

Citation : AIR 1951 AP 39

Hon'ble Judges : Suryanarayana Rao, J;Palnltkar, J

Bench : Division Bench

Advocate : Sadashiva Rao, for the Appellant; Vinayak Rao Vaidya, for No. 1 and Gopal Rao Ekbote, for No. 2, for the Respondent

Judgement

1. This is an application for issue of writ of certiorari to quash the order passed by the Revenue Minister, Hyderabad State on 18-11-1950, wherein he states:

I accept the recommendation made by the Civil Administrator of Aurangabad and cancel the patta of Trimbak Prasad in regard to 1632 acres 5 guntas of land situate in Jogwada village as the heir of jagirdar, Bala Prasad is entitled to the patta being made out in his name. I order that the patta should be made out in his name.

2. Three villages, Jogwada, Purj and Itawa in Aurangabad district were granted as Jagira for life by Government to two jagirdars, Bala Prasad and Tulja Prasad. Rai Chotelal was the Naib of the jagirs and was entrusted with the management of the jagir villages. He was also given a power of attorney by the jagirdars on 3rd Isfandar 1328 F (5th January 1918.)

3. Trimbak Prasad, petitioner before us, was granted patta of the lands now in dispute and situate in Jogwada village by an order of the Naib on 11th Azur 1328 F. (15th November 1918.) Azur is the first month of the Fasli year.

4. Bala Prasad died first in 1328 F and Tulja Prasad died later in Ardibahist 1328 F (March-April 1919.)

5. Rai Chotelal, the Naib, submitted to the Government the death report on 18th Khurda(sic) 1326 F. (23rd April 1919) wherein he also mentioned that jagirdar, Bala Prasad left behind him surviving an adopted son named Eknath Prasad and that he was not aware if there were any other heirs.

6. As stated in paragraph 3, petitioner, Trimbal Prasad got patta of the land in dispute and him name was entered in the Register of assessed land for the agricultural year 1329 P. It is stated be his Advocate, relying on a gasthi (circular) No. 8 of 1298 F that the agricultural year 1329 F is from 1323 F to June 1329 F and hence though patta was granted on 11th Azur 1328 F (15th November 1918 his name could be entered in the register of the agricultural year immediately following.

7. The jagir villages were resumed by the Government on 15th Shehrewar 1328 F (20th July 1919.) After resumption the villages were surveyed and Trimbak Prasad''s name was continued as pattedar. He is now continuing as pattedar and is possession of the lands in dispute from that agricultural year 1329 F and even now.

8. On 26-6-1342 F (30th March 1933) Eknath Prasad applied for the first time to the Revenue Secretariat for grant of patta of the resumed jag(sic) lands in his name. He also filed another application on 4-7-1343 F (8th April 1924) before the Subedar, Aurangabad. Reports were called for on these applications and the Tehsil reported that the Naib unauthorisedly granted patta to his son-in-law, Trimoak Prasad. The Taluqdar, however, reported to the Subedar that though the pattas were transferred wrongly by the Naib, still Eknath Prasad had no locus standi and his petition should be dismissed. The Subedar agreed with the Taluqdar and accordingly submitted a report to the Revenue Secretary. Again Eknath Prasad filed another application on 24-1-1344 F. (29th October 1934) complaining that the Subedar and the Taluqdar who passed the above order were one and the same person. The Revenue Minister ordered that the permanent Subedar should make the report. The permanent Subedar submitted his report that the Revenue Department was unable to interfere, pattas having already been granted and that Eknath Prasad should have recourse to the Civil Courts. Again on 22-5-1344 F (24th Feb. 1935) Eknath Prasad applied to the Revenue Secretary that the Subedar''s report was contrary to the report of Tehsil and that all the files should be called for and justice be done to him. He also filed another application on 12-11-1344 F, (19th August 1935) before the Revenue Secretary complaining that patta was granted to Trimbak Prasad by the Naib''s fraud and that it should now be revoked and granted to him. In the proceedings sheet of the Revenue Secretariat there is a note dated 18-7-1346 F. (22 April 1937) that the Naib of the Jagirdar had fraudulently transferred patta of the lands which was not in possession of any one, in Trimbak Prasad''s name and that the same may be cancelled and granted to Eknath Prasad as heir of the jagirdar. In support of this recommendation reference was made to Gasthi No. 17 of 1345 F. How the Gasthi of 1345 F could apply to a grant made in 1328 F has not been explained

to us. The Advocate for Eknath Prasad''s legal representative has however described this note as an order of the Revenue Secretary. We do not consider it to be an order of the Revenue Secretary, it does not appear to be so, nor is there anything to show that the Revenue Secretary signed it. If really it was the Revenue Secretary''s order, it would have probably ended the litigation there and then. On the other hand there is a letter No. 1480, dated 2-9-1346 F. (8th June 1939) from the Revenue Secretary to the Subedar putting the following questions:

(a) When jagirs were resumed by Government in 1328 F. how patta was granted in the name of Trimbak Prasad without the orders of Taluqdar or Subedar; and how patta was granted only for 189 acres when the actual area is 1632 acres and 5 guntas?

(b) Why when originally Rs. 725/- were recovered for 189 acres only Rs. 733/- were recovered for 1632 acres and 5 guntas?

(c) Whether Naib defrauded the Government by transferring the patta ordering the patwari to do so and whether the patwari also colluded in the said fraud?

In reply the Taluqdar and Subedar wrote back to the Revenue Secretary that the status of the persons holding the lands has now become that of the pattedars; and hence proceedings could not be revived on the application of Eknath Prasad. The Revenue Secretary agreed and passed an order dated the 27th Aban 1347 F closing the proceedings and for not taking any further action.

9. On 5-1-1356 F (5th October 1946) Bala Prasad son of Eknath Prasad filed an application before the President in Council, Sir Mirsa Ismail for restoration of his jagir lands. Orders were passed thereon that Eknath Prasad''s claim was already rejected and hence no further proceedings could now be taken. Bala Prasad med two more applications on 10-8-1356 F (10th May 1947) and on 7-10-1948 A. p., before the Revenue Secretary for fresh enquiry but no action was taken on these applications. On 6-12-1946, Bala Prasad filed an application after the Police action before the Chief Civil Administrator that the lands should be restored and justice be done to him. The application was forwarded to the Civil Administrator and Collector, Aurangabad. Bala Prasad also filed another application on 18-1-1948, before the Revenue Secretary for patta of the lands now in dispute to be granted to him. The Civil Administrator and Collector recommended to the Government as follows :

It is suggested that the lands in Jogwada village held by Rai Trimbak Prasad should be restored to the applicant, Bala Prasad, cancelling the patta and orders relating to it in favour of Rai Trimbak Prasad.

The Civil Administrator also suggested that:

the lands should be resurveyed and settled and in case the assessment on them be found to increase, the excess assessment should be recovered from Trimbak Prasad for the period of his possession over them and suitable action be taken against Rai Chotelal for deceiving the Government.

This recommendation was placed before the Revenue Board which expressed its opinion on 7-7-1950 as follows :

In view of the facts explained the Civil Administrator''s proposals to cancel the patta and restore the lands to the applicant should be rejected. The Civil Administrator''s suggestion regarding low assessment will be examined carefully. As the Civil Administrator was asked to reopen the case on the order of the ex-Revenue Member, I am submitting this to you for orders.

Accordingly, the matter went up to the Revenue Minister and he passed the order which is now sought to be quashed.

10. The contentions of Eknath Prasad and his successor, respondent No. 2 attacking the patta in favour of Trimbak Prasad are:

(1) That the Naib of the Jagir, Rai Chotelal had no power or authority to grant any patta;

(2) That Trimbak Prasad and Rai Chotelal were related as son-in-law and father-in-law and that the Naib took advantage of his position and fraudulently got the patta of the lands transferred in the name of Trimbak Prasad, really after both the jagirdars died, by antedating the order granting patta; and

(3) That in the patta a very small acreage was mentioned the lands being described as being 189 acres with an assessment of Rs. 725/. After survey it turned out to be 1,632 acres and 5 guntas and the assessment was raised by only Rs. 5/- from Rs. 725/- to Rs. 730.

11. On behalf of Trimbak Prasad, it is argued that Rai Chotelal was the Naib of the Jagir, that he was in entire management of the jagir on behalf of the jagirdars, that the power of attorney granted by the jagirdars to the Naib enumerated only powers to be exercised with reference to the private property and personal affairs of the jagirdars, that it could not and did not include his official powers as the Naib of the Jagir, that other pattas also were granted by the orders of the Naib, that those pattadars are still in possession and enjoyment of the lands, that there was nothing fraudulent in the Naib granting patta to the petitioner, even if he happened to be his son-in-law, that the patta was granted with the knowledge and consent of jagirdars in exercise of his authority and duties as Naib, and that the order of patta was not anti-dated, and that the acreage of the lands in dispute varied on account of the fact that the lands were granted in patta before survey settlement and that the same lands were found to be 1,600 and odd acres on settlement as is usual with grants before survey settlement.

12. We find that for several years, the question whether patta was validly granted to Trimbak Prasad, or was tainted with fraud on the part of Chotelal, was repeatedly agitated in the Revenue Department. The Government in the Revenue

Department had notice of this allegation against Chotelal. Responsible officers including the Subedar, the Revenue Secretary and the Government dealt with this matter. There was also a Moqbari (complaint) from a member of the public that patta was granted by the Naib''s fraud. The Taluqdar''s report was called for by the Government on two matters, (1) as to the effect of the previous decisions of the Revenue Secretariat, and (2) whether patta was granted after the death of the jagirdar by fraud. The complainant dropped out before any evidence was recorded but as it was a matter concerning the Government the Tehsil pursued the enquiry and held that there was no fraud. On the report of the Tehsildar, the Taluqdar reported that even formerly detailed enquiry was made in the matter and on the report of the Taluqdar, the Revenue Secretariat closed the matter without affecting Trimbak Prasad''s patta or possession.

13. In his order, the Revenue Minister considers that:

the Naib of the Jagir cleverly stated that he had no knowledge of the heirs of the deceased and that he knew only the adopted son, Eknath. This appears to be somewhat unaccountable.

We are not able to see from the record how the conduct of the Naib is unaccountable or how the remark ''cleverly stated'' is justified. If the Naib wanted to suppress the names of the heirs, he could have suppressed Eknath Prasad''s name also. Also no other heir has come forward during these three decades. Referring to the contention on behalf of Trimbak Prasad that the matter having been enquired into and disposed of more than once by Government, formerly, could not again be subjected to re-enquiry, the Minister proceeds:

This contention is based on the general principle of finality of decision but in this case no satisfactory enquiry was ever made in regard to the legality or otherwise of the patta granted in the name of Trimbak Prasad. I have gone through the previous files to find out whether finality could be attached to them. I am afraid, from the perusal of these papers, the order of the Government seems to be fully justified. At any rate as the Government has ordered re-enquiry and the final result of the re-enquiry is before me, it is too late to say that the re-enquiry is not justified. The Government is fully competent to re-consider where a serious irregularity in granting the patta was brought to its notice.

We regret the reasoning of the Revenue Minister does not appeal to us. There may have been differences of opinion between Tehsildar and the Taluqdar on the question of fraud and how far the grant in favour of Trimbak Prasad should be continued by the Government. The final authority namely the Subedar, the Revenue Secretary and the Government, having dealt with the matter more than once with notice of the contentions and allegations of Eknath Prasad and having recognised patta and possession of Trimbak Prasad, whether the same matter could be re-agitated again and again even after a lapse of 30 years on a similar complaint by Eknath Prasad''s son, requires very serious consideration. The criticism of the Revenue Minister that in the previous proceedings there was no finality, if true, will equally apply to the present proceedings and order of the Minister. In the present case also no further material or legal evidence has been adduced by the parties before the authorities. As for the Government being fully competent to order re-enquiry, no provision of law has been placed before us justifying the assumption of such authority, as will hereafter be shown.

14. Assuming that the Government could re-agitate the matter a question arises whether the re-enquiry should be made by the department itself or should properly be made by Courts of law in a judicial manner in the discharge of judicial functions. Even on this aspect we have not been shown any provision of law justifying the department itself to undertake the enquiry, ousting the jurisdiction of ordinary Courts; and whether in this particular case the Government having recognised and acquiesced in the title and possession of Trimbak Prasad for over three decades can ignore the effect in law of such recognition and acquiescence by it, is again an important question of law affecting the jurisdiction of the Government to enquire and decide the case itself without recourse to the Courts of law. As regards the powers of the Naib, the Revenue Minister seems to have been influenced by the power of attorney in his favour but whether independently of the power of attorney, the Naib as manager of the jagir could grant pattas and whether he did grant similar other pattas which are recognised, has not been considered by the Minister. Assuming that the Naib could not grant pattas in question, the effect in law of the subsequent recognition and acquiescence by the Government of the long and continuous possession of Trimbak Prasad for over three decades has not been given any weight. Further whether the sanction of patta was given by the jagirdar or by the Naib is again a matter of enquiry. The Revenue Minister has come to the conclusion that there is no evidence as to predating the order dated 11th Azur 1328 F., granting patta. On that finding the basis of fraud fails. If the order dated 11th Azur 1328 F., was in fact made on that date the Naib who is said to have been an influential person and was actually managing the jagir would have easily obtained the consent of the jagirdars for grant of patta to his son-in-law. The Revenue Minister also considers that absence of details, in the order granting patta in regard to survey numbers of the approximate area of the lands granted is highly irregular. Before this conclusion could be reached similar grants by the Naib during the period of 30 years ago could be produced before the deciding authority to know whether this was usual or anything extraordinary. Besides there is no material at all on the record beyond bare suspicion that the patta was granted without the consent or knowledge of the jagirdars or that they did not know anything about it and as we have said before even if it be assumed that the patta was not granted properly and was made without the knowledge of the jagirdars, the legal effect of the acquiescence by the Government even with notice of such irregularity and want of authority has to be decided judicially. The Minister considers that the order of the Naib was beyond his authority and ab initio void; we regret even here we are not able to agree with his view. The void grant assuming it to be so, has been recognised by the Government all these 30

years after the resumption of the jagirs and the effect of such recognition cannot be ignored. Also assuming there was fraud on the part of the Naib whether it can also be inferred that there was fraud by Trimbak Prasad, is again a question of fact and what the effect in law would be if there was no fraud on the part of Trimbak Prasad has not been considered by the Revenue Minister. Again while the Civil Administrator also recommends reassessment of the lands, the Revenue Minister does not agree with that order and while the Revenue Board recommends that the patta cannot be cancelled the Revenue Member directs it to be cancelled. Thus in substance the Revenue Minister has really decided the case as between Bala Prasad and Trimbak Prasad and has decided that so far as Government is concerned it has no claim for insufficient assessment against Trimbak Prasad. The dispute between two private parties should properly be judged in a Court of law under judicial process. It is not within the powers of the Revenue Department or Revenue Minister to decide such private claims and to cancel patta granted 30 years ago on the objection of a private party though the objection was several times raised on former occasions and turned down.

15. As regards the provisions of law under which jurisdiction was assumed and enquiry and decision made we were referred to Sections 74 and 87 of the Hyderabad Land Revenue Act by the petitioner''s Advocate. The English translation of Section 74 is as follows:

If it is intended to file a suit for possession of any Khalsa land or for the removal of any construction to such possession, a suit for orders against the opposite party to remove such unlawful possession or obstruction thereto, may be brought before the Tehsildar. The Tehsildar may, after a summary enquiry, if unlawful possession or obstruction is proved, order the ejectment of the person in such unlawful possession or may order the opposite party to abstain from offering resistance; but no cognizance of any such case shall be taken by the ''Revenue Department if more than two years have elapsed from the date of commencement of unlawful possession or obstruction. The decision of the Tehsildar shall be appealable to the Taluqdar, whose decision in such cases shall be final, but any party dissatisfied with it shall be entitled to seek remedy in a competent Court.

The Advocate contends that this section does not apply as the possession of Trimbak Prasad has never been unlawful to this moment and that more than two years have passed from the date of his possession Section 87 is as follows:

The Nazim of Survey settlement or Land Records, and after the settlement of records have been made over to the Taluqdar, the Taluqdar may at any time correct or cause to be corrected any clerical error or errors which the parties interested admit to have been made; he shall also inquire into all applications made within two years after the introduction of the survey settlement, for the correction of any wrong entry of a pattadar''s name in the said register, and if satisfied that an error has been made, whether through oversight, fraud, or collusion shall correct the same, notwithstanding that the party concerned does not admit the error, but any such application shall not be entertained at any time after two years, unless good cause be shown to him for the delay, and in such cases no error proved to have been made shall be corrected except with the previous sanction of Government.

The Advocate argues that even this section does lot apply. We agree with him. He says that here is no provision of law under which the Jepartment could assume jurisdiction in the present case. The Government Advocate agrees that Sections 74 and 87 are not applicable. He states'' that there is no specific Section in law conferring jurisdiction applicable to the present matter, but that Government on grounds of natural justice can always set aside the patta on ground of fraud. We are afraid that this is too broad a proposition of law to be accepted. Fraud renders a contract only voidable and not void and even for setting aside a contract on the ground of fraud the provisions of law of limitation have to be complied with even, by the Government and if the Government seeks to set aside the patta in question on the ground of fraud even though it had previous notice of it several times, it cannot on grounds of natural justice be the plaintiff and the judge, when there is no specific provision of law conferring Jurisdiction to it to decide the question. The Advocate for the respondent No. 2, Bala Prasad, however, on the other hand relies on Sections 57 and 157 of the Hyderabad Land Revenue Act. The translations of these Sections are reproduced below. Section 57 is as follows:

Any person who shall unauthorizedly enter upon occupation of any unoccupied Khalsa land or use or occupy any land which has been set apart for any special purpose, to the use or occupation of which under the provisions of this Act he is not entitled or has ceased to be entitled, shall:

(a) if the land which he unauthorizedly occupies or uses, forms part of an assessed survey number, pay the assessment of the entire number for the whole period of his unauthorised occupation or use; and

(b) if the land so occupied or used by him has not been assessed, such amount of assessment as would be leviable for the said period in the same village for similar land occupied or used for the same purpose; and

(c) shall also be liable, at the discretion of the Taluqdar, to a fine not exceeding a sum equal to ten times the amount of assessment payable by him for one year, if such sum be in excess of five rupees, if he has taken up the land for purposes of cultivation, and not exceeding such limit as may be fixed in rules made by Government from time to time if he has used it for any non-agricultural purpose.

(2) The Taluqdar''s decision as to the amount of assessment payable for the land unauthorized occupied or used shall be conclusive, and in determining its amount, occupation for a portion of a year shall be counted as for a whole year.

(3) The person unauthorizedly occupying or using any such land may be summarily evicted by the Taluqdar, and any crop raised on the land shall be liable

to forfeiture, and any building or other construction erected thereon shall also, if not removed by him after such written notice, not being less than a month, as the Taluqdar may deem reasonable, be liable to forfeiture or to summary removal.

(4) After the property is forfeited by. the Taluqdar it shall be managed by him according'' to his discretion and the cost of removal of encroachment, if there be any under this section, shall be recoverable from the person who was unauthorizedly occupying or using the land (as the case may be) as an arrear of land revenue.

Section 157 is as follows:

Whenever a Taluqdar may desire to evict, under the provisions of this Act or any other law, any person wrongfully in possession of any land, such eviction shall be made in the following manner:

(1) by serving a notice on the person wrongfully in possession requiring him to vacate the land within a fixed period from the date of receipt of the said notice;

(2) If such notice is not obeyed the said person shall be removed from the said land by force;

(3) If such removal is resisted and obstructed by any person, the Taluqdar may hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, shall issue a warrant for the arrest of the said person, and commit him to custody in the office of the district or tahsil, or send him with a warrant for imprisonment in the Civil Jail of the district for such a period not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction and resistance.

In our opinion these sections are not applicable.

16. From the resume of the facts of the case and the order of the Minister and the questions of law involved, it is apparent (1) that the same questions agitated repeatedly for the last 30 years are now sought to be re-agitated by respondent 2, (2) that in spite of notice of the alleged fraud of the Naib having been given to the Government repeatedly Government has all along recognized the title and possession of Trimbak Prasad, (3) that assuming the matter should now be re-agitated at this stage, important questions of fact and law regarding fraud and its effect, the effect in law of the acquiescence and recognition by Government, the question whether the dispute between private parties can be decided by the Revenue Department when the department has no claim whatever against Trimbak Prasad, on the basis of that alleged fraud, for reassessment, and the question whether even if there was a dispute between Trimbak Prasad and Government could now challenge the grant, whether the Government could assume jurisdiction to decide the case without any jurisdiction being conferred by any such provision of law, by merely relying on some rulings of the Revenue

Courts, the legality and binding nature of which is questioned (which again is a matter of law), are some of the important issues involved in the case. On the merits as has been stated already, the order of the Revenue Minister is based on the records of the same old proceedings without any further material or evidence, and suffers from the same disability of incompleteness or non-finality as is attributed by him to the previous proceedings. In this writ application our main concern is whether the Revenue Minister had jurisdiction to pass the order. There is no specific provision of law shown to us justifying assumption of jurisdiction in a case like this. The sections referred to 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. We are therefore, constrained to hold that the order of the Revenue Minister is beyond jurisdiction and that he assumed jurisdiction not conferred on him by law and passed the order under reference.

17. As regards the interpretation of the operative portion of the order of the Revenue Minister, there has also been a controversy before us. The Advocates for Trimbak Prasad and for respondent No. 2, interpret the order to mean cancellation of patta and also dispossession of the lands from the petitioner. We asked the Government Advocate for clarification of the order as to whether it includes dispossessing the petitioner, and gave him an opportunity to consult the Minister. He however, filed a reply that "the order under question is perfectly clear and does not admit of any doubt. There is no order for dispossession" ana stated that he thought it unnecessary to consult the Minister. He also reminded us that it was our duty to interpret the order. We have gone through the records and find that when the Revenue Minister''s order was sent for execution to the Collector, Aurangabad, who is a senior I.C.S., Officer, he understood the order to include dispossession of petitioner and grant of possession of the lands to respondent No. 2. In his letter dated the 3rd February 1951 to the Commandant, Brigadier Randhir Singh, the Collector writes:

All that Srivatcha, (respondent No. 2) was asked to do was to produce a certified copy from the village records showing himself as the original heir of the jagirdar in the villages concerned. If this is done I should have given possession as desired by Government.

Also after this Court issued an interim stay pending disposal of this petition, the Revenue Secretary to Government addressed a letter dated the 5-2-59 F. to the Secretary to the Revenue Board:

hence it is requested that the order of the Hon''ble Minister, Revenue, dated the 18-11-1950 cancelling the patta granted to Trimbak Prasad may not be executed ''and the person in possession, Trimbak Prasad may not be dispossessed pending disposal of the writ application'' by the High court.

The order of the Revenue Minister has thus been interpreted by the officers concerned and by the contesting parties (petitioner and respondent No. 2) as including also order for dispossession. This if probably due to the words used by him, "I accept the recommendation made by the Civil Administrator of Aurangabad and cancel the patta of Trimbak Prasad." And the Civil Administrator''s recommendation is it is suggested that the'' lands in Jogwada'' village held by Rai Trimbak prasad should be restored'' to the applicant." If the Government and a Senior I.C.S., Officer and the contesting parties construe the order as including dispossession from the lands, we have not acted illegally if we suggested that the order be clarified by the Minister if necessary to obviate all controversy and to make such a clarification binding or officers of his Department. It has also to be re membered that the position of the Minister before us, is that of a party, he being represented by the Government Advocate. And we are entitled to as a party for clarification. While the Government Advocate considered it unnecessary to have the order clarified by the Minister concerned, the advocate for respondent No. 2 received our suggestion with the light remark that it amounted to a "extraordinary procedure." We are however fortunate in having the high authority of the Federal Court for making the suggestion. The Lordships of the Federal Court delivered judgment in the case of AIR 1943 1 (Federal Court) . When the order was sent t(sic) the Bombay High Court, the High Court desire clarification and their Lordships of the Federa(sic) Court clarified the order and that is reported in ''Keshav Talpade v. Emperor'', AIR 1943 F (sic) 72. If their Lordships of the Federal Court could consider that a clarification of their order could be made and have made the clarification we se(sic) nothing extraordinary if we sought clarification (sic) his own order by the Minister when it has been understood in conflicting ways.

18. If the order had been clarified, it would have been binding on the department. If according to the Minister the order did not include dispossession from the lands but only cancellation of patta (cancelling the name of Trimbak Prasad as a tenant-holder of the lands in revenue records) that would have been a relevant factor for us to determine whether we should interfere by way of Writ. In view of the conclusion we have reached in this case, on the material before us, we consider it unnecessary for us to interpret or clarify the order. It is enough for our purposes to note that the order has been understood by the department and the contesting parties to include order for dispossession and that respondent 2 is insisting that Trimbak Prasad should be dispossessed from the lands and that he should be put in possession of the same.

Errors apparent on the face of the proceedings are always treated as errors of jurisdiction for the purpose of quashing by issuing a writ of Certiorari. The error which is apparent should not, however, be a mere accidental or formal error which could always be set right by amendment. It must be a substantial error and one which goes to the root of the matter. "Vide ''Krishnaswamy Ayyar v. Mohanlal Binjani'', AIR 1949 Mad 535.

We are satisfied that the order of the Minister is not a ministerial act. It affects rights of property of the petitioner.

When the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial whenever any body of persons having legal authority to determine questions affecting rights of subjects and having the duty to act judicially, act in excess of their legal authority a writ of Certiorari may issue:" Vide ''province of Province of Bombay Vs. Kusaldas S. Advani and Others, .

Acting in excess of legal authority would vitiate an administrative or executive order as well as judicial or quasi-judicial order A judicial or quasi-judicial act, on the other hand, implies more than mere application of the mind or the formation of the opinion. It has reference to the mode or manner in which that opinion is formed. It implies a proposal and an opposition, and a decision on the issue. It vaguely connotes hearing evidence and opposition, as Scrutton, L.J. expresses it. The degree of formality of the procedure as to receiving or hearing evidence may be more or less according to the requirements of the particular statute but there is an indefinable yet an appreciable difference between the method of doing an administrative or executive act and a judicial or quasi-judicial act. Vide ''In re Banwarilal Roy, 48 Cal W N 766 at p. 800.

18a. In concluson we hold (1) that the Revenue Minister had no jurisdiction to decide the matter in dispute and to pass the order referred to, (2) that there was no judicial enquiry, (3) that no legal evidence or further material was placed before the deciding authority to support the order passed by him and (4) that even assuming he had Jurisdiction, it was not competent for him in law or natural justice to deal with this matter since the previous orders and action by high senior officers and the President in Council in respect of the same dispute and complaint by respondent''s ancestor, have been called in question and the Minister as representing the Department could not sit in judgment over the same; and the proper course for him to have adopted was to have referred the matter to the Civil Court.

19. In the circumstances we quash the order of the Revenue Minister referred to and direct that the patta and possession of the petitioner, Trimbak Prasad should not be interfered with in pursuance of the said order. We make no order as to costs, and parties will bear the same themselves.