

Village Panchayat Calangute vs Additional Director Of Panchayat li& ... on 2 July, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2697, 2012 AIR SCW 3811, 2012 (5) AIR BOM R 73, (2013) 2 LANDLR 278, 2012 (7) SCC 550, (2012) 4 ALLMR 494 (SC), AIR 2012 SC (CIV) 1993, (2012) 6 SCALE 45, (2012) 2 CLR 202 (SC), 2012 (3) KLT SN 46 (SC), (2012) 4 BOM CR 481

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Bench: Sudhansu Jyoti Mukhopadhaya, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4832 OF 2012
(Arising out of SLP (C) No. 1758 of 2011)

Village Panchayat, Calangute ... Appellant
Versus

The Additional Director of Panchayat-II and Others ... Respondents
with

CIVIL APPEAL NO. 4833 OF 2012
(Arising out of SLP (C) No. 10569 of 2011)

J U D G M E N T

G. S. Singhvi, J.

1. Leave granted.

2. 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 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 order dated 18.08.2010 passed by the learned Single Judge of the Bombay High Court, Goa Bench in Writ Petition Nos. 16 and 312 of 2010.

3. M/s. Kay Jay Constructions Company Pvt. Ltd. (hereinafter described as, 'the company') (respondent No.4 in the appeal arising out of SLP (C) No.1758 of 2011) was granted permission by the appellant in 2006 for raising construction on property bearing Survey No. 362/12 and part of Survey No. 362/10 at Porbawado, Calangute, Bardez. The company is said to have illegally constructed a wall and thereby blocked access to the water well situated in Survey No.362/10 and the chapel situated beyond Survey No.362/12 as also the existing water drains. When the local residents complained against the illegal construction, the appellant passed resolution dated 24.03.2008 for revocation of the occupancy certificate, which was issued by the Secretary on the basis of what were termed as manipulated resolutions passed on 22.12.2007 and 28.02.2008. The appellant passed another resolution dated 25.3.2009 and revoked the permission granted to the company. The latter challenged the same by filing Panchayat Petition No.6/2009 on the ground that the decision taken by the appellant was contrary to the rules of natural justice. On realizing that the action taken by it was not proper, the appellant revoked resolution dated 25.03.2009. Thereafter, the Sarpanch issued notice dated 29.7.2009 under Section 64 of the Act and directed the company to stop further construction. Simultaneously, he fixed 4.8.2009 as the date for inspection of the site. The company challenged the notice in Panchayat Appeal No.12/2009. Respondent No.1 - the Additional Director of Panchayat entertained the appeal and passed an ex-parte interim order dated 3.8.2009.

4. In the meanwhile, application dated 24.7.2009 was made on behalf of the company for grant of permission to use the property for running a guest house. The same was rejected by the appellant vide resolution dated 4.8.2009. The Managing Director of the company challenged the decision of the Gram Panchayat in Panchayat Appeal No.174/2009. On being noticed, the appellant made a request that hearing of Panchayat Appeal No. 174/2009 may be deferred till the disposal of Panchayat Appeal No. 12/2009 and it may be permitted to inspect the construction made by the company. Respondent No.1 rejected the appellant's request and fixed Panchayat Appeal No.174/2009 for final hearing.

5. It is borne out from the record that some residents had also filed complaint before Block Development Officer, Bardez, Goa against the illegal construction raised by the company and the consequential blockage of access to the well and change of the natural flow of rain water resulting in water logging. Initially, the Block Development Officer passed an injunction order against the company but after considering the latter's reply, he dismissed the complaint by observing that the construction made by the company was not illegal and any restriction on the use of property would seriously prejudice its cause.

6. The appellant challenged orders dated 3.8.2009 and 30.11.2009 passed by respondent No.1 and order dated 19.10.2009 passed by the Block Development Officer in Writ Petition No.16/2010 on the ground that respondent No.1 did not have the jurisdiction to entertain an appeal against the notice issued under Section 64 of the Act and, in any case, such notice could not be stayed under Section 178. It was also pleaded that even if the appeal filed by the company was treated as maintainable, there was no justification to pass an interim order which had the effect of allowing the appeal. As regards the order of the Block Development Officer, it was pleaded that he could not have exercised power under Section 66 of the Act and disposed of the complaint filed by the local

residents and thereby allowed the company to continue the illegal construction which had effectively blocked access to the water well and the chapel.

7. During the pendency of Writ Petition No.16/2010, respondent No.1 passed final order dated 12.02.2010 in Panchayat Appeal No. 12/2009 and directed the appellant to reconsider the application made by the company for grant of permission to use the property for running a guest house. The appellant challenged that order in Writ Petition No. 312/2010.

8. The learned Single Judge of the High Court relied upon the order passed in Writ Petition No.620/2009 and dismissed both the writ petitions as not maintainable.

9. Shri Shyam Divan, learned senior counsel relied upon the judgment of the learned Single Judge in Village Panchayat of Calangute v. The Deputy 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 No.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'.

10. 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. Shri Valentine S.K.F. Rebello and another 1990(1) Goa L.T 70 and order dated 13.08.2010 passed by learned Single Judge in Writ Petition No. 620/2009 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 Rex v. London Quarter Sessions Ex parte Westminster Corporation (1950) 1 KB 148 and argued that the appellant cannot be treated as a 'person aggrieved' by the orders passed by respondent No.1 and the Block Development Officer. Learned senior counsel also pointed out that Writ Petition No. 5/2010 filed by the local residents questioning order dated 19.10.2009 passed by the Block Development Officer was dismissed by the learned Single Judge vide order dated 20.10.2010 and argued that in view of that order the appellant is estopped from questioning order dated 19.10.2009 .

11. We have considered the respective submissions. Before independence, majority population of the States which merged in the Union was rural. After independence and even now India continues to be a pre-dominantly rural country. There are almost six lakh villages in the country and almost 75% of the population lives in the villages. Article 40 of the Constitution, which enshrines one of the Directive Principles of State Policy was incorporated in the Draft Constitution in the light of the suggestions made by S/Shri M.A. Ayangar, N.G. Ranga, Surendra Mohan Ghose and Seth Govind Das, all of whom strongly advocated that the dream of the Father of Nation of initiating democracy at the grass root (rural India) be translated into reality by making Panchayats as units of self-Government. This Article mandates the State to take steps to organize Village Panchayats and

endow them with such powers and authority as may be necessary to enable them to function as units of self-Government. Notwithstanding the mandate of Article 40, the State failed to take effective steps to make Village Panchayats as units of self-Government. In 1977, a Committee was constituted under the chairmanship of Shri Ashok Mehta to evaluate Panchayati Raj institutions and their functioning. In its report, the Committee observed that the existing model of Panchayats has failed to transfer the fruits of democracy to the weaker sections of society because they are dominated mostly by socially and economically privileged people.

12. 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:

“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.

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.”

13. 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 decentralization of governance on Gandhian principle of participatory democracy. The Panchayati Raj institutions structured under 73rd 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. 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 Finance Commission to review financial position of the Panchayats. 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. By virtue of Article 243-L, the provisions of Part IX have been made applicable to the Union Territories. Article 243-M declares that provisions of Part IX shall not apply to the Scheduled Areas referred to in clause (1) and the tribal areas referred to in clause (2) of Article 244, the States of Nagaland, Meghalaya and Mizoram, hill areas in the State of Manipur for which District Councils exist as also the hill areas of Darjeeling. Clause 3(a) of this Article excludes the application of the provisions relating to reservation of seats for the Scheduled Castes insofar as the State of Arunachal Pradesh is concerned. Article 243-N contains a transitory provision for continuance of the existing laws for a maximum period of one year. Article 243-O contains a non-obstante clause and declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any Court and that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the State Legislature. Article 243(d) and Article 243-G which have bearing on the issue raised in these appeals read as under:

“243(d). In this Part, unless the context otherwise requires,-

(d) “Panchayat” means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;

243G. Powers, authority and responsibilities of Panchayat - 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.”

14. In the light of the Constitution (Seventy-third Amendment) Act, the State legislature enacted the Act, as is evident from its preamble, which reads thus:

“Whereas it is expedient to replace the present enactment by a comprehensive enactment to establish a two-tier Panchayat Raj System in the State with elected bodies at village and district levels, in keeping with the Constitution Amendment relating to Panchayats for greater participation of the people and more effective

implementation of rural development programmes.”

15. Chapter I of the Act contains definitions of various terms including “Panchayat” which means a Village Panchayat established under Section 3. Chapter II contains provisions relating to Gram Sabha and constitution of Panchayats including election to the Panchayats in which every person enrolled in the electoral roll of the Legislative Assembly of the State is entitled to participate. Chapter III contains provisions relating to functions, duties and powers of Panchayats, Sarpanch and Deputy Sarpanch. Since, we are not concerned with the provisions relating to staff of Panchayats, constitution of Taluka Panchayats and related provisions, constitution of Zilla Panchayats and related provisions, we do not consider it necessary to make a detailed reference to the provisions contained in Chapters IV to IX. Chapter X contains provisions relating to inspection and supervision etc. of Panchayats. Chapter XI relates to financial control and audit. Chapter XII incorporates miscellaneous provisions. For the sake of reference, Sections 2(14), 3(1), (2), 47-A, 60, 62, 64, 66, 70, 84, 178, 201, 201-A and relevant portions of Schedule-I are reproduced below:

“CHAPTER I Preliminary

2. Definitions.— In this Act, unless the context otherwise requires,-

(14) “Panchayat” means a Village Panchayat established under section 3;

CHAPTER II Gram Sabha — Constitution of Panchayats

3. Declaration of Panchayat areas and establishment of Panchayats.— (1) After making such inquiry as may be necessary, the Government may, by notification, declare a local area, comprising of a village or a group of villages or any part or parts thereof, or a combination of any two or more of them to be a Panchayat area for the purposes of this Act and also specify its headquarters.

(2) For every Panchayat area, there shall be a Panchayat as from such date as the Government may, by notification, appoint.

47-A. Executive powers of the Sarpanch.— Notwithstanding anything contained in this Act and the rules framed thereunder, the Sarpanch shall exercise the powers on the following matters, namely:—

(i) to implement the programme of welfare schemes and other developmental works;

(ii) to execute and implement the resolution passed by the Panchayat on the matters not specified in section 47.

(Inserted by the Amendment Act 1 of 1997) CHAPTER III Functions, Duties and Powers of Panchayats, Sarpanch and Deputy Sarpanch

60. Functions of the Panchayat.— (1) Subject to such conditions as may be specified by the Government from time to time, the Panchayat shall perform the functions specified in Schedule-I.

(2) The Panchayat may also make provision for carrying out within the Panchayat area any other work or measure which is likely to promote the health, safety, education, comfort, convenience or social or economic well-being of the inhabitants of the Panchayat area.

62. General powers of the Panchayat.— Panchayat shall have powers to do all acts necessary for or incidental to the carrying out of the functions entrusted, assigned or delegated to it and in particular and without prejudice to the foregoing powers to exercise all powers specified under this Act.

64. Powers and duties of the Sarpanch and Deputy Sarpanch.— (1) The Sarpanch of the Panchayat shall, in addition to the power exercisable under any other provision of this Act or rules made thereunder,—

(j) stop any unauthorized construction erected in the Panchayat area notwithstanding anything contained in sub-section (3) of section 66 of this Act and place the matter immediately before the ensuing meeting of the Panchayat for taking suitable decision;

(k) remove encroachment and obstruction upon public property, street, drains and open sites not being private property;

(l) ensure due compliance of the provisions of the Act; and

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 filings 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.

70. Control of hotels etc.— No place within the jurisdiction of a Panchayat shall be used as a hotel, restaurant, eating house, coffee house, sweetmeat shop, bakery, boarding house or lodging house (other than a hostel recognized by the Government), or a dharmashala or for manufacturing ice or aerated water except under a licence granted or renewed by the Panchayat and except in accordance with condition specified therein.

84. Powers and duties in regard to sources of water supply.— The Secretary or any officer authorized by the Panchayat in this behalf may at any time by written notice require that the owner or any person who has control over any well, stream, channel, tank, or other source of water supply shall, whether it is private property or not,—

(a) if the water is used for drinking,-

i) keep and maintain any such source of water supply other than a stream, in good repair; or

ii) within a reasonable time to be specified in the notice, cleanse any such source of water supply from silt, refuse and decaying vegetation; or

iii) in such manner as the Panchayat may direct, protect any such source of water supply from pollution by surface drainage; or

iv) desist from using and from permitting others to use for drinking purposes any such sources of water supply, which not being a stream in its natural flow, is in the opinion of the Panchayat unfit for drinking; or

v) if notwithstanding any such notice under sub-clause (iv), such use continues and cannot, in the opinion of the Panchayat, be otherwise prevented, close either temporarily or permanently, or fill up or enclose or fence in such manner as the Panchayat considers sufficient to prevent such use, such source of water supply; or

vi) drain off or otherwise remove from any such source of water supply, or from any land or premises or receptacle or reservoir attached or adjacent thereto, any stagnant water which the Panchayat considers as injurious to health or offensive to the neighbourhood;

178. Power of suspending execution of unlawful orders or resolution.— (1) If in the opinion of the Director, the execution of any order or resolution of a Panchayat or Zilla Panchayat or any order of any authority or officer of the Panchayat or the Zilla Panchayat or the doing of anything which is about to be done, or is being done, by or on behalf of a Panchayat or a Zilla Panchayat is unjust, unlawful or improper or is causing or is likely to cause injury or annoyance to the public or to lead to a breach of peace, he may by order suspend the execution or prohibit the doing thereof.

(2) When the Director makes an order under sub-section (1), he shall forthwith forward to the Government and the Panchayat or Zilla Panchayat affected thereby a copy of the order with a statement of the reasons for making it, and the Government may confirm or rescind the order or

direct that it shall continue to be in force with or without modification permanently or for such period as it thinks fit:

Provided that no order of the Director passed under sub-section (1) shall be confirmed, revised or modified by the Government without giving the Panchayat or the Zilla Panchayat concerned a reasonable opportunity of showing cause against the proposed order.

201. Appeals.— (1) Any person aggrieved by original order of the Panchayat under section 76, 77, 84, 104 and 105 of the Act, may, within such period as may be prescribed, appeal to the Director.

(2) The Appellate Authority may, after giving an opportunity to the appellant to be heard and after such enquiry as it deems fit, decide the appeal and its decision shall be final.

201-A. Appeal on miscellaneous matter dealt by the Panchayats. — (1) Where no appeal has been specifically provided in this Act on any miscellaneous matter which is dealt with by the Panchayat or the Village Panchayat Secretary or the Sarpanch, an appeal shall lie to the Block Development Officer within a period of thirty days from the date of refusal of any request by the said authority and his decision on such appeal, subject to the provision of sub- section (2), shall be final.

Explanation:— For the purpose of this section, "refusal" means rejecting of any request in writing or non conveying of any reply to the application within a period of fifteen days from the receipt of application in his office.

(2) 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. ” SCHEDULE – I FUNCTIONS AND RESPONSIBILITIES OF VILLAGE PANCHAYAT I. General functions:

(1) Preparation of annual plans for the development of the Panchayat area.

(7) Demolition of unauthorised construction.

VIII. Drinking water:

(1) Construction, repairs and maintenance of drinking water well, tanks and ponds.

(2) Prevention and control of water pollution.

(3) Maintenance of rural water supply schemes.”

16. The Preamble, Part IV and Part IX of the Constitution must guide our understanding of the Panchayati Raj institutions and the role they play in the lives of the people in rural parts of the country. The conceptualization of the Village

Panchayat as a unit of self government having the responsibility to promote social justice and economic development and as a representative of the people within its jurisdiction must be borne in mind while interpreting the laws enacted by the State which seek to define the ambit and scope of the powers and the functions of Panchayats at various levels.

17. An analysis of Article 40 and Articles 243 to 243-O shows that the framers of the Constitution had envisaged Village Panchayat to be the foundation of the country's political democracy - a decentralized form of Government where each village was to be responsible for its own affairs. By enacting the Constitution (Seventy-third Amendment) Act, Parliament has attempted to remedy the defects and remove the deficiencies of the Panchayati Raj system evolved after independence, which failed to live up to the expectation of the people in rural India. The provisions contained in Part IX provide firm basis for self-governance by the people at the grass root through the institution of Panchayats at different levels. 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 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.

18. In the light of the above, it is to be seen whether the appellant has the locus to challenge the orders passed by respondent No.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 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 up-keep and maintenance of sources of water supply which are in private hands.

19. 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. Proviso to this Section imposes an obligation on the Government to give reasonable opportunity of showing cause to the concerned Panchayat against the proposed confirmation, revision or modification of the order of the Director. 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), Deputy Director is empowered to exercise revisional power qua the order which may be passed by the Block Development Officer under sub-section (1).

20. 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 No.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 legality of the construction made by the company was under scrutiny. In both the cases, respondent No.1 set aside the resolutions passed by the appellant as also the notice issued by the Sarpanch. The orders passed by respondent No.1 do not refer to the particular provision under which the concerned officer was exercising the appellate power. Surely, he could not have exercised the power vested in the appellate authority under Section 201 because the source of power of the resolutions passed by the appellant and the notice issued by the Sarpanch cannot be traced in Sections 76, 77, 84, 104 and 105 of the Act which relate to removal of any building or part thereof or any tree or branch of a tree if it is in a ruinous state or is likely to fall or is otherwise dangerous to any person occupying such building or part thereof or matters relating to sanitation, conservancy and drainage or exercise of power by the Secretary in relation to any well, stream, channel, tank or other source of water supply or which postulates right to carry drain through land or into drain belonging to other persons. Similarly, respondent No.1 cannot be said to have exercised power under Section 201-A because under that provision, only the Block Development Officer is competent to entertain an appeal in a miscellaneous matter which is dealt with by the Panchayat or the Village

Panchayat Secretary or the Sarpanch and against which no appeal has been specifically provided under the Act. Therefore, it is reasonable to infer that respondent No.1 had exercised power under Section 178(1). However, instead of suspending the execution of the resolutions passed by the appellant or the notice issued by the Sarpanch and sending the matter to the State Government for confirmation, the concerned officer suo-moto annulled the resolutions and the notice by assuming that he had the power to do so.

21. It is thus evident that while the appellant and the Sarpanch had exercised their respective powers in public interest, respondent No.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 No.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 No.1 and the High Court was clearly in error in holding that the writ petition was not maintainable.

22. In *Karunagappally Grama Panchayat v. State of Kerala*, 1996 (1) KLT 419, the Division Bench of the Kerala High Court considered an identical question. In that case, the Writ Petition filed by the appellant – Gram Panchayat questioning the order of the State Government whereby a direction was issued to permit construction of a multi-storied building was dismissed by the learned Single Judge by observing that the Panchayat cannot be treated as an aggrieved person. While reversing the order of the learned Single Judge, the Division Bench made the following observations:

“If a Panchayat has a legal right to sue, then its corollary is that it can mention an action under Art. 226 of the Constitution. The legal character of a Panchayat is very much analogous to that of a Municipality or such other local body. In the case of a municipality, the position seems to be settled that it can sue or be sued. The right of a company registered under the Companies Act for suing another and also for moving under Art 226 has been recognised by the Apex Court in *D. C. & G. M. Co. Ltd.*

v. Union of India (AIR 1983 SCC 937). It may be that an officer of a Company or local body is incompetent to challenge an order passed by any authority superior to the local body through a suit or writ petition. He has to abide by the order. But that principle cannot be imported to the situation where the Juristic person itself becomes the aggrieved party.

In this context, we refer to S. 5 of the Act which says "every Panchayat shall be a body corporate by the name of the Panchayat...". It shall have perpetual succession and a common seal. It shall, subject to any restriction or qualification imposed by or under the Act or any other law "be vested with the capacity of suing or being sued on its corporate name". The Section further says that Panchayat shall be vested with the capacity of acquiring, holding and transferring property, movable or immovable or entering into contracts, and of doing all things necessary, proper or expedient for the purpose for which it is constituted.

Legal concept envisaged in S. 5 of the Act makes the position clear that Panchayat is a body corporate. If so it can sue or be sued. In that position Panchayat cannot be denuded of the right to

move under Art. 226 of the Constitution when any of its legal right is infringed by the authorities including the Government.”

23. In High Court of M.P. v. Mahesh Prakash and others (1995) 1 SCC 203, this Court considered several questions including the one whether the High Court has the locus to challenge the order passed on judicial side by filing a petition under Article 136 of the Constitution. While rejecting the decision of the High Court, this Court observed:

“The order that the first respondent challenged in the writ petition filed by him before the High Court was an order passed by the High Court on its administrative side. By reason of Article 226 of the Constitution it was permissible for the appellant to move the High Court on its judicial side to consider the validity of the order passed by the High Court on the administrative side and issue a writ in that behalf. In the writ petition the first respondent was obliged to implead the High Court for it was the order of the High Court that was under challenge. It was, therefore, permissible for the High Court to prefer a petition for special leave to appeal to this Court against the order on the writ petition passed on its judicial side. The High Court is not here to support the judicial order its Division Bench passed but to support its administrative order which its Division Bench set aside. We find, therefore, no merit in what may be termed the preliminary objection to the maintainability of the appeal.”

24. In State of Orissa v. Union of India 1995 Supp. (2) SCC 154, the Court considered the question whether the State Government has locus standi to challenge the order passed by the Central Government in exercise of its revisional power under the Mineral Concession Rules, 1960. While answering the question in affirmative, this Court observed:

“In this connection, it is necessary to note that in the first place, the State Government is not merely an authority subordinate to the Central Government which would, undoubtedly, be bound by the revisional orders of the superior authority. It is also the owner of the mines and minerals in question. If it is directed to issue a mining lease in favour of any party, it has locus standi to challenge that order under Article 226 of the Constitution of India.”

25. In Godde Venkateswara Rao v. Government of Andhra Pradesh AIR 1966 SC 828, this Court examined the issue of locus standi of a President of Panchayat Samithi to challenge the decision of the Government in the matter of location of Primary Health Centre and held:

“Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The right

that can be enforced under Art. 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.

Has the appellant a right to file the petition out of which the present appeal has arisen? The appellant is the President of the Panchayat Samithi of Dharmajigudem. The villagers of Dharmajigudem formed a committee with the appellant as President for the purpose of collecting contributions from the villagers for setting up the Primary Health Center. The said committee collected Rs.10,000/- and deposited the same with the Block Development Officer. The appellant represented the village in all its dealings with the Block Development Committee and the Panchayat Samithi in the matter of the location of the Primary Health Center at Dharmajigudem. His conduct, the acquiescence on the part of the other members of the committee, and the treatment meted out to him by the authorities concerned support the inference that he was authorized to act on behalf of the committee. The appellant was, therefore, a representative of the committee which was in law the trustees of the amounts collected by it from the villagers for a public purpose. We have, therefore, no hesitation to hold that the appellant had the right to maintain the application under Art. 226 of the Constitution. This Court held in the decision cited supra that "ordinarily" the petitioner who seeks to file an application under Art. 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest :

it can also relate to an interest of a trustee. That apart, in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Art. 226 of the Constitution at his instance is, therefore, maintainable."

26. 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.

27. In the result, the appeals are allowed, the impugned order is set aside and the writ petitions filed by appellant are restored to their original numbers. The High Court shall now issue notice to the respondents and decide the writ petitions on merits.

28. It will be open to the appellant to apply for interim relief. If any such application is filed, then the High Court shall decide the same on its own merits.

.....J. [G.S. Singhvi]J. [Sudhansu Jyoti
Mukhopadhaya] New Delhi, July 02, 2012.
