CASE NO.:
Appeal (civil) 6110 of 2003

PETITIONER:
Surya Dev Rai

RESPONDENT:
Ram Chander Rai & Ors.

DATE OF JUDGMENT: 07/08/2003

BENCH:
R.C. Lahoti & Ashok Bhan.

JUDGMENT:

J U D G M E N T

[@ S.L.P. (c) NO.12492 of 2002]

R.C. Lahoti, J.

Leave granted.

The appellant filed a suit, for issuance of permanent preventive injunction based on his title and possession over the suit property which is a piece of agricultural land, in the Court of Civil Judge. He also sought for relief by way of ad interim injunction under Order XXXIX Rules 1 and 2 of the C.P.C. The prayer was rejected by the trial court as also by the appellate court. Feeling aggrieved thereby the appellant filed a petition (C.M.W.P.No.20038 of 2002) in the High Court labeling it as one under Article 226 of the Constitution. The High Court has summarily dismissed the petition forming an opinion that the petition was not maintainable as the appellant was seeking interim injunction against private respondents. Reference is made in the impugned order to a Full Bench decision of Allahabad High Court in Ganga Saran Vs. Civil Judge, Hapur, Ghaziabad & Ors. (1991) Allahabad Law Journal 159. Earlier the remedy of final civil revision under Section 115 of the C.P.C. could have been availed of by the appellant herein but that remedy is not available to the appellant because of the amendment made in Section 115 of the C.P.C. by Amendment Act 46 of 1999 w.e.f. 01.07.2002.

This appeal raises a question of frequent occurrence before the High Courts as to what is the impact of the amendment in Section 115 of the C.P.C. brought in by Act 46 of 1999 w.e.f. 01.07.2002, on the power and jurisdiction of the High Court to entertain petitions seeking a writ of certiorari under Article 226 of the Constitution or invoking the power of superintendence under Article 227 of the Constitution as against similar orders, acts or proceedings of the courts subordinate to the High Courts, against which earlier the remedy of filing civil revision under Section 115 of the C.P.C. was available to the person aggrieved. Is an aggrieved person completely deprived of the remedy of judicial review, if he has lost at the hands of the original court and the appellate court though a case of gross failure of justice having been occasioned, can be made out?

Section 115 of the Code of Civil Procedure as amended does not now permit a revision petition being filed against an order disposing of an appeal against the order of the trial court whether confirming, reversing or modifying the order of injunction granted by

the trial court. The reason is that the order of the High Court passed either way would not have the effect of finally disposing of the suit or other proceedings. The exercise of revisional jurisdiction in such a case is taken away by the proviso inserted under sub-section (1) of Section 115 of the CPC. The amendment is based on the Malimath Committee's recommendations. The Committee was of the opinion that the expression employed in Section 115 CPC, which enables interference in revision on the ground that the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made, left open wide scope for the exercise of the revisional power with all types of interlocutory orders and this was substantially contributing towards delay in the disposal of cases. The Committee did not favour denuding the High Court of the power of revision but strongly felt that the power should be suitably curtailed. The effect of the erstwhile clause (b) of the proviso, being deleted and a new proviso having been inserted, is that the revisional jurisdiction, in respect of an interlocutory order passed in a trial or other proceedings, is substantially curtailed. A revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied.

As a preclude to search for answer to the question posed it becomes necessary to recollect and restate a few well-established principles relating to the Constitutional jurisdiction conferred on the High Court under Articles 226 and 227 of the Constitution in the backdrop of the amended Section 115 of the C.P.C.

Writ of Certiorari

According to Corpus Juris Secundum (Vol.14, page 121) certiorari is a writ issued from a superior court to an inferior court or tribunal commanding the latter to send up the record of a particular case.

H.W.R. Wade & C.F. Forsyth define certiorari in these words :-

"Certiorari is used to bring up into the High Court the decision of some inferior tribunal or authority in order that it may be investigated. If the decision does not pass the test, it is quashed â\200\223 that is to say, it is declared completely invalid, so that no one need respect it.

The underlying policy is that all inferior courts and authorities have only limited jurisdiction or powers and must be kept within their legal bounds. This is the concern of the Crown, for the sake of orderly administration of justice, but it is a private complaint which sets the Crown in motion." (Administrative Law, Eighth Edition, page 591).

The learned authors go on to add that problem arose on exercising control over justices of the peace, both in their judicial and their administrative functions as also the problem of controlling the special statutory body which was addressed to by the Court of King's Bench. "The most useful instruments which the Court found ready to hand were the prerogative writs. But not unnaturally the control exercised was strictly legal, and no longer political. Certiorari would issue to call up the records of justices of the peace and commissioners for examination in the King's Bench and for quashing if any legal defect was found. At first there was much quashing for defects of form on the record, i.e. for error on the face. Later, as the doctrine of

ultra vires developed, that became the dominant principle of control" (page 592).

The nature and scope of the writ of certiorari and when can it issue was beautifully set out in a concise passage, quoted hereafter, by Lord Chancellor Viscount Simon in Ryots of Garabandho and other villages Vs. Zamindar of Parlakimedi and Anr. â\200\223 AIR 1943 PC 164. "The ancient writ of certiorari in England is an original writ which may issue out of a superior Court requiring that the record of the proceedings in some cause or matter pending before an inferior Court should be transmitted into the superior Court to be there dealt with. The writ is so named because, in its original Latin form, it required that the King should "be certified" of the proceedings to be investigated, and the object is to secure by the exercise of the authority of a superior Court, that the jurisdiction of the inferior tribunal should be properly exercised. This writ does not issue to correct purely executive acts, but, on the other hand, its application is not narrowly limited to inferior "Courts" in the strictest sense. Broadly speaking, it may be said that if the act done by the inferior body is a judicial act, as distinguished from being a ministerial act, certiorari will lie. The remedy, in point of principle, is derived from the superintending authority which the Sovereign's Superior Courts, and in particular the Court of King's Bench, possess and exercise over inferior jurisdictions. This principle has been transplanted to other parts of the King's dominions, and operates, within certain limits, in British India."

Article 226 of the Constitution of India preserves to the High Court power to issue writ of certiorari amongst others. The principles on which the writ of certiorari is issued are well-settled. It would suffice for our purpose to quote from the 7-Judge Bench decision of this Court in Hari Vishnu Kamath Vs. Ahmad Ishaque and Ors. â\200\223 (1955) 1 SCR 1104. The four propositions laid down therein were summarized by the Constitution Bench in The Custodian of Evacuee Property Bangalore Vs. Khan Saheb Abdul Shukoor etc. â\200\223 (1961) 3 SCR 855 as under :-

"â\200¦â\200¦the High Court was not justified in looking into the order of December 2, 1952, as an appellate court, though it would be justified in scrutinizing that order as if it was brought before it under Article 226 of the Constitution for issue of a writ of certiorari. The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in Hari Vishnu Kamath Vs. Ahmad Ishaque 1955-I S 1104 : ((s) AIR 1955 SC 233) and the following four propositions were laid down :-

"(1) Certiorari will be issued for correcting errors of jurisdiction;

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.

(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

In the initial years the Supreme Court was not inclined to depart from the traditional role of certiorari jurisdiction and consistent with the historical background felt itself bound by such procedural technicalities as were well-known to the English judges. In later years the Supreme Court has relaxed the procedural and technical rigours, yet the broad and fundamental principles governing the exercise of jurisdiction have not been given a go-by.

In the exercise of certiorari jurisdiction the High Court proceeds on an assumption that a Court which has jurisdiction over a subject-matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an Appellate Court and step into re-appreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court.

In Nagendra Nath Bora & Anr. Vs. Commissioner of Hills Division and Appeals, Assam & Ors., (1958) SCR 1240, the parameters for the exercise of jurisdiction, calling upon the issuance of writ of certiorari where so set out by the Constitution Bench : â\200\223

"The Common law writ, now called the order of certiorari, which has also been adopted by our Constitution, is not meant to take the place of an appeal where the Statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extra-ordinary jurisdiction. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inference or in other words errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected and the appellate authority under a statute in question has unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction and it has not been shown that in exercising its powers the appellate authority disregarded any mandatory provisions of the law but what can be said at the most was that it had disregarded certain executive instructions not having the force of law, there is not case for the exercise of the jurisdiction under Article 226."

The Constitution Bench in T.C. Basappa Vs. T. Nagappa & Anr., (1955) 1 SCR 250, held that certiorari may be and is generally

granted when a court has acted (i) without jurisdiction, or (ii) in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceedings or from the absence of some preliminary proceedings or the court itself may not have been legally constituted or suffering from certain disability by reason of extraneous circumstances. Certiorari may also issue if the court or tribunal though competent has acted in flagrant disregard of the rules or procedure or in violation of the principles of natural justice where no particular procedure is prescribed. An error in the decision or determination itself may also be amenable to a writ of certiorari subject to the following factors being available if the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law but a mere wrong decision is not amenable to a writ of certiorari.

Any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting the rights of a subject and enjoined with a duty to act judicially or quasi-judicially is amenable to the certiorari jurisdiction of the High Court. The proceedings of judicial courts subordinate to High Court can be subjected to certiorari.

While dealing with the question whether the orders and the proceedings of subordinate Court are amenable to certiorari writ jurisdiction of the High Court, we would be failing in our duty if we do not make a reference to a larger Bench and a Constitution Bench decisions of this Court and clear a confusion lest it should arise at some point of time. Naresh Shridhar Mirajkar & Ors. Vs. State of Maharashra and Anr. â\200\223 (1966) 3 SCR 744, is a nine-Judges Bench decision of this Court. A learned judge of Bombay High Court sitting on the Original Side passed an oral order restraining the Press from publishing certain court proceedings. This order was sought to be impugned by filing a writ petition under Article 226 of the Constitution before a Division Bench of the High Court which dismissed the writ petition on the ground that the impugned order was a judicial order of the High Court and hence not amenable to a writ under Article 226. The petitioner then moved this Court under Article 32 of the Constitution for enforcement of his fundamental rights under Article 19(1)(a) and (g) of the Constitution. During the course of majority judgment Chief Justice Gajendragadkar quoted the following passage from Halsbury Laws Of England (Vol.11 pages 129, 130) from the foot-note :

"(â\200¦.in the case of judgments of inferior courts of civil jurisdiction) it has been suggested that certiorari might be granted to quash them for want of jurisdiction [Kemp v. Balne (1844), 1 Dow. & L. 885, at p.887], inasmuch as an error did not lie upon that ground. But there appears to be no reported case in which the judgment of an inferior Court of civil jurisdiction has been quashed on certiorari, either for want of jurisdiction or on any other ground".

His Lordship then said :

"The ultimate proposition is set out in terms: "Certiorari does not lie to quash the judgments of inferior Courts of civil jurisdiction".* These observations would indicate that in England the judicial orders passed by civil Courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the

jurisdiction to issue writs of certiorari."

[*Para 239, page 130 from Halsbury, ibid]

A perusal of the judgment shows that the above passage has been quoted "incidentally" and that too for the purpose of finding authority for the proposition that a judge sitting on the Original Side of the High Court cannot be called a court 'inferior or subordinate to High Court' so as to make his orders amenable to writ jurisdiction of the High Court. Secondly, the abovesaid passage has been quoted but nowhere the Court has laid down as law by way its own holding that a writ of certiorari by High Court cannot be directed to Court subordinate to it. And lastly, the passage from Halsbury quoted in Naresh Shridhar Mirajkar's case (supra) is from third edition of Halsbury Laws of England (Simond's Edition, 1955). The law has undergone a change in England itself and this changed legal position has been noted in a Constitution Bench decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra and Anr. â\200\223 (2002) 4 SCC 388. Justice SSM Quadri speaking for the Constitution Bench has quoted the following passage from Halsbury's Laws of England, 4th Edn.(Reissue) Vol.1 (1) :

"103. Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court in the King's Bench for review or to remove indictments and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs."

"109. Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities."

Naresh Shridhar Mirajkar's case was cited before the Constitution Bench in Rupa Ashok Hurra's case and considered. It has been clearly held : (i) that it is a well-settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by superior court to an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. The High Courts are not constituted as inferior courts in our constitutional scheme.

Thus, there is no manner of doubt that the orders and proceedings of a judicial court subordinate to High Court are amenable

to writ jurisdiction of High Court under Article 226 of the Constitution.

Authority in abundance is available for the proposition that an error apparent on face of record can be corrected by certiorari. The broad working rule for determining what is a patent error or an error apparent on the face of the record was well set out in Satyanarayan Laxminarayan Hegde and Ors. Vs. Mallikarjun Bhavanappa Tirumale, (1960) 1 SCR 890. It was held that the alleged error should be self-evident. An error which needs to be established by lengthy and complicated arguments or an error in a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari the High Court may quash the proceedings of the tribunal, authority or court but may not substitute its own findings or directions in lieu of one given in the proceedings forming the subject-matter of certiorari.

Certiorari jurisdiction though available is not to be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice has been occasioned. In exercising the certiorari jurisdiction the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine whether on the face of the record the inferior court has committed any of the preceding errors occasioning failure of justice.

Supervisory jurisdiction under Article 227
Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by sub-Articles (2) and (3) of Article 227 with which we are not concerned hereat. It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

The history of supervisory jurisdiction exercised by the High Court, and how the jurisdiction has culminated into its present shape under Article 227 of the Constitution, was traced in Waryam Singh & Anr. Vs. Amarnath & Anr. (1954) SCR 565. The jurisdiction can be traced back to Section 15 of High Courts Act 1861 which gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisionsal jurisdiction on the High Court. Section 107 of the Government of India Act 1915 and then Section 224 of the Government of India Act 1935, were similarly worded and reproduced the predecessor provision. However, sub-section (2) was added in Section 224 which confined the jurisdiction of the High Court to such judgments of the inferior courts which were not otherwise subject to appeal or revision. That restriction has not been carried forward in Article 227 of the Constitution. In that sense Article 227 of the Constitution has width and vigour unprecedented.

Difference between a writ of certiorari under Article 226 and

supervisory jurisdiction under Article 227.

The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram and Ors. Vs. Smt. Radhikabai and Anr., (1986) Supp. SCC 401. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this Article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

Upon a review of decided cases and a survey of the occasions wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labeling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the Legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination

which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

In Chandrasekhar Singh & Ors. Vs. Siva Ram Singh & Ors., (1979) 3 SCC 118, the scope of jurisdiction under Article 227 of the Constitution came up for the consideration of this Court in the context of Sections 435 and 439 of the Criminal Procedure Code which prohibits a second revision to the High Court against decision in first revision rendered by the Sessions Judge. On a review of earlier decisions, the three-Judges Bench summed up the position of law as under :-

(i) that the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal procedure;

(ii) the scope of interference by the High Court under Article 227 is restricted. The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors;

(iii) that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution;

(iv) that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as the Court of Appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a Court of Appeal.

Later, a two-judge Bench of this Court in Baby Vs. Travancore Devaswom Board & Ors., (1998) 8 SCC 310, clarified that in spite of the revisional jurisdiction being not available to the High Court, it still had powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents, the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the revisional jurisdiction conferred on it.

Does the amendment in Section 115 of C.P.C have any impact on jurisdiction under Articles 226 and 227?

The Constitution Bench in L. Chandra Kumar Vs. Union of India & Ors., (1997) 3 SCC 261, dealt with the nature of power of judicial review conferred by Article 226 of the Constitution and the power of superintendence conferred by Article 227. It was held that the jurisdiction conferred on the Supreme Court under Article 32 of the Constitution and on the High Courts under Articles 226 and 227 of the Constitution is part of the basic structure of the Constitution, forming its integral and essential feature, which cannot be tampered with much less taken away even by constitutional amendment, not to speak of a parliamentary legislation. A recent Division Bench decision by Delhi

High Court (Dalveer Bhandari and H.R. Malhotra, JJ) in Criminal Writ Petition NO.s.758, 917 and 1295 of 2002 â\200\223 Govind Vs. State (Govt. of NCT of Delhi) decided on April 7, 2003 (reported as [2003] 6 ILD 468 makes an indepth survey of decided cases including almost all the leading decisions by this Court and holds â\200\223 "The power of the High Court under Article 226 cannot be whittled down, nullified, curtailed, abrogated, diluted or taken either by judicial pronouncement or by the legislative enactment or even by the amendment of the Constitution. The power of judicial review is an inherent part of the basic structure and it cannot be abrogated without affecting the basic structure of the Constitution." The essence of constitutional and legal principles, relevant to the issue at hand, has been correctly summed up by the Division Bench of the High Court and we record our approval of the same.

It is interesting to recall two landmark decisions delivered by High Courts and adorning the judicial archives. In Balkrishna Hari Phansalkar Vs. Emperor, AIR 1933 Bombay 1, the question arose before a Special Bench: whether the power of superintendence conferred on the High Court by Section 107 of Government of India Act 1915 can be controlled by the Governor-General exercising his power to legislate. The occasion arose because of the resistance offered by the State Government to the High Court exercising its power of superintendence over the Courts of Magistrates established under Emergency Powers Ordinance, 1932. Chief Justice Beaumont held that even if power of revision is taken away, the power of superintendence over the courts constituted by the ordinance was still available. The Governor-General cannot control the powers conferred on the High Court by an Act of Imperial Parliament. However, speaking of the care and caution to be observed while exercising the power of superintendence though possessed by the High Court, the learned Chief Justice held that the power of superintendence is not the same thing as the hearing of an appeal. An illegal conviction may be set aside under power of superintendence but - "we must exercise our discretion on judicial grounds, and only interfere if considerations of justice require us to do so."

In Manmatha Nath Biswas Vs. Emperor, (1932-33) 37 C.W.N. 201, a conviction based on no legal reason and unsustainable in law came up for the scrutiny of the High Court under the power of superintendence in spite of right of appeal having been allowed to lapse. Speaking of the nature of power of superintendence, the Division Bench, speaking through Chief Justice Rankin, held that the power of superintendence vesting in the High Court under Section 107 of the Government of India Act, 1915, is not a limitless power available to be exercised for removing hardship of particular decisions. The power of superintendence is a power of known and well-recognised character and should be exercised on those judicial principles which give it its character. The mere misconception on a point of law or a wrong decision on facts or a failure to mention by the Courts in its judgment every element of the offence, would not allow the order of the Magistrate being interfered with in exercise of the power of superintendence but the High Court can and should see that no man is convicted without a legal reason. A defect of jurisdiction or fraud on the part of the prosecutor or error on the "face of the proceedings" as understood in Indian practice, provides a ground for the exercise of the power of superintendence. The line between the two classes of case must be, however, kept clear and straight. In general words, the High Court’s power of superintendence is a power to keep subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.

The principles deducible, well-settled as they are, have been well summed up and stated by a two-judges Bench of this Court

recently in State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Ors., JT 2003 (4) SC 605, para 28. This Court held :

(i) the jurisdiction under Article 227 cannot be limited or fettered by any Act of the state Legislature;

(ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with interlocutory order;

(iii) the power must be exercised sparingly, only to move subordinate courts and Tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise".

In Shiv Shakti Coop. Housing Society, Nagpur Vs. M/s. Swaraj Developers & Ors., (2003) 4 Scale 241, another two-Judges bench of this Court dealt with Section 115 of the C.P.C. The Court at the end of its judgment noted the submission of the learned counsel for a party that even if the revisional applications are held to be not maintainable, there should not be a bar on a challenge being made under Article 227 of the Constitution for which an opportunity was prayed to be allowed. The Court observed â\200\223 "If any remedy is available to a party, no liberty is necessary to be granted for availing the same."

We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away â\200\223 and could not have taken away - the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court nor the power of superintendence conferred on the High Court under Article 227 of the Constitution is taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 of the CPC, and is available to be exercised subject to rules of self discipline and practice which are well settled.

We have carefully perused the Full Bench decision of the Allahabad High Court in Ganga Saran's case relied on by the learned counsel for respondent and referred to in the impugned order of the High Court. We do not think that the decision of the Full Bench has been correctly read. Rather, vide para 11, the Full Bench has itself held that where the order of the Civil Court suffers from patent error of law and further causes manifest injustice to the party aggrieved then the same can be subjected to writ of certiorari. The Full Bench added that every interlocutory order passed in a civil suit is not subject to review under Article 226 of the Constitution but if it is found from the order impugned that fundamental principle of law has been violated and further such an order causes substantial injustice to the party aggrieved the jurisdiction of the High Court to issue a writ of certiorari is not precluded. However, the following sentence occurs in the judgment of the Full Bench:-

"where an aggrieved party approaches the High Court under Art. 226 of the Constitution against an order passed in civil suit refusing to issue injunction to a private individual who is not under statutory duty to perform public duty or vacating an order of injunction, the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under Art.226 of the

Constitution would not be maintainable."

It seems that the High Court in its decision impugned herein formed an impression from the above-quoted passage that a prayer for issuance of injunction having been refused by trial court as well as the appellate court, both being subordinate to High Court and the dispute being between two private parties, issuance of injunction by High Court amounts to issuance of a mandamus against a private party which is not permissible in law.

The above quoted sentence from Ganga Saran's case cannot be read torn out of the context. All that the Full Bench has said is that while exercising certiorari jurisdiction over a decision of the court below refusing to issue an order of injunction, the High Court would not, while issuing a writ of certiorari, also issue a mandamus against a private party. Article 227 of the Constitution has not been referred to by the Full Bench. Earlier in this judgment we have already pointed out the distinction between Article 226 and Article 227 of the Constitution and we need not reiterate the same. In this context, we may quote the Constitution Bench decision in T.C. Basappa Vs. T. Nagappa and Anr., (1955) 1 SCR 250 and Province of Bombay Vs. Khushaldas S. Advani (dead) by Lrs., 1950 SCR 621, as also a three-Judge Bench decision in Dwarka Nath Vs. Income-tax Officer, Special Circle, D Ward, Kanpur and Anr., (1965) 3 SCR 536, which have held in no uncertain terms, as the law has always been, that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine questions affecting the rights of subjects and obliged to act judicially. We are therefore of the opinion that the writ of certiorari is directed against the act, order of proceedings of the subordinate Court, it can issue even if the lis is between two private parties.

Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act No.46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction â\200\223 by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has

occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a

straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

The appeal is allowed. The order of the High Court refusing to entertain the petition filed by the appellant, holding it not maintainable, is set aside. The petition shall stand restored on the file of the High Court, to be dealt with by an appropriate Bench consistently with the rules of the High Court, depending on whether the petitioner before the High Court is seeking a writ of certiorari or invoking the supervisory jurisdiction of the High Court.

Costs made easy.