
(2014) 12 AHC CK 0045
In the Allahabad High Court
Case No : C.M.W.P. No. 58143 of 2007

Neelam Nusrat and Others

APPELLANT

Vs

Ghulam Qadir and Others

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 21(1)(b), 3(a), 3(a)(1), 3(g)

Citation : (2015) 3 ALJ 1 : (2015) 108 ALR 696 : (2015) 1 AWC 796

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Ajay Kumar Singh, Ashish Kumar Singh and P.K. Ganguli, Advocates for the Appellant; A.P. Srivastava, Advocates for the Respondent

Judgement

Sudhir Agarwal, J.—This case has come up by the order of Hon''ble the Chief Justice as fresh today in view of Apex Court's judgment dated 3.11.2014 passed in Civil Appeal No. 10011 of 2014 (arising from SLP (C) No. 27616 of 2014) whereby earlier judgment of this Court dated 29.5.2014 has been set aside and the Hon''ble Court, in the relevant part of its order, has said as under:

"Keeping in view the facts and circumstances of the present controversy, we are of the view that the order passed by the High Court is a non-speaking order and, as such, deserves to be set aside. The same is accordingly set aside.

The matter is remanded back to the High Court requiring it to consider the matter on merits in accordance with law. We would appreciate if the Hon''ble Chief Justice of the High Court lists the matter before the same Hon''ble Judge who had disposed of the matter by passing the impugned order dated 29.5.2014.

The appeal is disposed of in the above terms.

The parties are directed to appear before the High Court on 4.12.2014 whereupon the High Court shall dispose of the matter by hearing it on day-to-

day basis."

Though the case has been called several times, but neither petitioners appeared in person nor any of their Counsels has put in appearance. In the circumstances, I called upon the learned Counsels who had appeared in this matter and whose vakalatnama is on record through the Court Master.

2. Sri Ajay Kumar Singh, one of the Counsels for petitioners, stated that he has no instructions in the matter and Sri P.K. Ganguly would argue the matter. When called, Sri Ganguly appeared and stated that neither he is aware of Supreme Court's order nor possess file since his client took away the same and has not given any instruction to him to contest and argue the matter after remand. Therefore, he is not able to assist the Court. No other Counsel has appeared. The petitioners are also not present though they were directed by Apex Court to appear before this Court today, i.e., on 4.12.2014 and obviously the aforesaid judgment was passed by the Court in presence of the parties, in appeal instituted by present petitioners themselves.

3. Sri A.P. Srivastava, Advocate, is present on behalf of respondents 1/1 to 1/9 and respondent No. 2. He, however, stated that since no argument has been advanced on behalf of petitioners, as none is present on their behalf, therefore, he is relying on the reasons stated in the impugned judgments and that may be looked into by the Court.

4. In these circumstances, particularly when none is present on behalf of petitioners to address this Court on merits, looking into the direction of Apex Court, I find no option but to look into the record on my own and to decide this writ petition by considering grounds taken in the writ petition itself.

5. Brief facts necessary for understanding the dispute and appreciation may be stated as under.

6. The dispute relates to premises No. A-9/44-B situate in Mohalla Kayastha Tola, Varanasi, which is a residential accommodation. Gulam Qadir and his wife Smt. Shahjahan Begam claimed ownership thereof by virtue of registered sale deed dated 4.5.1979 whereby the aforesaid premises was purchased by them from its earlier owner, Gulam Nabi alias Babu, resident of A9/44, Mohalla Kayastha Tola, Varanasi. The aforesaid premises comprises of a Dalan, Angan, Room and Kitchen on the ground floor and a Room and Tin Shed on the first floor. The defendant No. 1, Abdul Hadi alongwith his family, consisted of his wife and daughters, occupied the aforesaid premises on a monthly rent of Rs. 15/-.

7. Sri Ghulam Qadir and Shahjahan Begum (respondent No. 1, now deceased and substituted by legal heirs) and, respondent No. 2 filed an application under section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") before Prescribed Authority, Varanasi for release of accommodation on the ground of personal need which was registered as P.A. Case No. 69 of 1983.

8. During pendency of Release Application, tenant-defendant No. 1, i.e., Abdul Hadi died and his legal heir, i.e., his wife was impleaded as defendant No. 1/1. She also died on 17.10.1990 whereafter three daughters were substituted as defendants No. 1/1, 1/2 and 1/3. Defendants No. 1/4 and 1/5 are also substituted heirs being sons of another daughter, Smt. Alam Ara, of Sri Abdul Hadi.

9. The tenant contested Release Application by filing written statement dated 14.12.1983 and in para 21 and 22 thereof, under, additional pleas, he stated that he worked as C.T. Grade Teacher and retired in 1972. He has four daughters. One of them, Smt. Rashida Bibi, married to Minhazul Hasan Khan resident of Bihar. Both of them died leaving two sons and a daughter who are living with defendant-tenant since there is none else to look after them. The granddaughter is now married but two grandsons are residing with the tenant, Abdul Hadi. The second daughter of Abdul Hadi, though married, but alongwith husband and children is residing with the tenant. In para 19 it was further pleaded by tenant that the two applicants-owners of disputed house are owner of separate eastern part of the house having purchased the same under different sale-deeds. An earlier Release Application No. 9 of 1981 was also filed which was rejected on 24.9.1981 and there against Appeal No. 364 of 1981 was also rejected by District Judge, Varanasi.

10. The Prescribed Authority i.e., 4th Civil Judge, Varanasi heard the matter and decided vide judgment dated 23.11.1984. It allowed Release Application and directed the tenant to hand over vacant possession to applicants-landlords within 30 days. The Trial Court considered the factum of bona fide need. It found that the landlords-applicants themselves were residing in a single room house No. A-19/56, Mohalla Chauhatta Lal Khan of which they are not owners, on a monthly rent of Rs. 25/- though the family consisted of grown up children etc. and available rented accommodation was extremely inadequate. It recorded a finding that landlord and his family consisted of 10 members, therefore, need of landlord was bona fide. It recorded the following findings:

"The applicants alongwith their 8 children are living in one room of the house of their relation wherein there is no sanitation or ventilation etc. while the disputed premises was purchased with the sole purpose of habitation of the applicants. In this circumstances it is perfectly proved that the applicant have genuine and bona fide need of the disputed premises and their needs are more pressing and greater than that of opposite party No. 1."

11. With regard to tenant's claim that his married daughter and their children are residing with them, Prescribed Authority/Trial Court did not accept his version and recorded findings as under:

"In this connection it is also to be mentioned here that according to opposite party No. 1, his daughters are married and there is no such type of evidence that any of his daughter have been divorced or judicially separated. Apart from this

there is no such proof that his daughter or her sons are nameless. Thus it cannot be believed that the daughters of opposite party No. 1 or their sons are being looked after by the opposite party No. 1 and they are depended upon him. If opposite party No. 1 is aged about 75 years and is suffering from any chronic disease, it is not possible for him to earn so much money by coaching so that he may look after the entire family of his daughters. Thus the entire contention of opposite party No. 1 in respect to maintenance of his daughter or her sons etc. are perfectly unnatural. It is strange that a person of 75 years old is in position to earn so much money to maintain a large number of family of his daughters."

12. It also held that the family of daughters do not come within the meaning of "heirs" so as to come under the definition of "family" and for that purpose placed reliance on a decision of this Court in *Smt. Tarawati v. Ambika Prasad Dixit* and another 1976 (2) ALR 89 (Sum.) : 1976 AWC 265. The Trial Court also found that tenant has another property in Kerakat, District Jaunpur but living alongwith his wife in the disputed accommodation at Varanasi. On the question of comparative hardship, it held, need of landlord, greater and more pressing and thus allowed Release Application.

13. Aggrieved thereto, the defendant-tenant Abdul Hadi Khan preferred Rent Control Appeal No. 481 of 1984. During the pendency of Appeal, Abdul Hadi Khan, the original tenant, died and was substituted by his legal heir Smt. Naznin Begum, widow.

14. Before Appellate Court, it was contended that six months" notice was not served and the provisions of Rule 16(1)(d) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as "Rules, 1972") has not been considered.

15. On the question of notice, Appellate Court recorded its findings against appellant-tenant, but on the question of non consideration of requirement of Rule 16(1)(d), it upheld appellant-tenant's contention and allowed the appeal vide judgment dated 25.9.1989. The Prescribed Authority's order dated 23.11.1984 was set aside and matter was remanded for a fresh decision after giving opportunity to the parties and also by permitting them to lead additional evidence, if any.

16. After remand, when matter was pending before the Prescribed Authority, Naznin Begum, widow of Late Abdul Hadi Khan, expired on 19.10.1992. Landlord moved an application No. 110-C stating that the three daughters of deceased tenant are all married and residing with their in-laws family and none of them is living in the house in dispute. However, 4th daughter of deceased tenant, i.e., Smt. Alam Ara (Rashida Bibi) who died long back, i.e., during lifetime of tenant, her two sons are illegally occupying disputed accommodation and they were sought to be impleaded as defendants No. 1/4 Nurus Salaha and 1/5 Naizul Hasan. The three daughters were substituted as defendants No. 1/1, 1/2 and 1/3.

17. The Prescribed Authority again considered the matter. It is admitted position

that no additional evidence was adduced before it after remand, though permitted by Lower Appellate Court vide judgment dated 25.9.1989. The contention raised before Prescribed Authority was that an earlier Release Application No. 9 of 1981 was rejected on 24.9.1981 and appeal was dismissed on 20.11.1982, therefore, another application for release of disputed accommodation within one year was not maintainable in view of Rule 18(2) of Rules, 1972. This issue was decided against tenant on the ground that earlier application was under section 21(1)(b) though present Release Application was under section 21(1)(a), therefore bar under Rule 18(2) was not attracted. Prescribed Authority also found that six months' notice was already given to tenant in August 1979 and no further notice was required to be given, that too, when Release Application was filed in 1983. The Court also found that the tenant having already died, their legal heirs do not come within the definition of "family" under Act, 1972, therefore also no separate notice was required for them. The Prescribed Authority in the context of Rule 16(1)(d) found that in changed circumstances, since original tenant, husband and wife, both have died, and, their daughters are all married, and, grandparents of daughter children do not come within the definition of "family", therefore, question of comparison of requirement of tenant with landlord does not arise, particularly when landlord's family is very big and therefore question of consideration of lesser accommodation; satisfying requirement of landlord, would not arise.

18. It was contended before Prescribed Authority that defendant No. 1/4 and 1/5 are occupants of the house and hence no Release Application can be brought against them under section 21(1)(a) of Act, 1972. The Prescribed Authority rejected it on the ground that they do not come within the definition of "family" under Act, 1972 and are not entitled to occupy disputed accommodation in the garb of tenancy of their maternal grandparents. Accordingly, Prescribed Authority vide judgment dated 7.2.1998 allowed Release Application.

19. The Rent Appeal No. 12 of 1998 was filed by defendants No. 1/4 and 1/5. During pendency of appeal, Sri Nusrat Khan, husband of petitioner No. 1 and father of petitioner No. 2 to 4 died resulting in substitution of petitioners 1 to 4 as appellants No. 1/1 to 1/4.

20. Before Appellate Authority, the appellants filed an application for issuing Commission to verify availability of accommodation in the disputed house, as also House No. A-19/56, Mohalla Chauhatta Lal Khan khan, where landlords were residing. The application was allowed on 13.9.2002 whereafter Advocate Commission inspected the premises and submitted report on 21.5.2004. It was objected by petitioners-appellants before Lower Appellate Court but rejecting the said objection, report was accepted by Lower Appellate Court vide order dated 15.9.2004. The Lower Appellate Court heard the matter and dismissed appeal vide judgment dated 21.10.2007.

21. This writ petition has been filed by legal heirs of Late Nusrat Khan, i.e., his widow, son and daughter and defendant No. 1/5 i.e., Misbahul Husain Khan. The

petitioners No. 3 and 4 are great grandchildren of original tenant, being grandchildren of eldest daughter Rashida Bibi.

22. As claimed, they are residing in disputed accommodation even much before when the accommodation was purchased by landlord-respondents in 1979.

23. There are 12 grounds in the writ petition on which the orders of Court below have been challenged. The basic contention is that the Courts below have erred in law by holding that petitioners do not come within the definition of "tenant" and they have misconstrued section 3(a) of Act, 1972. (Late) Nusrat Khan was son of original tenant and petitioners No. 3 and 4 are maternal great grandsons of original tenant. It is argued, since normally all of them were residing with original tenant, therefore, come within the definition of "tenant" under the Statute. It is also said that Lower Appellate Court has failed to consider the basic issue of bona fide need and comparative hardship before allowing Release Application and therefore, the impugned judgment is patently bad. It is also said that Advocate Commissioner's report was not a complete document and it has wrongly been accepted as evidence.

24. So far as consideration of "bona fide need" and "comparative hardship" between landlord and tenant, this Court finds that earlier Prescribed Authority in its order dated 23.11.1984 has held and recorded a finding of fact upholding "bona fide need" of landlords. The finding of bona fide need and comparative hardship recorded by Prescribed Authority was not found incorrect by Lower Appellate Court. Instead, it upheld that finding, but what Lower Appellate Court found that before passing release order, whether the entire accommodation must be released or a lesser part would be sufficient, as required under Rule 16(1)(d) of Rules, 1972 was not considered by Prescribed Authority and for that purpose alone the matter was remanded. It means even the finding with respect to comparative hardship as such was not found erroneous but for compliance of Rule 16(1)(d) of Rules, 1972 only, the matter was remanded.

25. Rule 16(1)(d) of Rules, 1972 reads as under:

"(d) Where the tenant's needs would be adequately met by leaving with him a part of the building under tenancy and the landlord's needs would be served by releasing the other part, the Prescribed Authority shall release only the other part of the building;"

26. Before the matter could be decided by Prescribed Authority after remand, the original tenant Abdul Hadi Khan and his wife both died. The matter has to be examined by Trial Court in the changed circumstances when both the original tenants, i.e., husband and wife, died. It is not in dispute that the legal heirs were all married daughters. Admittedly three daughters were not residing in the accommodation in question. The two grandsons of one daughter, who had died, were occupying disputed accommodation. Unless they are included within the definition of "tenant" or "family" of the tenant, question of consideration of release of tenanted accommodation in the light of Rule 16(1)(d) would not have

arisen. It cannot be disputed that in the rent matters, subsequent events have to be taken note by the Court at the stage when it is considering the matter.

27. The question as to why and in what circumstances, subsequent activities/ events can be looked into, has been considered time and again by Apex Court as well as this Court also.

28. A three-Judge Bench of Apex Court in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, , permitted cognizance of subsequent events, though very cautiously, and said:

"We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take subsequent cautious cognizance of events and developments subsequent to the institution of the proceedings provided the rules of fairness to both sides are scrupulously obeyed."

29. Again in *Hasmat Rai and Another Vs. Raghunath Prasad*, , the cognizance of subsequent events was held permissible provided it wholly satisfy the requirement of petitioner/landlord who petitioned for eviction on the ground of personal requirement. The Court said:

"Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlords requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the Court to take into consideration subsequent events."

(Emphasis added)

30. In *Ramesh Kumar Vs. Kesho Ram*, , a two-Judge Bench of Apex Court said that normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced. The only exception is that the Court is not precluded from moulding reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. Hon"ble M.N. Venkatachalia, J. (as his Lordship then was) observed:

"The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a "cautious cognizance" of the subsequent changes of fact and law to mould the relief."

31. In *Gaya Prasad Vs. Sh. Pradeep Srivastava*, , the Court said that for the

malady of judicial system of delayed justice, a landlord should not suffer. Every day may result in some kind of development and, therefore/every subsequent development would not deny claim of landlord on the pretext of a subsequent development since no one can be expected to stay idle for all times to come till a litigation is going on. It may happen that the lifetime of litigation may be more than that of litigant-landlord himself. Therefore, the judicial tardiness should not cause an irreparable loss to a landlord. It would be unjust to shut the door of justice to a landlord on the end of litigation after passing through various levels of litigation to deny him justice and relief sought only on the ground of certain developments occurred pendente lite because the tenant has been successful in prolonging litigation for an unduly extended long period. However, if the cause of action is submerged in such subsequent events, in other words, if the subsequent events are such as to satisfy the very requirement of landlord in its entirety, the same can be seen and there is no allergy in considering and taking note of subsequent events of importance which may justify remoulding of relief not on account of mere pendency of litigation but on account of the position and status of landlord and other relevant factors.

32. This matter was further examined in detail in Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LR's. and Another, , and having considered a number of authorities on the subject, the Apex Court, in para 15 of judgment, crystallized three aspects when subsequent events can be taken note by a Court of law, namely:

- (i) The relief claimed originally has, by reason of subsequent change of circumstances, become inappropriate; or
- (ii) It is necessary to take notice of subsequent events in order to shorten litigation; or
- (iii) It is necessary to do so in order to do complete justice between the parties.

33. It is in these facts and circumstances, the Prescribed Authority having taken note of subsequent events, considered the matter and allowed Release Application finding that the occasion to apply Rule 16(1)(d) has disappeared since the tenants have already died; and, the defendants No. 1/4 and 1/5 were not "tenants" as per definition contained in the Statute. The Lower Appellate Court has upheld it.

34. Now, the only question which is required to be examined is whether petitioners can be included within the definition of "tenant" under the Statute.

35. At the pain of repetition, though already said, the relationship of petitioners vis-a-vis the original tenant is being restated inasmuch Abdul Hadi's eldest daughter was Smt. Rashida Babi, who died leaving two sons; Nusrat Khan and Naizul Hasan alias Misbahul Hasan Khan alias Raju. Petitioner No. 1 is widow of Nusrat Khan and petitioners 3 and 4 are son and daughter of Nusrat Khan. Petitioner No. 2, Misbahul Hasan Khan alias Naizul Hasan is son of Rashida Bibi

and uncle of petitioners No. 3 and 4. The family tree, mere-fore, comes as under:

36. The term "tenant" is defined in section 3(a) of Act, 1972 as under:

"(a) "tenant", in relation to a building means a person by whom its rent is payable, and on the tenant's death--

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a non-residential building, his heirs;

Explanation.--An occupant of a room in a hotel or a lodging house shall not be deemed to be a tenant;"

(Emphasis added)

37. The "family" has been defined in section 3(g), which reads as under:

"(g) "Family", in relation to a landlord or tenant of a building, means, his or her--

(i) spouse;

(ii) male lineal descendants;

(iii) such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building ;"

(Emphasis added)

38. It cannot be doubted that none of the petitioners satisfy any relationship which constitute "family" as defined in section 3(g) of Act, 1972. In the same way, they would also not be covered by section 3(a).

39. Petitioners have sought to draw a distinction between definition of "family" and "tenant" given in Act, 1972 and it appears that what they are stressing upon is phrase "such only of his heirs", used in section 3(a)(1) of Act, 1972 and their contention is that the word "heirs" is wide enough to include the grandchildren and great grandchildren of maternal son if normally residing with him in the building at the time of his death. This contention stand negatived in view of the two authorities of this Court.

40. In Sanjay Vs. Upper Zila Adhikari and Another, , a similar argument has been considered by this Court and this Court, in para 7, said as under:

"7. Reading section 3(a) of the Act with section 3(g) harmoniously, the phrase "such only of his heirs" would have to be given restricted meaning confined to the relations as enumerated in the definition of "family" in section 3(g) of the Act. The petitioner being nephew of the tenant, is not covered by definition of "family" as given in the Act No. XIII of 1972."

41. The same view has been followed in Hari Gopal v. Vijay Kumar 2007 (69) ALR 562 , and there also, reiterating the above view, the Court in para 22 said as under:

"22. Reading section 3(a) of the Act with section 3(g) harmoniously, the phrase "such only of his heirs" would have to be given restricted meaning confined to the relations as enumerated in the definition of "family" in section 3(g) of the Act. Respondent No. 5 being son of the daughter of late Ram Niwas, the original tenant, has no relation with the family of the tenants, and is not covered by definition of "family" as given in the Act No. XIII of 1972."

42. I myself find in due agreement with the aforesaid authorities. In order to consider as to who are the "heirs" which would be included within the term "tenant" under section 3(a), it has to be read harmoniously with section 3(g) and only such "heirs" would come within the definition of "tenant" who satisfy the definition of "family" also and not others. The phrase "such only of his heirs" will have to be given a restricted meaning and it would be confined to the relations as enumerated in the definition of "family" in section 3(g). The above authorities clearly rule out any other view and is a clear answer to the very basic ground taken by petitioners in order to read the term "heir" in a much wider sense. This Court following the aforesaid authorities and also following the same view, finds no hesitation in negating this ground and to return this issue in favour of respondent-landlord.

43. Even otherwise, on the question of personal need, the judgment of Prescribed Authority was not disturbed by Lower Appellate Court, when it passed the remand order. On the question of comparative hardship also it did not find anything wrong but it was only on the question of extent to which the disputed accommodation should be released in the light of Rule 16(1)(d), the matter was remanded. Therefore, so far as the basic question of bona fide need" and "comparative hardship", I find that the judgment of Prescribed Authority has attained finality upto lower appellate stage, having not been challenged by erstwhile tenant thereafter. The only scope after remand was Rule 16(1)(d) which could have been looked into provided the original tenants would have been alive. They have already died. The petitioners do not satisfy the requirement of definition of "family" under section 3(g) and therefore cannot be said to be "tenant" under section 3(g) in view of aforesaid authorities. The petitioners cannot contend that after remand when second time appeal was filed, Lower Appellate Court ought to have again considered question of bona fide need and comparative hardship. The submission is thoroughly misconceived.

44. No other substantial issue or ground I find which has been raised in this writ petition. The question of re-examination of personal need and comparative hardship, which has already been answered with concurrent findings by both the Courts below warrants no interference, since no error apparent on the face of record has been pointed out therein. This Court cannot re-appreciate concurrent findings of fact, as if it is sitting in appeal. Even otherwise, I do not find any

manifest error in the judgments of Courts below so as to warrant interference in writ jurisdiction under Article 226 as if sitting in appeal. The scope of judicial review in such matters is very limited.

45. In supervisory jurisdiction of this Court over Subordinate Courts under Article 226/227, the scope of judicial review is very limited and narrow. It is not to correct the errors in the orders of the Court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority.

46. This power involves a duty on the High Court to keep the Inferior Courts and Tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

47. In *D.N. Banerji Vs. P.R. Mukherjee and Others*, , the Court said:

"Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere."

48. A Constitution Bench of Apex Court examined the scope of Article 227 of the Waryam Singh and Another Vs. Amarnath and Another, , and made following observations at p. 571:

"This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee*, , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".

49. In *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, , the Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

50. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (See: *Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu*, ; *Rukumanand Bairoliya Vs. The State of Bihar*, ;

Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, ; Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, ; Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others, ; Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, ; and Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others,

51. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: Mrs. Rena Drego Vs. Lalchand Soni, Etc., ; Chandra Bhushan (Deceased) by Lrs. Vs. Beni Prasad and Others, ; Smt. Savitrabai Bhausahab Kevate and Others Vs. Raichand Dhanraj Lunja, ; and M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another, .

52. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: Union of India and others v. Himmat Singh Chahar) (1909) 4 SCC 521.

53. In Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , the Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

54. In Mohan Amba Prasad Agnihotri and Others Vs. Bhaskar Balwant Aher (D) Through I.Rs., , the Court said that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse.

55. In Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another, , the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court cannot interfere.

56. In Union of India and Others Vs. Rajendra Prabha and Another, , the Court

observed that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

57. Similar view has been reiterated in *State of Maharashtra Vs. Milind and Others*, ; *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, ; and *Ouseph Mathai and Others Vs. M. Abdul Khadir*, .

58. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, , it was held that in exercise of supervisory power under Article 227, High Court can correct errors of jurisdiction committed by Subordinate Courts. It also held that when Subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

59. In *Jasbir Singh Vs. State of Punjab*, , the Court said:

"...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority. The power of superintendence exercised over the Subordinate Courts and Tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the Subordinate Courts in the discharge of their judicial functions is of paramount importance, just as the independence of the Superior Courts in the discharge of their judicial functions."

60. In *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, , the Court said that power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the Tribunals and Courts subordinate to High Court. The above authority has been cited and followed in *Kokkanda B. Poondacha and Others Vs. K.D. Ganapathi and Another*, , and *Bandaru Satyanarayana Vs. Imandi Anasuya and Others*, .

61. In *Abdul Razak (D) through L.Rs. and Others Vs. Mangesh Rajaram Wagle and Others*, , Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

62. In *TGN Kumar Vs. State of Kerala and Others*, , the Court said that power of

superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority.

63. In *The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar*, Apex Court referring to its earlier decision in *Union of India and Others Vs. R.K. Sharma*, observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.

64. In the present case, I do not find that the order impugned in this writ petition does satisfy any of the relevant considerations, as noticed above, so as to justify interference by this Court in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. In the circumstances, I find no merit in this writ petition. The writ petition, therefore, deserves to be dismissed.

65. However, before parting, it would be appropriate to notice past conduct of petitioners. This case came before the Court on 12.5.2014 but Counsel for petitioners made an all out attempt to get the matter deferred. However, the Court proceeded with the matter with short dates, as would be evident from following orders:

12.5.2014:

As prayed, put up on 14.5.2014.

14.5.2014:

As prayed, put up tomorrow.

15.5.2014:

As prayed, put up on 19.5.2014.

19.5.2014:

As prayed, put up tomorrow i.e., 20.5.2014.

20.5.2014:

As prayed, put up tomorrow i.e., on 21.5.2014.

21.5.2014:

Put up on 26.5.2014.

26.5.2014:

Put up tomorrow i.e., 27.5.2014.

27.5.2014:

Put up this case tomorrow.

28.5.2014:

Put up tomorrow i.e., 29.5.2014.

66. On 29.5.2014, the earlier two Counsels, i.e., Sri Ajay Kumar Singh and Ashish Kumar Singh did not appear and instead Sri P.K. Ganguli, another Counsel appeared and filed his vakalatnama. He also did not advance any substantial argument whereafter this Court itself perused the record and passed order on 29.5.2014. The matter was taken in appeal before Apex Court by the petitioners and on remand, it has come to this Court with clear direction that this Case shall be listed on 4.12.2014 and petitioners were directed to appear with further direction to the Court to decide the matter on day to day basis hearing.

67. Today, when the case was taken up, petitioners neither appeared in person nor represented through any of the Counsels. Court itself made attempt by calling earlier Counsels appearing in the matter but Sri Singh as well as Sri Ganguly, both said, that they have no instructions in the matter and file has been taken by the clients. It is, thus, evident that petitioners went to the extent of disobeying even the positive direction given by Apex Court whereby the date before this Court was fixed and petitioners were directed to appear before this Court today for hearing and disposal of the matter. They have completely failed to abide and observe the direction of Apex Court. It shows that having lost in both the Courts below; their attitude is only to delay the proceedings. It shows a complete lack of bona fide.

68. In these facts and circumstances, I am of the view that petitioners should also pay cost having been indulged in continuous vexatious litigation, though with lack of due bona fide. The writ petition is, accordingly, dismissed with cost of Rs. 25,000/-.