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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2113 of 2015

- Dr. Ram Sharan Lal Tripathi S/o Late Shri Ludhhak Prasad Tripathi, Aged About 76 Years R/o Indira Setu Marg, Near Nehru Chowk, Tilak Nagar, Bilaspur, Tehsil Bilaspur, Civil And Revenue District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Government Of Chhattisgarh, Department Of Revenue And Disaster Management, Mantralaya, Capital Complex, Naya Raipur, Tehsil And District Raipur, Chhattisgarh, Pin 492101

2. Board Of Revenue, Through Secretary, Board Of Revenue, Bilaspur, Tehsil Bilaspur, Civil And Revenue District Bilaspur, Chhattisgarh

3. Secretary, Government Of Chhattisgarh, Department Of Forest, Mantralaya, Capital Complex, Naya Raipur, Tehsil And District Raipur, Chhattisgarh, Pin 492101

4. Commissioner, Bilaspur Division, Bilaspur, Tehsil Bilaspur, Civil And Revenue District Bilaspur, Chhattisgarh

5. Collector, Bilaspur, Tehsil Bilaspur, Police Station Civil Lines, Civil And Revenue District Bilaspur, Chhattisgarh

6. Sub Divisional Officer (Revenue), Kota, Tehsil Kota, Civil And Revenue District Bilaspur, Chhattisgarh

7. Naib Tehsildar, Sub Tehsil Sakri, Police Station Chakarbhata, Tehsil Takhatpur, Civil And Revenue District Bilaspur, Chhattisgarh

---- Respondent

For Petitioner : Shri R.S. Marhas, Advocate.
For Respondents : Shri PK Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

01/12/2015

1. This petition under Article 226 of the Constitution of India has been listed for hearing on office objection regarding maintainability of the writ petition. An objection has been raised by the Registry that the writ petition filed against the order passed by the Board of Revenue, Chhattisgarh, should have been preferred under Article 227 of the Constitution of India and not under Article 226 of the Constitution.

2. The petitioner is aggrieved by the order passed by the Board of Revenue, Chhattisgarh on 17.7.2015 allowing the review application filed by the State.

3. Learned counsel for the petitioner would argue that the writ petition having been preferred against an order passed by the authority exercising power of judicial review but not being a civil Court, the writ petition under Article 226 of the Constitution has rightly been filed. He would further submit that it is the right of the petitioner to elect or choose a remedy against the order of subordinate Court or Tribunal i.e. whether to file petition under Article 226 or under Article 227 or both under Article 226/227 of the Constitution, therefore, it is not in the domain of the Registry to direct the petitioner to file a petition under Article 227 of the Constitution of India.

4. I have heard Shri R.S. Marhas, learned counsel for the petitioner and

Shri PK Bhaduri, Govt. Advocate for the State at length.

5. To dwell on the objection, distinction between the nature of authority and jurisdiction of the High Court under Article 226 and 227 of the Constitution has to be kept in mind, as has been settled by the Supreme Court. After considering plethora of precedent on the issue, the Supreme Court in **Surya Dev Rai Vs. Ram Chandar Rai**[1] held that Article 226 is a proceeding where the High Court exercises its original jurisdiction while a proceeding under Article 227 of the Constitution is not original but only supervisory. It was held that distinction between the two jurisdictions stands almost obliterated in practice.

6. In **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil**[2] the Supreme Court held that Articles 226 and 227 stand on substantially different footing. Whereas a proceeding under Article 226 is an original proceeding, the jurisdiction under Article 227 is neither original nor appellate, but is for both administrative and judicial superintendence. Under Article 226, the High Court normally annuls or quashes an order or proceeding whereas 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 inferior Tribunal should have made. The jurisdiction under Article 226 is normally invoked by affected party whereas the jurisdiction under Article 227 can be exercised by the High Court *suo motu* as a custodian of justice.

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1 (2003) 6 SCC 675
2 (2010) 8 SCC 329

7. Under Article 226 of the Constitution, the High Court issues a writ of certiorari, amongst other writs, to annul the proceeding or order which is challenged by the aggrieved party.

8. In **Hari Vishnu Kamath Vs. Ahmad Ishaque and others**[3], the Supreme Court formulated the principles upon which issuance of writ of certiorari is founded. Following **Hari Vishnu Kamath** (Supra), the Supreme Court in **The Custodian of Evacuee Property, Bangalore (in all the Appeals) Vs. Khan Saheb Abdul Shukoor etc.**[4] settled that (i) a writ of certiorari will be issued for correcting errors of jurisdiction; (ii) a writ of certiorari will also be issued when the Court or Tribunal acts illegally in exercise of its undoubted jurisdiction; (iii) the Court which issued writ of certiorari acts in exercise of supervisory jurisdiction, as distinct from appellate jurisdiction and finding of fact and (iv) a writ of certiorari can be issued to correct an error in the decision or determination if there is a manifest error apparent on the face of the record, such as when the decision is based on ignorance or disregard of provisions of law. It is patent error which can be corrected by writ of certiorari, but not just a wrong decision.

9. In **T.C. Basappa Vs. T. Nagappa and another**[5], the Supreme Court held that writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner'. The broad principles for issuance of writ of certiorari were propounded as follows:-

3 AIR 1955 SC 233
4 AIR 1961 SC 1087
5 AIR 1954 SC 440

> "In granting a writ of certiorari, the superior Court does not exercise the powers of an appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior Tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior Tribunal. The supervision of the superior Court exercised through writs of certiorari goes on two points one is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. Certiorari may lie and is generally granted when a Court has acted without or in excess of its jurisdiction.

10. The legal position that a writ of certiorari can be issued when the impugned decision is that of Court was crystallized by the Supreme Court in the matter of **Syed Yakoob Vs. K.S. Radhakrishnan**[6]. Settling the principle in clear terms, it was held thus:-

> "The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art.226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or

6 AIR 1964 SC 477

questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

(Emphasis supplied)

11. A 9 Judges Bench of the Supreme Court in the matter of **Naresh Shridhar Mirajkar Vs. State of Maharashtra and another**[7] held in paragraph-53 thus:-

"53. It is well-settled that the powers of this Court to issue writs of certiorari under Art. 32(2) as well as the powers of the High Courts to issue similar writs under Art. 226 are very wide. In fact, the powers of the High Courts under Art. 226 are, in a sense, wider than those of this Court, because the exercise of the powers of this Court to issue writs of certiorari are limited to the purposes set out in Art. 32(1). The nature and the extent of the writ jurisdiction conferred on the High Courts by Art. 226 was considered by this Court as early as 1955 in T. C. Basappa v. T. Nagappa and Anr. 1955-1 SCR 250 at pp,256-8 (AIR 1954 SC 440 at pp.443-44) . It would be useful to refer to some of the points elucidated in this judgment. The first point which was made clear by Mukherjea, J., who spoke for the Court, was that

"in view of the express provisions in our Constitution, we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in

7 AIR 1967 SC 1

appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law."

One of the essential features of the writ, according to Mukherjea, J., is

"that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari, the superior Court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The supervision of the superior Court exercised through writs of certiorari goes to two points, one is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. Certiorari may lie and is generally granted when a Court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the Court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances. When the jurisdiction of the Court depends upon the existence of some collateral fact, it is well-settled that the Court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess."

It is in the light of these principles which have been consistently followed by this Court in dealing with the problem relating to the exercise of the writ jurisdiction by the High Courts under Art. 226 or by this Court under Art. 32, that we must now proceed to deal with the point before us."

12. In **Harinagar Sugar Mills Ltd., Vs. Shyam Sunder Jhunjhunwala and others**[8], the Supreme Court had an occasion to ascertain as to what falls within the expression 'Courts or Tribunal'. It was held in

8 AIR 1961 SC 1669

paragraphs 30 to 34 thus:-

"**30**.....All tribunals are not courts, though all courts are tribunals. The word 'courts' is used to designate those tribunals which are set up in an organized State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish 'wrongs'. Whenever there is an infringement of a right or an injury, the courts are there to restore the *vinculum juris*, which is disturbed.....

31. When rights are infringed or invaded, the aggrieved party can go and commence a querela before the ordinary civil courts. These courts which are instrumentalities of Government, are invested with the judicial power of the State, and their authority is derived from the Constitution or fixed and they are ordinarily permanent, and can try any suit or cause within their jurisdiction. Their numbers may be increased or decreased, but they are almost always permanent and go under the compendious nature of 'courts of civil judicature'. There can thus be no doubt that the Central Government does not come within this class.

32. With the growth of civilisation and the problems of modern life, a large number of administrative tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary courts of civil Judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to courts, but are not courts. When the Constitution speaks of 'courts' in Articles 136, 227 or 228 or in Articles 233 to 237 or in the Lists, it contemplates courts of civil judicature but not tribunals other than courts. This is the reason for using both the expression in Articles 136 and 227.

By 'courts' is meant courts of civil judicature and by 'tribunals', those bodies of men who are appointed to decide controversies arising under certain special laws.

Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established.....

33. In my opinion, a court in the strict sense is a tribunal which is a part of the ordinary hierarchy of courts of civil judicature maintained by the State under its constitution to exercise the judicial power of the State. These courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word 'judicial', be it noted, is itself capable of two meanings. They were admirably stated by Lopes, L.J. in **Royal Aquarium and Summer and Winter Garden Society Ltd. Vs. Parkinson** {(1892) 1 QB 431 (CA)}, in these words: (QB p.452)

'.....The word “judicial” has two meanings. It may refer to the discharge of duties exercisable by a Judge or by Justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind – that is, a mind to determine what is fair and just in respect of the matters under consideration.'

That an officer is required to decide matters before him 'judicially' in the second sense does not make him a court or even a tribunal, because that only establishes that he is following a standard of conduct, and is free from bias or interest.

34. Courts and tribunals act 'judicially' in both senses, and in the term 'court' are included the ordinary and permanent tribunals and in the term 'tribunal' are included all others, which are not so included.....”

(Emphasis supplied)

13.The difference between the Courts and Tribunals again fell for

consideration before the Constitution Bench of the Supreme Court in the matter of **Madras Bar Association Vs. Union of India**[9] where the following has been held in paragraph-38:-

> "**38**. The term "courts" refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the State for administration of justice that is for exercise of the judicial power of the State to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to civil courts, criminal courts and the High Courts. Tribunals can be either private tribunals (Arbitral Tribunals), or tribunals constituted under the Constitution (Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule) or tribunals authorised by the Constitution (Administrative Tribunals under Article 323-A and tribunals for other matters under Article 323-B) or statutory tribunals which are created under a statute (Motor Accidents Claims Tribunal, Debt Recovery Tribunals and Consumer Fora). Some Tribunals are manned exclusively by Judicial Officers (Rent Tribunals, Motor Accident Claims Tribunal, Labour Courts and Industrial Tribunals). Other statutory tribunals have judicial and technical members (Administrative Tribunals, TDSAT, Competition Appellate Tribunal, Consumer Fora, Cyber Appellate Tribunal, etc.)."

14. In para-40, the Supreme Court has considered its earlier decision in **Harinagar Sugar Mills Ltd.** (Supra) and reproduced paras-30 to 34, therefore, I am not burdening this judgment by again reproducing para-40.

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9 (2010) 11 SCC 1

15. In **Madras Bar Association** (Supra), the Supreme Court considered its earlier judgments in the matters of **Jaswant Sugar Mills Ltd. Vs. Lakshmi Chand**[10], **Associated Cement Companies Ltd. Vs. P.N. Sharma**[11], **Kihoto Hollohan Vs. Zachillhu**[12] and **S.P. Sampath Kumar Vs. Union of India**[13] and concluded on the issue in para-45 thus:-

> "**45**. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognized differences between courts and tribunals. They are:
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> (i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.
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> (ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an "expert" in the field to which the tribunal relates. Some highly specialized fact-finding tribunals may have only technical members, but they are rare and are exceptions.
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> (iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act."
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> (Emphasis supplied)

10 AIR 1963 SC 677
11 AIR 1965 SC 1595
12 1992 Supp (2) SCC 651
13 (1987) 1 SCC 124

16. In **Radhey Shyam and another Vs. Chhabi Nath and Others**[14], the Supreme Court examined the correctness of view taken in the matter of **Surya Dev Rai** (Supra) that writ lies under Article 226 of the Constitution against the order of the civil Court. Overruling the said part of the judgment in the matter of **Surya Dev Rai** (Supra), it was held that writ petition under Article 226 of the Constitution would not lie against the order passed by the civil Court.

17. In **Riju Prasad Sarma and Others Vs. State of Assam and Others**[15], the Supreme Court was dealing with the argument as to whether a writ petition would lie against the order of Civil Court where the party is complaining of infringement of his fundamental right arising out of civil Court's order. The Supreme Court held in para-67 thus:-

> "**67**. On the related issue of the scope of Article 12 and whether for the purposes of issuance of writ, judicial decisions by the judiciary can be included in State action, we are in agreement with the submissions advanced by Mr. Rajeev Dhavan that definition of "the State" under Article 12 is contextual depending upon all the relevant facts including the provisions concerned in Part III of the Constitution. The definition is clearly inclusive and not exhaustive. Hence omission of judiciary when the Government and Parliament of India as well as the Government and Legislature of each of the States has been included in conspicuous but not conclusive that judiciary must be excluded. The relevant case laws cited by Mr. Dhavan are:
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> (i) Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology[16]

14 (2015) 5 SCC 423
15 (2015) 9 SCC 461
16 (2002) 5 SCC 111

(ii) Naresh Shridhar Mirajkar Vs. State of Maharashtra[17]

(iii) Triveniben Vs. State of Gujarat[18]

(iv) Poonam Vs. Sumit Tanwar[19].

18. On a careful analysis of the legal position settled by the Supreme Court in the above referred judgments, it would clearly emerge that while writ of certiorari cannot be issued against the order passed by the civil Court which is established by the State under its sovereign function and duty, such writ can be issued against all other authorities or tribunals which exercise judicial or quasi judicial or administrative functions.

19. Since undoubtedly the Board of Revenue is not a civil Court but is a revenue authority established under the CG Land Revenue Code, a writ petition under Article 226 of the Constitution for issuance of writ of certiorari to annul the order passed by the Board of Revenue is maintainable. Office objection to the contrary that the petitioner should have preferred a writ petition under Article 227 of the Constitution of India is thus overruled.

20. Before parting, this Court would appreciate the assistance rendered by Shri PK Bhaduri, learned Govt. Advocate.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve

17 AIR 1967 SC 1
18 (1989) 1 SCC 678
19 (2010) 4 SCC 460