REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5896 OF 2010
(Arising out of SLP (Civil) No.7445 of 2009)

Shalini Shyam Shetty and another ..Appellant(s)

Versus

Rajendra Shankar Patil ..Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

2. This appeal has been filed by the original defendant challenging the judgment and order dated 09.02.2009 of the Bombay High Court rendered in the Writ Petition filed under

Article 226 of the Constitution of India. The High Court dismissed the writ petition in view of concurrent finding of two lower courts and High Court thought that no interference in exercise of its writ jurisdiction is warranted.

3. The facts of the case are that the respondent/plaintiff filed a suit for eviction on the grounds of breach of terms of tenancy, damage to the property as well as causing nuisance and annoyance to the plaintiff and the other occupants. As per the plaintiff the original defendant was the tenant in respect of Room No.3 (hereinafter as suit premises) and was paying monthly rent of Rs.20/- including the water charges and excluding the electricity charges. The case of the plaintiff is that only the suit premises was let out though the original tenant was allowed to use a covered space of 10'x 4', but the same was for common usage and for access to W.C and water tap along with the other tenants.

4. Plaintiff claims that somewhere in January 2000, the defendant had requested the plaintiff to give keys of the two doors to clean the 'Sherry' portion. But the said keys were not returned even after 2-3 days and the plaintiff became suspicious and requested the defendant for returning the keys, but in vain. Suspecting some foul play, the plaintiff entered the 'sherry' to find that the defendant had placed his items over there and removed the drainage cover which was there in the Sherry. A police complaint was made with regard to the unauthorized possession but nothing happened. The plaintiff then requested the defendant to remove those articles but the request of the plaintiff was not heeded.

5. The defendant/appellant's father is said to have filed a suit for relief of declaration as tenant in the premises and to further restrain the landlord from interfering in the tenanted premises. In the said suit injunction was granted. Thereafter, the plaintiff had

demolished a wall that was there in the Sherry and put up a new door.

6. The original defendant expired during the pendency of the suit and his LRs were brought on record and they, in their written statement, admitted the relationship between the parties, but they denied all the allegations against them. They made a claim that the space measuring about 10'x4' abutting the entrance door of suit premises was in their exclusive use. As regards the suit filed by the appellant's father it was submitted that the same was settled outside the court with the understanding that the defendant would withdraw his suit, whereas the plaintiff will withdraw his suit simultaneously. An affidavit dated 16.03.01 was filed to that effect.

7. The learned Court of Small Causes at Mumbai, Bandra Branch vide its judgment dated 30.10.07 decreed the suit of the plaintiff/respondent and directed the defendantS to hand over the vacant

and peaceful possession of the suit premises to the plaintiff within a period of four months from the date of the order. It was held that at the time of filing of the present suit, as per evidence on record, the defendants were in unlawful occupation of the sherry portion of the suit property, which was admittedly not let out. As regards the settlement outside court it was held that the affidavit, Exhibit 'E', relied on by the defendants merely speaks of withdrawal of the suit of defendants and settlement of dispute. There is no mention about the present suit being settled. It was noted that admittedly the plaintiff has no documentary evidence to prove that the defendants had encroached and occupied the sherry portion of the suit property. But it was observed that there is corroborative evidence in this behalf in the form of NC Slip Exhibit 'G' which shows that the complaint was filed immediately after the plaintiff learnt about this unlawful possession. Reliance was also placed on paragraph 10 of the examination-in-chief of the D.W.1 which supports

the plaintiff's version.

8. It was held that the defendants admit that at some point prior to the filing of the present suit the 'sherry portion' was in the occupation of the deceased defendant. This has to be read in the light of the fact that the aforesaid portion was never let out to the deceased defendant. As such the occupation of the deceased defendant over the said portion was unlawful as he had no right to occupy the same.

9. Further reference was made to the suit filed by the appellant's father wherein an injunction order was passed in his favour. It was after the said injunction order that the defendants had demolished the wall in the sherry and constructed a door. They had also removed chamber covers and replaced it with tiles. As such it was held that the conduct of the defendants resulted in unhygienic conditions as it was impossible to clean the drains. On behalf

of the defendants there was no whisper or challenge to the entire testimony on this point anywhere in the cross-examination. The result of this was nuisance and annoyance to the plaintiff as well as to other occupants of the suit property and this testimony has also not been challenged.

10. An appeal was filed against this order. The First Appellate Court vide its order dated 11.09.08 partly allowed the appeal. The trial Court's judgment was confirmed on the ground of causing waste and damage as contemplated under Section 16 (1) (a) of the Maharashtra Rent Control Act, but the findings of the trial Court on the ground of nuisance and annoyance were set aside.

11. The Appellate Court noticed that in the suit filed by the defendants against the plaintiff, the defendants have specifically come out with the case that the dispute between the deceased defendant and the plaintiff with regard to the

alleged Sherry premises, was settled and an affidavit to this effect dated 16.03.01 was executed by the defendant. The Appellate Court thought it would be just and proper to take on record the certified copy of the order of dismissal of suit filed by the defendants dated 03.03.07 under provisions of Order 41 Rule 27 (b) CPC. On perusal of the same it was found that the same was dismissed for default.

12. The Appellate Court placing reliance on para 10 of the affidavit of examination-in-chief of the defendants came to a conclusion that it was mentioned therein that the possession of the Sherry was with him and the said defendants handed over the possession to the plaintiff, as per affidavit dated 16.03.01. As such it was for the defendants to explain how they were occupying the said premises, to which there has been no reasonable explanation offered. It was concluded that the defendants had encroached upon the Sherry premises which was not let out to them and the said act definitely amounted to

causing waste and damage to plaintiff's property.

13. With respect to the finding of nuisance it was observed by the Appellate Court that admittedly, none of the neighbouring occupier was examined by the plaintiff, which was necessary. As such under such circumstances, just because version of plaintiff is not challenged seriously it cannot be concluded that the plaintiff has established his case. The Appellate Court set aside the finding of the trial Court on this ground only but confirmed the finding on other grounds of eviction.

14. The appellants then moved to the High Court with a prayer to issue a writ of certiorari and/or any other writ, order or command and call for the papers and proceedings from the lower courts. The High Court dismissed the Writ Petition only on the ground that against concurrent finding of facts by the Courts below

the exercise of writ jurisdiction is not warranted.

15. The facts of the case have been discussed in detail in order to show that in a pure dispute of landlord and tenant between private parties, a writ petition was entertained by the High Court. It did not pass any order on the writ petition, inter alia, on the ground that there are concurrent findings of fact. If the findings have not been concurrent, the High Court might have interfered. In any event High Court did not hold that a writ petition is not maintainable in a dispute between landlord and tenant in which both are private parties and the dispute is of civil nature.

16. It was urged before this Court that petitions under Article 227 of the Constitution are filed against orders of Civil Court and even in disputes between landlord and tenant. Under the Bombay High Court Rules, such petitions are called writ petitions.

17. This Court is unable to appreciate this submission. First of all this Court finds that the petition which was filed before the High Court was a pure and simple writ petition. It was labeled as Writ Petition No.7926 of 2008 (page 75 of the SLP paper book).

18. In paragraph 6 of the writ petition it had been categorically stated:

> "That no efficacious remedy is available to the petitioners than the present petition under Article 226 of the Constitution of India. (page 89 of SLP paper book)"

19. In the prayer portion also a writ of certiorari has been prayed for in the following terms:

> "(a) That this Hon'ble Court be pleased to issue a writ of certiorari and/or any other writ, order or command and call upon the papers and proceedings of Appeal No.314 of 2007 together with Exh.8 in RAE Suit No.146 of 2001 and also R.A.D. Suit Stamp No.61 of 2001 (Suit No.6/8 of 2001)

and after going through the legality, validity and propriety of the said Appeal and the said other matters, this Hon'ble Court be pleased to quash and/or set aside the judgment and decree dated 11th September, 2008 passed by the Hon'ble Appeal Court in Appeal No.314 of 2007 of the Petitioners and allow the same in toto".

20. Therefore, the petition filed before the High Court was a writ petition.

21. Now coming to the Bombay High Court Rules, this Court finds that in Chapter I Rule 2B of the Bombay High Court (Appellate Side) Rules, 1960 (hereinafter referred to as rules) it is provided:

"**2B. Petitions/applications under Article 226 an/or 227 of the Constitution of India, arising out of/or relating to an order of penalty or confiscation etc. passed under any special statute**

All petitions/applications under Article 226 an/or 227 of the Constitution of India, arising out of or relating to an order of penalty or confiscation or an order in the nature thereof an order otherwise of a penal character and passed under any special statute shall be heard and decided by a Division Bench hearing Writ Petitions."

22. It does not appear from the said Rules that petitions under Article 227 are called writ petitions. What has been provided under the said Rules is that petitions under Article 227 filed in respect of certain category of cases will be heard by a Division Bench hearing writ petitions. That is merely indicative of the forum where such petitions will be heard.

23. Chapter XVII of the Rules deals petitions under Articles 226 and 227 and applications under Article 228 and rules for issue of writs and orders under those Articles. In Chapter XVII, Rules 1 to 16 deal with petitions under Article 226 of the Constitution.

24. Rule 17 deals with application under Articles 227 and 228. If a comparison is made between Rule 1 of Chapter XVII and Rule 17 of the same Chapter it will be clear that petitions under Article 226 and those under Article 227 are

treated differently. Both these Rules are set out one after the other:

"1. (i) Applications for issue of writs, directions, etc. under Article 226 of the Constitution

Every application for the issue of a direction, order or writ under Article 226 of the Constitution shall, if the matter in dispute is or has arisen substantially outside Greater Bombay, be heard and disposed of by a Division Bench to be appointed by the Chief Justice. The application shall set out therein the relief sought and the grounds on which it is sought, it shall he solemnly affirmed or supported by an affidavit In every such application, the applicant shall state whether he has made any other application to the Supreme Court or the High Court in respect of the same matter and how that application has been disposed of.

(ii) Applicant to inform Court, if during pendency of an application, the Supreme Court has been approached.

If the applicant makes an application to the Supreme Court in respect of the same matter during the pendency of the application in the High Court, he shall forthwith bring this fact to the notice of the High Court filing an affidavit in the case and shall furnish a copy of such affidavit to the other side.

(iii) Hearing may be adjourned pending decision by Supreme Court.

The Court may adjourn the hearing of the application made to it pending the decision of the Supreme Court in the matter."

"17. (i) Applications under Article 227 and 228

An application invoking the jurisdiction of the High Court under Article 227 of the Constitution or under Article 228 of the Constitution, shall be filed on the Appellate Side of the High Court and be heard and disposed of by a Division bench to be appointed by the Chief Justice. The application shall set out therein the relief sought and the grounds on which it is sought. It shall be solemnly affirmed or supported by an affidavit. In every such application, the applicant shall state whether he has made any other application to the Supreme Court or the High Court in respect of the same matter and how that application is disposed of.

(ii) Application to inform Court, if, during pendency of an application, the Supreme Court is approached.

If the applicant makes an application to the Supreme Court in respect of the same matter during the pendency of the application in the High Court, he shall forthwith bring this fact to the notice of the High Court by filing an affidavit in the case and shall furnish a copy of such affidavit to the other side.

(iii) Hearing may be adjourned pending decision by Supreme Court

The Court may adjourn the hearing of the application made to it pending the decision of the Supreme Court in the matter.

(iv) Rule 2 to 16 to apply mutatis mutandis

Provision of Rules 2 to 16 above shall apply mutatis mutandis to all such applications.

25. The distinction between the two proceedings also came up for consideration before the Bombay High Court and in the case of **Jhaman Karamsingh Dadlani** vs. **Ramanlal Maneklal Kantawala** (AIR 1975 Bombay 182) the Bombay High Court held:

"2. This High Court since its establishment in 1862 under the Letters Patent has been exercising original as well as appellate jurisdiction and its functioning is regulated by 'the Bombay High Court (Original Side) Rules, 1957' and 'Rules of the High Court of Judicature at Bombay, Appellate Side, 1960' (hereinafter referred to respectively as 'O. S. Rules' and 'A. S. Rules'). Rules also provide for disposal of petitions under Articles 226 and 227 of the Constitution. Supervisory jurisdiction of the High Court under Article 227 of the Constitution is exclusively vested in a Bench on the Appellate Side and jurisdiction of either of the two wings of this Court under Article 226, however, depends upon whether "the matter in dispute" arises substantially in Greater Bombay or beyond it, the same being exercisable by the original Side in the former case and by the Appellate Side in the latter case. This is not made dependent on the matter being in fact of an original or appellate nature. The contention of the learned Advocate General and Mr. Desai is that the matter in dispute, on averments in the petition, must be said to have arisen at any rate, substantially within the limits of Greater Bombay and the petitioner cannot be permitted to avoid the impact of these Rules and choose his own forum by merely quoting Article 227 of the title and prayer clause of the petition, when it is not attracted or by merely making

a pretence of the dispute having arisen beyond Greater Bombay by referring to non-existing facts to attract the Appellate Side jurisdiction under Article 226"

26. In paragraph 4 of **Jhaman** (supra), the High Court further distinguished the nature of proceeding under Article 226 of the Constitution to which, depending upon the situs of the cause of action, Rule 623 of Bombay High Court original Side Rules will apply. The said rule is set out below:

"623. Every application for the issue of a direction, order or writ under Article 226 of the Constitution other than an application for a writ of Habeas Corpus shall, if the matter in dispute is or has arisen substantially within Greater Bombay, be heard and disposed of by such one of the Judges sitting on the Original Side or any specially constituted Bench as the Chief Justice may appoint. The application shall be by petition setting out therein the relief sought and the grounds on which it is sought. The petition shall be supported by an affidavit. In every such petition the petitioner shall state whether he has made any other application to the Supreme Court or the High Court in respect of the same matter and how that application has been disposed of. The petitioner shall move for a Rule Nisi in open Court.

If the Petitioner makes an application to the Supreme Court in respect of the same

matter during the pendency of the petition in the High Court, he shall forthwith bring this fact to the notice of the High Court by filing an affidavit in the case and shall furnish a copy of such affidavit to the other side.

The Court may adjourn the hearing of the application made to it pending the decision of the Supreme Court in the matter."

27. From a perusal of paragraph 4 of **Jhaman** (supra) it is clear that to a proceeding under Article 227 of the Constitution of India only the appellate side rules of the High Court apply. But to a proceeding under Article 226, either the original side or the appellate side rules, depending on the situs of the cause of action, will apply.

28. Therefore High Court rules treat the two proceedings differently in as much as a proceeding under Article 226, being an original proceeding, can be governed under Original Side Rules of the High Court, depending on the situs of the cause of action. A proceeding under

Article 227 of the Constitution is never an original proceeding and can never be governed under Original Side Rules of the High Court.

29. Apart from that, writ proceeding by its very nature is a different species of proceeding.

30. Before the coming of the Constitution on 26th January, 1950, no Court in India except three High Courts of Calcutta, Bombay and Madras could issue the writs, that too within their original jurisdiction. Prior to Article 226 of the Constitution, under Section 45 of the Specific Relief Act, the power to issue an order in the nature of mandamus was there. This power of Courts to issue writs was very truncated and the position has been summarized in the law of writs by V.G. Ramchandran, Volume 1 (Easter Book Company). At page 12, the learned author observed:

"...The power to issue writs was limited to three High courts. The other High Courts in India, however, were created by the Crown

under Section 16 of the High Courts Act, 1861 but they had no such power. It is necessary to mention that under Section 45 of the Specific Relief Act, 1877, even the High Courts of Madras, Calcutta and Bombay could not issue the writs of prohibition and certiorari or an order outside the local limits of their original civil jurisdiction."

31. The power to issue writs underwent a sea-change with the coming of the Constitution from 26th January, 1950. Now writs can be issued by High Courts only under Article 226 of the Constitution and by the Supreme Court only under Article 32 of the Constitution.

32. No writ petition can be moved under Article 227 of the Constitution nor can a writ be issued under Article 227 of the Constitution. Therefore, a petition filed under Article 227 of the Constitution cannot be called a writ petition. This is clearly the Constitutional position. No rule of any High Court can amend or alter this clear Constitutional scheme. In fact the rules of Bombay High Court have not done that and proceedings under Articles 226 and 227

have been separately dealt with under the said rules.

33. The High Court's power of superintendence under Article 227 of the Constitution has its origin as early as in Indian High Courts Act of 1861. This concept of superintendence has been borrowed from English Law.

34. The power of superintendence owes its origin to the supervisory jurisdiction of King's Bench in England. In the Presidency towns of the then Calcutta, Bombay, Madras initially Supreme Court was established under the Regulating Act of 1793. Those Courts were endowed with the power of superintendence, similar to the powers of Kings Bench under the English Law. Then the Indian High Courts in three Presidency towns were endowed with similar jurisdiction of superintendence. Such power was conferred on them under Section 15 of the Indian High Courts Act, 1861.

35. Section 15 of the Indian High Courts Act of 1861 runs as under:

> "15. Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its Appellate Jurisdiction, and shall have Power to call for Returns, and to direct the Transfer of any Suit or Appeal for any such Court to any other Court of equal or superior Jurisdiction, and shall have Power to make and issue General Rules for regulating the Practice and Proceedings of such Courts, and also to prescribe Forms for every Proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all Books, Entries, and Accounts to be kept by the officers, and also to settle Tables of Fees to be allowed to the Sheriff, Attorneys, and all Clerks and Officers of Courts, and from Time to Time to alter any such Rule or Form or Table; and the Rules so made, and the Forms so framed, and the Tables so settled, shall be used and observed in the said Courts, provided that such General Rules and Forms and Tables be not inconsistent with the Provisions of any law in force, and shall before they are issued have received the Sanction, in the Presidency of Fort William of the Governor-General in Council, and in Madras or Bombay of the Governor in Council of the respective Presidencies."

36. Then in the Government of India Act, 1915 Section 107 continued this power of

superintendence with the High Court. Section 107 of the Government of India Act, 1915 was structured as follows:

"**107. Powers of High Court with respect to subordinate Courts. -** Each of the High courts has superintendence over all High Courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say:-

(a) call for returns;
(b) direct the transfer of any suit or appeal from any such court any other court of equal or superior jurisdiction;
(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
(e) settle tables of fees to be allowed to the sheriff, attorneys and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in council, and in other cases of the local government."

37. In the Government of India Act, 1935 the said Section 107 was continued with slight changes in Section 224 of the Act, which is as follows:

> **"224. Administrative functions of High Courts.-** (1) Every High Court shall have superintendence over all Courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,-
>
> (a) call for returns;
> (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
> (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
> (d) settle tables of fees to be allowed to the sheriff, attorneys and all clerks and officers of courts:
>
> Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.
>
> (2) Nothing in this Section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision."

38. The history of this power has been elaborately traced by a Division Bench of Calcutta High

Court in the case of **Jahnabi Prosad Banerjee and another** vs. **Basudeb Paul & others**, reported in AIR 1950 Calcutta 536 and that was followed in a Division Bench Judgment of Allahabad High Court in **Sukhdeo Baiswar** vs. **Brij Bhushan Misra and others** in AIR 1951 Allahabad 667.

39. The history of Article 227 has also been traced by this Court in its Constitutional Bench judgment in **Waryam Singh and another** vs. **Amarnath and another** [AIR 1954 SC 215]. In paragraph 13 at page 217 of the report this Court observed:

"...The only question raised is as to the nature of the power of superintendence conferred by the article".

40. About the nature of the power of superintendence this Court relied on the Special Bench judgment delivered by Chief Justice Harries in **Dalmia Jain Airways Limited** vs. **Sukumar Mukherjee** (AIR 1951 Calcutta 193).

41. In paragraph 14 page 217 of **Waryam Singh** (supra) this Court neatly formulated the ambit of High Court's power under Article 227 in the following words:

> "This power of superintendence conferred by article 227 is, as pointed out by Harries C.J., in 'Dalmia Jain Airways Ltd. v. Sukumar Mukherjee', AIR 1951 Cal 193 (SB) (B), to be exercised most 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."

42. Chief justice Harries in the Full Bench decision in **Dalmia** (supra) stated the principles on which the High Court can exercise its power under Article 227 very succinctly which, we would better, quote:

> "6. Though this Court has a right to interfere with decisions of Courts and tribunals under its power of superintendence, it appears to me that that right must be exercised most sparingly and only in appropriate cases. The matter was considered by a Bench of this Court in Manmathanath v. Emperor, AIR 1933 Cal 132. In that case a Bench over which Sir George Rankin C. J. presided held that Section 107, Government of India Act (which roughly

corresponds to Article 227 of the Constitution), does not vest the High Court with limitless power which may be exercised at the Court's discretion to remove the hardship of particular decisions. The power of superintendence it confers is a power of a known and well-recognised character and should be exercised on those judicial principles which give it its character. 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."

(page 193-194 of the report)

43. In stating the aforesaid principles, Chief Justice Harries relied on what was said by Chief Justice George Rankin in **Manmatha Nath Biswas** vs. **Emperor** reported in AIR 1933 Calcutta 132. At page 134, the learned Chief Justice held:

"...superintendence is not a legal fiction whereby a High Court Judge is vested with omnipotence but is as Norman, J., had said a term having a legal force and signification. The general superintendence which this Court has over all jurisdiction subject to appeal is a duty to keep them within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner. It does not involve responsibility for the correctness of their decisions, either in fact or law.

44. Justice Nasir Ullah Beg of Allahabad High Court in a very well considered judgment rendered in the case of **Jodhey and others** vs. **State through Ram Sahai**, reported in AIR 1952 Allahabad 788, discussed the provisions of Section 15 of the Indian High Courts Act of 1861, Section 107 of the Government of India Act 1915 and Section 224 of the Government of India Act 1935 and compared them with almost similar provisions of Article 227 of the Constitution.

45. The learned judge considered the power of the High Court under Article 227 to be plenary and unfettered but at the same time, in paragraph 15 at page 792 of the report, the learned judge held that High Court should be cautious in its exercise. It was made clear, and rightly so, that the power of superintendence is not to be exercised unless there has been an (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal

to exercise jurisdiction vested in Courts or tribunals. The learned judge clarified if only there is a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice, power of superintendence can be exercised. This is a discretionary power to be exercised by Court and cannot be claimed as a matter or right by a party.

46. This Court in its Constitution Bench decision in the case of **Nagendra Nath Bora & another** vs. **Commissioner of Hills Division and Appeals, Assam & others** (AIR 1958 SC 398) followed the ratio of the earlier Constitution Bench in **Waryam Singh** (supra) about the ambit of High Court's power of superintendence and quoted in **Nagendra Nath** (supra) the same passage, which has been excerpted above (See paragraph 30, page 413 of the report).

47. The Constitution Bench in **Nagendra Nath** (supra), unanimously speaking through Justice B.P. Sinha, (as his Lordship then was) pointed out that High Court's power of interference under Article 227 is not greater than its power under Article 226 and the power of interference under Article 227 of the Constitution is limited to ensure that the tribunals function within the limits of its authority.

(emphasis supplied)

48. The subsequent Constitution Bench decision of this Court on Article 227 of the Constitution, rendered in the case of **State of Gujarat etc.** vs. **Vakhatsinghji Vajesinghji Vaghela (dead) his legal representatives and others** reported in AIR 1968 SC 1481 also expressed identical views. Justice Bachawat speaking for the unanimous Constitution Bench opined that the power under Article 227 cannot be fettered by State Legislature but this supervisory jurisdiction is meant to keep the subordinate tribunal within

the limits of their authority and to ensure that they obey law.

49. So the same expression namely to keep the Courts and Tribunals subordinate to the High Court 'within the bounds of their authority' used in **Manmatha Nath Biswas** (supra), to indicate the ambit of High Court's power of superintendence has been repeated over again and again by this Court in its Constitution Bench decisions.

50. Same principles have been followed by this Court in the case of **Mani Nariman Daruwala @ Bharucha (deceased) through Lrs. & others** vs. **Phiroz N. Bhatena and others etc.** reported in (1991) 3 SCC 141, wherein it has been held that in exercise of its jurisdiction under Article 227, the High Court can set aside or reverse finding of an inferior Court or tribunal only in a case where there is no evidence or where no reasonable person could possibly have come to the conclusion which the Court or tribunal has come to. This Court made it clear that except to this

'limited extent' the High Court has no jurisdiction to interfere with the findings of fact (see para 18, page 149-150).

51. In coming to the above finding, this Court relied on its previous decision rendered in the case of **Chandavarkar Sita Ratna Rao** vs. **Ashalata S. Guram** reported in (1986) 4 SCC 447. The decision in **Chandavarkar** (supra) is based on the principle of the Constitution Bench judgments in **Waryam Singh** (supra) and **Nagendra Nath** (supra) discussed above.

52. To the same effect is the judgment rendered in the case of **Laxmikant Revchand Bhojwani and another** vs. **Pratapsingh Mohansingh Pardeshi** reported in (1995) 6 SCC 576. In paragraph 9, page 579 of the report, this Court clearly reminded the High Court that under Article 227 that it cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of

fundamental principle of law and justice (see page 579-580 of the report).

53. Same views have been taken by this Court in respect of the ambit of High Court's power under Article 227 in the case of **Sarpanch, Lonand Grampanchayat** vs. **Ramgiri Gosavi and another,** reported in AIR 1968 SC 222, (see para 5 page 222-234 of the report) and the decision of this Court in **Jijabai Vithalrao Gajre** vs. **Pathankhan and others** reported in (1970) 2 SCC 717. The Constitution Bench ratio in **Waryam Singh** (supra) about the scope of Article 227 was again followed in **Ahmedabad Manufacturing & Calico Ptg. Co. Ltd.** vs. **Ram Tahel Ramnand and others** reported in (1972) 1 SCC 898.

54. In a rather recent decision of the Supreme Court in case of **Surya Dev Rai** vs. **Ram Chander Rai and others**, reported in (2003) 6 SCC 675, a two judge Bench of this Court discussed the principles of interference by High Court under Article 227. Of course in **Surya Dev Rai** (supra)

this Court held that a writ of Certiorari is maintainable against the order of a civil Court, subordinate to the High Court (para 19, page 668 of the report). The correctness of that ratio was doubted by another Division Bench of this Court in **Radhey Shyam and another** vs. **Chhabi Nath and others** [(2009) 5 SCC 616] and a request to the Hon'ble Chief Justice for a reference to a larger Bench is pending. But in so far as the formulation of the principles on the scope of interference by the High Court under Article 227 is concerned, there is no divergence of views.

55. In paragraph 38, sub-paragraph (4) at page 695 of the report, the following principles have been laid down in **Surya Dev Rai** (supra) and they are set out:

> "38 (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a 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."

56. Sub-paras (5), (7) and (8) of para 38 are also on the same lines and extracted below:

"(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 (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) xxx xxx

(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 thereagainst and entertaining a petition invoking certiorari or supervisory

jurisdiction of the 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."

57. Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. [See 1986 (suppl.) SCC 401 at page 469)].

58. However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. [**State of U.P. and others** vs. **Dr.**

Vijay Anand Maharaj – AIR 1963 SC 946, page 951].

59. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields.

60. Another distinction between these two jurisdictions is that under Article 226, High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. {See **Surya Dev Rai** (supra), para 25 page 690 and also the decision of the Constitution Bench of this Court in **Hari Vishnu Kamath** vs. **Ahmad Ishaque and others** – [AIR 1955 SC 233, para 20 page 243]}.

61. Jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. Jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex-debito justicia or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a Letters Patent Appeal or an intra Court Appeal is maintainable. But no such appeal is maintainable from an order

passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ

jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this

Court in **Waryam Singh** (supra) and the principles in **Waryam Singh** (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in **Waryam Singh** (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a

gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of **L. Chandra Kumar** vs. **Union of India & others**, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the

Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such

a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will

divest this extraordinary power of its strength and vitality.

63. In the facts of the present case we find that the petition has been entertained as a writ petition in a dispute between landlord and tenant amongst private parties.

64. It is well settled that a writ petition is a remedy in public law which may be filed by any person but the main respondent should be either Government, Governmental agencies or a State or instrumentalities of a State within the meaning of Article 12. Private individuals cannot be equated with State or instrumentalities of the State. All the respondents in a writ petition cannot be private parties. But private parties acting in collusion with State can be respondents in a writ petition. Under the phraseology of Article 226, High Court can issue writ to any person, but the person against whom writ will be issued must have some statutory or public duty to perform.

65. Reference in this connection may be made to the Constitution Bench decision of this Court in the case of **Sohan Lal** vs. **Union of India and another**, reported in AIR 1957 SC 529.

66. The facts in **Sohan Lal** (supra) are that Jagan Nath, a refugee from Pakistan, filed a writ petition in the High Court of Punjab against Union of India and Sohan Lal alleging unauthorized eviction from his residence and praying for a direction for restoration of possession. The High Court directed Sohan Lal to restore possession to Jagan Nath. Challenging that order, Sohan Lal approached this Court. The Constitution Bench of this Court accepted the appeal and overturned the verdict of the High Court.

67. In paragraph 7, page 532 of the judgment, the unanimous Constitution Bench speaking though Justice Imam, laid down a few salutary

principles which are worth remembering and are set out:

"7. The eviction of Jagan Nath was in contravention of the express provisions of Section 3 of the Public Premises (Eviction) Act. His eviction, therefore, was illegal. He was entitled to be evicted in due course of law and a writ of mandamus could issue to or an order in the nature of mandamus could be made against the Union of India to restore possession of the property to Jagan Nath from which he had been evicted if the property was still in the possession of the Union of India. The property in dispute, however, is in possession of the appellant. There is no evidence and no finding of the High Court that the appellant was in collusion with the Union of India or that he had knowledge that the eviction of Jagan Nath was illegal. Normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order, which appertains to his office and is in the nature of a public duty (Halsbury's Laws of England Vol. 11, Lord Simonds Edition, p. 84). If it had been proved that the Union of India and the appellant had colluded, and the transaction between them was merely colourable, entered into with a view to deprive Jagan Nath of his rights, jurisdiction to issue a writ to or make an order in the nature of mandamus against the appellant might be said to exist in a Court..."

68. These principles laid down by the Constitution Bench in **Sohan Lal** (supra) have not been doubted so far.

69. Subsequently in some other cases question arose whether writ will lie against a private person. In **Engineering Mazdoor Sabha & another** vs. **Hind Cycles Ltd.,** reported in AIR 1963 SC 874, it was held that an arbitrator appointed under Section 10A of Industrial Disputes Act is not a private arbitrator even though he cannot be equated with a tribunal to be amenable under Article 136 of the Constitution of India. The Court held that in discharging his duties as an arbitrator, the arbitrator is clothed with some trappings of a Court and a writ of certiorari would be maintainable against him. So even though an arbitrator, acting under Section 10A of the Industrial Disputes Act, is a private individual, he discharges public function. So the ratio in the Constitution Bench decision in **Engineering Mazdoor Sabha** (supra) is consistent with the decision in **Sohan Lal** (supra).

70. It is only a writ of Habeas Corpus which can be directed not only against the State but also against private person. Justice Hidaytullah (as his Lordship then was) on behalf of a Bench of this Court stated the principle as "the writ of Habeas Corpus issues not only for release from detention by the State but also for release from private detention." (see AIR 1964 SC 1625 at 1630).

71. In **Rohtas Industries Ltd., & another** vs. **Rohtas Industries Staff Union & others** [(1976) 2 SCC 82] this Court held that in view of the amendment of the Industrial Disputes Act, 1947, by amendment Act 36 of 1964 and in view of provisions like Section 27 of the Act, an arbitrator under Section 10A of the Industrial Disputes Act is virtually a part of State's sovereign dispensation of justice and his award is amenable to review under Articles 226 & 227 of the Constitution. In **Rohtas** (supra), the

ratio of **Engineering Mazdoor Sabha** (supra) was followed.

72. Therefore, a private person becomes amenable to writ jurisdiction only if he is connected with a statutory authority or only if he/she discharges any official duty.

73. In the instant case none of the above features are present, even then a writ petition was filed in a pure dispute between landlord and tenant and where the only respondent is the plaintiff landlord. Therefore, High Court erred by entertaining the writ petition. However, the petition was dismissed on merits by a rather cryptic order.

74. It has repeatedly been held by this Court that a proceeding under Article 226 of the Constitution is not the appropriate forum for adjudication of property disputes or disputes relating to title. In **Mohammed Hanif** vs. **The State of Assam** [1969 (2) SCC 782] a three Judge Bench of this Court,

explaining the general principles governing writ jurisdiction under Article 226, held that this jurisdiction is extraordinary in nature and is not meant for declaring the private rights of the parties. [See para 5, page 786 of the report].

75. In coming to the aforesaid conclusion in **Hanif** (supra), this Court referred to the Constitution Bench decision in **T.C. Basappa** vs. **T. Nagappa and another** [AIR 1954 SC 440].

76. Following the aforesaid principles in **Hanif** (supra), this Court in **M/s. Hindustan Steel Limited, Rourkela** vs. **Smt. Kalyani Banerjee and others** [(1973) 1 SCC 273] held that serious questions about title and possession of land cannot be dealt with by writ court. In formulating these principles in **Kalyani Banerjee** (supra), this Court relied on Constitution Bench decision in **Sohan Lal** (supra) [See paragraph 16 page 282 of the report). Again in **State of Rajasthan** vs. **Bhawani Singh & others** [1993 Supp.

(1) SCC 306] this Court held that a writ petition is not the appropriate forum to declare a person's title to property. [see para 7, page 309 of the report]. Subsequently, again in the case of **Mohan Pandey & another** vs. **Usha Rani Rajgaria & others** reported in (1992) 4 SCC 61, this Court held that a regular suit is the appropriate remedy for deciding property disputes between private persons and remedy under Article 226 is not available to decide such disputes unless there is violation of some statutory duty on the part of a statutory authority. [See para 6, page 63 of the report].

77. Following the aforesaid ratio in **Mohan Pandey** (supra), this Court again in **Prasanna Kumar Roy Karmakar** vs. **State of W.B and others** [(1996) 3 SCC 403], held that in a dispute between the landlord and tenant, a tenant cannot be evicted from his possession by a writ court. Again in the case of **P.R. Murlidharan & others** vs. **Swami Dharmananda Theertha Padar & others** [(2006) 4 SCC 501], this Court held that it would be an

abuse of the process to approach a writ court in connection with dispute on questions of title for deciding which civil court is the appropriate forum.

78. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases High Courts, in a routine manner, entertain petition under Article 227 over such disputes and such petitions are treated as writ petitions.

79. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ

court should not interfere unless there is any infraction of statute or it can be shown, that a private individual is acting in collusion with a statutory authority.

80. We may also observe that in some High Courts there is tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in **Surya Dev** (supra) and in view of the recent amendment to Section 115 of the Civil Procedure Code by Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 of CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

81. As a result of frequent interference by Hon'ble High Court either under Article 226 or 227 of the

Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice.

82. This Court hopes and trusts that in exercising its power either under Article 226 or 227, Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest Courts of justice within their jurisdiction will adhere to them strictly.

83. For the reasons aforesaid, it is held that the High Court committed an error in entertaining the writ petition in a dispute between landlord and tenant and where the only respondent is a private landlord. The course adopted by the High Court cannot be approved. Of course, High Court's order of non-interference in view of concurrent findings of facts is unexceptionable. Consequently, the appeal is dismissed. However, there shall be no order as to costs.

.....J.
(G.S. SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

New Delhi
July 23, 2010