

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.12222/2018 (LB-RES)

C/W

WRIT PETITION No.9233/2021 (LB-RES)

IN WRIT PETITION No.12222/2018

BETWEEN

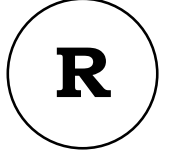
SRI V.HARISH
S/O VENKATARAMAN,
AGED ABOUT 34 YEARS,
R/O BRUNDAVANA ROAD, K.R.SAGARA,
BELAGOLA HOBLI, SRIRANGAPATNA TALUK,
MANDYA DISTRICT – 571 607.

... PETITIONER

(BY SRI K.N.NITISH, ADVOCATE FOR SRI K.V.NARASIMHAN,
ADVOCATE (VIDEO CONFERENCING))

AND

1. THE PRESIDENT
K.R.SAGARA GRAMA PANCHAYAT,
K.R.SAGARA, SRIRANGAPATNA TALUK,
MANDYA DISTRICT – 571 607.
2. THE SECRETARY
K.R.SAGARA GRAMA PANCHAYAT,
K.R.SAGARA, SRIRANGAPATNA TALUK,
MANDYA DISTRICT – 571 607.



3. PANCHAYAT DEVELOPMENT OFFICER
K.R.SAGARA GRAMA PANCHAYAT,
K.R.SAGARA, SRIRANGAPATNA TALUK,
MANDYA DISTRICT – 571 607.
4. THE PRESIDENT
SRIRANGAPATNA TALUK PANCHAYAT,
SRIRANGAPATNA, MANDYA DISTRICT – 571 438.
5. THE EXECUTIVE OFFICER
SRIRANGAPATNA TALUK PANCHAYAT,
SRIRANGAPATNA, MANDYA DISTRICT – 571 438.

... RESPONDENTS

(BY SRI B.J.SOMAYAJI, ADVOCATE FOR R1 & R3
(VIDEO CONFERENCING)
R2, R5 AND R5 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENT NO.1 TO 3 TO IMPLEMENT THE ORDER PASSED RESPONDENT NO.5 AT ANNEXURE-J DATED 7.9.2017 IN APPEAL NO. TA.PUM.SRI: 3/2015-16 AND THE ORDER OF 4TH RESPONDENT AT ANNEXURE-P DATED 19.01.2018 AND DIRECT THE RESPONDENT NO.1 TO 3 TO CHANGE KHATA OF PROPERTY BEARING KHATA NO.160, MEASURING EAST-WEST 150 FEET AND 100 FEET NORTH-SOUTH SITUATED IN K.R.SAGARA, BELAGOLA HOBLI, SRIRANGAPATNA TALUK, MANDYA DISTRICT IN FAVOUR OF THE PETITIONER.

IN WRIT PETITION No.9233/2021

BETWEEN

K.R.SAGAR GRAMA PANCHAYAT
KRISHNARAJASAGAR, REPRESENTED BY ITS
PANCHAYAT DEVELOPMENT OFFICER
SRIRANGAPATNA TALUK
MANDYA DISTRICT – 571 607.

... PETITIONER

(BY SRI B.J.SOMAYAJI, ADVOCATE, (VIDEO CONFERENCING))

AND

1. SHRI V. HARISH
S/O D.VENKATARAMAN
AGED ABOUT 35 YEARS,
BRINDAVANA ROAD, K.R.SAGAR,
BELAGOLA HOBLI
SRIRANGAPATNA TALUK
MANDYA DISTRICT – 571 607.
2. EXECUTIVE OFFICER
TALUK PANCHAYAT
SRIRANGAPATNA,
MANDYA DISTRICT – 571 607.

... RESPONDENTS

(BY SRI K.N.NITISH, ADVOCATE FOR SRI K.V.NARASIMHAN,
ADVOCATE FOR R1 (VIDEO CONFERENCING)
R2 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND SET ASIDE THE ORDER DATED 07.09.2017 PASSED BY THE EXECUTIVE OFFICER, TALUK PANCHAYAT, SRIRANGAPATNA, IN APPEAL NO.TPS 3/2015-16 (ANNEXURE -E).

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These writ petitions arise out of a common grievance of the claim of the petitioner for entering of his name in the khata of the property bearing khata No.160 measuring 150'x100',

situated in K.R.Sagara, Belagola Hobli, Srirangapatna Taluk, Mandya District.

2. Writ Petition No.12222/2018 is filed by one V.Harish who claims to be the son of one Smt.Sowbhagya who had claimed that the property afore-mentioned was hers and despite the order of the Executive Officer of Taluk Panchayat, the Gram Panchayat is refusing to register/re-enter khata in the name of the petitioner which always stood, according to the petitioner, in the name of his mother.

3. Writ Petition No.9233/2021 is filed by the Krishnarajasagar Gram Panchayat challenging the very order which directed registration of khata in favour of the petitioner in Writ Petition No.12222/2018 - the companion writ petition.

4. Facts in brief as borne out from the pleadings are as follows:

The Government by two notifications dated 30.08.1979 and 30.06.1998 declared Krishnarajasagar to be a notified area

and constituted Krishnarajasagar Notified Area Committee. The notification dated 30.06.1998 declared Krishnarajasagar notified area as Krishnarajasagar Gram Panchayat area. At that point in time, the name of one Smt.Sowbhagya had been entered into the assessment list in respect of a vacant land measuring 150'x100', which according to the Gram Panchayat was without any resolution. The Gram Panchayat cancelled the entry in the assessment list of Smt.Sowbhagya by a resolution dated 08.09.2008. This cancellation by the afore-said resolution became subject matter of an appeal under Section 237(1) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (hereinafter referred to as the 'Act for short). The appeal filed before the President of the Srirangapatna Taluk Panchayat was allowed on 06.02.2009 directing restoration of khata in favour of the petitioner/claimant.

5. The petitioner also filed a suit in O.S.No.172/2010 against the Panchayat seeking relief of permanent injunction. The said suit came to be decreed on 31.07.2012 directing

restraint upon the Gram Panchayat to interfere with the peaceful possession of the petitioner. A Regular Appeal against the said order was filed by the Gram Panchayat which also came to be dismissed. After the aforesaid proceedings, representations were given by the petitioner to enter his name in the khata of the subject property. This was rejected by the Gram Panchayat on 17.06.2015. This rejection became a subject matter of writ petition before this Court in W.P.No.13588/2014. The writ petition came to be disposed by an order of this Court dated 29.01.2016 directing the petitioner to approach the Competent Authority under Section 269 of the Act. The petitioner preferred an appeal before the Appellate Authority under Section 269 of the Act calling in question the endorsement issued by the Gram Panchayat dated 17.06.2015. The Gram Panchayat filed its objections before the Executive Officer hearing the appeal raising several grounds as also the jurisdiction to entertain the said appeal. This appeal was allowed by the Executive Officer by his order dated 07.09.2017.

6. In the interregnum, the development with regard to the suit that was filed by the petitioner/claimant as stated hereinabove is that it had been decreed. The Regular Appeal against the said decree in R.A.No.45/2013 was dismissed by the first Appellate Court on 12.02.2018 against which, the Gram Panchayat has preferred a Regular Second Appeal before this Court in R.S.A.No.1280/2018, which is yet to come up for its admission.

7. The petitioner has filed W.P.No.12222/2018 seeking a direction at the hands of this Court to the respondent- Gram Panchayat to enter his name in the assessment register/khata of the subject property. After issuance of notice in the said writ petition, the Gram Panchayat has preferred the companion writ petition No.9233/2021.

8. Heard Sri.K.N.Nitish, leaned counsel appearing for Sri.K.V.Narasimhan, learned counsel for claimant and Sri.B.J.Somayaji, learned counsel appearing for Gram Panchayat.

9. The learned counsel Sri.K.N.Nitish appearing for Sri.K.V.Narasimhan, appearing for the petitioner/claimant submits that the Gram Panchayat cannot be seen to challenge the order of the Executive Officer of the Taluk Panchayat passed under Section 269 of the Act, as the Gram Panchayat cannot be construed to be a person aggrieved. The learned counsel would submit the writ petition is not maintainable and if the writ petition is not maintainable no other ground need be considered. He would without prejudice to the aforesaid contention with regard to maintainability would contend that the mother of the petitioner was in possession of the property on the strength of a niveshana hakku patra which was given by the Competent Authority and when the notified area became a Gram Panchayat area, the Gram Panchayat could not have resiled out of it and would submit the writ petition be allowed and a direction to implement the order of the Appellate Authority be granted.

10. On the other hand, the learned Counsel Sri.B.J.Somayaji representing the respondent- Gram Panchayat

and the petitioner in the companion writ petition would submit that the petitioner has no right over the property, it is a public property which the petitioner wants to knock off as it is a vacant site measuring 150'x100' and the Government at no point in time had directed grant of hakku patra to a vacant site of the dimension of 150'x100'. He would submit that the Executive Officer has grossly erred in directing the entry of the name of the petitioner and the order so directing is bereft of reasons.

11. I have given my anxious consideration to the submissions made by the learned counsel appearing for the respective parties and have perused the material on record.

12. At the outset, I deem it appropriate to consider the threshold submission of the learned counsel for the petitioner/claimant with regard to maintainability of the writ petition. The learned counsel to buttress his submission with regard to maintainability of the writ petition by the Gram Panchayat places reliance upon two judgments of two different High Courts one, reported in **2020 SCC OnLine Rajasthan**

1084 in the case of **Gram Panchayat Khandewla, Through its Sarpanch Namely, Pran Veer Singh Vs. State of Rajasthan and others** and the other, reported in **1990 SCC OnLine Kerala 296** in the case of **District Executive Officer and others Vs. State and Others**.

13. The Rajasthan High Court in the case of **Gram Panchayat Khandewla**¹ has held as follows:

“7. The post of Gram Panchayat is one of the posts provided under the Rajasthan Panchayat Act and Rules framed therein. The appointment is made at their district level by the advertisement issued by the Chief Executive Officer, Zila Parishad and selection is on the basis of recommendation made by the District Level Committee. Thus the appointment of the respondent cannot be said to have been made by the Panchayat Samiti or Gram Panchayat. However, his services are provided to each Gram Panchayat and at that stage, the salary is paid from the budget of the concerned Gram Panchayat. On account of the same, he does not

¹ **2020 SCC OnLine Rajasthan 1084**

become an employee of the Sarpanch of Gram Panchayat. The District Establishment Committee and the Chief Executive Officer, Zila Parishad would have therefore right to hear grievance raised by him against the action of Sarpanch or Gram Panchayat for removing him.

8. *This court finds that it is by way of representation/appeal to higher authority that the case was re-examined and a special enquiry committee was formed consisting of three officers to find out whether the concerned Gram Panchayat Sahayak was removed legally. Reaching to the conclusion that the order passed of removal was illegal. The concerned respondent no. 8 has been directed to be reinstated. The manner and method by which the Gram Panchayat has challenged the order, amounts to challenging the authorities of the superior officer. An appellate forum or higher forum where representation is received will have power and authority to re-examine the orders passed by subordinate authorities and it can decide, remand or quash the order passed by the subordinate authorities. Such power is an inherent power with the appellate authority/higher authority. The Subordinate Authority cannot be allowed to*

question the said authority by filing of the writ petition before this court. This court agrees that the such method adopted by the petitioner amounts to misuse of legal remedies and and if the same is allowed to be entertained, it would amount to creating the administrative chaos.”

In the case of **District Executive Officer**², the High Court of Kerala has held as follows:

“2. Section 3 of the Act provides for constitution of a welfare fund and. Section 6 for constitution of a Board to administer the fund. Section 7 provides for appointment of officers to determine contributions payable by employers. Petitioners were so appointed. The Government or other authority specified by the Government, is empowered to hear appeals against orders made by such officers. Appellate orders made by Government are challenged by petitioners, who claim to be aggrieved by those orders. To show that they have locus standi, petitioners rely on Section 35C(2) of the Central Excise & Salt Act which enables a Collector, to authorise his subordinate

² 1990 SCC OnLine Kerala 296

officers, to file appeals against orders of 'Appellate' Collectors. In that department, there are 'Collector' and 'Appellate Collectors' and the latter perform only quasi-judicial functions. Counsel for respondents submit that petitioners are not aggrieved persons, that permitting them to challenge orders of the appellate authority would militate against well established tenants in areas of quasi judicial functioning, and that the doctrine of merger and bias must halt them in their track to reach remedies. To support the first contention, Shri M.B. Kurup appearing for some of the respondents, relied on a decision of this court in Divisional Forest Officer v. Pushpan (1983 KLT 951). A learned Judge of this court held that a Divisional Forest Officer after issuing an order, became Functus officio, and that he has no locus standi after his order merged with the order of the superior authority. This contention was endorsed by Shri B. Radhakrishnan, who appeared as Amicus Curiae. He pointed out that the petitions are not filed by the Board, or on behalf of them, and that in the light of Section 6(2) of the Act, the Fund is body corporate which "shall by the said name sue and be sued" According to him, petitioners are not aggrieved

persons because, even in a pecuniary sense the contributions go to a pool, and not to the petitioners. The doctrine of merger also stands against petitioners, submits Sri. Radhakrishnan. The contention that petitioners have no locus standi commends acceptance, as they cannot act for the fund and as they have no enforceable interest. Relying on the decision in Gojer Brothers (P.) Ltd. v. Sri Ratan Lal Singh ((1974) 2 SCC 453 : AIR 1974 SC 1380), Sri Radhakrishnan submitted that there can only be one operative order governing the same subject, and that the order of an inferior tribunal loses identity by merger with the order of the superior tribunal. The Supreme Court held that the principle of merger extends not only to judicial proceedings, but also to proceedings of quasi judicial and executive orders. Both on principle and precedent, this contention must be sustained.

7. *Since petitioners have acted as a quasi judicial authority, they cannot be permitted to act as parties, whatever be the sequence of events. Having fulfilled one role, the other role should not be available. That was justification enough for the appellate authority to have interceded.*

8. *There is another and an equally fundamental objection to permitting petitioners to maintain actions. If a subordinate authority is to challenge the decision of a superior authority, that would be an unwholesome state in areas of quasi judicial functions. In Bhopal Sugar Industries v. Income Tax Officer (AIR 1961 S.C. 192), the Supreme Court held that when a subordinate authority in the hierarchy does not adhere to, or abide by the decision of a superior authority, its action cannot be justified. That was a case where an Income Tax Officer failed to carry out the directions of a superior tribunal, namely the Income Tax Appellate Tribunal. The Court said:*

“Such refusal is in effect a denial of justice and is further more destructive of one of the basic principles in the administration of justice, based as it is, in this country, on a hierarchy of courts”.

9. *This principle has been accepted by English Courts also. In Cassel v. Broome ((1972) A.C. 1027). Diplock L.J. observed:*

“It is inevitable in a hierarchal system of courts that there are decisions of the Supreme Appellate Tribunal which does not attract unanimous approval The judicial system works only if some one is allowed to have the last word”.

These judgments are distinguishable on the facts of the case obtaining in the aforesaid judgments in juxtaposition with the facts obtaining in the case at hand. The present writ petition filed by the Gram Panchayat is in furtherance of its objective of protection of a public property, which the petitioner/claimant seeks a claim upon. The facts therein were not concerning such a grievance. It was with regard to an enquiry conducted and a direction of reinstatement against an employee of the Panchayat. There was no public interest involved in both the cases at hand.

14. On the other hand, a deeper delving into the matter is obviated by the judgment of the Apex Court on the issue as in the case of **Village Panchayat, Calangute v. Director of**

Panchayat³, wherein the Apex Court considered the very issue with regard to maintainability of a writ petition by a Gram Panchayat. The question before the Apex Court reads as follows:

“Whether a village panchayat established under Section 3 of the Goa Panchayat Raj Act, 1994 (for short “the Act”) or any other statutory dispensation existing prior to the enactment of the Act has the locus to file a petition under Article 226 and/or Article 227 of the Constitution for setting aside an order passed by the designated officer exercising the power of an appellate authority qua the action/decision/resolution of the village panchayat is the question which arises for consideration in these appeals filed against the order dated 18-8-2010 passed by the learned Single Judge of the Bombay High Court, Goa Bench in Village Panchayat, Calangute v. Director of Panchayat [WPs Nos. 16 and 312 of 2010, order dated 18-8-2010 (Bom)] .

The contention before the Apex Court of the parties to the *lis* were as follows:

³ (2012) 7 SCC 550

“8. *Shri Shyam Divan, learned Senior Counsel relied upon the judgment of the learned Single Judge in Village Panchayat of Calangute v. Director of Panchayats [(2004) 2 Goa LR 497] and of the Division Bench of the Kerala High Court in Karunagappally Grama Panchayat v. State of Kerala [(1996) 1 KLT 419] and argued that summary dismissal of the writ petitions was not at all warranted because the issues raised by the appellant were of considerable public importance. Shri Divan submitted that the illegal construction raised by the Company has the effect of preventing the public from having access to the water well in Survey No. 362/10 and the chapel situated beyond Survey No. 362/12 and argued that the appellant being a representative body of the people of the village has the right to question the orders passed by Respondent 1 and the Block Development Officer and the High Court could not have non-suited it by accepting the narrow interpretation of the term “person aggrieved”.*

9. *Shri V.C. Daga, learned Senior Counsel for the Company relied upon the judgment of the Division Bench of the High Court in Village Panchayat of Velim v. Valentine S.K.F. Rebello [(1990) 1 Goa LT 70]*

and order dated 13-8-2010 [Village Panchayat of Sancoale v. M-Tech Developers Ltd., WP No. 405 of 2009, order dated 13-8-2010 sub nom Village Panchayat of Bastara v. Maruti Hallikar, WP No. 620 of 2009 (Bom)] passed by the learned Single Judge in Writ Petition No. 620 of 2009 and batch and argued that the writ petitions filed by the appellants were rightly dismissed as not maintainable. Shri Daga also relied upon the judgment in R. v. London Quarter Sessions, ex p Westminster Corpn. [(1951) 2 KB 508 : (1951) 1 All ER 1032 (DC)] and argued that the appellant cannot be treated as a “person aggrieved” by the orders passed by Respondent 1 and the Block Development Officer. The learned Senior Counsel also pointed out that Writ Petition No. 5 of 2010 filed by the local residents questioning the order dated 19-10-2009 passed by the Block Development Officer was dismissed by the learned Single Judge vide order dated 20-10-2010 [Anthony Pereira v. Director of Panchayat, WP No. 5 of 2010, order dated 20-10-2010 (Bom)] and argued that in view of that order the appellant is estopped from questioning the order dated 19-10-2009.”

The issue that arose before the Apex Court is answered after considering the 73rd amendment to the Constitution of India introduced in 1992 and various Articles that empowered the panchayat, the Apex Court holds as follows:

“11. In 1992, the Constitution (Seventy-third Amendment) Act was introduced in Parliament and the existing Part IX was substituted. The background in which this amendment was introduced is evinced from the first two paragraphs of the Statement of Objects and Reasons, which are extracted below:

“1. Though the Panchayati Raj institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the directive principles of State policy lays

down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the shortcomings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj institutions to impart certainty, continuity and strength to them.”

12. *The aforesaid amendment is a turning point in the history of local self-government. By this amendment panchayat became an “institution of self-governance”—Article 243(d) and comprehensive provisions came to be incorporated for democratic decentralisation of governance on the Gandhian principle of participatory democracy. The Panchayati Raj institutions structured under the Seventy-third Amendment are meant to bring about sweeping changes in the governance at the grass-root level. By this amendment, Parliament introduced three-tier system of Panchayati Raj institutions at village, block and district levels. Article 243-C provides for*

composition of a panchayat and filling up of the seats in a panchayat by direct election. Article 243-D provides for reservation of seats and Article 243-E provides for duration of panchayat. Article 243-F enumerates the grounds of disqualification of membership of the panchayat and Article 243-G prescribes the powers, authority and responsibilities of a panchayat.

13. *Article 243-H gives power to the State Legislatures to enact law and authorise a panchayat to levy, collect and appropriate taxes, duties, tolls and fees; assign to a panchayat such taxes, duties, tolls and fees levied and collected by the State Government and also provide for making such grants-in-aid to the panchayats from the Consolidated Fund of the State. Clause (d) of this article envisages a legislative provision for constitution of appropriate provisions for crediting all monies received by or on behalf of the panchayats and also for withdrawal of such monies. Article 243-I envisages constitution of the Finance Commission to review the financial position of the panchayats.*

14. Article 243-K(1) declares that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the panchayats shall be vested in a State Election Commission. Clause (4) of this article empowers the State Legislature to make law with respect to all matters relating to, or in connection with, elections to the panchayats.

xx xx xx

17. Article 243(d) and Article 243-G which have bearing on the issue raised in these appeals read as under:

“243-Definitions.—In this Part unless the context otherwise requires—

(d) ‘**panchayat**’ means an institution (by whatever name called) of self-government constituted under Article 243-B, for the rural areas;

243-G.Powers, authority and responsibilities of panchayats.—Subject to the provisions of this Constitution, the legislature of a State may, by law, endow the panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and

such law may contain provisions for the devolution of powers and responsibilities upon panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”

xx xx xx xx

23. *For achieving the objectives enshrined in Part IX of the Constitution, the State Legislatures have enacted laws and made provision for devolution of powers upon and assigned various functions listed in the Eleventh Schedule to the panchayats. The primary focus of the subjects enumerated in the Eleventh Schedule is on social and economic development of the rural parts of the country by conferring upon the panchayat the status of a constitutional body. Parliament has ensured that the panchayats would no longer perform the role of simply executing the programs and policies evolved by the political executive of the State. By virtue of the provisions contained in Part IX, the panchayats have been*

empowered to formulate and implement their own programs of economic development and social justice in tune with their status as the third tier of the Government which is mandated to represent the interests of the people living within its jurisdiction. The system of panchayats envisaged in this part aims at establishing strong and accountable systems of governance that will in turn ensure more equitable distribution of resources in a manner beneficial to all.

24. *In the light of the above, it is to be seen whether the appellant has the locus to challenge the orders passed by Respondent 1 in the appeals filed by the Company. A conjoint reading of the provisions contained in Chapter III of the Act shows that a panchayat is generally required to perform the functions specified in Schedule I and also make provision for carrying out any other work or measures likely to promote the health, safety, education, comfort or convenience or social or economic well-being of the inhabitants of the panchayat area. It also has the power to do all acts necessary for or incidental to carrying out the functions entrusted, assigned or delegated to it. The Sarpanch is not only entrusted with the duty to implement the programme of welfare*

schemes and other development works, but also stop any unauthorised construction erected in the panchayat area. Section 66 which regulates erection of buildings within the panchayat area empowers it and/or the Sarpanch to take action against erection of building without obtaining permission from the competent authority or any violation of the conditions imposed at the time of grant of such permission. The panchayat is also empowered to issue direction for upkeep and maintenance of sources of water supply which are in private hands.

25. *Section 178 empowers the Director to suspend the execution of any order or resolution passed by a panchayat or prohibit the doing of anything by or on behalf of a panchayat if he is satisfied that the execution of any such order or resolution or doing of anything by or on behalf of the panchayat is unjust, unlawful or is improper or is causing or is likely to cause injury or annoyance to the public or lead to a breach of peace. Section 178(2) casts a duty on the Director to forward to the Government and the panchayat affected by his order a copy of the statement of reasons for making the order. The Government has the power to confirm or rescind*

the order or direct that it shall continue to remain in force with or without modification permanently or for a specified period. The proviso to this section imposes an obligation on the Government to give reasonable opportunity of showing cause to the panchayat concerned against the proposed confirmation, revision or modification of the order of the Director.

26. *Section 201 provides for appeal against an order of the panchayat made under Sections 76, 77, 84, 104 and 105. Where no appeal has been provided under the Act on any miscellaneous matter dealt with by the panchayat or the village panchayat Secretary or the Sarpanch, an appeal lies to the Block Development Officer under Section 201-A(1). In terms of Section 201-A(2), the Deputy Director is empowered to exercise revisional power qua the order which may be passed by the Block Development Officer under sub-section (1).*

27. *In this case, the appellant had entertained the complaint made by local residents, revoked occupancy certificate and also cancelled the permission granted to the Company for raising construction. The resolution cancelling the permission*

was recalled apparently because the rules of natural justice had not been followed. Thereafter, the Sarpanch issued notice under Section 64 and directed the Company to stop further construction. The Company challenged the notice and succeeded in persuading Respondent 1 to pass an ex parte interim order. The application made by the Company for permission to use the property for running a guest house was rejected by the appellant because the legality of the construction made by the Company was under scrutiny. In both the cases, Respondent 1 set aside the resolutions passed by the appellant as also the notice issued by the Sarpanch.

xx xx xx xx

30. *It is thus evident that while the appellant and the Sarpanch had exercised their respective powers in public interest, Respondent 1 nullified that exercise because he felt that the resolution/action was contrary to law and was unjustified. While exercising the power under the Act, the panchayat was not acting as a subordinate to Respondent 1 but as a body representing the will of the people and also a body corporate in terms of Section 8 of the Act. Therefore, it had the locus to challenge the orders*

passed by Respondent 1 and the High Court was clearly in error in holding that the writ petition was not maintainable.

xx xx xx xx

35. *By applying the ratio of the aforesaid judgments to the facts of these cases, we hold that the writ petitions filed by the appellant were maintainable and the learned Single Judge of the High Court committed grave error by summarily dismissing the same. We also declare that the contrary view expressed by the High Court in other judgments does not represent the correct legal position.”*

The question that arose before the Apex Court was whether a writ petition by a Gram Panchayat calling in question the order passed by the Executive Officer was maintainable or otherwise. The contentions were that the writ petition was not maintainable and the contra contention was that it was. The Apex Court after considering the amendment to the Constitution empowering Gram Panchayats, has declared that a writ petition in certain circumstances by the Gram Panchayat challenging the order of

the Executive Officer would be maintainable. Therefore, the threshold bar that the petitioner/claimant seeks to contend is unacceptable and I hold the writ petition to be maintainable.

15. Insofar as the civil proceedings that the petitioner/claimant instituted in O.S.No.172/2010 was a suit for permanent injunction and not a suit for declaration of title of the property, for the petitioner to contend that there is a decree in his favour which would depict ownership. Even otherwise, the issue is pending at large before this Court in R.S.A.No. 1280/2018. I deem it appropriate not to consider the said issue in the light of the pending proceedings before this Court.

16. The case of the Gram Panchayat is that the objections filed by them before the Executive Officer has not been looked into even and the order of the Executive Officer is bereft of reasons. Therefore, the order of the Executive Officer is extracted for the purpose of ready reference:

“ಪ್ರಸ್ತಾವನೆ:

ಶ್ರೀ ವಿ.ಹರೀಶ್ ಬಿನ್ ವೆಂಕಟರಾಮ, ಕೆ.ಆರ್.ಸಾಗರ ಗ್ರಾಮ, ಇವರು ಮಾನ್ಯ ಗೌರವಾನ್ವಿತ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ W.P.13588/2014 ರಲ್ಲಿ ನೀಡಿರುವ ನಿರ್ದೇಶನದಂತೆ, ಕರ್ನಾಟಕ ಪಂಚಾಯತ್ ರಾಜ್ ಅಧಿನಿಯಮ ಕಾಯ್ದೆ ಪ್ರಕರಣ 269 ರ ರೀತ್ಯಾ ಮೇಲ್ಕಂಡ ಪ್ರಕರಣವನ್ನು ಇತ್ಯಾರ್ಥಗೊಳಿಸಲು ಕೋರಿ ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಮನವಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಘನ ನ್ಯಾಯಾಲಯವು ಸದರಿ ಮನವಿಯನ್ನು ಪುರಸ್ಕರಿಸಿ, ಕೆ.ಪಿ.ಆರ್. ಕಾಯ್ದೆ 1993 ರ ಪ್ರಕರಣ 263 ರಂತೆ ಕ್ರಮ ವಹಿಸಲು ನಿರ್ದೇಶನ ನೀಡುವುದರ ಮೇರೆಗೆ ಪ್ರಕರಣವನ್ನು ತೆಗೆದುಕೊಳ್ಳಲಾಗಿದೆ. ಮನವಿ ಅಂಶಗಳ ಬಗ್ಗೆ ಎದುರುದಾರರಾದ ಅಧ್ಯಕ್ಷರು, ಕೆ.ಆರ್.ಸಾಗರ ಗ್ರಾಮ ಪಂಚಾಯತಿ ಇವರು ತಕರಾರು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಸದರಿ ತಕರಾರಿನಲ್ಲಿ ತಿಳಿಸಿರುವಂತೆ ಡಿಮ್ಯಾಂಡ್ ಪ್ರತಿಯನ್ನು ಅನುಸರಿಸಿ ವಿವಾದಿತ ಸ್ವತ್ತು ನೋಂದಣಿಯಾಗಿರುವುದು ಅಫೀಲುದಾರರು ಸಲ್ಲಿಸಿರುವ ದಾಖಲೆಯಿಂದ ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಮೇಲ್ಮನವಿದಾರರು ಹಾಗೂ ಎದುರುದಾರರು ಸಲ್ಲಿಸಿರುವ ಅಂಶಗಳು ಹಾಗೂ ದಾಖಲೆಗಳನ್ನು ಪರಿಶೀಲಿಸಿ, ಲಿಖಿತ ಹೇಳಿಕೆಯನ್ನು ಪರಿಗಣಿಸಿ, ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಲಾಗಿದೆ.

:ಆದೇಶ:

ಮೇಲ್ಮನವಿದಾರರು ಮೇಲ್ಮನವಿಯಲ್ಲಿ ತಿಳಿಸಿರುವ ಅಂಶಗಳು ಹಾಗೂ ಎದುರುದಾರರಾದ ಗ್ರಾಮ ಪಂಚಾಯತಿಯ ಅಧ್ಯಕ್ಷರು ಹಾಗೂ ಇತರರು ಸಲ್ಲಿಸಿರುವ ದಾಖಲೆಗಳ ರೀತ್ಯಾ ಈ ಪ್ರಕರಣವು ಸಿವಿಲ್ ಸ್ವರೂಪದ್ದಾಗಿರುವುದರಿಂದ ಸಿವಿಲ್ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸದರಿ ಸ್ವತ್ತಿಗೆ ಪ್ರತಿಬಂಧಕಾಜ್ಞೆ ಇರುವುದನ್ನು ಪರಿಗಣಿಸಿ, ಪ್ರಕರಣವನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸಲಾಗಿದೆ ಹಾಗೂ ವ್ಯವಸ್ಥಾಪನ ಪತ್ರದ ಅನುಸಾರ ಕ್ರಮವಹಿಸಲು ತಿಳಿಸಿದೆ.

ಮೇಲ್ಕಂಡ ಪ್ರಕರಣವನ್ನು ದಿನಾಂಕ: 07-09-2017 ರಂದು ತೆರೆದ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಬೆರಳಚ್ಚುಗಾರರಿಗೆ ಉಕ್ತಲೇಖನ ನೀಡಿ ಗಣೇಕರಿಸಿ ತಿದ್ದುಪಡಿ ಮಾಡಿ ಸರಿಪಡಿಸಿ ಘೋಷಿಸಲಾಗಿದೆ.”

In terms of the afore-extracted order, the Executive Officer of the Taluk Panchayat directs correction in the khata by making an entry of the name of the petitioner. The order displays blatant non-application of mind. There is no consideration of either the case of the petitioner/claimant or the respondent - Gram Panchayat. The Executive Officer is considering a case before him under Section 269 of the Act. Therefore, exercises *quasi* judicial powers.

17. It is trite law that an order passed by a *quasi* judicial authority determining the rights of the parties should contain reasons, as reasons would reflect application of mind. In an era where even administrative orders cannot be bereft of reasons, it can hardly be justifiable, if orders of *quasi* judicial authorities are cryptic, bald or laconic. Therefore, the contention of the learned counsel Sri.B.J.Somayaji deserves acceptance with regard to maintainability of the writ petition and obliteration of the order of the Executive Officer, Taluk Panchayat. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition No.12222/2018 filed by the petitioner/claimant is dismissed.
- (ii) Writ Petition No.9233/2021 filed by the Gram Panchayat is allowed. Order impugned dated 07.09.2017 passed by the Executive Officer, Taluk Panchayat, Srirangapatna stands quashed.
- (iii) The matter is remitted back to the hands of the Executive Officer, Taluk Panchayat to re-determine the entire issue before it, hear the parties and pass appropriate orders, which would bear the stamp of application of mind.
- (iv) The said exercise by the Executive Officer shall be concluded as expeditiously as possible, at any rate within four months from the date of receipt of the copy of the order.

In view of disposal of the petitions, I.A.No.1/2019 filed in W.P.No.12222/2018 does not survive for consideration. Accordingly, stands disposed.

**Sd/-
JUDGE**

bkp