
(2010) 08 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No's. 405 and 620 of 2009

Village Panchayat of Sancoale and Another

APPELLANT

Vs

M-Tech Developers Ltd.

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Constitution of India, 1950 — Article 243G

Goa Village Panchayat Raj Act, 1994 — Section 201A, 47A, 50, 66, 66(2)

Village Panchayat Act, 1962 — Section 83, 83(1), 83(2), 83(4)

Citation : (2011) 7 ALLMR 177 : (2011) 1 BomCR 373

Hon'ble Judges : Britto N.A., J

Bench : Single Bench

Advocate : J. Godinho, in W.P. No. 405/2009 and D. Pangam, in W.P. No. 620/2009, for the Appellant; S.G. Dessai and A. Gaonkar in W.P. No. 405/2009, A.D. Bhobe in W.P. No. 620/2009, for Respondent 1 and S. Bhandodkar, Additional Government Advocate for Respondent No. 2 in W.P. No. 620/2009, for the Respondent

Judgement

Britto N.A., J.—These writ petitions are filed by the Village Panchayats and are directed against orders passed by the Additional Director of Village Panchayats, in appeals filed under Sub-section (7) of Section 66 of the Goa Panchayat Raj Act, 1994 (Act, for short).

2. The private Respondents in whose favour the orders have been passed by the Additional Director of Village Panchayats have taken a preliminary objection as regards the maintainability of these writ petitions at the behest of the Village Panchayats, and the same is being disposed off by this judgment.

3. The objectors have placed reliance on a Division Bench judgment of this Court in the case of (Village Panchayat of Velim v. Shri Valentine S.K.F. Rebello and Anr. 1990 (1) G.L.T. 70 in support of their objection, while the Petitioners have placed reliance on a judgment of a learned Single Judge of this Court in the case of (Village Panchayat of Calangute v. The Deputy Director of Panchayats 2004 (2) G.L.R. 497 and also on Sub-section (7) of Section 66 of the Act as well as the

explanation below it, which according to the Petitioners specifically provides for filing an appeal to the Director and by implication, a writ petition, against the order of the Director.

4. There is no doubt that the Division Bench judgment was rendered in the light of Section 83 of the Village Panchayats Regulation, 1962 which dealt with control of erection of buildings and which reads as follows:

83. Control of erection of buildings -

(1) No person shall erect or re-erect or commence to erect or re-erect within the limits of a village, any building without the previous permission of the Panchayat.

(2) Permission shall be presumed to have been granted if the Panchayat fails to communicate its sanction or refusal in respect thereof within two months from the date of receipt of the application for permission. In case of refusal, the Panchayat shall communicate to the applicant the reasons therefore and an appeal shall lie against any such order of refusal to the Deputy Collector/Sub-Divisional Officer in charge of the sub-division within a period of thirty days of the date of communication of such refusal.

(3) No person who becomes entitled under Sub-sections (1) or (2) to proceed with any intended work of erection or re-erection shall commence such work after the expiry of one year from the date on which he first became entitled so to proceed therewith, unless he shall have again become so entitled by a fresh compliance with the provisions of the preceding Sub-sections.

(4) Whoever erects or re-erects or commences to erect or re-erect any building without such permission or in any manner contrary to the provisions of Sub-section (1) or any bye-law in force, or to any conditions imposed by the Panchayat shall be punished with fine, which may extend to fifty rupees; and in the case of a continuing contravention, he shall be liable to an additional fine, which may extend to five rupees for each day during which such contravention continues after conviction for the first such contravention.

(5) Without prejudice to the penalty prescribed in Sub-section (4) the Panchayat may -

(a) direct in writing that the erection or re-erection be stopped;

(b) by written notice require such erection or re-erection to be altered or demolished as it may deem necessary within a reasonable time;

and if the requirement under Clause (b) is not complied with within the time fixed in the notice, the Panchayat may cause the alteration or demolition to be carried out by its officers and servants and all the expenses incurred by the Panchayat therefore shall be recoverable in the same manner as an amount claimed on account of any tax recoverable as arrears of land revenue under any law for the time being in force in the Union territory.

(6) Nothing contained in this section shall apply to any building which is used or required for public service, or for any public purpose, and is the property of the Government or any Panchayat or Municipality or is to be erected or re-erected by the Government or the Panchayat or Municipality; but reasonable notice of the proposed construction shall be caused to be given to the Panchayat, and the objections or suggestions of the Panchayat, if any shall be considered.

5. The Village Panchayats Regulation, 1962 has been repealed and replaced by the Goa Panchayats Raj Act, 1994. Section 66 of the Act deals with regulation of the erection of buildings. It reads as follows:

66. Regulation of the erection of buildings -

(1) Subject to such rules as may be prescribed, no person shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Panchayat. The permission may be granted on payment of such fees as may be prescribed.

(2) If a Panchayat does not, within thirty days from the date of receipt of application, determine whether such permission should be given or not and communicate its decision to the applicant, the applicant may file an appeal within thirty days from the date of expiry of aforesaid period, to the Deputy Director who shall dispose of the same within thirty days from the date of filing of such appeal. If the Deputy Director fails to dispose of the appeal within thirty days, such permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.

(3) Whenever any building is erected, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under Sub-section (1) or any conditions imposed by the permission granted, the Panchayat may, -

(a) direct that the building, alteration or addition be stopped; or

(b) by written notice require within a reasonable period to be specified therein, such building alteration or addition to be altered or demolished.

(4) In the event of non-compliance with terms of any notice under Clause (b) of Sub-section (3) within the period specified in the notice, it shall be lawful for the Panchayat to take such action as may be necessary for the completion of the act thereby required to be done, and all the expenses therein incurred by the Panchayat shall be paid by the person or persons upon whom the notice was served and shall be recoverable as if it were a tax imposed under this Act.

(5) Where the Panchayat fails to demolish the building which is erected, added to or reconstructed without the permission of the Panchayat, or in any manner contrary to the rules made under the Act or any conditions imposed in the permission, within a month from the date of the knowledge, the deputy Director shall assume the powers of the Panchayat under Sub-sections (3), (4) and (5)

and take such steps as may be necessary for the demolition of such building.

(6) Notwithstanding anything contained in the foregoing provisions, the Block Development Officer concerned may, by notice addressed to the person responsible, stop any construction which is being constructed in violation of the provisions of the Act or rules or bye-laws made thereunder and refer the case to the Deputy Director of Panchayat. On receipt of the notice, such person shall forthwith stop the same.

(7) An appeal shall lie to the Director, within a period of thirty days from any order or direction or notice issued under any of the provisions of this section and the decision of the Director on such appeal shall be final.

Explanation: For the purpose of this section, failure to communicate the decision by the Panchayat under Sub-section (2) and failure to demolish the building under Sub-sections (3) and (4) shall be deemed to be "remiss" in the performance of duties by the Panchayat.

6. With a view to simplify the procedure for the grant of permission for the construction of buildings, the Government has issued an order bearing No. 30/3/DP-99 dated 22/ 3/2000 by which:

1. Every person seeking permission for construction of building is required to prepare four sets of building plans and drawings and submit the same to the Panchayats along with all the necessary documents as required by the Goa, Daman and Diu Village Panchayats (Regulation of Buildings) Rules, 1971.

2. The Village Panchayat Secretary or any other person authorized by the Panchayat is required to acknowledge the applications and the Village Panchayat Secretary is required to scrutinize the applications and place before the Sarpanch within two days from the date of receipt of the applications. In case the application is complete in all respect, the Sarpanch is required to forward the plans and drawings to the Town Planner of the concerned Taluka in duplicate and simultaneously one set of plans and drawings to the Assistant Engineer of P.W.D./ Technical Officer. In case the application is incomplete, the Panchayat Secretary is required to return the same to the Applicant within a week with the directions to resubmit the application after complying with the observations raised by the Panchayat.

3. The Town Planner and the Technical Officer are required to communicate their comments/views within two weeks from the date of receipt of the plans and drawings from the Panchayat.

4. The Panchayat on receipt of the report from the Town Planner and the Technical Officer is required to place the matter and take proper decision within two weeks from the date of receipt of the report. In case of failure of receipt of the decision from the Town Planner and from the PWD, the Panchayat is required to take a decision on the application submitted by the applicant. In any case, the Panchayat is required to communicate its decision within a period of 30 days

from the date of receipt of the application by the Panchayat

7. In the case of Village Panchayat of Velim v. Shri Valentine S.K.F. Rebello and Anr. (supra), the writ petition was filed by the Village Panchayat seeking a writ of certiorari to quash the order of the Deputy Collector, who was the appellate authority under the Village Panchayat Regulation. The Division Bench after considering various decisions of the Apex Court came to the conclusion that the Village Panchayat was not a person who could be said to have been aggrieved by the order. The Division Bench held that for a person to be aggrieved, he must be a person who has suffered a legal grievance and against whom a decision has been pronounced which has wrongfully deprived him of some thing or wrongfully refused him some thing or wrongfully affected his title to some thing. The learned Division Bench noted that it was not pointed out to them in what manner the Petitioner Panchayat had suffered a legal grievance and merely because the appellate authority had reversed decision of refusal and granted permission to the Respondent No. 1, the Panchayat was not wrongfully deprived of anything nor its title to some thing was affected and, therefore, it could not be said that Panchayat was an aggrieved party. The learned Division Bench accepted the submission made on behalf of the Respondent that the Panchayat had filed the writ petition out of vindictiveness and not for any cogent reasons. The Division Bench held that the Petitioner Panchayat ought not to be permitted to maintain the petition thereby allowing the Petitioner to challenge the appellate decision merely because the Petitioner believes that the appellate decision is not palatable for to do so would amount to subversion of judicial discipline. The Division Bench concluded that in case the Panchayat was allowed to challenge the appellate order, it may lead to chaos which the judicial discipline must decry and proceeded to dismiss the writ petition on preliminary objection as not maintainable.

8. The learned Single Judge in the case of Village Panchayat of Calangute v. The Deputy Director of Panchayats (supra) was dealing with Section 201-A of the Act which dealt with filing of an appeal on miscellaneous matter dealt by the Panchayats. Sub-section (2) thereof provided that a revision shall lie to the deputy Director against any order passed by the Block Development Officer under Sub-section (1) within a period of thirty days from the date of the order. The learned Single Judge referred to the Division Bench judgment in the case of Village Panchayat of Velim (supra), and held that the appellate order was revisable at the instance of the Village Panchayat of Velim, and further held that the situation in that case differed from the one before the Division Bench which was considering the propriety of a writ petition by Village Panchayat against an appellate order passed under Goa, Daman and Diu Village Panchayat Regulation, 1962. Referring to Section 201-A, the learned Single Judge observed that it was apparent from the section that it provided for an appeal in respect of any miscellaneous matters which are dealt with by the Panchayat or Village Panchayat Secretary or the Sarpanch and it provides for an appeal to the Block Development Officer. Sub-section (2) clearly laid down that a revision shall lie to

the Deputy Director of Panchayat against any order passed by the Block Development Officer. The learned Single Judge further observed that the Village Panchayat's submission that the word "any order" suggests the intention of the legislature to make an order passed by the Block Development Officer, revisable. It did not place any restriction as regards the nature of the order or the party applying for revision. The learned Single Judge also referred to the State of Maharashtra Vs. Marwanjee P. Desai and Others, wherein the Apex Court has stated as follows:

... True intent of the legislature shall have to be gathered and deciphered in its proper spirit having due regard to the language used therein. Statement of objects and reasons is undoubtedly an aid to construction but that by itself cannot be termed to be and by itself cannot be interpreted. It is a useful guide but the interpretations and the intent shall have to be gathered from the entirety of the statute and when the language of the sections providing an appeal to a forum is clear and categorical no external aid is permissible in interpretation of the same. The legislature has deliberately used "every order" and if the restrictive meaning is attributed, as has been so done by the High Court, then the word "every" in any event becomes totally redundant but since the legislature avoids redundancy every word used in the particular provision shall have to be attributed a meaning and attribution of any meaning to the word "every" by itself would negate the interpretation as found favour with the High Court. The word "every" has been totally ignored, which is neither permissible nor warranted.

9. Before proceeding further and at the outset, it may be observed that Shri Bandodkar, the learned AGA, who appears for the Respondent No. 2 in Writ Petition No. 620/2009 was requested by the Court to convey the Government's point of view in the controversy involved in these writ petitions, and Shri Bandodkar has submitted that the Government even now accepts the view expressed by the Division Bench in the case of Village Panchayat of Velim v. Shri Valentine S.K.F. Rebello and Anr. (supra) as the correct view and the Village Panchayats in terms of Sub-section (7) of Section 66 have no right to file an appeal or a writ petition against orders issued by the Director of Panchayats u/s 66(7) of the Act.

10. Be that as it may, elaborating the objection further, Shri A.D. Bhobe, learned Counsel appearing on behalf of the Respondent No. 1 submits that under Sub-section (2) of Section 66 of the Act, a Panchayat cannot be an aggrieved person against the order passed by the Deputy Director granting permission to an applicant because the Deputy Director performs that function which was required to be performed by the Village Panchayat and in case of failure to dispose of the appeal, the permission is deemed to be granted against which the Panchayat can file no appeal. Referring to Sub-section (5) of Section 66 of the Act, learned Counsel submits that the Deputy Director assumes the powers of the Panchayat and any order passed by him has to be considered as an order passed by the

Panchayat itself against which the Panchayat can file no appeal. Referring to the explanation below Sub-section (7) of Section 66 of the Act, learned Counsel submits that it is only failure to communicate the decision of the Panchayat under Sub-section (2) and failure to demolish the building under Sub-sections (3) & (4) that are deemed to be remissness in the performance of duties by the Panchayat. Learned Counsel submits that only because the Director of Panchayats gives an opportunity to the Village Panchayat to defend its decisions, it does not mean that gives the Village Panchayat a right to appeal when the decision goes against it.

11. Shri Dessai, the learned Senior Counsel appearing on behalf of the Respondent No. 1 in the other petition submits that the Panchayat is not an individual, but an authority entrusted to regulate the erection of buildings. Learned Senior Counsel submits that there is no substantial change in Section 66 of the Act from Section 83 of the Regulation and further submits that Sub-section (1) of Section 83 of the Regulation and Sub-section (1) of Section 66 of the Act, respectively, remain substantially the same. Learned Senior Counsel submits that the deeming provision is found in Sub-section (2) of Section 83 of the Regulation and, likewise, it is also found in Sub-section (2) of Section 66 of the Act, but in the latter case, only in case the Deputy Director fails to decide the appeal within 30 days. Learned Senior Counsel submits that it is an applicant who can file an appeal to the Deputy Director in terms of Sub-section (2) of Section 66 of the Act and not the Village Panchayat. Learned Senior Counsel submits that Sub-section (3) of Section 66 of the Act is equivalent to Sub-sections (4) and (5) of Section 83 of the Regulation the only difference being that there is no provision made for imposing the fine. Referring to Sub-section (5) of Section 66 of the Act, learned Senior Counsel submits that in case the Panchayat fails to perform the duty cast on it by Sub-sections (3) and (4) of Section 66 then, it is Deputy Director who takes over the functions of the Village Panchayat and in such a situation also the Village Panchayat cannot be said to be aggrieved by the decision of the Deputy Director given under Sub-section (5) of Section 66 of the Act. Learned Senior Counsel submits that in case the Village Panchayat issues a notice, an aggrieved party cannot be the Village Panchayat, but it must be the party to whom the notice is issued. Similarly, learned Senior Counsel submits that in cases where the Deputy Director takes over the function of the Village Panchayat, it cannot be said to be aggrieved with the decision of the Deputy Director. Referring to the explanation below Sub-section (7) of Section 66 of the Act, learned Counsel submits that there can be remissness in performance of duties by the Panchayat only in case of failure to communicate the decision by the Panchayat under Sub-section (2) and failure to demolish the building under Sub-sections (3) & (4) and that has nothing to do with Section 50(4) of the Act which deals with resignation or removal of Sarpanch or Deputy Sarpanch which is meant for taking action against individuals and which is otherwise relatable to Section 47-A of the Act. Learned Senior Counsel submits that the grant of a licence is a function of the Village Panchayat and not of the Sarpanch or its Deputy Sarpanch. Learned

Senior Counsel submits that the decision of the learned Single Judge in the case of Village Panchayat of Calangute (*supra*) does not lay down any law, nor has it decided any issue and the controversy at hand has to be decided in the light of the judgment of the learned Division Bench.

12. Shri Godinho, learned Counsel on behalf of the one of the Petitioners submits that the decision of the Division Bench is based on Section 83 of the 1962 Regulation and not on Section 66 of the Act and when Sub-section (7) of Section 66 of the Act speaks of filing an appeal to the Director from any order, it means that filing of the appeal is not at all restricted. Learned Counsel submits that the interpretation given by the learned Single Judge, and after the Act came into force with reference to Section 201 of the Act, must be followed in the case of Section 66 of the Act, as well. Learned Counsel Shri Godinho submits that if the Panchayat is heard by the Director of Panchayats in appeals filed before him there is no reason why the Panchayat should not be permitted to file an appeal against the decision of the Director of Panchayats, when the same goes against the Village Panchayat, since after all the Village Panchayat is an elected body.

13. Shri Pangam, the learned Counsel appearing on behalf of the other Petitioner submits that the Petitioner has a right to file an appeal against the decision of the Director of Panchayats given u/s 66(7) of the Act. Learned Counsel submits that Sub-section (7) of Section 66 and the explanation below it make a complete departure from Section 83 of the Regulation. According to the learned Counsel, under Sub-section (2) of Section 83 an appeal is provided only in case of a refusal. Learned Counsel submits that Section 66 of the Act is much wider than Section 83 of the Regulation and i.e. because of the explanation which provides for penal consequences. Learned Counsel submits that a Village Panchayat acts in different capacities sometimes administrative and at times performs quasi judicial functions. Learned Counsel submits that whenever an order of the Panchayat is challenged before the Director of Panchayats, the Panchayat is entitled to defend its order, and therefore it cannot be said that the Village Panchayat has no right to challenge the order given by the Director of Panchayats before this Court and the Panchayat will certainly be a person who is aggrieved by the said order. Learned Counsel refers to Section 8 of the Act and submits that the Village Panchayat is a body corporate. Learned Counsel submits that interpretation given by the Court in interpreting a provision in one Act need not be used while interpreting the provision of another Act. Learned Counsel submits that Sub-section (7) of Section 66 of the Act does not restrict that an appeal can be filed only by an aggrieved person and therefore the meaning to be given to "any order" in Sub-section (7) of Section 66 of the Act cannot be restricted by that method. Learned Counsel submits that the submission that Sub-section (7) of Section 66 provides a forum of appeal only to an applicant and not to the Panchayat is not contemplated by the said provision.

14. Shri Godinho has placed reliance on the case of Gujarat Pradesh Panchayat Parishad and Others Vs. State of Gujarat and Others, . In this case, the Apex

Court has stated that Part IX of the Constitution confers certain powers on local self-Government. It promises duration of five years, free and fair election, representation of Scheduled Castes and Scheduled Tribes in the administration of institutions of local self-Government, "no interference" by other organs of the State, including judiciary, etc. however, the High Court was right in observing that "a District Panchayat cannot arrogate to itself the status of a body as independent or autonomous as a Province in a Federation". Part IX of the Constitution or Article 243-G makes no change in the essential feature of the Panchayat organisation. What was sought to be done by the Seventy-third Amendment was that constitutional status to the local self-Government was conferred to District Panchayats, Taluka Panchayats and Village Panchayats. A State Legislature/in the light of constitutional provisions in Part IX, cannot do away with these democratic bodies at the local level nor can their normal tenure be curtailed otherwise than in accordance with law nor can the State Government delay elections of these bodies. The Apex Court has also observed that there is a clear distinction between elected representatives and civil servants. Elected representatives of the people at District Panchayat level will formulate policy and civil servants will execute it by implementing programmes and policy decisions. In matters of formulation of policies and programmes also, civil servants may make significant contribution by bringing the relevant data to the notice of the political executive. Likewise, elected representatives may inform civil servants about problems and difficulties of people which can be taken care of by the administration. But, both the functions are to be performed by the two wings which are different though interdependent.

15. Shri Pangam has placed reliance on a decision of the High Court of M.P. Vs. Mahesh Prakash and others, , wherein it was held that the High Court on its administrative side can file an appeal against the High Court on the judicial side. Learned Counsel has also placed reliance on Ghulam Qadir Vs. Special Tribunal and Others, wherein the Apex Court observed, looking at the scheme of the Displaced Persons - J & K State Evacuees" (Administration of Property) Act, 2006, the Rules made thereunder and the powers conferred upon the Custodian that the fact that Custodian-General was impleaded as a party-Respondent before the Tribunal, the Custodian-General had a right to challenge the order of the Tribunal by way of a writ petition as he was administrator of the properties and is required to protect the same, particularly when various comments were made about the Custodian-General and its powers curtailed by the order passed by the Tribunal. The Apex Court observed that the Scheme of the said Act and the Rules made thereunder confer upon the Custodian, the right to hold and manage the property of the evacuee in accordance with the provisions of law. Any order passed by an authority, though under the Act, can be challenged by the Custodian before an appropriate authority for protection of the rights and interests of the evacuee of which he is the protector and Custodian, till the property is restored to the evacuee under the Act. The Custodian under the Act does not perform only judicial or quasi judicial powers but is also entrusted with

the administration of the property having the rights to deal with it as authorised by Sections 9, 9-A and 10 of the Act besides the Rules regulating the exercise of such powers. A writ can also be issued where in exercise of the powers, conferred upon it, the Court or Tribunal acts illegally or improperly. The jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence should not be reopened or questioned in writ proceedings.

16. In my view, all the three decisions cited by learned Counsel on behalf of Petitioner stood on their own facts and are not at all applicable to the facts of the case at hand. The first decision refers to constitutional status which has been conferred on Village Panchayat; the second to an appeal being filed by the administrative side against the order passed by the Judicial Side of the High Court. In the third, it was noticed that the Custodian is also entrusted with the administration of an evacuee's property and he could challenge an order passed by an authority for the protection of rights of an evacuee. In the case at hand, there is nothing that a Village Panchayat is required to protect. It has only to grant a licence for erection of a building or demolish it when it is erected, added or reconstructed without such license or contrary to the rules or conditions imposed by the licence. Under the Act, the Legislature in its wisdom has set up a three tier mechanism to regulate the erection of buildings and though one of them is a duly elected body i.e. Village Panchayat, and the other two are not, the Village Panchayat can otherwise have no interest in the matter of grant of licenses.

17. If the Regulation of 1962 was replaced by the Act of 1994, similarly, Section 83 of the Regulation which dealt with the "control of erection of buildings" was replaced by Section 66 of the Act which deals with "regulation of the erection of buildings". Both the provisions essentially remain the same, except that in case of failure to communicate the decision by the Village Panchayat, a right of an appeal is provided to the Deputy Director to an applicant in terms of Sub-section (2) of Section 66 of the Act, while under Sub-section (2) of Section 83 permission itself was deemed to be granted. The deeming provision in case of Sub-section (2) of Section 66 comes only when the Deputy Director fails to dispose of the appeal within 30 days. There are more changes in Section 66 of the Act in that where the Panchayat fails to demolish the building which is erected or altered or added to any existing building or reconstructed without the permission of the Panchayat, within a month from the date of knowledge, for the Deputy Director to assume the powers of the Panchayat under Sub-sections (3), (4) and (5) of Section 66 of the Act and take such steps as may be necessary for demolition of such building. There are also powers conferred on the BDO to stop an illegal construction - i.e. a construction which is in violation of the Act, or the Rules or bye-laws and refer the case to the Deputy Director. At the cost of repetition, Sub-section (7) of Section 66 may again be reproduced. It provides that:

(7) An appeal shall lie to the Director, within a period of thirty days from any order or direction or notice issued under any of the provisions of this section and the decision of the Director on such appeal shall be final.

18. Going by the reverse order, the "notice" referred to in Sub-section (7) can only be a notice referred to in Clause (b) of Sub-section (3) of Section 66 of the Act or Sub-section (6) of Section 66 of the Act and this notice can be issued only by the Panchayat for alteration or addition of the building or by the BDO for a construction which is in violation of the Act and therefore it is the noticee who will be aggrieved by it and who will be entitled to file an appeal, and not the Village Panchayat who issues it. Likewise, the "direction" referred to in Sub-section (7) of Section 66 of the Act can only be a direction issued and referred to in Clause (a) of Sub-section (3) of Section 66 of the Act. Here again it is the Panchayat who gives the direction that the building, alteration or addition be stopped and, therefore, it is only the person to whom a direction is given by the Panchayat who will be entitled to file an appeal. In other words, only those persons who are given a written notice for alteration or demolition of the building or a direction for stoppage of the building, who are entitled to file an appeal to the Director in terms of Sub-section (7) of Section 66 of the Act and, obviously, the Village Panchayat cannot file any appeal against the direction or written notice given by itself in terms of Clauses (a) and (b) of Sub-section (3) of Section 66 of the Act. The "order" referred to in Sub-section (7) of Section 66 could only be an order issued by the Deputy Director either dismissing the appeal or allowing the same. In case the appeal is dismissed it would be the applicant who would be aggrieved by the order of the Deputy Director dismissing the appeal and who would be entitled to file an appeal to the Director in terms of Sub-section (7) of Section 66 of the Act. If the appeal is allowed by the Deputy Director then certainly the Panchayat can have no right to file an appeal against the same because the Deputy Director in allowing the appeal performs the function which was required to be performed by the Village Panchayat. It does not sound to reason that the Village Panchayat which fails to perform its duty of granting or refusing the application for permission would be entitled to file an appeal against the order of Deputy Director granting such an application. The Legislature could not have contemplated such a situation. In other words, it cannot be said that Sub-section (2) of Section 66 contemplates a situation that the Panchayat will remain inactive after the receipt of the application, and then file an appeal in case the same is granted by the Deputy Director in an appeal filed to the Deputy Director. The Legislature could never have contemplated such a situation. Section 66 of the Act provides for grant of permission by the Village Panchayat and to take action against constructions or reconstructions done without its permission. It is the primary duty of the Village Panchayat as an elected body to grant permissions and to take actions for demolitions in cases of buildings which are erected, added or reconstructed without such permissions. In case the Panchayat fails to grant permission when applied for, then the applicant is entitled to approach the Deputy Director in an appeal and obtain such a

permission. It may be that the Village Panchayat is an elected body while the Deputy Director or the Director are Government servants, but the fact remains that the Act provides a hierarchy of authorities for the grant of permission for the construction of buildings and/or demolition of illegal constructions carried out without permission or contrary to the rules. Again, it may be noted that the Panchayat may be elected body, but when it fails to decide an application for permission or take action for demolition in terms of Sub-sections (3) and (4), its powers are exercised or can be taken over by the Deputy Director who is entitled to take such steps as may be necessary for grant of licence or the demolition of the buildings. That one authority is elected and the others are not is of no consequence. That a Village Panchayat is heard by the Deputy Director or the Director before passing orders in appeals is only for the purpose of defending its action and for compliance of principles of natural justice but such a procedural formality cannot be construed as conferring a right of appeal on the Village Panchayat to challenge the orders of the Deputy Director or of the Director. There cannot be an appeal unless it is specifically provided for by the statute. In other words, Section 66 of the Act operates and regulates a mechanism of granting permission/s for the construction of building/s and demolition thereof, in case they are constructed without permission or contrary to the rules or conditions imposed by the permissions which are granted.

19. These writ petitions certainly are not filed in public interest against the orders of the Additional Director of Panchayats. They could be filed only if some rights of the Petitioners are affected. Petitioners cannot be said to be aggrieved by the decisions of the Additional Director of Panchayats who in the scheme of Section 66 of the Act has been conferred an authority to hear appeals from the decisions of the Village Panchayat. An appeal or a writ petition can be filed only by an aggrieved person when it is otherwise not filed in public interest. The expression "Aggrieved" has been defined by Black's Law Dictionary as having suffered loss or injury; damnified; injured. An "Aggrieved party" has been defined in the same dictionary as one whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word "aggrieved" refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation. A similar view was expressed by the Division Bench in Village Panchayat of Velim (*supra*) in para 15 thereof.

20. The explanation below Sub-section (7) of Section 66 of the Act only makes the failure to communicate the decision by the Panchayat under Sub-section (2) and failure to demolish the building under Sub-sections (3) and (4) as remissness in the performance of duties by the Panchayat and that entitles a party to approach the Deputy Director in appeal under Sub-section (2) or to invoke the powers by the Panchayat under Sub-section (5) as the case may be. The explanation has nothing to do with performance of the executive powers of the Sarpanch u/s 47-A or u/s 64(1)(j) of the Act, those being their individual

powers or duties which have nothing to do with the powers or duties, which are required to be exercised by the Village Panchayat as a separate legal entity. In my view, neither Sub-section (7) of Section 66 or for that matter the explanation below Section 66 can come to the rescue of the Petitioners, the Village Panchayats, not to follow the law laid down by the Division Bench. In my view, the principle laid down by the Division Bench in the case of Village Panchayat of Velim (*supra*) holds good even today after the Regulation of 1962 has been replaced by the Act of 1994 and Section 83 of the Regulation by Section 66 of the Act.

21. As stated, Section 66 of Act also has provided a mechanism for granting of permissions for construction of buildings and for demolition thereof when the same are constructed without permission contrary to permission or contrary to the rules by providing a hierarchy of authorities including the Deputy Director and the Director of Panchayats. It is also to be noted that the Deputy Director as well as the Director of Panchayats are otherwise also the Administrative authorities to control the functioning of Village Panchayats and only because Village Panchayat is formed by elected representatives they cannot be allowed to think that they are above the law. In terms of Section 66 of the Act, the Panchayat, Deputy Director, the BDO and the Director exercise statutory functions. There is a hierarchy of authorities. Just because the lower authority thinks that the decision made by the higher authority, in its opinion is improper, it cannot be allowed to challenge the said decision. For permitting such an exercise would certainly amount to insubordination and subversion of administrative discipline.

22. Moreover, it may be stated that the Division Bench judgment in the case of Village Panchayat of Velim was rendered in 1990. The Act was enacted in 1994. The Legislature is presumed to be acquainted with the construction which this Court had placed on Section 83 of the Regulation and accepted its interpretation and in case it was of a different intention it would have specifically provided for an appeal by the Village Panchayat against the orders of Deputy Director, etc., in Section 66 of the Act when it substituted it, for Section 83 of the Regulation.

23. I am, therefore, of the considered opinion, that these writ petitions deserve to be dismissed in accordance with the law laid down by the Division Bench of this Court in the case of Village Panchayat of Velim (*supra*). Consequently, the objections raised are upheld. The writ petitions are dismissed as not maintainable.