the Court may, after inquiry, pass orders determining the amount due from the receiver on examination of his accounts, and also similarly determine the amount of loss caused to the estate by the wilful default or gross negligence of the receiver.

I therefore hold that an appeal lies in this case, and accordingly overrule the preliminary objection.

I agree with my learned brother on the merits of the case, and also in the order as to costs which he proposes to pass in this case.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Anantakrishna Ayyar and Mr. Justice Sundaram Chetti.

MADDUR MUNISWAMI CHETTY, PETITIONER,

1931, April 22.

v.

THE BOARD OF REVENUE, LAND REVENUE AND SETTLEMENT, MADRAS, AND ANOTHER, RESPONDENTS.*

Madras Village Courts Act (I of 1889), sec. 8—Panchayat Court—Member of—Removal of, from membership of that Court—Collector's order directing—Order of Board of Revenue affirming—Judicial orders and not merely administrative orders—Writ of certiorari *in respect of—Application to High Court for—Maintainability of—Interference in—Conditions—Delegation of jurisdiction vested in Collector under sec. 8—What amounts to—Legality of—Inquiry under sec. 8—Principles of "natural justice" applicable to.*

Orders made by the Collector under section 8 of the Madras Village Courts Act, I of 1889, removing a member of a Panchayat Court from the membership of that Court and by the Board of Revenue affirming the Collector's order on appeal are judicial

* Civil Miscellaneous Petition No. 1227 of 1930.

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and not merely departmental or administrative orders, and an application to the High Court for relief by way of *certiorari* is maintainable in respect of such orders. Neither the use of the word "final" in section 8 of the Act nor the circumstance that the Collector deciding matters referred to in that section may not be "a Court" (as to which *quære*) precludes the High Court from entertaining the application if the other conditions are satisfied. But the High Court will not grant relief if it is not satisfied that the principles of natural justice have not been observed by the Collector and by the Board of Revenue.

The jurisdiction vested in the Collector by section 8 of the Madras Village Courts Act cannot be delegated by him. A mere direction by the Collector to a subordinate to give notice to the parties interested, to inquire into the matter, to record evidence, and submit the records to him, so that, with those materials, he may use his own discretion in the matter and exercise the jurisdiction specially vested in him by the section is not, however, a case of delegation.

There being no specific procedure prescribed by the Madras Village Courts Act in regard to an inquiry under section 8 thereof, the authority concerned will have to act according to the principles of "natural justice".

PETITION praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue a writ of *certiorari* and remove the proceedings of the lower Courts to the High Court by calling for the entire records of the proceedings in Rt. No. 1081, dated 12th February 1930 of the Board of Revenue, Land Revenue and Settlement, Madras, and proceedings of the District Collector, Chittoor, D. Dis. No. 8595/29, dated 8th October 1929 and quash the same.

T. K. Srinivasathatha Chariar for petitioner.

Government Pleader (P. Venkataramana Rao) for respondents.

The JUDGMENT of the Court was delivered by

ANANTAKRISHNA AYYAR J.

ANANTAKRISHNA AYYAR J.—This is an application filed by Maddur Muniswami Chetty praying that the High Court may be pleased to issue a writ of *certiorari* to the

Board of Revenue, Land Revenue and Settlement, Madras (1st respondent), and the Collector of Chittoor (2nd respondent), and to call for the entire records in connection with the proceedings taken against the petitioner which resulted in the removal of the petitioner from his position as a member of a Panchayat Court, and to quash the proceedings.

The petitioner was one of the members of the Panchayat Court of Tirupathi. The president of the Board sent up a complaint against the petitioner alleging that the petitioner was guilty of certain specific misconduct and that he was not a fit person to continue as a member of the Panchayat Court. The petitioner in his turn sent up a petition against the president of the said Court charging him with irregularity in the conduct of the proceedings, and other specific acts mentioned in that petition. The Collector of Chittoor directed the Tahsildar of Chandragiri Taluk to enquire into the matter of both the petitions after giving due notice to the petitioners. The Tahsildar, it is alleged, gave notice to the petitioner as well as the president in respect of both the above petitions, and after taking the depositions of several witnesses sent up the records to the Collector. The Collector passed orders on the 8th October 1929 to the following effect:—

"M.R.Ry. Maddur Muniswami Chetty Garu is a member of the Village Panchayat Court at Tirupathi. He is found to be quarrelsome within the Court during the conduct of its business. His membership of the Court is clearly prejudicial to its efficiency and reputation. He is therefore removed under section 8 of the Madras Village Courts Act, 1889, from the membership of the Court, with effect from the date of this Order."

The petitioner thereupon appealed to the Board of Revenue. The Board of Revenue dismissed the appeal by its resolution, dated 12th February 1930. The Board

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remarked that "it has perused the appeal petition and the connected records", and that it "considers that the appellant is unsuitable to be a member of the Panchayat Court." The appeal was accordingly dismissed. Munisami Chetty filed the present application to the High Court, and in the affidavit that he filed in support of his application he made allegations to the effect that no notice was given to him of the enquiry by the Tahsildar, that the enquiry was conducted in his absence, and that at one stage when he was present he was directed to stand outside the building while the Tahsildar was examining certain witnesses. In effect he complained that the enquiry by the Tahsildar did not comply with the principles of natural justice. The affidavit also went further and specifically stated that no formal charges were framed either by the Tahsildar or by the Collector, and that he had no opportunity of either explaining the evidence against him or to adduce evidence in his favour which he wanted to adduce. He also complained that his Counsel was not given an opportunity to argue his appeal before the Board. Having regard to the serious nature of the allegations made in the affidavit, we issued notice to both the respondents, namely—the Board of Revenue and the Collector. When this matter came before us on a former occasion, we had before us only the affidavit of the petitioner and also the affidavit filed by the Collector in answer to the allegations contained in the petitioner's affidavit. We thought that it would be more satisfactory if an affidavit from the Tahsildar who conducted the enquiries in this case under the orders of the District Collector could be filed, if available. Now we have got an affidavit sworn to by the Tahsildar, and the petitioner has filed his reply affidavit with reference to the Tahsildar's affidavit.

Before we go further into the merits of the controversy, we think it proper to consider one or two points of a preliminary nature raised in the affidavit filed by the Collector.

In paragraph 4 it is stated:—

"Neither the Collector nor the Board of Revenue when exercising the powers conferred on them by Madras Act I of 1889 are subordinate to the jurisdiction of this Honourable Court."

In paragraph 7 it is alleged as follows:—

"The action of the Collector in removing the petitioner from office, and of the Board of Revenue in affirming the said action, are departmental and administrative, in respect of which a writ of *certiorari* does not lie."

If the said orders are in essence departmental or administrative orders, it is clear that remedy by way of *certiorari* would not ordinarily be available to the petitioner. In this connection it is desirable to refer to the provisions of section 8 of the Madras Village Courts Act. Under that section,

"the Collector of the District may suspend or remove a village munsif or a member of the village court for incapacity, neglect of duty, misconduct, or other just and sufficient cause, and shall do so on a requisition passed by the District Judge for like cause appearing in the judicial proceedings of a village munsif."

The second paragraph of that section is also important. From every order of suspension or removal, an appeal may be made within three months to the Board of Revenue, if the order was passed by the Collector without orders from the District Judge, or to the High Court if passed upon such orders. The decision of the Board of Revenue or High Court as the case may be on all such appeals shall be final. Reading the provisions of section 8, it is clear that the order complained of in the present case could not be said to be a mere departmental or administrative order. A member of the

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Panchayat Court is not as such a departmental subordinate of the Collector. The right, which such member has, concerns his status and is a valuable legal right, and any order which has the effect of, in any way, impairing or taking away such right should *prima facie* be taken to be more of a judicial character rather than that of a mere departmental or administrative character. This view derives strength by reason of the fact that the second paragraph of the section allows an appeal to the High Court against such orders in certain cases, as, for example, when the initiative was taken by the District Judge by making a requisition to the Collector to proceed under section 8 of the Act. It cannot be said that one and the same order, if it was initiated in one way, is of a departmental or administrative character, but that, if it was initiated in another way, is of a judicial character, more especially when the result of the order would be to take away from a person his status as a member of the Panchayat Court. It could not be contended that a right of appeal is given to the High Court in respect of a mere departmental or administrative order passed by the Collector.

As observed by Lord PARMOOR in *Local Government Board* v. *Arlidge*(1):—

> "Whether the order of the Local Government Board is to be regarded as of an administrative or of a *quasi*-judicial character appears to me not to be of much importance, since, if the order is one which affects the rights and property of the respondent, the respondent is entitled to have the matter determined in a judicial spirit, in accordance with the principles of substantial justice."

It is clear that the essence of the proceedings before the Collector in this case was one relating to the legal rights possessed by the petitioner as a member of the

(1) [1915] A.C. 120, 142.

Panchayat Court, and the decision being one relating to a judicial matter, we think that the preliminary points mentioned in the Collector's affidavit about the want of jurisdiction in this Court to deal with this matter should be decided against the Collector.

Then it was argued by the learned Government Pleader that, having regard to the last sentence in section 8 of the Act, namely, that the decision of the Board of Revenue or the High Court as the case may be on all such appeals shall be "final", the petitioner has no further remedy. It could not be contended at this time of the day that, because the word "final" is used, therefore the remedy by way of *certiorari* is not available, if in other respects a party would be entitled to the same. The word "final" used in the section really means that the said decision is not open to any further appeal. The question as to what is the meaning of the word "final" had to be considered in *Fahamidannissa Begum* v. *The Secretary of State for India in Council*(1) and *Muthuvaien* v. *Periasami Iyen*(2). It is however not necessary to go into those cases just now, because the Privy Council had to consider the effect of the insertion of such words in enactments in relation to the remedy by way of *certiorari*. In *Rex* v. *Nat Bell Liquors, Ltd.*(3) their Lordships of the Privy Council consider this question. Their Lordships remark that the insertion of the words "final" and "without appeal" in statutes does not restrict or take away the right of the superior Court to bring the proceedings before itself by *certiorari*, if the other conditions be satisfied. Even after the insertion of such words in several statutes, and even after the decisions of the Courts that the insertion

(1) (1886) I.L.R. 14 Calc. 67 (F.B.). (2) (1903) 13 M.L.J. 497.
(3) [1922] 2 A.C. 128, 159, 160.

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of such words does not take away the remedy by way of *certiorari* in proper cases, the Legislature has not thought proper to make any amendments. The Privy Council further remarked that the Legislature by continuing to use the same language in subsequent enactments should be taken to have accepted this interpretation put upon these words by Courts. Those remarks substantially apply to the present case also.

As remarked in Halsbury's Laws of England, Vol. X, page 175, paragraph 345 :—

"*Certiorari* can only be taken away by express negative words. It is not taken away by words which direct that certain matters shall be 'finally determined' in the inferior Court, nor by a proviso that 'no other Court shall intermeddle' with regard to certain matters as to which jurisdiction is conferred on the inferior Court."

Again in paragraph 346, it is stated :—

"Clauses by which *certiorari* is taken away are strictly construed."

In Wharton's Law Lexicon, page 150, it is stated as follows :—

"An appeal does not lie unless it is expressly given by statute, but *certiorari* always lies unless it is expressly taken away by statute."

It therefore seems to us that the insertion of the word "final" in section 8 does not, of itself, preclude the High Court from entertaining an application for relief by way of *certiorari*, if the other conditions be satisfied. With these remarks, we proceed to deal with the application on its merits.

The chief allegations made by the petitioner are, as has been mentioned already, that he had no notice of the enquiry made by the Collector, and that no charges were framed against him. It is also mentioned that the Collector has no jurisdiction to delegate his functions in this matter to any other officer. The answer to the

latter contention is clear. The Collector is the officer to whom this power is given by the Act, and it is not open to him to delegate to any other person that particular jurisdiction, that is, the right to decide questions which are confided to him for decision under the terms of the Act. But, in this case, the Collector has not done anything like that. He has not delegated to any other person his right to decide the matter. What has been done is to direct a subordinate of the Collector, namely, the Tahsildar of Chandragiri, to give notice to the parties interested, to inquire into the matter, to record evidence, and submit the records to him, so that, with those materials before him, the Collector may use his own discretion in the matter and exercise the jurisdiction specially vested in him by section 8 of the Act. The present case not being a case of *delegation*, the cases quoted by the learned Advocate for the petitioner do not call for any special notice in this connection.

The action of the Tahsildar has been severely criticised on behalf of the petitioner. But, after reading the affidavit filed by the Tahsildar, we feel no doubt that of the two versions, the Tahsildar's version is clearly the one that we should act upon. We have got the admitted fact that on the 11th August 1929 the petitioner gave a statement before the Tahsildar. The petitioner is no doubt right in complaining that no "formal charges" were framed in this matter. It would have been more satisfactory if that had been done, and such a procedure would have rendered unavailable to the petitioner the main argument which he has been urging to get rid of the order against him. But we find, from the statement of the petitioner referred to above, that the acts complained of against him were specifically put to him. In fact the very first sentence

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of that statement makes it clear that he was apprised of the real matters of complaint made against him, and asked to give his own explanation. The Tahsildar also states that he explained the contents of both the petitions to the petitioner as well as to the president. He also states that the petitioner was present when the enquiry was being conducted,—except at a later stage when owing to the petitioner's own default he was not present though the date to which the enquiry was adjourned was communicated to him. On the 30th August 1929, the petitioner again went to the Tahsildar and gave a list of certain witnesses. The Tahsildar states that, of the witnesses mentioned in the list, such of those as the petitioner wanted to be examined were examined. The Tahsildar swears that the petitioner was never asked to go out of the building when the evidence was being recorded. Having regard to the statements made by the Tahsildar, and seeing that the Tahsildar's statements are supported by other records in the case, we think that the complaint made by the petitioner under the several heads mentioned above has not been made out.

But it was argued that the petitioner was not given an opportunity to argue before the Collector. It does not appear that the petitioner expressed any desire to be given an opportunity to do so. Ordinarily, the Collector is bound to give notice of the date on which he is going to take up a case like this for inquiry and decision. But, having regard to the course taken in the present case, one can easily see that the petitioner was satisfied with making his representations in writing to the Tahsildar and leaving the Collector to go through the records and to pass such orders as he thought proper. We do not think that, in the circumstances of the present case, the Collector's failure to give further

notice to the petitioner should be taken to have really prejudiced the petitioner.

Then it was argued that before the Board of Revenue also the petitioner's Counsel was declined an opportunity to argue his case. The appeal to the Board was prepared by his learned Advocate, and he stated in that petition of appeal that, " 'if necessary' he might be heard ". Having regard to the context, the reasonable interpretation of the appeal memorandum is that the petitioner was satisfied with putting his points in writing, and left it to the Board whether it would, in the circumstances, hear Counsel. Having left the matter to the Board to decide whether Counsel should be heard or not, it is not open to the petitioner now to complain that his Counsel was not heard. If we were not able to place that interpretation on the appeal petition, and if it were clear to us that the Advocate who presented that petition to the Board expressed a specific desire therein to be allowed to be heard orally before final orders were passed, and if the Board, in spite of the same, passed orders against the petitioner without giving a proper opportunity for hearing the petitioner's Counsel as requested, then the question will arise whether the Board in disposing of an appeal under the Madras Village Courts Act is bound to hear the appellant or his Counsel orally, and whether the decision of the Board arrived at otherwise would be legal, and whether it would have to be vacated and the appeal remitted to the Board for fresh disposal after giving a proper opportunity to the petitioner's Counsel to argue the appeal. In the circumstances of the present case, we need not go into that question.

In the present case, we need not consider whether the Collector deciding matters referred to in section 8 of the Village Courts Act is a Court or not. The learned Government Pleader drew our attention to

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Chinnayya Gounder, In re(1), and to the provisions of the Madras Act III of 1895, and argued that the Collector could not be said to be "a Court," and that the High Court has no jurisdiction over him, either under section 115 of the Code of Civil Procedure or under section 107 of the Government of India Act. It is not necessary for us to express any opinion on that point, because it has been held that the High Court's power to issue writs of *certiorari* is not confined to "Courts" subordinate to the High Court. In *Mrs. Besant* v. *Emperor*(2) by this Court, and by the Privy Council on appeal in *Besant* v. *Advocate-General of Madras*(3), it has been remarked that the power of *certiorari* is a power which the High Court possesses in addition to its powers of supervision and revision under section 115 of the Code of Civil Procedure and section 107 of the Government of India Act. In respect of persons or bodies exercising judicial functions and adjudicating on legal rights of parties, it has been held that such a writ of *certiorari* would lie. In Halsbury's Laws of England, Volume X, page 161, paragraph 320, it is remarked :

> "*Certiorari* also lies to remove, for the purpose of quashing, the determinations of persons or bodies who are by statute or charter intrusted with judicial functions out of the ordinary course of legal procedure . . . though "the determinations of such authorities are not judgments in the sense required to admit of a writ of error being brought in respect of them."

See also page 160, paragraph 320, of the same Volume X of Halsbury's Laws of England—where it is stated :

> "*Certiorari* lies at common law to remove the proceedings of inferior courts or judicial bodies for the purpose of quashing such proceedings where the writ of error did not lie."

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(1) (1921) 41 M.L.J. 577. (2) (1916) I.L.R. 39 Mad. 1085.
(3) (1919) I.L.R. 43 Mad. 146, 159 to 161 (P.C.).

Similarly in *Local Government Board* v. *Arlidge*(1), decided by the House of Lords, Lord HALDANE L.C. observed at page 133:—

"If the Local Government Board failed in this duty, its order might be the subject of *certiorari*, and it must itself be the subject of mandamus."

Lord PARMOOR referred to this point at page 140:—

"The power of obtaining a writ of *certiorari* is not limited to judicial acts or orders in a strict sense, that is to say, acts or orders of a Court of law sitting in a judicial capacity. It extends to the acts and orders of a competent authority which has power to impose a liability or to give a decision which determines the rights or property of the affected persons."

On the subject of *certiorari* generally, we may refer to a very recent decision of VENKATASUBBA RAO and MADHAVAN NAIR JJ. in *Venkataratnam* v. *Secretary of State for India*(2), where the law relating to *certiorari* is exhaustively considered, and the conclusion is reached that, in the absence of express statutory prohibition, this High Court possesses the same jurisdiction in *certiorari* as the Court of King's Bench in England.

It is therefore clear that the circumstance that the Collector is not a Court presents no insuperable obstacle to our entertaining this application by way of *certiorari*, if the other conditions be satisfied, having regard to the nature of the adjudication in question.

It should be observed by way of a general answer to most of the contentions raised by the learned Avocate for the petitioner that the Madras Village Courts Act does not prescribe in detail the procedure to be adopted in such matters. In the absence of any specific procedure prescribed by the Act, the authority concerned will have to act according to the rules of "nature justice". What these rules are had to be considered by the House of Lords in the case of *Local*

(1) [1915] A.C. 120. (2) (1929) I.L.R. 53 Mad. 979.

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Government Board v. *Arlidge*(1) already referred to. The essentials of natural justice applicable to such cases have been examined by the several learned Lords who took part in that decision. At page 132, Viscount HALDANE L.C. stated as follows :—

"When the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice."

At page 140, Lord PARMOOR observed as follows :—

"In determining whether the principles of substantial justice have been complied with in matters of procedure, regard must necessarily be had to the nature of the issue to be determined and the constitution of the tribunal."

At page 138, it was remarked by Lord SHAW :

"If a statute prescribes the means, it must employ them. If it is left without express guidance, it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are *ex necessitate* those of Courts of justice is wholly unfounded."

Finally, to quote the observations of Lord PARMOOR at page 140:

"Where, however, the question of the propriety of procedure is raised in a hearing before some tribunal other than a Court of law there is no obligation to adopt the regular forms of legal procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice."

Having regard to the above observations made by the noble and learned Lords as to what course should be followed in cases not specifically provided for by any

(1) [1915] A.C. 120.

particular statute, and after examining the records in the present case, we are not satisfied that the principles of natural justice have not been applied to the case of the petitioner. That being so, we dismiss the application with costs.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Madhavan Nair.

AVARU, SON OF KALI MATATHIL VEERAN KUTTY (FIRST DEFENDANT), APPELLANT,

1931, April 27.

v.

ASI BAI AND TWO OTHERS (PLAINTIFFS 3, 7 AND 8), RESPONDENTS.*

Madras Malabar Compensation for Tenants' Improvements Act (I of 1900)—Applicability of, to building leases (that is, leases of vacant sites for building purposes).

The operation of the Malabar Tenants' Improvements Act (I of 1900) is not confined to agricultural leases. The Act applies to building leases (that is, leases of vacant sites for building purposes) as well. *Chathukutty* v. *Kunhappu*, (1927) I.L.R. 50 Mad. 813, and *Sabju Sahib* v. *Malabar District Board*, (1929) I.L.R. 53 Mad. 54, referred to.

Law on the point prior to Madras Act (I of 1887) and the effect of that Act considered.

SECOND APPEAL against the decree of the District Court of South Malabar in Appeal Suit No. 86 of 1924 preferred against the decree of the Court of the Subordinate Judge of Cochin in Original Suit No. 4 of 1921.

P. Govinda Menon for appellant.

B. Sitarama Rao and *C. V. Harihara Ayyar* for respondents.

Our. adv. vult.

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* Second Appeal No. 1532 of 1925.