
(2014) 04 JH CK 0044
In the Jharkhand High Court
Case No : L.P.A. No. 521 of 2012

Murliwala Minerals Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 225, 226, 227, 32
Government of India Act, 1919 — Section 107, 108
Government of India Act, 1935 — Section 224
Mines and Minerals (Development and Regulation) Act, 1957 — Section 30

Citation : (2014) 3 AJR 313 : (2014) 2 JLJR 611

Hon'ble Judges : R. Banumathi, C.J.; S. Chandrashekhar, J

Bench : Division Bench

Advocate : Sumeet Gadodia, Advocate for the Appellant; Shamim Akhtar, S.C. (Mines) and Prabhas Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, C.J.—When the judgment was rendered by the Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, whether intra-court appeal is maintainable under clause 10 of the Letters Patent constituting the High Court of Judicature at Patna (as adopted by the Jharkhand High Court) is the point falling for consideration in this Letters Patent Appeal.

2. Brief facts, which led to filing of this L.P.A., are as under:-

The appellant is a company carrying on business of mining in the name and style of Murliwala Mineral Pvt. Ltd. and engaged in exploring, opening, working mines drills and shafts borewell and pump refine and quarry for stone, coal, earth lime stone, iron, aluminum, tantinium, vanadium, mica, feloshper, quartz, bauxite and other minerals and to develop the same for business purposes. By its application dated 9.1.1997 in terms of Rule 22(i) of the Minerals Concession Rules, 1960, the appellant applied for grant of lease for minerals, Mica Felosphar and Quartz,

in an area of 140 acres of land situated in Mouza Nagri of the district Giridih. Vide memo dated 12.3.1997, the Assistant Mining Officer, Giridih, informed the appellant to furnish certain documents and the appellant submitted the same. Vide memo dated 23.2.2000 issued by the Additional Director, Mines, Govt. of Bihar, the Assistant Mining Officer, Giridih, was directed to procure the "No Objection Certificate" of the Forest Authority and to make the same available along with other documents.

3. It is noted that though the appellant applied for grant of mining lease on 9.1.1997 and the same remained pending with the erstwhile State of Bihar and after creation of the State of Jharkhand, vide letter dated 23.2.2000 and by other letters, the appellant was directed to appear before the authorities; but the application was not disposed of. For early disposal of his application, the appellant moved Jharkhand High Court in W.P. (C) No. 6318/2003. Vide order dated 23.12.2003, the same was disposed of with a direction to the State Government to dispose of the application within three months. Vide memo dated 12.5.2004, the State of Jharkhand rejected the application of the appellant. The appellant preferred revision u/s 30 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 55 of the Mineral Concession Rules, 1960, before the Government of India and vide order dated 19.3.2007, the revision application was dismissed by the revisional authority.

4. Challenging the order of the Deputy Commissioner, vide memo dated 12.5.2004, and the order dated 19.3.2007 passed by the revisional authority, the appellant filed writ petition, W.P. (C) No. 2844/2007. The said writ petition was dismissed on 22.11.2012, in which learned Single Judge held that in exercise of supervisory jurisdiction in the writ petition under Article 227 of the Constitution of India, the Court is to see whether the State Government or Tribunal has remained within the bounds of the jurisdiction or committed serious error of jurisdiction or acted in excess of jurisdiction. The learned Single Judge further held that the original authority, i.e. the State Government or the revisional authority, namely, the Central Government Mining Tribunal have not committed any perversity warranting interference by the court and accordingly dismissed the writ petition. Being aggrieved by the dismissal of the writ petition, the appellant has preferred this intra-court appeal.

5. In view of the serious objections raised by the respondents as to the maintainability of the intra-court appeal, we heard the submissions of the learned counsel for the parties on the question of maintainability of the intra-court appeal.

6. Learned counsel for the appellant, Mr. Sumeet Gadodia, submitted that irrespective of the fact that whether the impugned order is passed by a Court or the Tribunal at the first instance in exercise of the original jurisdiction or by the Tribunal in exercise of its appellate or revisional jurisdiction, such an order can always be challenged by a writ petition under Article 226 of the Constitution of India seeking writ of certiorari and the order of the learned Single Judge passed

in such writ petition under Article 226 could be challenged by way of Letters Patent Appeal. It was submitted that even though the writ petition was filed under Article 227 of the Constitution of India, since the appellant has challenged not only the order passed by the revisional authority but also challenged the order passed by the original authority, i.e. Deputy Secretary to the Department of Mines and Geology, Government of Jharkhand, therefore, writ petition has to be treated as one filed under Article 226 of the Constitution of India. It was submitted that merely because in its nomenclature the writ petition has been filed under Article 227, the same is not conclusive in determining the nature of the writ petition and going by the prayer and substance of the pleadings in the writ petition, it is to be construed only as a writ application filed under Article 226 of the Constitution of India and consequently, this LPA against the order of the Single Judge is maintainable. In support of his contention, Mr. Sumeet Gadodia, learned counsel for the appellant, relied upon the following judgments:-

- (i) Mavji C. Lakum Vs. Central Bank of India,
- (ii) Shahu Shikshan Prasarak Mandal and Another Vs. Lata P. Kore and Others,
- (iii) State of Madhya Pradesh and Others Vs. Visan Kumar Shiv Charan Lal,
- (iv) Ashok K. Jha and Others Vs. Garden Silk Mills and Another,
- (v) M.M.T.C. Ltd. v. Commissioner of Commercial Taxes & Ors. ((2009) 1 SCC 8)
- (vi) Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil,
- (vii) Sahi Ram Vs. Avtar Singh and Others,

7. Learned counsel for the respondents submitted that the appellant filed writ petition under Article 227 of the Constitution of India for quashing the order passed by the 2nd respondent and the learned Single Judge held that neither the original authority (State Government), nor the revisional authority (Union of India) has committed any error of jurisdiction or illegality to exercise supervisory jurisdiction under Article 227 and since the writ petition under Article 227 was dismissed by the learned Single Judge, L.P.A. is not maintainable under clause 10 of the Letters Patent. In support of his contention, learned counsel for the respondents relied upon the following judgments:-

- (i) Umaji Keshao Meshram and Others Vs. Radhikabai and Another,
- (ii) Kanhaiyalal Agraival & Ors. v. Factory Manager, Gwalior Sugar Co. Ltd. (2001 (3) Jhr. Cr. 184 (SC))
- (iii) M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad,
- (iv) Swapan Kumar Bandopadhyay Vs. SAIL and Others,
- (v) Gujarat State Road Transport Corporation Vs. Firoze M. Mogal and 1 Another,

8. We have considered the submissions and carefully gone through the

judgments relied upon the appellant and the respondents.

9. Article 226 of the Constitution of India deals with power to issue certain writs. Article 226 reads as under:-

226. Power of High Courts to issue certain writs (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without--

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Article 227 of the Constitution of India, which falls immediately after Article 226, deals with "power of superintendence over all courts by the High Court". Article 227 reads as under:-

227. Power of superintendence over all courts by the High Court.- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerics and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

10. From the analysis of the above two Articles, it emerges that the power conferred under both the provisions are distinct and separate. A perusal of Article 227 of the Constitution would indicate that the power of superintendence conferred on the High Court is a power that is confined to courts and tribunals in relation to which it exercises jurisdiction. On the other hand, the power conferred on the High Court under Article 226 is not a power that is confined to courts and tribunals, but it extends to any person or authority including, in appropriate cases, any Government within the territorial jurisdiction of the High Court.

11. Under Article 226, the High Courts have power to issue directions, orders and writs to any person or authority including any Government. Whereas under Article 227, every High Court has power of superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same as the power of superintendence. By no stretch of imagination can a writ in the nature of habeas corpus or mandamus or quo warranto or prohibition or certiorari be equated with the power of superintendence. These are writs which are directed against persons, authorities and the State. The power of superintendence conferred upon every High Court by Article 227 is a supervisory jurisdiction intended to ensure that subordinate courts and tribunals act within the limits of their authority and according to law (see *State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc.*,) and *Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others*, . The orders, directions and writs under Article 226 are not intended for this purpose and the power of superintendence conferred upon the High Courts by Article 227 is in addition to that conferred upon the High Courts by Article 226. Though at the first blush it may seem that a writ of certiorari or a writ of

prohibition partakes the nature of superintendence inasmuch as at times the end result is the same, the nature of the power to issue these writs is different from the supervisory or superintending power under Article 227. The powers conferred by Articles 226 and 227 are separate and distinct and operate in different fields. The fact that the same result can at times be achieved by two different processes does not mean that these two processes are the same. (Vide Ashok K. Jha and Others Vs. Garden Silk Mills and Another, .)

12. In the aforesaid context, we may usefully refer to the recent judgment of Hon"ble Supreme Court rendered in the case of Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, , wherein Hon"ble Supreme Court explained the difference between Articles 226 and 227 of the Constitution of India and observing that Articles 226 and 227 stand on substantially different footing and operate in different fields, Hon"ble Supreme Court proceeded to lay down principles on exercise of High Courts" jurisdiction under Article 226 and Article 227 of the Constitution of India as under:-

43. In a rather recent decision of the Supreme Court in Surya Dev Rai Vs. Ram Chander Rai and Others, , a two-Judge Bench of this Court discussed the principles of interference by the High Court under Article 227. Of course in Surya Dev Rai Vs. Ram Chander Rai and Others, this Court held that a writ of certiorari is maintainable against the order of a civil court, subordinate to the High Court (SCC p. 688, para. 19 of the Report). The correctness of that ratio was doubted by another Division Bench of this Court in Radhey Shyam and Another Vs. Chhabi Nath and Others, and a request to the Hon"ble Chief Justice for a reference to a larger Bench is pending. But insofar as the formulation of the principles on the scope of interference by the High Court under Article 227 is concerned, there is no divergence of views.

44. In para. 38 sub-para. (4) at SCC p. 695 of the Report, the following principles have been laid down in Surya Dev Rai Vs. Ram Chander Rai and Others, and they are set out:

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

45. Sub-paras. (5), (7) and (8) of para. 38 are also on the same lines and extracted below; (Surya Dev Rai Vs. Ram Chander Rai and Others,

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

the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) * * *

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

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

46. Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. (See *Umaji Keshao Meshram and Others Vs. Radhikabai and Another*, .) However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. (*State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, .)

47. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields. Another distinction between these two jurisdictions is that under Article 226, the High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. (See *Surya Dev Rai Vs. Ram Chander Rai and Others*, and also the decision of the Constitution Bench of this Court in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, .)

48. The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised

in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial, authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed *ex debito justitiae* or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra-court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all the High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

[Underlining added]

13. After referring various judgments, in paragraph 49, Hon^{ble} Supreme Court proceeded to summarize the principles on the exercise of High Courts' jurisdiction under Article 227 of the Constitution of India as under:-

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

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

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

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

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh and Another Vs. Amarnath and Another*, , and the principles in *Waryam Singh and Another Vs. Amarnath and Another*, have been repeatedly followed by subsequent Constitution Benches and various other

decisions of this Court.

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

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

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

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

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in *L. Chandra Kumar Vs. Union of India* and others, and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the CPC by the CPC (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

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

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

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

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

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.

14. Explaining the scope of Article 226 and Article 227, in *Umaji Keshao Meshram and Others Vs. Radhikabai and Another*, , Hon"ble Supreme Court held as under:-

98. From what has been said above it must follow that when a single Judge of a Chartered High Court decides a petition under Article 226 or 227, his judgment is one given pursuant to Article 225 of the Constitution and is appealable under Clause 15 of the Letters Patent unless it falls within one of the excluded categories.

99. According to the Full Bench even were Clause 15 to apply, an appeal would be barred by the express words of Clause 15 because the nature of the jurisdiction under Articles 226 and 227 is the same inasmuch as it consists of granting the same relief, namely, scrutiny of records and control of subordinate Courts and tribunals and, therefore, the exercise of jurisdiction under these Articles would be covered by the expression "revisional jurisdiction" and "power of superintendence". We are afraid, the Full Bench has misunderstood this scope and effect of the powers conferred by these Articles. These two Articles stand on an entirely different footing. As made abundantly clear in the earlier part of this judgment, their source and origin are different and the models upon which they are patterned are also different. Under Article 226 the High Courts have power to issue directions, orders and writs to any person or authority including any Government. Under Article 227 every High Court has the power of superintendence over all Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same as the power of superintendence. By no stretch of imagination can a writ in the nature of habeas corpus or mandamus or quo warranto or prohibition or certiorari be equated with the power of superintendence. These are writs which are directed against persons, authorities and the State. The power of superintendence conferred upon every High Court by Article 227 is a supervisory jurisdiction intended to ensure that subordinate Courts and Tribunals act within the limits of their authority and according to law (see *State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc.*, and *Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others*,). The orders, directions and writs under Article 226 are not, intended for this purpose and the power of superintendence conferred upon the High Courts by Article 227 is in addition to that conferred upon the High Courts by Article 226. Though at the first blush it may seem that a writ of certiorari or a writ of prohibition partakes of the nature of

superintendence inasmuch as at times the end result is the same, the nature of the power to issue these writs is different from the supervisory or superintending power under Article 227. The powers conferred by Articles 226 and 227 are separate and distinct and operate in different fields. The fact that the same result can at times be achieved by two different processes does not mean that these two processes are the same.

100. Under Article 226 an order, direction or writ is to issue to a person, authority or the State. In a proceeding under that Article the person, authority or State against whom the direction, order or writ is sought is a necessary party. Under Article 227, however, what comes up before the High Court is the order or judgment of a subordinate Court or tribunal for the purpose of ascertaining whether in giving such judgment or order that subordinate Court or tribunal has acted within its authority and according to law. Prior to the commencement of the Constitution, the Chartered High Courts as also the Judicial Committee had held that the power to issue prerogative writs possessed by the Chartered High Courts was an exercise of original jurisdiction (see *Mahomedalli Allabux Vs. Ismailji Abdulali*, , *Raghunath Keshav Khadilkar Vs. Poona Municipality and Another*, , AIR 1943 164 (Privy Council) and AIR 1947 90 (Privy Council) . In the last, mentioned case which dealt with the nature of a writ of quo warranto, the Judicial Committee held:

In their Lordships' opinion any original civil jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or later enactments falls within the description of ordinary original civil jurisdiction.

By Article 226 the power of issuing prerogative writs possessed by the Chartered High Courts prior to the commencement of the Constitution has been made wider and more extensive and conferred upon every High Court. The nature of the exercise of the power under Article 226, however, remains the same as in the case of the power of issuing prerogative writs possessed by the Chartered High Courts. A series of decisions of this Court has firmly established that a proceeding, under Article 226 is an original proceeding and when it concerns civil rights, it is an original civil proceeding (see, for instance, *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, , *S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another*, , *Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others*, , *Arbind Kumar Singh Vs. Nand Kishore Prasad and Others*, and *Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others*, .

101. Consequently, where a petition filed under Article 226 of the Constitution is according to the rules of a particular High Court heard by a Single Judge, an intra-court appeal will lie from that judgment if such a right of appeal is provided in the charter of that High Court, whether such Charter be Letters Patent or a statute. Clause 15 of the Letters Patent of the Bombay High Court gives in such a case a right of intra-court appeal and, therefore, the decision of a Single Judge of that High Court given in a petition under Article 226 would be appealable to a Division Bench of that High Court.

102. It is equally well-settled in law that a proceeding under Article 227 is not an original proceeding. In this connection, we need refer to only two decisions of this Court. In Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, of Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, :

Article 227 of the Constitution no doubt does not confer on the High Court power similar to that of an ordinary court of appeal. The material part of this Article substantially reproduces the provisions of s. 107 of the Government of India Act, 1915 except that the power of superintendence has been extended by this Article to Tribunals as well. Section 107 according to preponderance of judicial opinion clothed the High Courts with a power of judicial superintendence apart from and independently of the provisions of the other laws conferring on them revisional jurisdiction. The power under Art. 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors : see Waryam Singh and Another Vs. Amarnath and Another, . Under Art. 226 of the Constitution it may in this connection be pointed out the High Court does not hear an appeal or a revision: that court is moved to interfere after bringing before itself the record of a case decided by or pending before a court, a tribunal or an authority, within its jurisdiction.

The origin and nature of the power of superintendence conferred upon the High Courts by Article 227 was thus stated by this Court in Waryam Singh and Another Vs. Amarnath and Another, .

15. The same principle is reiterated in Kanhaiyalal Agrawal & Ors. v. Factory Manager, Gwalior Sugar Co. Ltd. (2001 (3) Jhr. CR. 184 (SC)) as under:-

6. So far as the law on the matter is concerned as to whether an appeal would lie against an order made in writ petition before the High Court challenging an order of the labour court, this Court in its decision in M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, , stated that "if a Single Judge exercises jurisdiction under Article 226. Letters Patent Appeal would be maintainable, but if the jurisdiction is exercised under Article 227 it will not be maintainable. But with an explanation that if the Single Judge of the High Court in considering the petitioner under Article 226 or Article 227 does not state under which provision he has decided the matter and where the facts justify filing of petition both under Article 226 and Article 227 and a petition so filed is dismissed by the Single Judge on merits, the matter may be considered in its proper perspective in an appeal. This Court held as aforesaid in view of the decisions of this in Umaji Keshao Meshram and Others Vs. Radhikabai and Another, ; RDCCB v. Dinkar , and Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah and others, .

16. Referring to various judgments of Hon"ble Supreme Court on the issue, the Full Bench of Gujrat High Court in Gujarat State Road Transport Corporation Vs. Firoze M. Mogal and 1 Another, held as under:-

120. The aforementioned decisions make the position of law as clear as a noonday that when a learned Single Judge of a High Court exercises power under Article 226 of the Constitution of India, he exercises extraordinary original jurisdiction and this jurisdiction is distinct from revisional jurisdiction and appellate jurisdiction of the High Court. The proceedings before the learned Single Judge under Article 226 of the Constitution of India would remain original proceedings and the words of the Section should be understood to mean, exercise of powers under Article 226 of the Constitution of India, which is always original.

127. At this stage, it must be made clear that the power which the High Court exercises under Art. 227 of the Constitution is a power of judicial superintendence over subordinate Courts and Tribunals situated within the State, such a power of judicial superintendence was, for the first time, conferred upon the High Courts by the Indian High Courts Act, 1861. Subsequently, the power was conferred by Section 107 of the Government of India Act, 1915 and Section 224 of the Government of India Act, 1935. The Supreme Court in *Waryam Singh and Another Vs. Amarnath and Another*, has held that the power under Art. 227 was a power of judicial superintendence available not only against the decisions of subordinate Courts but also against decisions of all Tribunals functioning within the State over which the High Court exercised jurisdiction.

17. In catena of decisions, Hon"ble Supreme Court has held that power to issue writ under Article 226 is an original proceeding. The power under Article 227 of the Constitution of India is intended to be used sparingly and the High Court can interfere in exercise of its power of superintendence for the purposes of keeping the subordinate courts and tribunals within the bounds of their authority and in exercise of its power of superintendence, the High Court can interfere when there has been a patent perversity in the orders of the Tribunals and courts subordinate to it or where there has been gross or manifest failure of justice or where there has been infringement of basic principles of nature justice. Having discussed the nature of the proceeding under Article 226 and 227 of the Constitution of India, let us consider the right to file appeal under clause 10 of the Letters Patent against the judgment of Single Judge.

18. Clause 10 of the Letters Patent constituting the High Court of Judicature at Patna (as adopted by the Jharkhand High Court) deals with appeals to the High Court from the Court. Clause 10 of the Letters Patent reads as under:-

10. Appeal to the High Court from Judges of the Court.- And we do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order) made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction of one Judge of the said High Court or one Judge of any

Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February One thousand nine hundred and twenty-nine, in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us. Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.

19. Clause 10 of the Letters Patent provides for an appeal against the judgment of a Single Judge of the High Court, if the order passed by the Single Judge amounts to "judgment" unless the appeal is specifically barred as falling under one or other three categories which have been set in the preceding paragraph. An analysis of the provisions of clause 10 of the Letters Patent makes it clear that no appeal lies against any one of the following categories of judgment:-

(i) Judgment passed in exercise of appellate jurisdiction in respect of a decree or order;

(ii) An order made in exercise of revisional jurisdiction;

(iii) A sentence or order passed or made in exercise of the power of superintendence under the provisions of Section 107 of Government of India Act or in exercise of criminal jurisdiction of one Judge of High Court or one Judge of Divisional Court pursuant to Section 108 of the Government of India Act.

20. From a catena of decisions, it is established that the proceeding under Article 226 is the original proceeding. Per contra, the proceeding under Article 227 is supervisory and superintending in nature. Considering the scope of maintainability of the appeal under clause 15 of the Letters Patent of Gujrat High Court and explaining that the proceeding under Article 227 are supervisory and superintending in nature, in paragraph 183 to 190, Gujrat High Court in Gujarat State Road Transport Corporation Vs. Firoze M. Mogal and 1 Another, held as under:-

183. Thus, Clause 15 of the Letters Patent provides for an appeal from the judgment of the Court of the original jurisdiction to the High Court in its appellate jurisdiction. Powers of the High Court under Articles 226 and 227 of the Constitution of India are distinct, separate and operate in different fields, even if in some cases, result to be achieved is the same. Proceedings under Article 226 are original in nature. However, the High Court under Article 227 exercises the powers of superintendence over the subordinate Courts and the Tribunals.

184. The powers contemplated by the Constitution makers under Articles 226

and 227 appear to be different. The former is described as the power to issue certain writs, orders or directions. The latter is described as the power of superintendence. There are two separate articles in the Constitution next door to each other dealing with these powers. The power under Article 226 is only judicial. The power under Article 227 is both judicial and administrative. The power under Article 226 is exercised on the application of a party and for the enforcement of a legal right.

185. The power under Article 227 can be exercised suo motu by the Court as the custodian of all the justice within the limits of its territorial jurisdiction and for the vindication of its position as such.

186. The power under Article 227 is a power that can be exercised only over courts and tribunals. On the other hand, the power under Article 226 is a power that can be exercised not only over courts and tribunals but also over other bodies like the Government.

187. Prior to the Constitution, the power to issue writs could not be considered to be a branch of the power of superintendence because the power of superintendence possessed by the High Courts did not carry with it the power to issue writs. Even under the Constitution, the power of superintendence is treated as a power divorced from the power to issue writs. This is borne out by the fact that the Supreme Court possesses the power to issue writs, yet it does not possess the power of superintendence.

188. It is thus explicit according to us that there cannot be interchangeability between the jurisdiction of the High Court under Articles 226 and 227 even if occasionally the ultimate result to be achieved may be same or similar in nature. One cannot be substantiated for other.

189. Proceedings under Article 226 are original in nature. Aggrieved party can canvass grievance relating to infringement of the civil right. In these proceedings, the wrong doer may be a person or an authority and is a necessary party, since has a right to support, justify or defend the act complained of.

190. In contra distinction, the proceedings under Article 227 are supervisory and superintending in nature. The High Court thereunder exercises the jurisdiction to ascertain and confirm whether the Court or Tribunal has discharged its junction within its jurisdiction and according to law. Such Court or Tribunal when they have adjudicated a dispute relating to the contractual right between the parties are not necessary party in a proceeding under Article 227. They have no obligation to defend their orders impugned in the proceedings wherein the aggrieved party claims a relief to quash the same. Such Courts or Tribunals cannot claim to be aggrieved due to quashing of their orders or can legitimate make complaint for non-joinder in a proceeding under Article 227.

21. If a judgment under appeal falls within the four corners of Article 227, the intra-court appeal would not be maintainable. The determining factor is the

nature of the order passed by the Single Judge, which is appealed against. Neither mentioning in the cause title of the application of both the Articles, nor granting of ancillary order thereupon by the Single Judge would be relevant. In each case, the Division Bench has to consider the substance of the judgment under appeal to ascertain whether the Single Judge has mainly exercised his jurisdiction under Article 226 or 227 of the Constitution of India. In the case of Ashok K. Jha and Others Vs. Garden Silk Mills and Another, , the Hon"ble Supreme Court held that for determining the question of maintainability of an appeal against such a judgment of the Single Judge the Division Bench has to find out whether in substance the judgment has been passed by the learned Single Judge in exercise of the jurisdiction under Article 226 of the Constitution. In the event in passing his judgment on an application which had mentioned in its cause-title both Articles 226 and 227, the Single Judge has in fact invoked only his supervisory powers under Article 227, the appeal under Clause 15 would not lie.

22. Keeping in view the above principles, if we examine the present case, it has to be pointed out that the writ petition has been filed under Article 227 of the Constitution of India. In the writ petition, the appellant sought for quashing of the order dated 19.3.2007 passed by the revisional authority - Central Government Mining Tribunal, by which the revision of the appellant against the original order has been rejected. In the order, learned Single Judge has also observed that in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, the writ petition has been filed.

23. Against an order of refusal of application for lease u/s 30 of the M.M.D.R. Act, aggrieved party has right of revision before the Central Government. In exercise of that revisional power, Central Government has the right to alter, set aside and grant lease in favour of the aggrieved party. Rules 54 and 55 of the M.C. Rules contain detailed provision for the exercise of this revisional jurisdiction by the Central Government. The proviso to sub-rule (1) of rule 54 of the M.C. Rules confers discretion on the Central Government to condone the delay in applying under this rule. Rule 55 says that after calling for records and hearing the State Government the Central Government may "confirm, modify or set aside the order and pass such other order in relation thereto, as the Central Government may deem just and proper". Sub-rule (2) of rule 55 confers powers on the Central Government to stay the operation of an order passed by the State Government or any other authority until the final disposal of the application for revision. It will be seen that Section 30 of the M.M.D.R. Act read with the aforesaid M.C. Rules, give wide power to the Central Government: (1) to condone the delay, (2) to grant interim relief to the petitioner, and (3) to pass any order as they may deem just and proper.

24. As pointed out earlier, in the writ petition the order passed by the revisional authority, i.e. Central Government Mining Tribunal, was under challenge. The said order has been passed by the Mining Tribunal in exercise of its statutory

revisional power u/s 30 of the M.M.D.R. Act read with Rules 54 of the M.C. Rules. The M.M.D.R. Act itself confers upon the Central Government wide quasi-judicial power to decide the matter in revision and in exercise of the revisional jurisdiction, the Central Government acts as quasi-judicial authority and it gives reasonable opportunity to the parties and pass order. While so, it is not correct to contend that the High Court could have exercised the extra-ordinary jurisdiction under Article 226 of the Constitution. The writ petition was rightly filed under Article 227 of the Constitution of India invoking supervisory jurisdiction of the High Court and the Letters Patent Appeal filed against that order is not maintainable.

25. Learned counsel for the appellant contended that in the writ petition, the appellant has not only challenged the order dated 19.3.2007 passed by the revisional authority but the appellant has also prayed for quashing of the original order contained in memo No. 534 dated 12.5.2004 issued by the Deputy Secretary, Department of Mine and Mettology, Government of Jharkhand and since the appellant has also challenged the original order, the writ petition has to be treated as one filed under Article 226 of the Constitution of India and therefore the Letters Patent Appeal is maintainable. The order of the Central Government rejecting the revision of the appellant for grant of mining lease to him confirmed the rejection of the application of the appellant by the State of Jharkhand. Thus, there is merger of the order of the State Government in the order of the Central Government, which is superior authority. Therefore, the appellant is not right in contending that since the original order of rejection of the application of the appellant by the State Government is under challenge, it is amenable to the jurisdiction of the High. Court under Article 226 of the Constitution of India. Since there is merger of the order of the State Government in the order of the Central Government, High Court would have no jurisdiction to entertain the writ petition under Article 226 and rightly the writ petition has been filed under Article 227 invoking supervisory jurisdiction. Learned Single Judge rightly held that in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, writ petition has been preferred and that the authorities have not committed any perversity so as to warrant interference by this Court. In view of the above discussion, we hold that since the writ petition has been filed under Article 227 of the Constitution of India, this LPA is not maintainable.

In the result, this LPA is dismissed as not maintainable.