

**(1951) 09 CAL CK 0011**  
**In the Calcutta High Court**  
**Case No : (sic) Case No. 1770 of 1950**

Hamilton Estate of Satjelia Kutchery

APPELLANT

Vs

Ananta Mandal

RESPONDENT

**Date of Decision :** 04-09-1951

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 3(17)  
Charter Act, 1861 — Section 15  
Civil Procedure Code, 1908 (CPC) — Section 115  
Constitution of India, 1950 — Article 136, 226, 227, 227(1), 227(2)  
Government of India Act, 1915 — Section 107  
West Bengal Bargadars Act, 1950 — Section 2, 9  
West Bengal Bargadars Act, 1960 — Section 10, 10(1), 10(2), 11, 12  
West Bengal Bargadars Rules, 1950 — Rule 10, 11, 12, 12(1), 12(2)

**Citation :** (1953) 1 ILR (Cal) 226

**Hon'ble Judges :** P.N. Mookerjee, J;Chakravartti, J

**Bench :** Division Bench

**Advocate :** Atul Chandra Gupta, Basanta Kumar Panda and Payodhi Nath Roy Choudhury, for the Appellant;Nares Chandra Sen Gupta and Biswanath Bajpayee, for the Respondent

## Judgement

Chakravartti, J.—This Rule raises a fundamental question under the West Bengal Bargadars Act, 1960. It was contended that a Conciliation Board established under the Act or an Appellate Officer appointed under it, was not a "tribunal" within the meaning of Article 227 of the Constitution and, therefore, this Court had no jurisdiction under the Article to interfere with a decision of either of those authorities. The Rule was issued under Article 227 and is directed against certain orders passed under the Bargadars Act.

2. If we could accept the contention as correct, it would obviously be unnecessary to proceed further and refers at all to the facts of the case. But as, in our opinion, the contention is not sound, it is necessary to state the facts.

3. The opposite party is an inhabitant of village Sudhangsupur in the district of

24-Parganahs and the Petitioner is a tenant in the employment of the Sir Daniel Hamilton Estate, which owns an extensive area of lands in the locality. On April 16, 1950, the opposite party made an application to the Gosaba Bhugch's Conciliation Board, in which he stated that the Petitioner had declined to allow him to continue his cultivation of about 15 bighas of land which he had been cultivating under the bhug system for the last 16 or 18 years. It was prayed that suitable orders might be passed, which would enable him to continue such cultivation. The case of the opposite party was that the applicant had been cultivating the lands, not under the bhug system, but as a labourer paid for his labour in money, and that he had been doing so under written agreements, executed annually. It was, accordingly, contended that the applicant was not a bargadar, as defined in the Act, and the dispute was not one within the jurisdiction of the Board. This contention was given effect to by the Board, which found that the agreement for the previous year, which was admitted by the applicant, made no reference to his receiving a share of the produce but, on the other hand, the endorsements of payment on the agreement, which also were admitted, showed that he had received payments in money or in paddy in lieu of money on various dates, as his wages. It was, accordingly, held that the opposite party was not a bargadar and, in that view his application was rejected.

4. The opposite party then appealed to the Appellate Officer, who reversed the decision of the Board. The Appellate Officer held that, although, according to the terms of the agreement, the opposite party could certainly not be held to be a bargadar, yet Section 18 of the Act entitled him to go behind the written contract and give effect to the real relationship between the parties. He found such relationship to be that "between a landowner and his bargadar", relying on certain papers he had called for from the Petitioner at the instance of the opposite party and also what he referred to as "common knowledge" about the origin of the contract system introduced in the estate. In the result, he declared the opposite party to be a bargadar and remanded the case to the Board with a direction to pass the actual order for possession after taking into consideration certain circumstances.

5. The Petitioner then moved this Court under Article 227 of the Constitution and obtained the present Rule.

6. In support of his preliminary objection, Dr. Sen Gupta contended that a Board constituted under the Bargadars Act was only a body of arbitrators and in no sense a tribunal. According to him, "tribunals" as contemplated by Article 227 of the Constitution, were not something different from courts and the term had been added only in order to cover bodies or authorities who were in fact courts, but were yet not called by that name. A Board under the Bargadars Act, it was contended, was not a tribunal, because it was not a court, and it was not a court because it was not bound to hear evidence. Dr. Sen Gupta admitted that the absence of an obligation to hear evidence was the only circumstance he could point to as distinguishing a Board from a court.

7. Before proceeding further, I may mention that the exact point is covered by an unreported decision of a Division Bench to which we drew the attention of the learned advocates. In 56 CWN 25 decided on June 19, 1951, by Harries, C.J. and Das J., the learned Chief Justice observed as follows:

There can be no doubt, I think, that the Bh?gch?s Conciliation Board ... has to hear applications and decide according to law. They have to give the parties an opportunity of putting forward their contentions and I think that there can be no doubt whatever that a Bh?gch?s Conciliation Board is a tribunal which has to exercise its functions judicially. The Appellate Officer bears appeals from the Board and, I think, it is equally clear that he is a tribunal.

8. It would have been enough for us to say that we would follow this decision with which we agreed, but in view of the arguments addressed to us at some length. I might as well deal with them.

9. I have no doubt at all that the extreme contention of Dr. Sen Gupta that the word "tribunals" in Article 227 also means courts but only courts not so called, must be put on one side. The same argument was advanced before the Supreme Court in the case of *Bharat Bank, Ltd. v. Employees of the Bharat Bank Ltd.* (1950) St to (sic) in connection with. Article 136, where also the two words occur, but it found no favour with the majority of the Judges. Observed Mahajan, J.:

The word "tribunal" has been used in previous legislation in a number of statutes and it is difficult to think that the Constitution, when it introduced this word in Article 136, intended to limit its meaning to only those tribunals which, though not described as courts strictly speaking, were discharging the same or analogous functions as were being discharged by courts.

10. It is to be noticed that Article 136, deals with power to entertain an appeal and if even in that Article the word "tribunal" means bodies or authorities other than courts, there is less reason for saying that in Article 227, which deals with the power of superintendence, "tribunal" and "court" are synonymous. Even Mukherjee J. who represented the minority view of Sastri J. and himself held that the Court, having authority in that behalf, might interfere with decisions of non-judicial tribunals by means of writs. The fact that Article 227 does not mention writs, which are provided for elsewhere, but leaves the procedure unnamed seems to me to be immaterial.

11. Dr. Sen Gupta pointed out that in Section 107 of the Government of India Act, 1915 and Section 224 of the Act of 1935, which were predecessors of Article 227, the word "court" was qualified by the words "the time being subject to its appellate jurisdiction(sic)". Those words do not appear in Article 227 and Dr. Sen(sic) contention was that the omission of those" words(sic) addition of the word "tribunal" indicated that the intention was only to bring within the purview of the Article courts which, though court were not subordinate to the High Court. I am unable to accept that construction of Article 227.

12. The course of the exercise of revisional jurisdiction by the High Courts over bodies or authorities deciding rights of parties has been the same in this country as in England, except for the temporary check imposed by the Government of India Act, 1935. At the beginning it was limited to acts or decisions of courts properly so called, but gradually it was extended to bodies of an ambiguous status till at last it reached out occasionally even to organs of the Government. The courts found it possible to interfere with acts done by the second and the third type of authorities by calling them "judicial" but, as has been pointed out, at least in the case of administrative bodies "it was not the "power which was judicial, but the procedure which the courts "held must be followed before the power could be exercised". The Courts insisted that whoever decided anything which affected rights of parties must at least proceed after a due enquiry into the facts and give an opportunity to the parties to be heard and the obligation they enforced even on bodies which were not, strictly speaking, courts and even, on administrative authorities when they were not merely taking executive action but determining a question. If there was nothing in relevant statute or rules or regulations which made such procedure obligatory, the courts said they would supply the omission from the common law or natural justice, *Cooper v. Wordsworth Board of Works* (1863) 14 C.B. (M.S.) 180 (194) : 143 Q.R. 414 (420) and where there were prescribed rules, the direction would be to conform to them. As the sphere of State activity began to widen, the administration became more and more complicated and a large variety of new rights and obligations came into existence which were entrusted for decision or enforcement to administrative officers or special bodies. The courts took it upon themselves to see that even such authorities did not act arbitrarily and intervened, except when expressly debarred by statute, to make them follow the rules prescribed for them and also the fundamental principles of justice, which every statute conferring a power was taken to intend. But it was often found difficult to regard the functions of such authorities as "judicial", even according to the extended meaning of the term, and, therefore, the concept of "quasi-judicial" functions was introduced for the purposes of review by the courts of decisions administrative or special bodies, affecting rights of individuals, (sic)certain limitations, even domestic tribunals were not (sic)as will appear from the decision of Maugham J. as he then was, in *Maclean v. The Workers' Union* (1929) 1 Ch. 602 and of the Privy Council in the recent case of *Lennox Arthur Patric O' Reilly v. Cyril Cuthbert Gittens* (1949) 54 (sic)124. In England, the interference has been chiefly by means of writs, but in India where writs ran only within the Original Jurisdiction of the High Courts, which had such jurisdiction, the power of Superintendence has been, till recently, all that could be relied upon. Still, the High Courts have attempted generally to proceed on the same principles and follow the same course as in England, but they have been handicapped by the requirement that the bodies with which they could interfere must be courts. The little they have been able to do has been by calling different ambiguous bodies "courts" although, in doing so, they greatly strained the term. The Government of India Act of 1985 curtailed their powers further in that revision of judgments of inferior courts in exercise of

the power of superintendence was expressly forbidden. In my opinion, Article 227 of the Constitution has now Removed this double handicap. The Article is not still keeping the High Court's power of superintendence limited to courts, as Dr. Sen Gupta contended, but has extended it to persons and bodies who also determine questions between parties under the Authority of the State, though they are not courts, properly so called. And the power of superintendence now comprises both administrative and judicial control. Dr: Sen Gupta referred to sub-art.(2) of Article 227 where only the word "court" is used but not "tribunal". But that sub-art. relates only to some special administrative matters and it begins by saying that the provision made by it for specified powers is without prejudice to the generality of the provisions contained in sub-art. (1) "Tribunal", however, cannot mean private persons or bodies or authorities who decide matters without reference to any rules and only according to their own notions of right and wrong. Although in certain circumstances, a suit may lie in court in, respect of the acts of such persons or bodies, they cannot be said to be subject to general superintendence by the High Court. In my view, the word "tribunal" in Article 227 means, as Mr. Gupta suggested, a person or a body, other than a court, set up by the State for deciding rights between contending parties in accordance with rules having the force of law and, I would add, doing so, not by way of taking executive action but of determining a question. It was obviously in that view that a commissioner of a Division, acting as the appellate authority under the Motor Vehicles Act, was held to be a tribunal within the meaning of the Article in *Sabitri Motor Service, Ltd. v. Aransol Bus Association* I.L.R {1951} 2 Cal. 437 and an Appellate Court under the Rent Control Act of 1950 was held to be a tribunal in *P.C. Guha v. W.A. Basil* (1952) 55 C.W.N. 611. The effect of the addition of the word "tribunal" to the word "court" in Article 227 and the removal of the bar against revision of judgments in exercise of the power of superintendence, in my view, is that all agencies, whether courts or not, performing the duty of deciding disputed questions of right between parties on behalf of and under the sanction of the State and in, accordance with. State-made laws, are placed under the administrative and judicial control of the High Court.

13. A, second branch of Dr. Sen Gupta's argument was that a Conciliation Board set up under the Barg?d?rs" Act would still not come under Article 227, for it was only a body of arbitrators who were not bound to hear evidence and could decide a case just as they liked after making such enquiry as they thought fit to make or without making any enquiry at all. This view of a Conciliation Board is not warranted by the provisions of the Act. Dr. Sen Gupta relied on Rule 7(2) of the Rules, framed under the Act, which provides that the "Board may make such "enquiries as it may think fit before making an award or, order", but that is clearly a general provision and does not mean that even if the parties wish to adduce evidence, the Board may decline to take it, if it does not "think fit" to hear evidence. Indeed, Section 10 of the Act confers on the Board all the powers which a civil court has under the CPC as to summoning and examining witnesses and compelling production of documents. It is not easy to see why these powers

should have been conferred, if it was not intended that the Board should take all necessary oral and documentary evidence. Again, Section 3(7) of the Act enjoins the Board to give effect to agreements in writing regarding division of the produce and the Explanation to Section 7(2) makes it the duty of the Board to consider whether consent to such agreements was caused by fraud,- coercion, misrepresentation or mistake. In connection with applications for resumption of lands u/s 5(1), the question whether the person cultivating the lands is or is not a barg?d?r must often arise and u/s 5(2), the Board must have often to decide whether the owner is cultivating the resumed lands himself or has let hem out to a different barg?d?r. These are all matters of evidence and the inclusion of such matters among the duties of the Board, coupled with the provisions of Section 10(2), makes it abundantly clear that the Act intends the Board to take and hear evidence. It is true that, by reason of Section 10(2), the Board is not bound to observe the provisions of the Evidence Act, but, that may only, show that the Board is not a court.

14. The Board decides disputed questions of tight between contending parties. It acts under the authority of a states Under Rule 7(1) it has to give the parties an opportunity to be heard. u/s 10, it has all the powers of a civil court regarding summoning and examination of witnesses and production of documents-and it is obviously intended that evidence shall be heard. The Board has to decide questions in accordance with the provisions of the Act, as expressly directed by Section 7(2). u/s 7(3) it makes an award or passes an order. Failure to comply with an award or order made by it is punishable with imprisonment or fine u/s 14. u/s 12(2) such award or order is executable and u/s 15 any money payable under an award or order is recoverable as an arrear of public demand. The orders of the Board thus take effect by their own force and they are not mere declarations which have to be enforced by further proceedings. u/s 11, orders and awards of a Board are appealable. Under Rule 12, the Appellate Officer also is bound to give the parties an opportunity of being heard. Both the Board and the Appellate Officer have thus almost all the trappings of a court and perform analogous functions, though they are not courts, properly so called.

15. The provisions summarised above can leave no doubt that the Board; and the Appellate Officer are both tribunals within the meaning of Article 227 and that, as such, they are subject to the judicial superintendence of this Court. It is true that Section 9(1) provides that no award or order of a Board or an Appellate Officer shall be questioned in any court and u/s 2(e) "Court", includes the High Court. But, obviously, those provisions cannot prevail against the Constitution.

16. Some question was raised about the correct form of procedure in respect of proceedings under Article 227. No special procedure has been described either by the Constitution or by any rules; The procedure of an application in revision and a Rule issued thereon was followed in proceedings u/s 107 of the Government of India Act of 1915 and the same procedure, which has so far been adopted for proceedings under Article, 227, appears to be a convenient and appropriate one,

particularly as it serves to distinguish a proceeding under Article 227 from a proceeding by way of a writ under Article 226. There appears to be some overlapping between the two Articles which makes it desirable that proceedings under one should be distinguishable from those under the other.

17. What the true limits of the jurisdiction under Article 227, presents a further question of some difficulty. I am aware thus in practice the Article is being applied as if it confers the widest possible powers on the High Court, including the powers of revising the decision of an inferior court or tribunal on the merits and, substituting a correct decision for the erroneous one as a matter of everyday procedure in all cases. I have strong doubts whether a power of superintendence can include such power. I shall leave aside the case of courts, where the decision may be revisable under other provisions of law as well, such as Section 115 of the CPC and where a further question may arise as to how the powers under such provisions and under Article 227 are to be adjusted. But even in the case of tribunals, I am not sure that Article 227 gives the High Court power to review the substance of the decision itself rather than merely power to control the procedure preparatory to the decision and to require observance of the prescribed forms of procedure and a proper standard of fairness. Extreme cases can certainly be thought of where something so shocking to the sense of justice has occurred that the Court considers it necessary or even imperative to quash the proceeding or the decision altogether or to decide the matter itself, but normally a power of superintendence would not seem to imply the ordinary appellate or revisional powers of a superior Court. It is, however, not necessary to decide that question finally in this case, because the power under Article 227 at least includes power to require that the facts shall be fully investigated and fairly found and when found, fairly considered after giving the parties a proper opportunity to explain them. That cannot be said to have been done in the present case and failure in that regard is a sufficient ground for interference.

18. To return now to the facts, the whole approach of the Appellate Officer to the question before him was wrong, because he began by saying that Section 18 of the Act entitled him to disregard the contract and find out the facts for himself. All that Section 18 means is that where there is a bargain contract, the rights of the downer and the bargain shall be governed entirely by the provisions of the Act and any terms or conditions contained in any contract or instrument or custom or usage which are contrary to those provisions, shall be of no force or effect. They must yield to the Act. The section does not mean that even as regards the existence or otherwise of a settlement of the bargain type, the contract or instrument must or may be disregarded. The Board or the Appellate Officer is undoubtedly entitled to see whether a written contract purporting to evidence the arrangement between the parties is a sham document, not representing the true incidents of the contract, but the source of that power is not Section 18. It appears that because the Appellate Officer started with the notion that Section 18 empowered him to treat the agreement as not existing at all, he strayed away even at the beginning from the proper line of approach. The

proper line to take before discarding the instrument would be to see if the recorded payments were consistent with the terms of the agreement suggested an arrangement on other terms. If the payments were found to be consistent with, the terms of the deed, other and stronger" reasons would be required in Order to held that the deed did not represent the true relationship between the parties. The Appellate Officer also refers to what he describes as a matter of common knowledge that the contract system was introduced in the estate 10 or 12 years ago in order to ensure that the cultivator could have "no legal right of possession o(sic) the produce of the land". What he means is by no means clear for, if the estate really introduced a contract system in lieu of the barg? system, it had every right to do so and there is as reason why the contracts should not prevail. If it is meant that a form of contract, not in accordance with the real incidents of the agreement was gone through, then the alleged object is not intelligible for, 10 or 12 years ago the Barg?d?rs Act was not in existence and there could be no motive for misrepresenting payment of a share of the produce as payment in money. The Appellate Officer does not seem to have been aware that the definition of "barg?d?r" in the Barg?d?rs Act was in the same terms as the proviso to Section 3(17) of the Bengal Tenancy Act and he does not seem to have realised that under that proviso, 10 or 12 years ago, receipt of a share of the produce instead of receipt of payment in money would not improve this status of the person cultivating the land in any way Throughout, the Appellate Officer was misled by his wrong notions of law with the result that he failed to examine the facts in the way they should have been examined, Nor is his examination of the evidence satisfactory. He seems to have treated the "Field Book", produced for the first time before himself, as a great discovery but in reality it added nothing to the endorsements on the back of the agreement which the Board had before it. He read the entries in the Field Book in his own way, apparently without any explanation by anybody. Before us, Mr. Gupta attempted to give an explanation, with the assistance of his client, but Dr. Sen Gupta naturally objected and said, in my opinion rightly, that the whole matter must be gone into on proper evidence by the authorities below. He also complained that the Board, on its part, had paid no heed of his client's case that the agreement had been obtained from him by undue influence and fraud and had not given him an opportunity to adduce evidence in that behalf and, further and failed to consider that unlike the other endorsement of (sic)ment the (sic) two bore no thumb impression of his client

19. In my opinion, there has been no due enquiry into the (sic) and no attempt to find out, either by the Appellate(sic) or the Board, whether there is another side to the case, each overlooking one side. The case must therefore go back. When we observed that the case would be remitted to the Board, Dr. Sen, Gupta submitted that there was a difficulty in the way of following that course, because Rule 7(3) required the Board to dispose of an application within three weeks of the date of its filing. In my opinion, there is no substance in that objection, for the time-limit cannot apply when the case is remanded by a superior authority.

Indeed, if observance of the time-limit be mandatory, the decision of the Appellate Officer, which was in favour of Dr. Sen Gupta's client, was void, because it was given much later than fifteen days from the date of the filing of the appeal which is the time-limit under Rule 12(2).

20. In the result, we set aside the orders of both the Appellate Officer, and the Board and remand the case to the Board in order that the application may be heard afresh. The Board must consider all the issues raised by the parties, including the issue of alleged coercion, if pressed, and must give the parties proper opportunity to adduce evidence on the issues, both oral and documentary, and also make such further enquiry, if any, as it may itself desire to make, with proper notice to the parties. The Board will then consider all the materials and decide whether or not the opposite party held the lands under the barg? system and pass final orders in accordance with its finding and the provisions of the Act. Nothing said in this judgment must be taken as an expression of opinion on any question of fact or the truth or otherwise of the case of either party.

21. The Rule is thus made absolute. There will be no order as to costs.

22. P.N. Mookerjee, J. I agree, but I would like to add a few words.

23. Broadly speaking, two questions of fundamental importance have been raised before us. One relates to the interpretation of Article 227 of the Constitution and directly embraces the determination of its scope and the extent of the powers and authority of this Court thereunder. The other concerns primarily the functions—more particularly their nature and character—of the Bh?gch?ss Conciliation Board and of the Appellate Officer under the West Bengal Barg?d?rs" Act, 1950. In the determination of this latter question a construction of the provisions of the West Bengal Act, referred to above, is plainly involved, but the applicability of Article 227 to the present case, will also, in the ultimate analysis, depend largely on a consideration of the said provisions. Both the Act and the Constitution have, therefore, to be carefully examined for a proper disposal of this Rule before us.

24. Article 227 of the Constitution vests this Court with powers of superintendence over "all courts" and tribunals throughout the "territories in relation to which it exercises jurisdiction". It manifests, on the face of its language, a clear departure not only from its immediate predecessor Section 224 of the Government of India Act, 1935, but also from the cognate earlier provisions namely, Section 107 of the Government of India Act, 1915, and Section 15 of the Charter Act of 1861. This departure is at once striking and highly suggestive and a close study of it in retrospect seems to be of immense help in the solution of the first question now set Before us.

25. u/s 15 of the Charter Act this Court had powers of "superintendence over all courts which may be subject to its "appellate jurisdiction" and such powers could be exercised not merely for purposes of administrative control, but also for judicial interference, that is, for interference with judicial decisions of the inferior

courts: vide Nilmoni Singh Deo v. Taraknath Mukerjee ILR (1892) Cal. 295 : L.R. 9 IndAp 17. Section 107 of the Government of India Act, 1915, though it used a slightly different language, introduced no change in the situation, Then came Section 224 of the Government of India Act, 1935, which expressly limited this power of superintendence to. administrative matters. Such was the position immediately before January 26, 1950, when the new Constitution came into force and in Article 227 it made the following provision:

Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

26. Viewed in the above background, certain fundamental changes become plainly visible. On the free of the Article, the High Court's power of superintendence now extends not merely over "all Courts ... subject to its appellate jurisdiction" but over "all courts and tribunals throughout the territories, in "relation to which it exercises jurisdiction". The limitation again of this power to administrative control which was there u/s 224 of the Government of India Act, 1935, has been swept away. Apparently, therefore, vital changes of a two fold character have been introduced by Article 227 and for such introduction the Constitution has employed no secret. methods With characteristic boldness restrictive clauses have been committed from the new Article and words, apparently indicative of an extended jurisdiction, have been, openly added. To all appearances, the High Court's power of superintendence(sic) new been enlarged both as regards subject and sub(i)sic)H and although the reality, extent and(sic) effect of the(sic) have to be more closely examined there is little doubt, if mere language be the guide, that the Constitution intended that the High Courts would now possess far wider powers of superintendence than they ever had.

27. That by the Constitution there has been some enlargement of the High Court's powers of superintendence has not been disputed before us but the extent of this enlargement hag, given rise to acute controversies. It has been accepted by Dr. Sen Gupta, who has appeared to oppose this Rule that this power of superintendence does comprehend both administrative and judicial controls and does extend over all courts situate within the territorial jurisdiction of the High Court concerned, but a point has been raised-and seriously pressed before us-as to the meaning of the word "tribunal" as used in Article 227. That word, Dr. Sen Gupta has boldly argued, is a mere surplusage and does not add to or alter the scope of the article and in support of this argument he has placed strong reliance upon the juxtaposition of the two Words "court" and "tribunal" in the Article in question and upon the well-known doctrine of ejusdem generis. Bharat Bank's case (1960) S.C.E. 459, apparently against this contention of Dr. Sen Gupta, has been sought to be distinguished on the ground that the Article there considered, namely, Article 136, related to entirely different matters and immediately concerned the powers and duties of the supreme judiciary of this land. No inference, so pleads Dr. Sen Gupta, can or ought to be drawn from that

decision as to the meaning of the word "tribunal" in Article 227.

28. The point, thus raised, requires careful consideration, but, having given the matter my best thoughts, I am unable to persuade myself to accede to Dr. Sen Gupta's argument. That argument, to say the least, is utterly inappropriate in interpreting the Constitution and appears to be basically unsound and opposed alike to principle and authority. It clearly overlooks the historical setting in which the Article in question was conceived and patently ignores the experience of ages upon which its whole structure was built. It is founded upon a total misconception of the role of the superior judiciary, to wit, the High Courts, under the Constitution and upon an utter disregard of the forces which gave birth to it and sustain its life. To yield to such an argument would indeed be disastrous and destructive not merely of the dynamic potentialities of the living organism which we so fondly and proudly call our Constitution, but also of the chief purposes for which the High Courts exist same. A similar argument was found unacceptable same Court in Bharat Bank's case (supra) and, as am not impressed by learned Counsel's attempt to distinguish that case from the present on the point, now before us, I am bound to reject his argument. The attempted distinction seems to be without substance and wholly unavailing and I have no hesitation in holding that the word "tribunal" as used, in Articles 136 and 227 bears the same meaning. On reason and on authority the Articles must, therefore, be held to embrace within their legitimate spheres of influence not merely judicial bodies but quasi-judicial bodies as well.

29. The net conclusion thus emerges that under Article 227 of the Constitution every High Court has power of superintendence over all judicial and quasi-judicial bodies within its territorial limits in respect of both judicial and administrative matters. Written in letters of light the Article illumines the entire field of judicial and quasi-judicial activities with its own effulgrance which apparently perceives no barriers. The power conferred is immense and, as there are no words of restraint employed by the Article, the control envisaged may well be unlimited. Does it, however, necessarily follow that the exercise of this unlimited power should also be unrestrained and should be made in every case of error, however trifling, committed by the subject bodies? If that be the legitimate construction it would plainly a brogate the necessity of almost all the provisions contained in the different municipal laws for the exercise of appellate, or revisional powers. Such could never have been the intention of the Constitution and, in fairness to it, it is only just to hold that, however unlimited the control may be in its scope and extent, its exercise should be judicially restrained. The mere fact that the Constitution employs no word of restraint is not enough to justify untrammelled exercise of the power, conferred by the Article in question. In the vastness of its extent and the great responsibilities which such vastness necessarily carries with it lies the restraint to the exercise of that power of superintendence. It is not to be resorted to for correcting any and every mistake or for undoing any and every kind of injustice By its very nature the remedy provided by the Article is to be applied only to extraordinary cases. For ordinary cases the normal remedies

under the municipal laws are available and it is only wise that the field pertaining to such remedies should be left untouched by the constitutional powers under Article 227. Only, therefore, where grave injustice has occurred or likely to occur by reason of some mistake committed by the inferior judicial or quasi-judicial bodies and the municipal law provides no adequate remedy the High Courts are entitled and indeed bound to intervene under Article 227 and correct the mistake and grant appropriate relief. Where again gross violation of some statutory provision has been made by the inferior bodies and against such violation, no adequate remedy is to be found in municipal law the "High Courts ought to interfere, in appropriate cases, under the said Article. That seems to be the true view of the control contemplated by Article 227 and the more I look into the matter the more I, feel convinced of the justness and propriety of that view.

30. Having thus determined the nature, scope and extent of the power under Article 227 and the manner of its exercise I proceed now to consider the second question, demanding consideration in the present case. The main provisions of the West Bengal Bargadars' Act, bearing upon this question, have already been referred to by my Lord in the judgment pronounced by him and therein they have been sufficiently discussed. Very little remains to be added and I would only draw attention to Sections 3(2), 4, 8 and 12 and Rules 3, 5, 6, 9, 12(1) and 13. The rule-making power is contained in Section 19 and the rules having been made under that power are really parts of the statute itself and have the force of law and thus the question raised before us has to be answered upon a proper consideration of the relevant sections of the Act and of the relevant rules as well. A glance at these relevant provisions, as indicated above, will be enough to show that both the Bhagch's Conciliation Board and the Appellate Officer under the West Bengal Bargadars' Act are at least quasi-judicial bodies and thus come within the purview of Article 227.

31. Section 6 of the Act read with Section 7 provides for establishment of the Bhagch's Conciliation Board by the State Government for decision of disputes between "Bargadars" and "Owners" with regard to cultivation and produce of land. Sections 3, 4 and 5 and to some extent Rule 2 also define the substantive rights of the parties in relation to such produce and cultivation and Section 7(2) enjoins that, in deciding the disputes, the Board has to observe the provisions of the said Sections 3, 4 and 5. The procedure to be followed by the Board is laid down in Section 12(1) read with Rules 6 and 7 under which the parties concerned have a right to be heard and Section 10 makes it clear that the Board although it is not bound to observe the provisions of the Indian Evidence Act (vide Section 10(2)), has the powers of a civil court in regard to the taking of evidence (vide Section 10(1)). Rule 9 imposes a duty on the Board to make a record of essential facts and also impliedly recognized the power of the Board to take evidence. The decision of the Board is to be in the form of an award or order (vide Section 7(3)), which award or order, as the case may be, is intended to be binding on the parties (vide Section 14 and also Sections 9 and 18), and u/s 15 any money payable under such award or order is recoverable as an arrear of

public demand. u/s 12(2) the Board's award or order is executable and Rule 13 lays down the manner of execution. Against an award or order of the Board an appeal may be taken to the Appellate Officer who is appointed by the State Government (vide Section 11). The appeal is to be filed within the period prescribed in Rule 10 in form indicated in Rule 11 and the procedure for this appellate stage is provided in Section 12(7) read with Rule 12 under which also the parties concerned have a right to be heard. The order of the Appellate Officer is executable under the Act (vide Section 12(2)) and the manner of its execution is also laid down in Rule 12. There is One other provision to which reference ought to be made at this stage. That is Rule 6(2) under which the Board is authorised to make such enquiries as it may think fit before making an award or order.

32. I have given above a brief outline of the relevant statutory provisions which, on analysis, leads plainly to this position that both the Board and the Appellate Officer under the Act are appointed by the State Government to exercise the power of the State to decide disputes or controversies between its subjects relating to rights of property and that they are to exercise this power in accordance with the rules of law and procedure laid down in the statute in question providing, inter alia, for substantive rights, that is, rights in relation to property, and also accordance of opportunity to the parties concerned to be heard on the points in dispute. In such context the provision in Rule 6(2) authorizing the Board to make such enquiries as it may think fit before making an award or order-and there is even no s such provision in regard to the Appellate Officer-does not really affect the position. The Board and the Appellate Officer, therefore, exercise the "judicial power" of the State within the meaning ascribed to the said expression by Griffith C.J. in *Huddard Parker and Co. v. Moorehead* (1909) 8 C.L.R. 330, 337. and quoted with approval by the Judicial Committee of the Privy Council in *Shell Co. of Australia v. Federal Commissioner of Taxation* (1931)(sic) and by the Supreme Court in *Bharat Bank's* case, already cited. They thus perform judicial functions-and, as already indicated, Rule 6(2) does not, in the context, noticed above, rob the proceedings before the Board of their judicial character-and are at least quasi-judicial bodies upon tests laid down in *Cooper v. Wilson* (1937) 2 K.B. 309, 340., cited with approval in *Bharat Bank's* case. They are not courts, strictly so-called, they may not also (strictly speaking, judicial bodies, as they are out of the hie(sic)f the ordinary judicial system and may not posses(sic)all circumstances, all the ingredients essential for the(sic)nder the authority of *Cooper's* case, but, nevertheless have unquestionably all the recognized attributes(sic)judicial bodies (vide the authorities already cited) (sic)as such amenable to the jurisdiction of this Court un(sic)7

33. The only questions that now remains is as to whether, in the instant case before us, circumstances exist for the exercise of our constitutional powers under Article 227. This aspect of the matter has been fully discussed in the judgment of my learned brother and I need only say, that, on the materials before us, it is

abundantly clear that the present case is pre-eminently one for interference under that Article. I, therefore, agree with my Lord in holding that the order of the Appellate Officer against which this rule has been obtained cannot stand. That order must, accordingly be set aside, and, as I agree also that, in the circumstances of this case, a remand is necessary for a just and proper decision of the disputes between the parties in accordance with law, I concur in the order proposed by my learned brother.