

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 04.03.2021

Order Passed on : 16/07/2021

W.P.(227) No. 914 of 2015

Sunil Tawari, S/o. Shri S. N. Tawari, aged about 48 years, through : the Power of Attorney S. N. Tawari, S/o. Late Jouhar Mal Tawari, aged about 72 years, R/o. Jal Vihar Colony, Telibandha, P. S. Civil Line, Raipur, District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Janak Ram Kurre, S/o. Gannu Kurre, Through : The Power of Attorney Bharat Kurre, S/o. Janak Ram Kurre, R/o. Satnami Para, Sati VIII, P. S. Telibandha, Raipur, District Raipur Chhattisgarh.
2. Board of Revenue, Bilaspur, District Bilaspur Chhattisgarh.

---- Respondents

W.P.(C) No. 3179 of 2018

Sunil Taori, S/o. Shri S. N. Taori, aged about 51 years, Jal Vihar Colony, Raipur, District- Raipur, Chhattisgarh, Raipur, District- Raipur, Chhattisgarh, Through The Power of Attorney S.N. Taori, S/o Late Jouhar Mal Taori, aged about 78 years, R/o P-222, Parthivi Pacific, Tatabandh, District Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Janak Ram Kurre, S/o. Rambhu, R/o. Telibandha Raiour, Tahsil and District Raipur, Chhattisgarh, Through : the power of attorney Bharat Kurre, S/o. Janak Ram Kurre, R/o. Telibandha, Raipur, Tahsil And District- Raipur, Chhattisgarh.
2. State of Chhattisgarh, Through : The Collector, Raipur, District- Raipur, Chhattisgarh.

---- Respondents

W.P.(227) No. 84 of 2017

Jitendra Kumar Agrawal, S/o. Late Brijbhushan Agrawal, aged about 48 years, R/o. Near Sarvodaya Hospital, Dubey Colony, Mova, Raipur, District Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, S/o. Through : The Secretary, Department of Revenue, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur, Chhattisgarh.
2. Collector, Raipur, District Raipur, Chhattisgarh.
3. Tahsildar, Raipur, District Raipur, Chhattisgarh.
4. Gram Seva Samiti, a registered society, through : its Secretary Shri Ajay Tiwari, Kutchery Chowk, Raipur, District Raipur Chhattisgarh.

---- Respondents

W.P.(227) No. 61 of 2014

State of Chhattisgarh, Through : The Collector, Bilaspur, Distt Bilaspur, C.G.

---- Petitioner

Versus

1. Chhattisgarh Board of Revenue, Bilaspur, Distt Bilaspur, Through Registrar.
2. Kailash Soni, S/o. Lt. Shri Gendlal Soni, R/o. Mangla, Tah and Distt Bilaspur, C.G.

---- Respondents

And

W.P.(227) No. 483 of 2020

1. State Of Chhattisgarh, Through - The Secretary, Government of Chhattisgarh, Department of Revenue, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur (C G)
(The Petitioner No. 1 was not a party before the learned Board of Revenue but has been impleaded as petitioner No. 1 in the instant petition as the proper course is to implead the State Government Through : the Secretary of the concerned department).
2. The Collector, District -Janjgir Champa, Chhattisgarh.

---- Petitioners

Versus

Anil Kumar, S/o. Late Tulsi Prasad, R/o. Near Railway Station Champa, Tahsil Champa, District Janjgir Champa Chhattisgarh.

---- Respondent

For Petitioners (In W.P.(227) 914/2015 & W.P.(C) No. 3179/2018.	: Mr. Raghavendra Pradhan, Advocate
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For Respondent No.1 (In W.P.(227) 914/2015 & W.P.(C) No. 3179/2018.	: Mr. Amit Sharma & Mr. Himanshu Soni, Advocates
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For Petitioner (In W.P.(227) 84/2017	: Mr. Manoj Paranjpe, Advocate
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For Respondent No.4 (In W.P.(227) 84/2017	: Mr. Shiv Kumar Shrivastava, Advocate
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For Respondent No.2 (In W.P.(227) 61/2014	: Mr. Manoj Kumar Sinha, Advocate
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For Respondent (In W.P.(227) 483/2020	: Mr. Bharat Rajput, Advocate
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For State/respondents-petitioners : Mr. D.P. Singh, Dy. Advocate General

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

1. All these petitions have been brought challenging the orders of the Revenue Board in exercise of revisional jurisdiction.
2. Preliminary objections have been raised by the respondents on this ground, that these petitions under Article 227 of the Constitution of India are not maintainable pursuant to the judgment of this Court in **Dr. Ram Sharan Lal Tripathi Vs. State of C.G.**, reported in **AIR 2016 C.G. 17**, in which, it has been held by the Single Bench of this Court that the Board of Revenue is not a civil Court, but is revenue authority established under the C.G. Land Revenue Code, 1959 (hereinafter referred to as "the Code, 1959") therefore, the petitions under Article 227 of the Constitution of India shall not be maintainable.
3. Mr. Manoj Paranjpe, counsel appearing on behalf of the petitioner in W.P.(227) No. 84 of 2017 would submit, that the objection raised by the respondents side is misconceived. There is no such finding of the learned Judge in case of *Dr. Ram Sharan Lal Tripathi (Supra)* that a petition under Article 227 of the Constitution of India shall not be maintainable at all.
4. It is submitted that Article 227 of the Constitution of India provides that every High Court shall have judicial superintendence over all Courts and Tribunal. Article 235 of Constitution of India provides that the District Court and the Court-subordinate thereto shall be under the control of High Court with respect to the subjects mentioned in the provision. However, Article 227 of the

Constitution of India very clearly lays down that the tribunal functioning in the State shall be under the judicial superintendence of the High Court, even if they are not under the administrative control of the High Court.

5. It is further submitted, that the Board of Revenue is also a Court. Section 3 of the Code, 1959, provides for Constitution of Board of Revenue and Section 31 of the Code, 1959, confers the status of Court to the Board of Revenue and Revenue Officers. This provision provides that Board or Revenue Officers while exercising power under these Code or any other enactment for the time being in force, to enquire into or to decide any question arising for determination between the State Government and any person or between the parties to any proceeding shall be a revenue Court.
6. It is submitted that in case of **Dangalia & Ors. Vs. Deshraj & Ors.**, reported in **1973 M.P.L.J. - 796**, before M.P. High Court it was held, that the Revenue Courts are full fledged Court, which are governed by the special provision of the Code, 1959 and in absence of such provisions, they are to be governed by the Code of Civil Procedure, 1908. It is also submitted that in case of **S.K. Sarkar Vs. Vinay Chandra Mishra**, reported in **AIR 1981 SC 723**, the Supreme Court has held that under Article 227 of the Constitution of India, the High Court has power of superintendence over all Courts and Tribunals. It was also held that the Revenue Board is a Court Sub-ordinate to the High Court within the contemplation of Section 10 of the Contempt of Courts Act, 1971.

7. Reliance has also been placed on the judgment of Supreme Court in case of **Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. & Anr.** reported in **1967 AIR 1494**, **Umaji Keshao Meshram And Ors. vs Radhikabai**, reported in **AIR 1986 SC 1272**, **Sushilabai Laxminarayan Mudliyar & Ors. Vs. Nihalchand Waghajibhai Shah & Ors.** reported in **(1993) Supp. (1) SCC 11**, judgment of M.P. High Court in case of **Manoj Kumar Vs. Board of Revenue & Ors.**, reported in **2008 (1) M.P.L.J. 152**, judgment of Supreme Court in **Ashok K. Jha & Ors. Vs. Garden Silk Mills & Ors.**, reported in **(2009) 10 SC 584**, judgment of M.P. High Court in case of **Om Prakash Vs. Surjan Singh**, reported in **2004 R.N. 31**, judgment of Supreme Court in case of **Radhe Shyam & Ors. Vs. Chhabi Nath & Ors.**, reported in **(2015) 5 SCC 423**, and on the judgment between the same parties reported in **2009 (5) SCC 616**.
8. It is submitted that in view of the judicial pronouncements cited here-in-above, the Board of Revenue has trappings of a Court and being a Court, it is under judicial supervision of the High Court under Article 227 of the Constitution of India. Hence, this petition and all other connected petitions are maintainable.
9. Mr. Raghavendra Pradhan, counsel appearing on behalf of the petitioners in W.P.(227) No.914 of 2015 and W.P.(C) No. 3179 of 2018, adopts the argument submitted by Mr. Paranjpe and would submit that the Board of Revenue is a Court within the judicial superintendence of the High Court, hence, the petition filed challenging the orders of the Board of Revenue passed under the provisions of Code, 1959 are challengeable under Article 227 of

the Constitution of India.

10. Counsel appearing in W.P. (227) No.483 of 2020 and W.P.(227) No. 61 of 2014, submits that these petitions under Article 227 of the Constitution of India have been brought by the State itself, therefore, the petitioner-State in both the cases goes by the objection raised. Hence, the petition under Article 227 of the Constitution of India is not maintainable. There is requirement to file petition under Article 226 of the Constitution of India to challenge the impugned order.
11. Counsel for the respondents in W.P.(227) No. 914 of 2015, W.P.(C) No. 3179 of 2018 and W.P.(227) No. 84 of 2017 submits that the objection raised is sustainable on the basis of the judicial finding of the co-ordinate Bench of this Court in case of *Dr. Ram Sharan Lal Tripathi (Supra)*. It is submitted that in case of **Mani Nariman Daruwala @ Bharucha (deceased) Through : LRS. & Ors. Vs. Phiroz N. Bhatena & Ors.**, reported in **(1991) 3 SCC 141**, it has been held by the Supreme Court, that the High Court has no jurisdiction to interfere with the finding of facts in exercise of jurisdiction under Article 227 of the Constitution of India. Further in case of **Khimji Vidhu Vs. Premier High School**, reported in **(1999) 9 SCC 264**, it has been held that the jurisdiction under Article 227 of the Constitution of India must be sparingly exercised and may be exercised to correct errors of jurisdiction and the like but not to upset pure findings of fact, which falls in the domain of an appellate Court only.

12. It is submitted, that the petitioners in W.P.(227)No. 914 of 2015, W.P.(227) No.84 of 2017 and W.P.(C) No. 3179 of 2018, challenged the impugned order on the basis of the facts present in the case and therefore, the jurisdiction under Article 227 of the Constitution of India is not available to this court to consider upon the impugned orders as desired by these petitioners. Hence, the preliminary objection raised be allowed and the petitioners in these cases and the petitioners in W.P.(227) No. 61 of 2014 and W.P.(227) 483 of 2020 be directed to seek relief under Article 226 of the Constitution of India.
13. I have heard the learned counsel for the parties and considered on the submissions made.
14. In case of *Dr. Ram Sharan Lal Tripathi (Supra)*, the learned Single Judge has given consideration to the judgment of Supreme Court in case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil (2010) 8 SCC 329*, *Hari Vishnu Kamath Vs. Ahmad Ishaque & Ors.*, *AIR 1955 SC 233*, *The Custodian of Evacuee Property, Bangalore (in all the appeals) Vs. Khan Saheb Abdul Shukoor etc.*, *AIR 1961 SC 1087*, *T.C. Basappa Vs. T. Nagappa & Anr.*, *AIR 1954 SC 440*, *Syed Yakoob Vs. K.S. Radhakrishnan*, *AIR 1964 SC 477*, *Naresh Shridhar Mirajkar Vs. State of Maharashtra & Anr.* *AIR 1967 SC 1*, *Harinagar Sugar Mills Ltd. Vs. Shyam Sunder Jhunjunwala & Ors*, *AIR 1961 SC 1669*, *Madras Bar Association Vs. Union of India*, *(2010) 11 SCC 1*, *Radhey Shyam & Anr. Vs. Chhabi Nath & Ors. (2015) 5 SCC 423*, *Riju Prasad Sarma & Ors. Vs. State of Assam & Ors.*, *(2015) 9 SCC 461* and it was held in paragraph No. 18 and 19, which are as follows :-

- “18. On a careful analysis of the legal position settled by the Supreme Court in the above referred judgments, it would clearly emerge that while writ of certiorari cannot be issued against the order passed by the civil Court which is established by the State under its sovereign function and duty, such writ can be issued against all other authorities or tribunals which exercise judicial or quasi judicial or administrative functions.
19. Since undoubtedly the Board of Revenue is not a civil Court but is a revenue authority established under the CG Land Revenue Code, a writ petition under Article 226 of the Constitution for issuance of writ of certiorari to annul the order passed by the Board of Revenue is maintainable. Office objection to the contrary that the petitioner should have preferred a writ petition under Article 227 of the Constitution of India is thus overruled.”
15. The Division Bench of Madhya Pradesh High Court in case of *Dangalia & Ors. Vs. Deshraj & Ors. (Supra)* has held in paragraph 7 – 8, which is as follows :-
- “7. In this connection it is to be noted that the Madhya Pradesh Land Revenue Code 1959, is a law which confers certain rights of some categories on persons as also it prescribes the procedure to be followed by the Revenue Courts. It came into force with effect from 1st of October, 1959, and it repealed all the regional laws. Therefore, it may be necessary to note the relevant provisions of this Act conferring powers on the Revenue Courts. Section 31 of the M. P. Land Revenue Code, 1959, confers status of Courts on the Revenue Board and the Revenue Officers. It provides that the Board or the Revenue Officer, while exercising power under this Code or any other enactment for the time being in force to enquire into or

to decide any question arising for determination between the State Government and any person or between parties to any proceedings, shall be a Revenue Court. Section 32 of the Code provides that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. Section 33 of the Code states that subject to the provisions of Sections 132 and 133 of the Code of Civil Procedure, 1908, and to rules made under Section 41, every Revenue Officer acting as a Revenue Court shall have power to take evidence, to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness or to produce any document for the purposes of any inquiry or case arising under this Code or any other enactment for the time being in force. Section 43 of the Code further provides that unless otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 shall, so far as may be, be followed in all proceedings under this Code. Further on, we may note Section 55 of the Code which provides that for avoidance of doubt it is 'hereby declared that save as otherwise expressly provided in this Code, the provisions of this Chapter shall apply to:--

- (a) all orders passed by any Revenue Officer before the date of coming into force of this Code and against which no appeal or revision proceedings are pending before such date; and,
- (b) all proceedings before Revenue Officers, notwithstanding that they were instituted or commenced or arose out of proceedings

instituted or commenced before the coming into force of this Code.

8. Thus, the said provisions not only constitute Revenue Officers as full-fledged Courts, which would be governed by the special provisions of the M. P. Land Revenue Code, 1959, and in the absence of such provisions, they are to be governed by the Code of Civil Procedure, 1908, if they do not come in conflict with the former. Moreover, from the date of commencement of the said Code, i.e. 1-10-1959, the procedure as prescribed by the said Code has been made applicable to all Revenue proceedings of whatever kind by virtue of Section 55 of the Code, although such proceedings may have been initiated or orders in those proceedings might have been passed by Revenue Officers prior to the coming into force of the Code under any of the repealed regional enactments. Thus, there can be no doubt that with effect from 1-10-1959, it is only the M. P. Land Revenue Code, 1959, which will apply and a resort to any of the repealed enactments cannot be made by any of the parties."

16. In case of *S.K. Sarkar Vs. Vinay Chandra Mishra* (supra), it has been held by the Supreme Court in paragraph 15, which is as under :-

- "15. Section 2 (c) of the Act defines 'criminal contempt'. Section 9 emphasises that "nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which would not be so punishable apart from this Act". Section 10 runs as under :

"Every High Court shall have and exercise the same jurisdiction, powers and authority, in

accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself."

Then, there is a proviso which is not material for our purpose. The provision in Section 10 is but a replica of Section 3 of the 1952 Act. The phrase "courts subordinate to it" used in Section 10 is wide enough to include all courts which are judicially subordinate to the High Court, even though administrative control over them under Article 235 of the Constitution does not vest in the High Court. Under Article 227 of the Constitution the High Court has the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The Court of Revenue Board, therefore, in the instant case, is a court "subordinate to the High Court" within the contemplation of Section 10 of the Act."

17. In case of *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. (Supra)*, the Supreme Court has held in para-22, which is as under :-

"22. The nature of jurisdiction exercised by the High Court under Article 227 of the Constitution was gone into at length by a Full Bench of the Patna High Court in *Budhi Nath Jha v. Manilal Jadav*, AIR 1960 Pat 361 (FB). There it was observed that "It is also apparent that the power of revision conferred upon the High Court under Article 227 of the Constitution is similar in nature to the appellate power of the High Court, though the power under Art. 227 is circumscribed by various limitations. These limitations, however do not affect the intrinsic quality of the power granted under Art. 227 of the Constitution, which is the same as

appellate power."

The learned Chief Justice of the Patna High Court relied to a very great extent on a passage from Story reading :

"The essential criterion of appellate jurisdiction is, that it revises and corrects the proceedings in a cause already instituted and does not create that cause. In reference to judicial tribunals an appellate jurisdiction, therefore, necessarily implies that the subject matter has been already instituted and acted upon by some other court, whose judgment or proceedings are to be revised."

For the purpose of this case, it is not necessary to decide whether revisional jurisdiction is the same as the appellate jurisdiction but it is enough to hold that under Art. 227 of the Constitution, the High Court exercises judicial control over all courts and tribunals functioning within the limits of its territorial jurisdiction."

18. In case of *Umaji Keshao Meshram & Ors. Vs. Radhikabai* (Supra), the Apex Court has held in paragraph 100 and 102, which are as follows :-

"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....."

“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. & Calico Ptg. Co.'s Case this Court said (at pages 193-4) (of 1973 (1) SCR 185 : at p. 1603 of AIR 1972 SC 1598):

“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 Narayan Singh v. Amar Nath, [1954] S.C.R. 565 : AIR 1954 SC 215). 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.”

x x x x x x x

19. The Supreme Court in *Sushila Bai Laxminarayan Mudliyar* (Supra) referring to the judgment in *Umaji Keshao Meshram*, it has been

held that where the facts justify a party may file an application under Section 226 and 227 of the Constitution of India and while the Court decides that application under Article 226, it may issue ancillary direction under Article 227 of the Constitution of India

20. In *Manoj Kumar Vs. Board of Revenue & Ors* (Supra), the Special Bench of Madhya Pradesh High Court comprising of five judges Bench has given detailed consideration and held in paragraph 34 and 37, which are as under :-

“34. At this juncture we may fruitfully state that the word 'superintendence' has not been used in Article 226 of the Constitution. It is also evident that the term 'writs' is not referred to in Article 227. On a scrutiny of Article 227 it would be crystal clear that power of superintendence conferred on the High Courts is a power that is restricted to the Courts and Tribunal in relation to which it exercises jurisdiction. On the contrary the power conferred on the High Court under Article 226 is not constricted and confined to the Courts and Tribunals but it extends to any person or authority. Be it noted, Article 226 as has been engrafted in the Constitution covers entirely a new area, a broader one in a larger spectrum.”

“37. From the aforesaid enunciation of law it is quite vivid that two powers are distinct and that is why Their Lordships resorted to Article 226 for one part and invoked Article 227 of the Constitution for the other facet. It is worth noting that Articles 226 and 227 of the Constitution of India are supplement to each other but that does not convey that the power exercised under them are identical in all cases. The Apex Court, time and again, has expressed the view that the power exercised under Article 226 is to be characterized as

supervisory power and not power exercised in appellate or revisional jurisdiction. The consistent view of the Apex Court is that the power exercised under Article 226 is in exercise of original jurisdiction and not under 'supervisory jurisdiction'. To elaborate: whenever word 'supervisory' has been used in the context of Article 226 it is in contrast with the appellate or revisional jurisdiction. When a writ is issued under Article 226 of the Constitution in respect of Courts or Tribunals it is done in exercise of original jurisdiction and the parameters are different than Article 226 of the Constitution of India. It is worth noting that the power under Article 227 was there in a different manner under the Government of India Act. Power of superintendence is distinct from the exercise of power of revisional or supervisory jurisdiction which is a facet of the power superintendence. The confusion occurs when one applies the principle of equivalence or equates the exercise of supervisory power and power of superintendence with original or supervisory jurisdiction. There is an acceptable nuance between the concept of jurisdiction and exercise of power by certain parameters. Both do come within the fundamental concept of 'judicial review' but the jurisdiction exercised is different. In *Achutananda Baidya v. Prafulla Kumar Gayen* AIR 1997 SC 2077, it has been held that power of superintendence under Article 227 includes within its concept the power of judicial review. In our considered opinion when under Article 226 a writ is issued it is issued in exercise of original jurisdiction whether against a Tribunal or Inferior Courts or Administrative Authorities.”

21. In case of *Ashok Kumar Jha Vs. Garden Silk Mills* (Supra), the Apex Court has discussed the judgment in *Umaji Keshao Meshram, Sushila Bai Laxminarayan Mudliyar* (Supra) and

reiterated that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application under both these articles in fairness of justice to party and in order not to deprive him of valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227.

22. In case of *Radheshyam & Ors. (Supra)*, the Supreme Court has reiterated the judgment of the Supreme Court in *T.C. Basappa V. T. Nagappa (reported in AIR 1954 SC 440)*. The relevant extract of the judgment is as follows :-

“7. One of the fundamental principles in regard to the issuing of a writ of certiorari, is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression "judicial acts" includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin, L.J. thus summed up the law on this point in *R. v. Electricity Commissioners* (KB p. 205)

'.....Whenever anybody or persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.'

23. In case of **Surya Dev Rai Vs. Ram Chander Rai**, reported in **(2003) (6) SCC 675**, the Supreme Court has held in paragraph - 32, which are as under :-

“32. The principles deducible, well-settled as they are, have been well summed up and stated by a two-judges Bench of this Court recently in State, through Special Cell, New Delhi Vs. Navjot Sandhu, SCC pp. 656-57, para -28. This Court held :

- '(i) the jurisdiction under Article 227 cannot be limited or fettered by any Act of the state Legislature;
- (ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with an interlocutory order;
- (iii) the power must be exercised sparingly, only to move subordinate courts and Tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise".

24. The Supreme Court has further held in case of **Surya Dev Rai Vs. Ram Chander Rai (supra)** at Para -38. The relevant extracts from para-38 is as under:-

- “38. x x x x x x x x x x
- (1) x x x x x x x x x x
- (2) x x x x x x x x x x
- (3) x x x x x x x x x x

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the 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.

(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) x x x x x x x x x x x x x

(7) x x x x x x x x x x x x x

(8) x x x x x x x x x x x x x

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof.

In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

The view in *Suryadevi Rai case (supra)* that writ of certiorari is maintainable against the order of civil Court has been doubted by another Bench of Supreme Court in the case of ***Radheshyam and another Vs. Chhabinath & Ors. (supra)***.

25. Division Bench of this Court in case of **Dr. Bhagwat Singh Vs. Pt. Ravi Shankar Shukla University and another**, reported in **2013 (4) C.G.L.J. 171 (DB)**, observed in paragraph No.-27, 28 and 29, which are as follows :-

“27. In Durga Das Basu's Shorter Constitution of India 14th edition (page 864-865), the basic tests for determining whether an authority is a tribunal or not, have been rightly summarized as follows :-

- (a) That the power of adjudication has been conferred on the authority in question by statute;
- (b) That such adjudicating power is a part of the State's inherent power exercised in discharging its judicial function;
- (c) If there a *lis* and the decision of the authority is *binding* and *final*.'

28. In the present case, the power of adjudication is conferred upon the Kuladhipati by statute; he exercises judicial powers under section 12(4) of the

Act as held under the first point; there is *lis* between the parties; and his decision is final. Thus, all three parameters are satisfied.

29. The fact that the Kuladhipati, while exercising power under section 12 (4) of the Act, is a Tribunal under supervisory jurisdiction of Article 227 of the Constitution, is also clear from the Supreme Court decision in *Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and others* {1984 (Sup) SCC – 540 = AIR 1985 SC 364} (the Jaitla case)."

26. In case of **Manmohan Singh Jaitla Vs. Commissioner Union Territory, Chandigarh & Others**, reported in **AIR 1985 – SC 364**, the Supreme Court has held in paragraph No.7, which is as follows :-

"7. The High Court declined to grant any relief on the ground that an aided school is not 'other authority' under Art. 12 of the Constitution and is therefore not amenable to the writ jurisdiction of the High Court. The High Court clearly overlooked the point that Deputy Commissioner and Commissioner are statutory authorities operating under the 969, Act. They are quasi-judicial authorities and that was not disputed. Therefore, they will be comprehended in the expression 'Tribunal' as used in Art. 227 of the Constitution which confers power of superintendence over all courts and tribunals by the High Court throughout the territory in relation to which it exercises jurisdiction. Obviously, therefore, the decision of the statutory quasi-judicial authorities which can be appropriately described as tribunal will be subject to judicial review namely a writ of certiorari by the High Court under Art. 227 of the Constitution. The decision questioned before the High Court was of the Deputy Commissioner and the Commissioner

exercising power under Sec. 3 of the 1969 Act. And these statutory authorities are certainly amenable to the writ jurisdiction of the High Court.”

27. Reliance of the respondents in case of *Mani Nariman Daruwala @ Bharucha and Khimji Vidhu* (supra), are not on this point that the Board of Revenue is excluded from the definition of Court, therefore, the ratio laid down in these cases have no applicability to the question present here for determination.
28. The reliance of the respondents on the case of *Mani Nariman Daruwala @ Bharucha (deceased) through Lrs & Ors. (Supra)*, *Khimji Vidhu (Supra)* are on this point as to what shall be the extent of jurisdiction of the High Court under Article 227 of the Constitution of India.
29. On making close scrutiny of the order of the Coordinate Bench of this Court in *Dr. Ram Sharan Lal Tripathi (supra)*, the finding given that the Board of Revenue is not a Civil Court but a revenue authority under the Code, 1959, is an established fact. The learned Coordinate Bench has not gone further to make any observation that the Board of Revenue is not a Tribunal or quasi judicial body and thus the Board is excluded from the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India.
30. The view of the Division Bench of Madhya Pradesh High Court in case of *Dangalia & Ors. (supra)* that the provisions of Code, 1959 constitute revenue officer as full fledged Courts having applicability of Code of Civil Procedure in the proceeding before them. It has been similarly held by the Supreme Court in case of *S.K. Sarkar*

(*Supra*). The view expressed is very clear that High Court has power of superintendence over all the Courts and tribunals throughout the territories in relation to which it exercises jurisdiction under Article 227 of the Constitution of India. Same was the view of the Supreme Court in case of *Thakur Jugal Kishore Sinha (supra)*, *Umaji Keshao Meshram (supra)* and in case of *Sushila Bai Laxminarayan Mudliyar (supra)*. The Supreme Court has gone further to observe that the parties have choice to file an application under Article 226 or 227 of the Constitution of India, when they feel that the facts are justified to make such petition, therefore, the parties have a choice either to file petition under Article 226 or 227 of the Constitution of India at their peril. The jurisdiction under Article 226 Constitution of India is original jurisdiction of the High Court, whereas the jurisdiction under Article 227 of the Constitution of India is only supervisory. There are limitations and restrictions of the Court exercising supervisory jurisdiction it has been held in case of *Mani Nariman Daruwala @ Bharucha, Khimji Vidhu (supra)* and many more judgments of the Supreme Court and various High Courts. Hence, on this basis, it is for the parties to decide under what constitutional provision, they shall be benefited with grant of relief. The finding of the learned Coordinate Bench in case of Dr. Ram Sharan Lal Tripathi is correct opinion expressed on the basis of facts and circumstances present in that case, that according to the facts present in that case, the petitioner was justified in seeking writ of certiorari.

31. There is clear distinction between the jurisdiction that can be exercised under Article 226 of the Constitution of India and the

jurisdiction that can be exercised under Article 227 of the Constitution of India. The petitioner in the case of *Dr. Ramsharan Lal Tripathi (supra)* had filed the petition seeking writ of certiorari and writ of certiorari can not be issued against the order passed by a civil Court and therefore, for this reason, it was held that by the Coordinate Bench that Revenue Board is not a civil Court. There is no such observation that the orders passed by the Revenue Board or in revenue authority shall not be amenable to Article 227 of the Constitution of India. Hence, the finding in that case does not operate as a bar to file petition against the order of Revenue Board seeking relief under Section 227 of the Constitution of India.

32. The issue in the present case is different. The petitioners in all these cases seek the indulgence of this Court to exercise supervisory jurisdiction. The Board of Revenue comes under the definition of Court and thus any orders passed by Board are subject to supervision by the High Court under Article 227 of the Constitution of India and such exercise of jurisdiction of High Court shall be within the restrictions and limitations, which are already mentioned herein-above, that such exercise of powers can be sparingly exercised and may be exercised to correct errors of jurisdiction and the like but not to upset pure findings of fact of the Court. Such finding of fact can be interfered only by the appellate authority and the High Court exercising jurisdiction under Article 227 of the Constitution of India is not an appellate authority.
33. The question that according to the facts and circumstances of each and every case, regarding which the objection has been raised on the point of maintainability, can not be determined at this

stage. At the cost of repetition, it is again made clear that it is for the parties to choose the provision of Constitution to seek relief as per their requirements and that shall be at the peril of the party themselves.

34. In case of **High Court Bar Association Vs. State of C.G.**, reported in **AIR 2016 CG 03**, the Full Bench of this Court has held in para -19, which are as under :-

“19. A survey of the aforesaid decisions rendered by the Supreme Court in catena of decisions settles the legal position with regard to maintainability of a writ appeal by laying down that where facts of the case justify filing of petition both under Article 226 & 227 of the Constitution and where the petitioner has sought relief invoking jurisdiction under Article 226 of the Constitution, remedy of writ appeal would be available. It has also been held that no straitjacket formula can be laid down but it would depend upon facts and circumstances of each case as to what is the nature of relief sought in the petition and would also depend upon the order passed by the Single Judge disposing of the writ petition. In all these cases, issue with regard to maintainability of writ appeal arose for consideration in the factual premise that the order of Single Judge was passed in a petition arising out of orders passed by Subordinate Court, Tribunals or Quasi Judicial Authority. It is thus luminescently clear that even in a case where the petition before the Single Judge arises out of order passed by Subordinate Court, Tribunal or Quasi Judicial Authority, in the given facts and circumstances of the case and applying the parameters and test laid down by the Supreme Court in the above cited decisions, writ appeal may be held

maintainable. Therefore, to say that in cases where the orders are passed by the Subordinate Court, Tribunal or Quasi Judicial Authority, it shall always and invariably be a case of exercise of supervisory jurisdiction under Article 227 of the Constitution irrespective of the nature of relief sought and the orders passed by the Single Judge, would be a negation of the judicially evolved principles laid down in aforesaid binding decisions.”

35. In the same judgment, it was again held that where the facts justified fact in filing application under Article 226 and 227 of the Constitution of India, or the parties chooses to file application under both the articles in fairness.
36. In case of *Dr. Ram Sharan Lal Tripathi*, the Coordinate Bench has overruled the default pointed out by the Registry, that the petition filed under Article 226 of the Constitution of India, is not maintainable and that it should have been filed under Article 227 of the Constitution of India. That decision of the Court, on default was made on the basis of the facts and circumstances of that case. It is again reiterated that the facts and circumstances of all the cases can not be identical and further there is choice of the parties to pursue for relief under Article 226 or under Article 227 of the Constitution of India. Thus the decision in *Dr. Ram Sharan Lal Tripathi*, does not create a bar on entertaining the petition under Article 227 of the Constitution of India.
37. Hence, on the basis of the detailed discussion made herein above and the settled view of the Apex Court and the High Court, which have been discussed herein above and the other observations that have been made in this order, it is held that the present

petitions, filed under Article 227 of the Constitution of India against the orders passed by Board of Revenue are maintainable.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram