

(1991) 08 DEL CK 0079

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No. 205 of 1991

Delhi Bar Association

APPELLANT

Vs

B. Prasad and Others

RESPONDENT

Date of Decision : 14-08-1991

Acts Referred:

Citation : (1991) 45 DLT 153

Hon'ble Judges : S.N. Sapra, J

Bench : Single Bench

Advocate : R.P. Lao, B.D. Kaushik, Rajeev Khosla, Kapil Sibal, Rashmi Kathpalia and A.R. Wig, for the Appellant;

Judgement

S.N. Sapra, J.

(1) ADMIT.

(2) By this petition, filed under Article 227 of the Constitution of India, Delhi Bar Association, seeks to challenge the impugned order dated June 12, 1971, passed by Shri B.L. Garg. Additional District Judge, Delhi, and for acceptance of the application dated June 5, 1991, for restoring the status quo ante.

(3) For better appreciation of the question, involved in the present case, and the contentions, urged before me, by learned Counsel for parties, it will be necessary to give the summary of the facts and circumstances, leading to the institution of the present petition.

(4) Delhi Bar Association, petitioner herein, hereinafter called the Association, is one of the leading Bar Associations, in India and, its membership is between 4,000 to 5,000. At about 11 P.M. on June 3, 1991, the Association, through its Secretary and another advocate, filed a suit for permanent injunction, to restrain Smt. B. Prasad, Deputy Commissioner, Delhi, and Shri R.S. Dhaiya, Assistant Commissioner of Police, Subzi Mandi, Delhi, respondents I and 2 herein, from dispossessing the plaintiffs, from the site (annexure A to the plaint), opposite

Criminal side gate and below (in front of tea stall) in criminal side, Tis Hazari Courts, Delhi, and further, not to interfere, in any manner, with the carrying on of the professional work, by 160 members of the Association, from their seats, located in the premises. plaintiffs also prayed that defendants be further restrained, from removing any material from the site, including the lawyers seats, chairs, earth and other articles.

(5) In the suit, petitioners also filed an application, under Order 39 Rules I and 2, read with Section 151 of Civil Procedure Code, thereby, claiming the ex parte temporary injunction, identical to the reliefs, as claimed in suit.

(6) Vide order dated June 3, 1991, passed at 11 P.M. Shri S.P. Singh Chaudhry, Additional District Judge, Delhi who was also acting as Vacation Judge, at his residence, restrained defendants/respondents 1 and 2, from removing earth, sheds, furniture or anything else, from the disputed property and, defendants were also directed to maintain status quo, regarding possession of the disputed property. It was also directed that objection, if any, could be filed by June 5, 1991.

(7) On June 5, 1991, it appears, that petitioners filed a petition, u/s 12 of the Contempt of Court Act, and read with Order 39 Rule 2-A of Civil Procedure Code, against the present respondents I and 2 and 2 other persons, namely, Shri Krishan Kumar, Executive Magistrate/Estate Officer and Shri Dharminder Sharma, Sdm, Kotwali for initiating contempt proceedings against them.

(8) In the contempt petition, it was alleged that the officials, under the command of Shri Dharminder Sharma, S.D.M. were having altercations with some lawyers members of the Association, when the Secretary and other petitioners, after obtaining the stay order, reached the site. Shri Rajiv Khosla asked the officials and police personnels, to stop the removal of properties of the lawyers, as the Court had issued the stay order. On seeing the stay order, it is so alleged by petitioners, the SDM. got annoyed. According to petitioners, the stay order was brought to the notice of respondents in the contempt)ers, petition, at about 11.40 P.M., on June 3, 1991. However, in spite of the stay are order, respondents I and 2 brought at the site, 100 of their subordinates, police The personnels, to remove the seats, sheds, chairs, tables, benches etc. of the number lawyers. During the night between June 3 and 4, most of the seats, chairs, court tables etc. of the lawyers were removed from the site, by the officials. In short, many according to petitioners, the officials intentionally disobeyed the stay order.

(9) Along with the contempt petition, petitioners moved an application)f the u/s 151 of Civil Procedure Code, thereby, seeking an order of status rect, quo ante, in respect of suit premises, and for bringing the position of the site, asking to its prior position, as it was at the time of grant of the stay order, i their

(10) Respondents I and 2 herein, have filed written statement, replies to the contempt petition and other applications, thereby disputing all the allegations, as made by petitioners.

(11) In their written statement, defendants alleged that the site in question is a public land, as reflected in the relevant khasra girdwari entries filed in and the relevant Shajra. The entire public land, of which the site in question is a part, was leased by the L & Do, to Delhi Administration, for Tis Hazari area actual Courts. Therefore, according to defendants, petitioners have no right to claim possession of the land in question, nor has any document been produced, thereby, entitling them to claim possession. It was further alleged that the site in question has always been and continues to be used, as a public thorough fare, meant for transit and public parking. In fact, the disputed portion of the road is opposite the malkahana of the Deputy Commissioner's office and all Government vehicles, unloading the goods, to be deposited in the malkahana, were/are parked there. It was specifically denied that in the site in dispute, there was any seat or table or chair or sign board, of any of the lawyers. To elaborate this point, respondents 1 and 2, pointed out, that pursuant to a Bomb explosion in Tis Hazari on January 22, 1991, a decision was taken to beef up the security arrangement, in and around Tis Hazari complex, It was decided that all parking areas, including the site in dispute, be regulated by cordoning sites with railings. The site in question, was an unregulated parking space. In taking this decision, the Delhi Bar Association was also consulted and, a meeting was held at the office of the Deputy Commissioner, immediately after January 22, 1991. Being aware that Delhi Administration had decided to regulate the site in question for public parking; and for parking of the Government vehicles, the Bar Association, with ulterior motive, decided to overnight convert the space, in order to contend that the space was under the occupancy of the lawyers. It was further alleged by defendants in suit, that on the afternoon of June 3, 1991, it was reported to the Deputy Commissioner, that trollies, full of earth and malba were being brought by tractors and dumped into the parking area, i.e. the site in dispute. Shri Krishan Kumar, Officer in charge, informed the Deputy Commissioner that Shri Rajiv Khosia was supervising the operation. In these circumstances, there was a genuine apprehension that lawyers were contemplating construction activity on the site, in question. Apprehending this, a letter was dispatched on June 3, 1991, to Shri Rajiv Khosla, received in his office at about 6 20 P.M., in which the factum, relating to the alleged construction activity on Government land, in Tis Hazari Complex, was brought to his notice. He was further informed that any unauthorised encroachment/ construction, if not stopped, would entitle the Administration to intervene in the matter for protection of public land, in accordance with law.

(12) According to defendants, that fearing that Association was not likely to respond to the request of the Administration, the police had already been informed to be ready to stop alleged illegal activity, and the activity of further dumping earth and malba on the site was stopped forthwith.

(13) The allegations, made in the contempt petition, were also denied in toto by respondents. According to respondents, in the contempt petition, stay order was served at about 12.30, P.M. on June 4, 1991.

(14) By the impugned order, learned Additional District Judge, did not finally dispose of the petitioner's application, filed u/s 151 of Civil Procedure Code, along with contempt petition, for restoration of status quo ante. However, the learned trial Court, directed the parties, to maintain status quo, in respect of the suite site, as of that date. It was further directed that petitioners' application, be kept pending for disposal, and would be considered, at the time of considering the contempt application. It was further observed that the learned Sub Judge, to whom the case would be entrusted, would try to dispose of the matter, within a period of 2 months.

(15) It is this impugned order, which is being assailed by petitioners, in the present petition.

(16) The petition, along with an application, u/s 151 of Civil Procedure Code, for restoring the status quo ante, as it existed prior to the date of incident, came up for hearing before J.K. Mehra, J. on June 28, 1991. Notice was issued to respondents, for July 1, 1991, and Shri Atul Wig, Advocate, accepted notice on behalf of respondents no. 1. By means of order of the same date, respondents were directed, not to interfere with the lawyers operating for their work, for that day, from the places where from they were operating earlier. It was further directed that in carrying out their work, lawyers would not, in any way, Cause obstruction or hinderance, in the free movement of the vehicles of the Administration or block any passage.

(17) After passing of the aforesaid order, respondent no. 1 presented, through her counsel, an application u/s 151 of Civil Procedure Code, at the residence of the Vacation Judge, for stay of the operation of the order dated June 28, 1991, on the ground, that this would create very serious law and order problem.

(18) On June 8, 1991. at 10.35 P.M, J.K. Mehra, J. issued notice of the application, returnable on June 29, 1991, at 2.30 P.M. It was further directed that both sides would maintain status quo, as of that date, till then.

(19) To avoid confrontation, between the lawyers and Delhi Administration, and to enable both the parties to arrive at an amicable settlement, I listed the matter in my chamber, where, useful discussions took place. At the request of learned counsel for the parties, I also inspected the site in question, on July 20, 1991, in the presence of Shri Kapil Sibal, Counsel for respondents I and 2, Shri R.P. Lao, counsel for petitioners, Shri Ar.un Kumar Mathur, Dcp, Delhi, Shri B.D. Kaushik and Shri Rajiv Khosla President and Honorary General Secretary of Delhi Bar Association. Unfortunately, the amicable settlement could not be arrived at, as, both had their own difficulties and problems.

(20) This is the reason, I am proceeding to decide the matter, on merits.

(21) Mr. R.P. Lao, argued that the lawyers have a fundamental right, to carry on their profession with dignity and honour. This fundamental right is guaranteed, under Article 19(1)(g) of the Constitution of India. Towards the discharge of their

professional duties, and carrying on their work, lawyers have a right to have proper seats or chambers, in the Courts complex. The Chambers, which have been constructed, in consultation with the Administration, are insufficient, because the number of lawyers has been increasing every year. The result is that some of the lawyers are sitting in the bar rooms, but, large number of lawyers, who have no chambers, are sitting in the verandahs of the Court building, and Central Hall. Even, in the other parts of the complex, many lawyers have put up their temporary sheds.

(22) It was further contended by Mr. Lao, that the stand of the Administration, that the site in question was part of the road, was not correct, as, it is evident from the plan, filed by both the parties, nor it was a parking site. In fact, the lawyers were occupying the site and were carrying on their professional work, from the seats and sheds, put up by them. Possession of the lawyers is impliedly admitted in reply, filed by respondents I and 2, to the contempt petition, as well as, the written statement, where it is alleged that the earth and malba were being dumped on the site. According to Mr. Lao, the Association claimed that about 150 or 160 lawyers had their seats in the site in dispute and this was in the Court Complex itself. The suit was also filed in Court and office of the Deputy Commissioner was also situated in the Court. How, the Association could state an incorrect fact in the plaint when, the actual position, at the time of the suit, could have been verified by the Vacation Judge, by appointing a Local Commissioner. Moreover, where was the necessity and urgency to approach the Vacation Judge at 11 P.M., for getting a preventive relief, if there were no seats of the lawyers, at the disputed site. The other contention, urged by Mr. Lao was, that the impugned order is perverse one and, in fact, instead of deciding the application, the trial Court kept the same pending, without granting any relief. The order, on the face of it is illegal, because it shows non application of mind. The affidavit, filed by the Secretary of Delhi Bar Association, has been completely ignored. The observation of the trial Court, Mr. Lao argued, that there was no iota of evidence, placed by either of the parties to show the possession, was contrary to the admitted facts. In this regard, Mr. Lao made reference to the reply of respondent no. 4, in the contempt petition, wherein, it was stated that one Duli Chand Advocate, had alleged that Shri Rajiv Khosia had asked him that his puce structure, installed in the extreme corner of the site, would be removed and other lawyers would be seated on that structure. The report was lodged by Shri Duli Chand, which is found in the Daily Diary entry, in the register of May 2, 1991, in the police post Tis Hazari, Police Station Subzi Mandi, Delhi. Again, on May 4, 1991 another Daily Diary No. 18, at the aforesaid police post, shows that Shri DuU Chand lodged another report and complained against Shri Rajiv Khosla and others, for demolition of structure.

(23) According to Mr. Lao, it clearly shows that even in the first week of May, 1991, there was admittedly one puce structure of Shri Duli Chand and Shri Rajiv Khosia wanted that some lawyers be accommodated. It shows that many lawyers were having their seats there. On the razed ground, near the tea stall, there are

temporary sheds of some lawyers and so is the case on one side of the passage, leading to the Tehsil building. The next contention of Mr. Lao was that the trial Court misread the documents. The last contention of Mr. Lao was that it was the duty of the Administration to provide chambers to the lawyers. Till Chambers are provided, the Administration was duty bound to provide space to lawyers for temporary sheds, as this is in public interest. Mr. Lao submitted that it was a lit case, where, the Court should interfere, as petitioners have been able to make out a very strong prima facie case, and unless the status quo ante is restored, petitioners and lawyers would suffer an Irreparable loss and injury.

(24) Reliance was placed upon the judgments in Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, ; Century Flour Mills Ltd. Vs. S. Suppiah and Others, ; State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, ; Vikram Deo Singh Tomar Vs. State of Bihar, ; Sodan Singh and etc. etc. v. New Delhi municipal Committee and another etc., Air 1989 SC 1988 and Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, .

(25) On the other hand, Mr. Kapil Sibal, learned Counsel for respondents 1 and 2 argued that the power of the High Court, under Article 227 of the Constitution of India, is limited and can be exercised only to correct error of jurisdiction on the part of the subordinate Courts and the Tribunal. The High Court is to see whether, the Tribunal or the subordinate Courts, function within limits of their jurisdiction. If the subordinate Courts and the Tribunal act, within their jurisdiction, but, commit an error of law, the High Court has no jurisdiction to interfere into the same. the High Court does not act as an appellate Court, under Article 227.

(26) The next contention of Mr. Sibal was, that, what the petitioners sought in their application, u/s 151 CPC ., was not a preventive relief, but the restoration of status quo ante. In other words, petitioners claimed the relief of temporary mandatory injunction. For this, petitioners were bound to make out, not only a prima facie case, but a very strong case, which, petitioners failed to make out. No document was placed in support of their pleas that they were having the seats, chairs or tables. Mere on the basis of the allegations, the trial Court has no jurisdiction to grant a temporary mandatory injunction. Not only this, even in the plaint, or subsequent application and petition, petitioners failed to disclose the names of those 150/160 lawyers, who were having their seats, at the site in dispute. None of these 150/160 lawyers has filed any affidavit, so far to show that he was having a seat, or his belongings have been removed.

(27) Mr. Sibal argued that no-doubt, lawyers should be provided with chambers, and in the absence of chambers, a proper place for carrying on their profession in the Court. But, the lawyers have no fundamental right to occupy the public land. The land in question was never in possession of the lawyers and to support of his contention, he referred to the averments, made in the written statement, where it is alleged that for regulating the parking site, what steps the Administration took.

(28) Mr. Sibal placed reliance upon the judgments in Shaik Mohammed Umar Saheb Vs. Kaleskar Hasham Karimsab and Others, ; Jijabai Vithalrao Gajre Vs. Pathankhan and Others, ; AIR 1975 1297 (SC); Mohd. Yunus Vs. Mohd. Mustaqim and Others, and Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, .

(29) In Century Flour Mills Ltd. (supra), the Full Bench of the Madras High Court, was considering the scope of the inherent power of the Court, u/s 151 of Civil Procedure Code, in the given situation, and held :

"IN our opinion, the inherent powers of this Court u/s 151 CPC . are wide and are not subject to any limitation. Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the Court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice. Even apart from Section 151, we should observe that as a matter of judicial policy, the Court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the Court's orders. But in this case it is not necessary to go to that extent as we hold that the power is available u/s 151 CPC .

(30) In Trimbak Gangadhar Telang and another (supra), while interring the scope of Articles 226 and 227 of the Constitution of India, Supreme Court held:

"AS would be apparent from the above narrative, the instant case does not involve any substantial question of law of general or public importance. Although counsel for the appellants has strenuously assailed the correctness of the findings of the Revenue Tribunal and of the High Court, we are unable to accede to his contention. We have not, despite careful consideration of the judgments and objections submitted to us, been able to discern any legal infirmity or error either in the decision of the Revenue Tribunal or of the High Court. It is a well settled rule of practice of this Court not to interfere with the exercise of discretionary power under Articles 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a tribunal is vocative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure of law has crept or where the order passed results in manifest injustice, that a Court can justifiably intervene under Article 227 of the Constitution. In the instant case, we have not been able to find any such flaw. The finding of the Revenue Tribunal that the respondents were independent tenants of separate parts of the land in dispute under Vasudeo Balwant Telang, the predecessor-in-interests of the appellants, which has been affirmed by the High Court, appears to be well founded in view of the following proved facts and circumstances : (1) The entry made in the record of rights after due enquiry according to law about the status of the respondents Nos. 2 and 3 as protected tenants in respect of the portions of the land in dispute in their possession. (2) Separate payment of the

rent by the respondents and acceptance thereof by Vasudeo Balwant Telang. (3) Application by Vasudeo Balwant Telang for declaration that respondents were jointly and severally responsible for payment of rent of the land in dispute. (4) Notices by Vasudeo Balwant Telang to the respondents terminating their tenancies on the ground that he required the portions of the land in their respective possession for personal cultivation. (5) Application filed by Vasudeo Balwant Telang against the respondents u/s 31 of the 1948 Act averring that he bona fide required the land for his personal cultivation".

(31) In *Chandavarkar Sita Ratna Rao* (supra), the Supreme Court was considering the power of the Court, under Articles 226 and 227 of the Constitution of India and held.

"IT is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest of injustice (see *Trimbak Gangadhar Telang* (supra)). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion, Therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into "questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the appellate bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, Therefore, the High Court was in error."

(32) In *Vikram Deo Singh Tomar* (supra), their Lordships of the Supreme Court, while considering the object and scope of Article 21 of the Constitution of India, held :

"INDIA is a welfare State governed by a Constitution which holds the pride of place in the hearts of its citizens. It lays special emphasis on the protection and well being of the weaker Sections of society and seeks to improve their economic and social status on the basis of constitutional guarantees spelled out in its provisions. It shows a particular regard for women and children, and notwithstanding the pervasive ethos of the doctrine of equality it contemplates special provision being made for them by law. This is only to be expected when an enlightened constitutional system takes charge of the political and socio-economic governance of a society, which has for centuries witnessed the

relegation of women to a place far below their due. We live in an age when this Court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen. And, so, in the discharge of its responsibilities to the people, the State recognises the need for maintaining establishments for the care of those unfortunates, both women and children, who are the castaways of an imperfect social order and for whom, Therefore, of necessity provision must be made for their protection and welfare. Both common humanity and considerations of law and order require the State to do so. To abide by the constitutional standards recognised by well-accepted principle, it is incumbent upon the State when assigning women and children to these establishments, euphemistically described as "care Homes", to provide at least the minimum conditions ensuring human dignity. What we see before us in the instant case is a crowded hovel, in which a large number of human beings have been thrown together, compelled to subsist in conditions of animal survival, conditions which blatantly deny their basic humanity. How else shall we describe an establishment where women are detained in miserable conditions, compelling most of them to sleep on broken floors, in damp and dank conditions, with no covering whatever to protect them from the chill wind and near freezing temperatures of the north Indian winter, who are fed a wretched health- denying diet, are denied the basic amenities of convenient toilets and a private bathing place, who, if they complain, are beaten up, and although attacked by disease and illness are unable to find timely medical relief. It is clear that the Welfare Department of the State Government of Bihar views its responsibilities in regard to these women with a lightness which ill befits its existence and the public funds appropriated to it. The name of "Care Home" given to these establishments is in ironic misnomer. The primitive conditions in which the inmates are compelled to live shock the conscience".

(33) In *Sodnan Singh and etc. etc.* (supra). One of the questions for decision, before their Lordships of the Supreme Court, was the right of the Hawkers, to carry on their trade or business, on the pavements of the roads of the city of Delhi, under Article 19(I)(g) of the Constitution of India. Their Lordships of Supreme Court held:

"THE controversy in the present cases, however, cannot be settled by what has been said earlier. The claim of the petitioners before us is much higher. They assert the right to occupy specific places on road pavements alleging that they have been doing so in the past. As has been stated earlier, the facts have been disputed and individual cases will be considered separately in the light of the present judgment. The argument, however, which has been pressed on behalf of the petitioners is that they have their fundamental rights guaranteed by Articles 19 and 21 of the Constitution to occupy specific places demarcated on the pavements on a permanent basis for running their business. We do not think there is any question of application of Article 21 and we will be briefly indicating our reasons. Therefore later. But can there be at all a fundamental right of a

citizen to occupy a particular place on the pavement where he can squat and engage in trading business ? We have no hesitation in answering the issue against the petitioners. The petitioners do have the fundamental right to carry on a trade or business of their choice, but not to do so on a particular place. The position can be appreciated better in the light of two decisions of this Court in Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others Vs. Union of India (UOI) and Others, and K. Rajendran and Others Vs. State of Tamil Nadu and Others, .

"STREET trading being a fundamental right has to be made available to the citizens subject to Article 19(6) of the Constitution. It is within the domain of the State to make any law imposing reasonable restrictions in the interest of general public. This can be done by an enactment on the same lines as in England or by any other law permissible under Article 19(6) of the Constitution. In spite of repeated suggestions by this Court nothing has been done in this respect. Since a citizen has no right to choose a particular place in any street for trading, it is for the State to designate the streets and earmark the places from where street trading can be done. Inaction on the part of the State would result in negating the fundamental right of the citizens. It is expected that the State will do the needful in this respect within a reasonable time failing which it would be left to the Courts to protect the rights of the citizens."

(34) In Shaikh Mahamad Umarsaheb (supra), the Supreme Court held that under Articles 226 and 227 of the Constitution of India, the High Court does not act as Court of appeal and, cannot reappraise the evidence. It was further held:

"THERE is certainly some substance in the grievance raised on behalf of the appellant that the first issue was rather confusing and misleading. Instead of framing a separate issue with regard to each charge of corrupt practice raised in the petition, the learned Judge framed the issue in a manner which leaves much to be desired. For instance he should have framed separate issue with regard to each of the pamphlets. The issues should further have specified the different heads of corrupt practice committed in respect of each of the pamphlets. We cannot, however, come to the conclusion that because of the unsatisfactory nature of the issues framed, the whole trial is vitiated. The appellant knew exactly what points he had to meet. Evidence was adduced about the publication and distribution of the pamphlets by the election petitioner and contradicted by the appellant. As we have already stated, although the evidence about the distribution of the pamphlet was meagre and not beyond reproach, it was not for the High Court to take the view that the order ought to be quashed on the ground that there was no evidence. It was urged by learned Counsel for the appellant that there was enough material for the Court to come to the conclusion that Hakim Abdul Rahiman Shaikh was not a person whose veracity could not be depended upon. There is much that can be said against him but this does not mean that everything deposed to by him should be rejected and when the trial Judge accepted the evidence with regard to the distribution of the pamphlet by

the appellant the High Court which was not hearing an appeal could not be expected to take a different view in exercising jurisdiction under Articles 226 and 227 of the Constitution and for ourselves, we see no reason to interfere with the order of the High Court."

(35) In *Jijabai Vithalrao Gajre (supra)*, the Supreme Court was considering the scope of the power of High Court, under Article 227 of the Constitution of India, and it was held:

"MR.Sanghi in support of his first contention has drawn our attention to the principles laid down in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and in *Rambhau v. Shankar Singh Civil Appeal No. 35 of 1966, D/17.3.1966 (SC)*. It is no doubt true that this Court has held in those decisions that the powers of the High Court under Article 227 are not greater than the powers under Article 226 of the Constitution. It has been further laid down that the power of interference under Article 227 was limited to seeing that the tribunals function within the limits of their authority and that the High Courts cannot sit in appeal against the order of a tribunal in a petition under Article 227. In our opinion, the High Court in this case cannot be considered to have exceeded its jurisdiction under Article 227 of the Constitution. We have already stated that all findings on material facts have been accepted by the High Court. It is only on two material aspects which affect the jurisdiction of the revenue tribunals to grant the necessary relief under the Act that the High Court differed. Those were : (i) the power of the mother on the facts found by the tribunals to grant the lease on behalf of her minor daughter and its legal effect; and (ii) the maintainability of the application of the appellant u/s 39 of the Act. Therefore we cannot accept the contention of Mr. Sanghi that any error has been committed by the High Court in considering these aspects in proceedings under Article 227."

(36) In *Babhutmal Raichand Oswal (supra)* their Lordships of Supreme Court were considering the powers of the High Court, to interfere with finding of fact, under Article 227 of the Constitution of India, and held : "The Special Civil Application preferred by the appellant was admittedly an application under Article 227 and it is, Therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court ? It is well settled by the decision of this Court in *Waryam Singh and Another Vs. Amarnath and Another*, that the ;

".....POWER of superintendence conferred by Article 227 is, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee*, 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."

This statement of law was quoted with approval in a subsequent decision of this Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division*

and Appeals, Assam and Others, and it was pointed out by Sinha, J. as he then was, speaking on behalf of the Court in that case:

"It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority".

It would, Therefore, be seen that the High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate Court or tribunal. Its function is limited to seeing that the subordinate Court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it. What Morris, L.J., said in *Rex v. Northumberland Compensation Appeal Tribunal* (1952-1 All Er 122) in regard to the scope and ambit of certiorari jurisdiction must apply equally in relation to exercise of jurisdiction under Article 227. That jurisdiction cannot be exercised :

"As the cloak of an appeal indisguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings." If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts."

(37) In *Mohd. Yunus* (supra) the Supreme Court was considering the scope of supervisory jurisdiction of High Court, under Article 227 of the Constitution of India and held :