

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

(1) D. B. Civil Special Appeal (Writ) No. 756/2022
In
S. B. Civil Writ Petition No. 9521/2013

Ratna @ Ratan Lal Son Of Late Shri Nathu Mina, Aged About 68
Years, Resident Of Farasiya, Tehsil Kishangarh, District Ajmer.

----Appellant

Versus

1. Board of Revenue for Rajasthan At Ajmer Through Its Registrar.
2. Smt. Asha Devi Agarwal Wife Of Om Prakash Agarwal, Aged About 63 Years, Resident Of Near Bus Stand, Madanganj-Kishangarh Tehsil Kishangarh, District Ajmer (Rajasthan)
3. Ramgopal Son Of Bhagirath, Resident Of Sabzi Mandi, Opposite Maszid, Madanganj-Kishangarh Tehsil Kishangarh, District Ajmer
4. Ganpat (Since Deceased), Through Legal Representative-
 - 4/1. Indra Mohan Son Of Shri Ganpat, Aged About 52 Years, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
 - 4/2. Murli Manohar Son Of Shri Ganpat, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
5. Satyanarain (Since Deceased), Through Legal Representatives.
 - 5/1. Hari Om S/o Satya Narayan, Aged About 55 Years, Resident of Near Ravindra Theatre Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
 - 5/2. Radha Kishan Son Of Satya Narayan, Aged About 52 Years, Resident Of Near Ganesh Mandir, Krishanpuri, Madanganj, Kishangarh, District Ajmer.
 - 5/3. Vishnu Son Of Satya Narayan, Aged About 42 Years, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
6. Hanuman Son Of Bhagirath, Residents Of Sabzi Mandi, Opposite Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.

7. Jagdish (Since Deceased), Through Legal Representatives-
- 7/1. Nand Kishore Son Of Jagdish, Aged About 52 Years, Resident of Near Ravindra Theatre Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
- 7/2. Girraj Son Of Jagdish, Aged About 41 Years, Resident Of Near Ganesh Mandir, Krishanpuri, Madanganj, Kishangarh, District Ajmer.
8. Shyam Sunder Sharma
9. Suresh Sharma
Both Sons Of Nityanand Sharma, Residents Of Madanganj Kishangarh, District Ajmer.
10. State Of Rajasthan, Through Tehsildar, Kishangarh.
11. Kisturi Devi Widow Of Dhanna Lal,
12. Sunil Kumar Son Of Dhanna Lal,
13. Vinod Son Of Dhanna Lal,
All Residents Of Village Farasia, Tehsil Kishangarh, District Ajmer.
14. Additional Divisional Commissioner, Ajmer.
15. District Collector, Ajmer.

-----Respondents

Connected With

(2) D. B. Civil Special Appeal (Writ) No. 781/2022

In

S.B. Civil Writ Petition No. 11851/2013

Ratna @ Ratan Lal Son of Late Shri Nathu Mina, aged about 68 years, Resident of Farasiya, Tehsil Kishangarh, District Ajmer.

-----Appellant

Versus

1. Board of Revenue for Rajasthan, at Ajmer Through Its Registrar.
2. Smt. Asha Devi Agarwal Wife Of Om Prakash Agarwal, Aged About 63 Years, Resident Of Near Bus Stand, Madanganj-Kishangarh Tehsil Kishangarh, District Ajmer (Rajasthan).
3. Ramgopal Son Of Bhagirath, Residents Of Sabzi Mandi, Opposite Maszid, Madanganj Kishangarh, Tehsil

Kishangarh, District Ajmer.

4. Ganpat (Since Deceased), Through Legal Representative-
- 4/1. Indra Mohan Son Of Shri Ganpat, Aged about 52 years, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
- 4/2. Murli Manohar Son Of Shri Ganpat, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
5. Satyanarain (Since Deceased), Through Legal Representatives:-
- 5/1. Hari Om S/o Satya Narayan, Aged About 55 Years, Resident Of Near Ravindra Theatre Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
- 5/2. Radha Kishan Son Of Satya Narayan, Aged About 52 Years, Resident Of Near Ganesh Mandir Krishanpuri, Madanganj, Kishangarh, District Ajmer.
- 5/3. Vishnu Son Of Satya Narayan, Aged About 42 Years, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
6. Hanuman Son Of Bhagirath, Residents Of Sabzi Mandi, Opposite Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
7. Jagdish (Since Deceased), Through Legal Representative.
- 7/1. Nand Kishore Son Of Jagdish, Aged About 52 Years, Resident Of Near Ravindra Theater, Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
- 7/2. Girraj Son Of Jagdish, Aged About 41 Years, Resident Of Near Ganesh Mandir, Krisanpuri, Madanganj, Kishangarh, District Ajmer.
8. Shyam Sundar Sharma
9. Suresh Sharma
Both sons Of Nityanand Sharma, Residents Of Madanganj, Kishangarh, District Ajmer.
10. State of Rajasthan, Through Tehsildar, Kishangarh.
11. Kisturi Devi Widow Of Dhanna Lal,
12. Sunil Kumar Son Of Dhanna Lal,
13. Vinod Son Of Dhanna Lal,

All Resident Of Village Farasia, Tehsil Kishangarh, District Ajmer.

14. Additional Divisional Commissioner, Ajmer.
15. District Collector, Ajmer.

----Respondents

(3) D. B. Civil Special Appeal (Writ) No. 785/2022

In

S.B. Civil Writ Petition No. 11852/2013

Ratna @ Ratan Lal Son Of Late Shri Nathu Mina, Aged About 68 Years, Resident Of Farasiya, Tehsil Kishangarh, District Ajmer.

----Appellant

Versus

1. Board of Revenue, for Rajasthan at Ajmer Through Its Registrar.
2. Smt. Asha Devi Agarwal Wife Of Om Prakash Agarwal, Aged About 63 Years, Resident Of Near Bus Stand, Madanganj- Kishangarh Tehsil Kishangarh, District Ajmer (Rajasthan)
3. Ramgopal Son Of Bhagirath, Residents Of Sabzi Mandi, Opposite Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
4. Ganpat (Since Deceased), Through Legal Representative-
 - 4/1. Indra Mohan Son Of Shri Ganpat, Aged About 52 Years, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
 - 4/2. Murli Manohar Son Of Shri Ganpat, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
5. Satyanarain (Since Deceased), Through Legal Representatives:-
 - 5/1. Hari Om S/o Satya Narayan, Aged About 55 Years, Resident Of Near Ravindra Theatre Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
 - 5/2. Radha Kishan Son Of Satya Narayan, Aged About 52 Years, Resident Of Near Ganesh Mandir, Krishanpuri, Madanganj, Kishangarh, District Ajmer.

- 5/3. Vishnu Son Of Satya Narayan, Aged About 42 Years, Resident Of Infornt Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
6. Hanuman Son Of Bhagirath, Residents Of Sabzi Mandi, Opposite Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
7. Jagdish (Since Deceased), Through Legal Representative-
- 7/1. Nand Kishore Son Of Jagdish, Aged About 52 Years, Resident Of Near Ravindra Theatre, Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
- 7/2. Girraj Son Of Jagdish, Aged About 41 Years, Resident Of Near Ganesh Mandir, Krisanpuri, Madanganj, Kishangarh, District Ajmer.
8. Shyam Sunder Sharma
9. Suresh Sharma
Both sons of Nityanand Sharma, Resident Of Madanganj, Kishangarh, District Ajmer.
10. State Of Rajasthan, Through Tehsildar, Kishangarh.
11. Kisturi Devi Widow of Dhanna Lal,
12. Sunil Kumar Son Of Dhanna Lal,
13. Vinod Son Of Dhanna Lal,
All Residents Of Village Farasia, Tehsil Kishangarh, District Ajmer.
14. Additional Divisional Commissioner, Ajmer.
15. District Collector, Ajmer.

-----Respondents

(4) D. B. Civil Special Appeal (Writ) No. 977/2022

In

S.B. Civil Writ Petition No. 11851/2013

1. Smt. Kisturi Devi Widow Of Dhanna Lal,
2. Sunil Kumar Son Of Dhanna Lal,
3. Vinod Son Of Dhanna Lal,
All Residents Of Village Farasia, Tehsil Kishangarh, District Ajmer.

-----Appellants

Versus

1. Board of Revenue for Rajasthan at Ajmer, Through Its Registrar.
2. Smt. Asha Devi Agarwal Wife Of Om Prakash Agarwal, Aged About 63 Years, Resident Of Near Bus Stand, Madanganj-Kishangarh Tehsil Kishangarh, District Ajmer (Rajasthan).
3. Ramgopal Son Of Bhagirath, Resident Of Sabzi Mandi, Opposite Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
4. Ganpat (Since Deceased), Through Legal Representative-
 - 4/1. Indra Mohan Son Of Shri Ganpat, Aged About 52 Years, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
 - 4/2. Murli Manohar Son Of Shri Ganpat, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
5. Satyanarain (Since Deceased), Through Legal Representatives-
 - 5/1. Hari Om S/o Satya Narayan, Aged About 55 Years, Resident Of Near Ravindra Theatre Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
 - 5/2. Radha Kishan Son Of Satya Narayan, Aged About 52 Years, Resident Of Near Ganesh Mandir, Krishanpuri, Madanganj, Kishangarh, District Ajmer.
 - 5/3. Vishnu Son Of Satya Narayan, Aged About 42 Years, Resident Of Infornt Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
6. Hanuman Son Of Bhagirath, Resident Of Sabzi Mandi, Opposite Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
7. Jagdish (Since Deceased), Through Legal Representative-
 - 7/1. Nand Kishore Son Of Jagdish, Aged about 52 years, Resident Of Near Ravindra Theatre, Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
 - 7/2. Girraj Son Of Jagdish, Aged about 41 years, Resident Of Near Ganesh Mandir, Krisanpuri, Madanganj, Kishangarh, District Ajmer.

8. Shyam Sunder Sharma
9. Suresh Sharma
Both sons of Nityanand Sharma, Resident Of Madanganj,
Kishangarh, District Ajmer.
10. State Of Rajasthan, Through Tehsildar, Kishangarh.
11. Ratna @ Ratan Lal Son Of Late Shri Nathu Mina, Aged
About 68 Years, Resident Of Farasiya, Tehsil Kishangarh,
District Ajmer.
12. Additional Divisional Commissioner, Ajmer.
13. District Collector, Ajmer.

-----Respondents

(5) D. B. Civil Special Appeal (Writ) No. 996/2022
In
S.B. Civil Writ Petition No. 9521/2013

1. Smt. Kisturi Widow Of Dhanna Lal,
2. Sunil Kumar Son Of Dhanna Lal,
3. Vinod Son Of Dhanna Lal,
All Residents Of Village Farasia, Tehsil Kishangarh, District
Ajmer.

-----Appellants

Versus

1. Board of Revenue, for Rajasthan at Ajmer Through Its
Registrar.
2. Smt. Asha Devi Agarwal Wife Of Om Prakash Agarwal,
Aged About 63 Years, Resident Of Near Bus Stand,
Madanganj- Kishangarh Tehsil Kishangarh, District Ajmer
(Rajasthan)
3. Ramgopal Son Of Bhagirath, Resident Of Sabzi Mandi,
Opposite Maszid, Madanganj Kishangarh, Tehsil
Kishangarh, District Ajmer.
4. Ganpat (Since Deceased), Through Legal Representative -
4/1. Indra Mohan Son Of Shri Ganpat, Aged About 52 Years,
Resident Of Infront Of Maszid, Madanganj Kishangarh,
Tehsil Kishangarh, District Ajmer.
4/2. Murli Manohar Son Of Shri Ganpat, Resident Of Infront Of
Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District
Ajmer.

5. Satyanarain (Since Deceased), Through Legal Representative -
 - 5/1. Hari Om S/o Satya Narayan, Aged About 55 Years, Resident Of Near Ravindra Theatre Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
 - 5/2. Radha Kishan Son Of Satya Narayan, Aged About 52 Years, Resident Of Near Ganesh Mandir, Krishanpuri, Madanganj, Kishangarh, District Ajmer.
 - 5/3. Vishnu Son Of Satya Narayan, Aged About 42 Years, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
6. Hanuman Son Of Bhagirath, Resident Of Sabzi Mandi, Opposite Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
7. Jagdish (Since Deceased), Through Legal Representative-
 - 7/1. Nand Kishore Son Of Jagdish, Aged About 52 Years, Resident Of Near Ravindra Theatre, Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
 - 7/2. Girraj Son Of Jagdish, Aged About 41 Years, Resident Of Near Ganesh Mandir, Krisanpuri, Madanganj, Kishangarh District Ajmer.
8. Shyam Sunder Sharma
9. Suresh Sharma
Both sons of Nityanand Sharma, Resident Of Madanganj, Kishangarh, District Ajmer.
10. State Of Rajasthan, Through Tehsildar, Kishangarh.
11. Ratna @ Ratan Lal Son Of Late Shri Nathu Mina, Aged about 66 years, Resident Of Farasiya, Tehsil Kishangarh, District Ajmer.
12. Additional Divisional Commissioner, Ajmer.
13. District Collector, Ajmer.

-----Respondents

(6) D. B. Civil Special Appeal (Writ) No. 999/2022

In

S.B. Civil Writ Petition No. 11852/2013

1. Smt. Kisturi Devi Widow Of Dhanna Lal,
2. Sunil Kumar Son Of Dhanna Lal,
3. Vinod Son Of Dhanna Lal,

All Residents Of Village Farasia, Tehsil Kishangarh, District Ajmer.

----Appellants

Versus

1. Board Of Revenue, For Rajasthan At Ajmer Through Its Registrar.
2. Smt. Asha Devi Agarwal Wife Of Om Prakash Agarwal, Aged About 63 Years, Resident Of Near Bus Stand, Madanganj- Kishangarh Tehsil Kishangarh, District Ajmer (Rajasthan)
3. Ramgopal Son Of Bhagirath, Resident Of Sabzi Mandi, Opposite Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
4. Ganpat (Since Deceased), Through Legal Representative -
 - 4/1. Indra Mohan Son Of Shri Ganpat, Aged About 52 Years, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
 - 4/2. Murli Manohar Son Of Shri Ganpat, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
5. Satyanarain (Since Deceased), Through Legal Representative -
 - 5/1. Hari Om S/o Satya Narayan, aged about 55 years, Resident Of Near Ravindra Theatre Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.
 - 5/2. Radha Kishan Son Of Satya Narayan, Aged About 52 Years, Resident Of Near Ganesh Mandir, Krishanpuri, Madanganj, Kishangarh, District Ajmer.
 - 5/3. Vishnu Son Of Satya Narayan, Aged About 42 Years, Resident Of Infront Of Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
6. Hanuman Son Of Bhagirath, Resident Of Sabzi Mandi, Opposite Maszid, Madanganj Kishangarh, Tehsil Kishangarh, District Ajmer.
7. Jagdish (Since Deceased), Through Legal Representative.
 - 7/1. Nand Kishore Son Of Jagdish, Aged About 52 Years, Resident Of Near Ravindra Theatre, Oswal Mohhala, Madanganj, Kishangarh, District Ajmer.

- 7/2. Girraj Son Of Jagdish, Aged About 41 Years, Resident Of Near Ganesh Mandir, Krisanpuri, Madanganj, Kishangarh District Ajmer.
8. Shyam Sunder Sharma
9. Suresh Sharma
Both sons of Nityanand Sharma, Resident Of Madanganj, Kishangarh, District Ajmer.
10. State Of Rajasthan, Through Tehsildar, Kishangarh.
11. Ratna @ Ratan Lal Son Of Late Shri Nathu Mina, Aged About 68 Years, Resident Of Farasiya, Tehsil Kishangarh, District Ajmer.
12. Additional Divisional Commissioner, Ajmer.
13. District Collector, Ajmer.

-----Respondents

(7) D. B. Special Appeal (Writ) No. 222/2023

In

S.B. Civil Writ Petition No. 19076/2022

Heeralal S/o Late Chandraram, R/o Dhani Dulapura, Tan Kankra, Tehsil Dantaramgarh, District Sikar Rajasthan.

-----Defendant-Petitioner-Appellant

Versus

1. Chitra Singh W/o Shri Vikramaditya Shekhawat, R/o Danta House, Outside Chandpole, Jaipur, Rajasthan.
Plaintiff-Respondent
2. Hanuman S/o Late Dularam S/o Late Chandraram,
3. Chokharam S/o Late Dularam S/o Late Chandraram,
4. Gopal S/o Late Dularam S/o Late Chandraram,
5. Kumari Patasi D/o Late Dularam S/o Late Chandraram,
6. Smt. Sundari Devi W/o Late Dularam,
7. Krishnaram S/o Late Chandraram,
8. Jodharam S/o Late Chandraram,
9. Rakhi D/o Late Chandraram,
10. Manna Devi D/o Late Chandraram,
11. Devli W/o Baluram,
12. Ramdevaram S/o Late Baluram,
13. Jogaram S/o Late Baluram,

14. Kesar Devi D/o Late Baluram,
15. Birdi Devi D/o Late Baluram,
16. Raju Devi D/o Late Baluram,
All Residents of Dhani Dulapura, Tan Kankra, Tehsil
Dantaramgarh, District Sikar, Rajasthan.
17. State of Rajasthan, Through Tehsildar Dantaramgarh,
District Sikar.

----Defendants-Respondents

(8) D. B. Special Appeal (Writ) No. 410/2023

In

S. B. Civil Writ Petition No. 10140/2018

1. Sitaram S/o Shri Gopal, Aged About 50 Years, R/o Gram
Bilwa, Tehsil Sanganer, Distt. Jaipur.
2. Ramratan S/o Shri Gopal, Aged About 55 Years, R/o Gram
Bilwa, Tehsil Sanganer, Distt. Jaipur.
3. Babulal Gopal, S/o Shri Gopal, Aged About 60 Years, R/o
Gram Bilwa, Tehsil Sanganer, Distt. Jaipur.

----Appellants/Petitioners/Defendants

Versus

1. Bhonrilal S/o Kajod Adopted S/o Late Shri Gashi, R/o
Gram Narsinghpura @ Dadiya, Tehsil Sanganer, Distt.
Jaipur.
2. Gyarsha S/o Laxminarayan, R/o Gram Narsinghpura @
Dadiya, Tehsil Sanganer, Distt. Jaipur.
3. Rameshwar S/o Laxminarayan, R/o Gram Narsinghpura @
Dadiya, Tehsil Sanganer, Distt. Jaipur.
4. Tehsildar, Sanganer, Distt. Jaipur.
5. Naryan S/o Bhura, R/o Gram Narsinghpura @ Dadiya,
Tehsil Sanganer, Distt. Jaipur.
6. Smt. Kamla D/o Gopal, W/o Ram Sahai, R/o Gram
Narsinghpura @ Dadiya, Tehsil Sanganer, Distt. Jaipur.
7. Smt. Gulli, D/o Gopal, W/o Babulal, R/o Gram
Narsinghpura @ Dadiya, Tehsil Sanganer, Distt. Jaipur.
8. Smt. Bhuri D/o Gopal W/o Birdichand, R/o Gram Mahal,
Tehsil, Sanganer, Distt. Jaipur.
9. Gopal S/o Laduram, R/o Gram Bilwa, Tehsil Sanganer,
Distt. Jaipur.

10. Smt. Soni, Widow Of Sonji @ Sohanlal, R/o Gram Narsinghpura @ Dadiya, Tehsil Sanganer, Distt. Jaipur.
11. Ramsahai, S/o Shri Sonji @ Sohanlal, R/o Gram Narsinghpura @ Dadiya, Tehsil Sanganer, Distt. Jaipur.
12. Ramkishor S/o Shri Sonji @ Sohanlal, R/o Gram Narsinghpura @ Dadiya, Tehsil Sanganer, Distt. Jaipur.
13. Suraj S/o Bhura, R/o Gram Narsinghpura @ Dadiya, Tehsil Sanganer, Distt. Jaipur.
14. Ramsahai, S/o Bhura, R/o Gram Narsinghpura @ Dadiya, Tehsil Sanganer, Distt. Jaipur.
15. Shankar Lal S/o Bhura, R/o Gram Narsinghpura @ Dadiya, Tehsil Sanganer, Distt. Jaipur.
16. Smt. Kailashi D/o Shri Gopal, W/o Ramji Lal, R/o Gram Dudali, Tehsil Bassi, Dist. Jaipur.
17. Smt. Sara Devi, Wife Of Shri Kanhiya Lal, Resident Of Gram Mehal Tilawala, Tehsil Sanganer, Distt. Jaipur.
18. Sub Registrar, Tehsil Sanganer, District Jaipur.

----Respondents/Plaintiffs

(9) D. B. Special Appeal (Writ) No. 411/2023

In

S.B. Civil Writ Petition No. 15556/2016

Rameshwar Son Of Shri Laxmi Narayan, Aged About 65 Years,
R/o Narsinghpura @ Dadiya, Tehsil- Sanganer, District- Jaipur
(Raj.)

----Appellant/Petitioner

Versus

1. Bhonri Lal Son Of Shri Kajod, (Adopted Son) Ghasi, R/o Narsinghpura @ Dadiya, Tehsil- Sanganer, District- Jaipur (Raj.)
2. Sitaram, Son Of Shri Gopal
3. Ramratan, Son Of Shri Gopal
4. Babu Lal Son Of Shri Gopal,
All Residents Of Narsinghpura @ Dadiya, Tehsil- Sanganer,
District- Jaipur (Raj.) (Legal Heirs Of Late Smt. Mangi)
5. Kalu Son Of Shri Laxminarayan, R/o Narsinghpura @ Dadiya, Tehsil- Sanganer, District- Jaipur (Raj.)

6. Gyarasa Son Of Shri Laxminarayan, R/o Nrisinghpura @ Dadiya, Tehsil- Sanganer, District- Jaipur (Raj.)
7. Sub Registrar, Tehsil Sanganer, District- Jaipur(Raj.)
8. Tehsildar, Sanganer, District Jaipur (Raj.)
9. Narayan Son Of Shri Bhura, R/o Nrisinghpura @ Dadiya, Tehsil- Sanganer, District- Jaipur (Raj.)
10. Smt. Kamla, Daughter Of Shri Gopal Wife Of Shri Ram Sahay
11. Smt. Gulli Daughter Of Shri Gopal Wife Of Shri Babu Lal, All Resident Of Nrisinghpura @ Dadiya, Tehsil- Sanganer, District- Jaipur (Raj.)
12. Smt. Bhuri Daughter Of Shri Gopal Wife Of Birdi Chand, R/o Gaon Mahal, Tehsil- Sanganer, District- Jaipur.
13. Gopal Son Of Shri Laduram, Gaon Beelwa, Tehsil Sanganer, District- Jaipur.
14. Smt. Soni, Widow Sonji @ Sohan Lal
15. Ram Rai, Son Of Late Shri Sonji @ Sohan Lal
16. Ramkishore, Son Of Late Shri Sonji @ Sohan Lal
17. Suraj, Son Of Shri Bhura
18. Ram Sahay, Son Of Shri Bhura
19. Shankar Lal Son Of Shri Bhura, All Residents Of Nrisinghpura @ Dadiya, Tehsil Sanganer, District- Jaipur (Raj.)
20. Smt. Kailashi Devi Daughter Of Shri Gopal, Wife Of Shri Ramji Lal, R/o Dudhla, Tehsil- Bassi, District- Jaipur (Raj.)

-----Respondents

For Appellants	:	Mr. Rajendra Prasad Senior Advocate assisted by Ms. Harshita Thakral Advocate, Ms. Dhriti Laddha Advocate and Mr. Abhishek Pareek Advocate; Mr. N.K. Maloo Senior Advocate & Amicus Curiae assisted by Mr. Pratyush Sharma Advocate. Mr. Saket Pareek Advocate Mr. Aditya Pareek Advocate Mr. Mahesh Gupta Advocate Mr. Manoj Kumar Bhardwaj Advocate.
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For Respondents : Mr. R.K. Agarwal Senior Advocate
assisted by Mr. Adhiraj Modi Advocate
Mr. Anand Sharma Amicus Curiae
Mr. Ashish Sharma Advocate.

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MRS. JUSTICE SHUBHA MEHTA

Order

REPORTABLE

25/10/2024

(Per Hon'ble the Chief Justice):

1. In these nine appeals, which have been listed for analogous hearing, objection to maintainability of these intra-court appeals, has been raised on common grounds.

2. All these appeals arise out of orders passed in writ petitions by the learned Single Judges. Insofar as D. B. Civil Special Appeal (Writ) Nos. 756/2022, 781/2021, 785/2022, 977/2022, 996/2022, 999/2022 and 222/2023 are concerned, they arise out of orders passed in Writ Petition Nos. 9521/2013, 11851/2013, 11852/2013 and 19076/2022 filed before the learned Single Judge assailing orders passed by the Board of Revenue, Ajmer (hereinafter referred to as 'the Board of Revenue') in exercise of its power of revision provided under Section 84 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as 'the Act of 1956').

Insofar as D. B. Civil Special Appeal (Writ) Nos. 410/2023 and 411/2023 are concerned, they have been filed assailing common order dated 17.04.2023 passed by learned Single Judge in Writ Petition Nos. 15556/2016 and 10140/2018 wherein order of dismissal of appeal by the Board of Revenue as well as order of dismissal of review petition were challenged.

Submissions on behalf of respondents:

3. Mr. R.K. Agarwal, learned Senior Counsel appearing on behalf of the respondents raised an objection with regard to maintainability of these intra-court appeals on the submission that various revenue proceedings were brought before the Board of Revenue in suits seeking declaration of various rights and the revenue courts while deciding the suits exercised judicial function, which is akin to judicial function of the civil courts, in respect of those matters where the jurisdiction of civil courts is expressly barred under the provisions of the Act of 1956 and the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955'). The decrees and orders passed by the revenue courts at the first instance, in exercise of original jurisdiction were taken in appeal before the revenue appellate authorities and finally to highest court of appeal and/or revision being the Board of Revenue in the hierarchy of revenue courts. Therefore, it is contended, the Board of Revenue exercised jurisdiction as appellate and/or revisional authority to examine the matters arising out of revenue suits and thereby exercised judicial function as 'Court' for all legal and practical purposes. Hence, the orders passed by the Board of Revenue exercising such powers and functions as highest revenue court are not amenable to writ jurisdiction, but are subject only to supervisory jurisdiction under Article 227 of the Constitution of India. The Board of Revenue, being a revenue court, as defined under Section 5(35) of the Act of 1955 and even though, strictly speaking, it is not the civil court but definitely has trappings of Court exercising special jurisdiction in respect of the matters provided under the Act of 1955 and the Act of 1956 as the

jurisdiction of the civil court is expressly barred. Learned Senior Counsel also referred to the provisions contained in Section 5 sub-section 34-A, Section 5 sub-section (35); Section 53; Sections 88 to 92 and Section 208 of the Act of 1955 to submit that the revenue courts, while exercising jurisdiction in the matter of revenue suits, function as judicial court and, therefore, decrees as also orders which are ultimately passed by the revenue courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India in view of the judgment of the Hon'ble Supreme Court in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others**¹. In support of his submissions, learned Senior Counsel placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of **Ethiopian Airlines Vs. Ganesh Narain Saboo**²; **Trans Mediterranean Airways Vs. Universal Exports & Another**³; and **Pyarelal Vs. Shubhendra Pilonia (Minor) through Natural Guardian (Father) Shri Pradeep Kumar Pilonia & Others**⁴.

Submissions on behalf of appellants:

4. Per contra, Mr. Rajendra Prasad, learned Senior Counsel appearing on behalf of the appellants would argue that though in respect of matters provided under the Act of 1955 and the Act of 1956, jurisdiction of the civil court is expressly barred and those matters can be decided only by revenue authorities either as statutory functionaries or as revenue courts and even though while deciding revenue suits, the revenue courts are not part of hierarchy of civil courts. Referring to the provisions contained in

1 (2015) 5 SCC 423

2 (2011) 8 SCC 539

3 (2011) 10 SCC 316

4(2019) 3 SCC 692

Section 5 and Section 8 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') and Article 233 of the Constitution of India, learned Senior Counsel would submit that a distinction has always been maintained between the Board of Revenue and Civil Court and they are not one and the same. Referring to definition of "District Judge" and "Chief Controlling Revenue Authority" as provided in the General Clauses Act, 1897, it is submitted that the said Presiding Officers are also separately defined as they represent two different and distinct hierarchy of courts and cannot be held to be covered under the broad classification of "Civil Court". Learned Senior Counsel would also refer to legislative entries under List I, II and III of Schedule VII appended to the Constitution of India to submit that the revenue courts and civil courts fall under altogether different legislative entries for the purposes of legislation.

5. Learned Senior Counsel also traced historical origin of various courts including the revenue courts and civil courts in the State of Rajasthan prior to coming into force the Constitution of India and the States Reorganisation Act, 1956, by referring to three Ordinances namely; The Rajasthan High Court Ordinance, 1949; the Rajasthan Board of Revenue Ordinance, 1949, The Rajasthan Civil Courts Ordinance, 1950 and the Rajasthan Revenue Courts (Designation) Ordinance, 1949. Reference has also been made to the provisions contained in the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951 as also the provisions contained in the Act of 1955 and the Act of 1956. Learned Senior Counsel also referred to the provisions with regard to judicial matters as enumerated in the First Schedule appended

to the Act of 1956 to submit that the revenue courts including the Board of Revenue exercise limited jurisdiction in respect of the revenue matters alone and, therefore, they are the courts of limited jurisdiction and does not have plenary jurisdiction which the civil courts exercise under Section 9 of CPC. According to learned Senior Counsel, as the revenue courts are not civil courts, the decrees and orders passed by the revenue courts are amenable to writ jurisdiction under Article 226 of the Constitution of India and in cases where writ petitions are filed under Articles 226 and 227 of the Constitution of India before the High Court or where the certiorari jurisdiction of the High Court is invoked or where a prayer is made invoking certiorari jurisdiction of the High Court and where the facts of the case justify filing of writ petition under Articles 226 and 227 of the constitution of India, intra-court appeal as provided under Rule 134 of the Rules of the High Court of Rajasthan, 1952 (hereinafter referred to as 'the Rajasthan High Court Rules') would be maintainable and not barred. In such cases, decision of the Hon'ble Supreme Court in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** would not be not attracted. Contention of learned Senior Counsel is that the Larger Bench of the Hon'ble Supreme Court in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** declared law that orders passed by the civil courts are not amenable to writ jurisdiction. As the revenue courts are not civil courts, though they may have trappings of civil court, the decision rendered in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** does not apply and the decrees and orders passed by the Board of Revenue are amenable to

certiorari jurisdiction under Article 226 of the Constitution of India. Learned Senior Counsel also placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of **Jogendrasinhji Vijaysinghji Vs. State of Gujarat & Others**⁵; **Umaji Keshao Meshram & Others Vs. Radhikabai, Widow of Anandrao Banapurkar & Another**⁶; **Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc.**⁷; **Syed Yakoob Vs. K.S. Radhakrishnan & Others**⁸; and decisions of this Court in the cases of **Mahendra Kumar Jain Vs. Appellate Rent Tribunal, Ajmer**⁹; **Keshav Dev vs. Radhey Shyam-(1)**¹⁰; **Babita Vs. Nihaldei**¹¹; **Panna Ram Vs. Ramu Ram**¹²; **Ramesh Chand Tiwari & Others Vs. Board of Revenue & Others**¹³; **Punjab National Bank Vs. Purewell & Associates Ltd.**¹⁴; and **Kartar Singh Vs. Board of Revenue & Others**¹⁵.

6. Since the issue with regard to maintainability of these intra-court appeals against the order passed by the Board of Revenue in exercise of its revisional or appellate jurisdiction was raised, on the request made by the Court, Mr. N.K. Maloo, learned Senior Counsel and Mr. Anand Sharma, learned Counsel also assisted the Court as Amicus Curiae.

5 (2015) 9 SCC 1

6 1986 (Supp) SCC 401

7 AIR 2009 SC 713

8 AIR 1964 SC 477

9 AIR 2022 Rajasthan 7

10 1964 RLW 1

11 2017 (2) WLC (Raj.) 275

12 AIRONLINE 2019 RAJ 403

13 2005 (2) WLC (Raj.) 305

14 2002 (1) WLC (Raj.) 67

15 2010 (3) WLC (Raj.) 368

Submissions by Amicus Curiae:

7. Mr. N.K. Maloo, learned Senior Counsel and Amicus Curiae extensively submits that the settled legal position, as has been adumbrated in plethora of decisions is that where the orders of courts and tribunals are challenged by filing petitions under Articles 226 and 227 of the Constitution of India and where the facts of the case justify seeking invocation of writ of certiorari, writ appeal would be maintainable under Rule 134 of the Rajasthan High Court Rules. His further submission is that on plain reading of Rule 134 of the Rajasthan High Court Rules, there is not even any bar against an order passed by a Single Bench even in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. He would also submit that unless there is a bar under the provisions relating to appeal, an appeal would be maintainable even against the orders which are passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. His further submission is that special courts constituted under special enactments, including the revenue courts, exercise powers and jurisdiction in relation to matters provided under the revenue laws in the State of Rajasthan namely the Act of 1955 and the Act of 1956, though they may have trappings of civil courts, they are not civil courts. The decision rendered by the Hon'ble Supreme Court in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** carves out an exception insofar as civil courts are concerned by providing that orders passed by the civil courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India. Subject to aforesaid exception, in respect of other orders passed by the courts and

tribunals constituted under various enactments, the courts which are not civil courts and tribunals constituted under special enactments against whose orders certiorari jurisdiction under Article 226 of the Constitution of India is invoked, writ appeal would be maintainable under the applicable rules. The Board of Revenue, it is contended, is not a court, but tribunal and, therefore, amenable to writ jurisdiction and whenever writ petition is filed seeking to invoke certiorari jurisdiction, then irrespective of whether the court has granted relief or not, intra-court appeal as provided under Rule 134 of the Rajasthan High Court Rules would be maintainable. During the course of arguments, learned Senior Counsel referred to decision rendered by this Court in the case of **Kartar Singh Vs. Board of Revenue & Others (supra)**, wherein a Division Bench of this Court held that intra-court appeal under Rule 134 of the Rajasthan High Court Rules would lie from an order passed by Single Judge even while exercising the powers under Article 227 of the Constitution of India. Learned Amicus Curiae also relied upon the decisions of the Hon'ble Supreme Court in the cases of **Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil¹⁶**; **Harinagar Sugar Mills Ltd. Vs. Shyam Sunder Jhunjhunwala & Others¹⁷**; **Life Insurance Corporation of India Vs. Nandini J. Shah & Others¹⁸** and **Jogendrasinhji Vijaysinghji Vs. State of Gujarat & Others (supra)**.

8. Mr. Anand Sharma, learned Amicus Curiae also assisted the Court and submitted that the decision rendered by the Hon'ble

¹⁶ (2010) 8 SCC 329

¹⁷ AIR 1961 SC 1669

¹⁸ (2018) 15 SCC 356

Supreme Court in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** is limited on the issue as to whether an order passed by a civil court is amenable to writ jurisdiction. Referring to various provisions contained in the Act of 1955 and the Act of 1956, learned Amicus Curiae would submit that the order passed by the Board of Revenue can be challenged under Article 227 of the Constitution of India when it exercises judicial function but when it passes an order as Chief Revenue Controlling Authority, then, such order is amenable to writ jurisdiction under Article 226 of the Constitution of India. He would further submit that though the Board of Revenue and other revenue courts may have trappings of civil court, they cannot be equated with civil court. The law enunciated in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** is not applicable in those cases where the orders passed by the Board of Revenue are challenged by filing writ petition before the High Court. Learned Amicus Curiae has placed reliance upon the decisions rendered by the Hon'ble Supreme Court in the cases of **Mahendra Kumar Jain Vs. Appellate Rent Tribunal, Ajmer (supra)**; **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)**; **Jogendrasinhji Vijaysinghji Vs. State of Gujarat & Others (supra)**; **Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil (supra)**; **Surya Dev Rai Vs. Ram Chander Rai & Others¹⁹**; **Ashok K. Jha & Others Vs. Garden Silk Mills Limited & Another²⁰**; and decisions rendered by this Court in the cases of **Kartar Singh Vs. Board of Revenue &**

¹⁹ (2003) 6 SCC 675

²⁰ (2009) 10 SCC 584

Others (supra); Ramesh Chand Tiwari & Others Vs. Board of Revenue & Others (supra); and Sukh Dev Vs. Prakash Chandra²¹.

Relevant factual matrix of the cases:

9. Before we proceed to deal with various legal submissions on the aspect of maintainability of these intra-court appeals, we consider it apposite to mention that in all the cases, orders passed by the Board of Revenue in exercise of its revisional/appellate jurisdiction were challenged by filing writ petitions under Articles 226 and 227 of the Constitution of India. Furthermore, D. B. Civil Special Appeal (Writ) Nos. 756/2022, 781/2021, 785/2022, 977/2022, 996/2022 and 999/2022 arise out of common order dated 11.04.2022 passed by the learned Single Judge in three writ petitions. All three writ petitions were filed by petitioner-Smt. Asha Devi Agarwal aggrieved by orders passed by the Board of Revenue. Common order passed by the learned Single Judge has been challenged by the respondents in the writ petitions, namely, Ratna @ Ratan Lal, Kisturi Devi, Sunil Kumar and Vinod. In respect of the orders of mutation of the subject land, one of the appellants in above appeal, Ratna @ Ratan Lal filed an application under Section 82 of the Act of 1956 before Tehsildar for making reference with regard to three mutation orders on the ground that those mutation orders were illegal. After issuing notice, the Tehsildar dropped the proceedings and refused to make reference. Later on, Ratna @ Ratan Lal filed three appeals along with applications for condonation of delay before the District Collector, Ajmer questioning mutation orders passed in the years 1967,

21 2010 (2) WLC (Raj.) 500

1968 and 1984. Applications for condonation of delay as also the appeals were dismissed. Thereafter, Ratna @ Ratan Lal filed appeals before the Additional Divisional Commissioner, Ajmer who allowed the appeals vide judgment dated 16.06.2005 remanding the matters back to the District Collector, Ajmer. Aggrieved by order dated 16.06.2005 passed by Additional Divisional Commissioner, Ajmer, Smt. Asha Devi Agarwal filed three revisions petitions under Section 84 of the Act of 1956 before the Board of Revenue. The Board of Revenue quashed and set aside the orders passed by the Additional Divisional Commissioner, Ajmer as well as District Collector, Ajmer and also proceeded to set aside mutation orders and directed the disputed land to be restored in the name of the persons whose names existed before the first sale. Aggrieved by three orders passed by the Board of Revenue in exercise of its revisional jurisdiction, Smt. Asha Devi Agarwal preferred three writ petitions which came to be decided by the learned Single Judge vide common order dated 11.04.2022, which has been assailed in the aforesaid six appeals by Ratna @ Ratan Lal, Kisturi Devi, Sunil Kumar and Vinod.

10. D.B. Civil Special Appeal (Writ) Nos. 410/2023 and 411/2023 arise out of common order dated 17.04.2023 passed in two writ petitions filed by Rameshwar and Sitaram & Others. Bhonri Lal (Respondent No. 1 in two writ petitions) filed revenue suit before the Court of ACM-II, Jaipur for declaration and permanent injunction which came to be decreed in his favour vide judgment dated 23.04.2012. First appeal preferred against the said judgment was dismissed by the Revenue Appellate Authority. Second appeal was also dismissed by the Board of Revenue.

Review petition seeking review of order of the Board of Revenue was also filed which was also dismissed. Against dismissal of second appeal vide judgment dated 22.07.2015 and dismissal of review petition vide order dated 08.06.2016, two writ petitions came to be filed before the learned Single Judge which were dismissed vide order dated 17.04.2023, which has been assailed in the aforesaid two appeals.

11. D.B. Civil Special Appeal (Writ) No. 222/2023 arise out of order dated 18.01.2023 passed by learned Single Judge in a writ petition filed by defendant-Heeralal aggrieved by order dated 23.02.2021 passed by the Sub Divisional Officer, Dantaramgarh, District Sikar rejecting an application under Order 7 Rule 11 read with Order 9 Rule 9 CPC as also order of the Board of Revenue, dismissing revision petition filed against above order. In that case, Respondent-Chitra Singh filed suit for eviction, declaration and possession against the appellant-defendant Heeralal and other defendants. Writ petition filed under Articles 226 and 227 of the Constitution of India against order passed by the Board of Revenue was dismissed, giving rise to aforesaid intra-court appeal.

Analysis & Conclusion:

12. The Scheme of intra-court appeal in Rajasthan High Court is traceable to The Rajasthan High Court Ordinance, 1949 (hereinafter referred to as 'the Ordinance of 1949') promulgated by His Highness, the Rajpramukh on the 21st day of June, 1949 (Ordinance No. XV of 1949) to provide for the establishment of a High Court of Judicature for Rajasthan. The Ordinance of 1949 was promulgated in exercise of powers conferred by Paragraph (3)

of Article X of the Covenant and all other powers enabling Rajpramukh in this behalf. Section 18 under the Chapter, "Civil jurisdiction of the High Court" provided for appeal to the High Court from judgment of Judges of the Court as below:

"18. Appeal to the High Court from judgment of Judges of the Court.-(1) An appeal shall lie to the High Court 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 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 section 43 or in the exercise of criminal jurisdiction) of one Judge of the High Court.

(2) Notwithstanding anything hereinbefore provided, an appeal shall lie to the High Court from a judgment of one Judge of the High Court made 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 High Court where the Judge who passed the judgment declares that the case is a fit one for appeal."

Appeal was provided from the judgment of one Judge of the High Court, subject to certain exceptions. Though, amongst others, one of the exceptions was that appeal was not available against an order made in exercise of power of superintendence under Section 43, a perusal of Section 43 would reveal that such power of superintendence was conferred over all courts, civil or criminal, in the State of Rajasthan for the time being subject to appellate jurisdiction of the High Court. Therefore, to the extent of orders passed in exercise of power of superintendence over civil or criminal courts, intra-court appeal was not available.

13. In exercise of powers conferred by Section 46 of the Ordinance of 1949 read with Article 225 of the Constitution of India and all other powers enabling it in that behalf, the rules of

High Court of Judicature for Rajasthan were promulgated, known as "Rules of the High Court of Judicature for Rajasthan, 1952".

Rule 134 thereof provided as below:

"[**134. Special Appeal.**-A person desiring to prefer a Special Appeal from the judgment of a Single Judge shall present a duly stamped memorandum of appeal within thirty days from the date of such judgment. Where such appeal is presented after the period mentioned above, it shall be accompanied by an application supported by an affidavit explaining the cause of delay and it shall be rejected unless the appellant satisfies the Court that he had sufficient cause for not preferring the appeal within the aforesaid time.

The memorandum of appeal shall be drawn up in accordance with Rules 125, 130 and 131 of this Chapter and shall be accompanied by a certified copy of the judgment or order appealed from alongwith two extra typed copies of the judgment or order]."

A conjoint reading of Section 18 of the Ordinance of 1949 and Rule 134 of the Rajasthan High Court Rules would reveal that substantive provision for intra-court appeal was provided under Section 18 of the Ordinance of 1949 and substantive as well as procedural aspect was dealt with under Rule 134 of the Rajasthan High Court Rules and Rule 134 did not incorporate any different provision with regard to intra-court appeal.

14. After coming into force the Constitution of India with effect from 26.01.1950, the provisions of the Ordinance of 1949 continued to remain in force and operation subject to the provisions contained in Article 372 of the Constitution of India until it was repealed vide the Judicial Administration Laws (Repeal) Act, 2001 (No. 22 of 2001) [hereinafter referred to as 'the Repeal Act of 2001'] enacted by the Parliament. By the aforesaid Act, number of Acts including the Ordinance of 1949 were repealed. The effect of repeal was that substantive provisions under Section

18 of the Repealed Rajasthan High Court Ordinance, 1949, providing for intra-court appeal also stood repealed. The legal position became uncertain with regard to maintainability of an intra-court appeal and eventually, a reference was made to the Full Bench of the this Court in the case of **State of Rajasthan Vs. V.R.C. Misra & 6 Ors.**²² for adjudication of following question:

“Whether the right to file intra Court appeals stands abrogated with the repealing Act coming into force on August 29, 2001 by which the Rajasthan High Court Ordinance 1949 was repealed notwithstanding the several other existing provisions preserving the powers of the High Court in the matter of administration of justice as contained in Article 225 of the Constitution read with Sections 52, 54 and 57 of the State Reorganisation Act, 1956?”

15. While answering the reference, the Full Bench of this Court in the aforesaid case observed thus:

“**260.** The right of intra-court appeal does not stand abrogated with the Repealing Act of 2001 coming into force on 29.8.2001 by which the Rajasthan High Court Ordinance, 1949 was repealed. The right to the intra-court appeal in the High Court of Judicature for Rajasthan, and the jurisdiction of the Division Bench to hear the appeal against the judgment of the learned single judge of this Court as was vested under Article 225 of the Constitution and later on conferred under s.52 of the State Reorganisation Act, 1956 and the Rajasthan High Court Rules therefore, was not affected or abrogated by the repeal of the Rajasthan High Court Ordinance, 1949 which had long ceased to be governing statute in respect of subjects dealt with under Art. 225 of Chapter V of Part VI of the Constitution and on the subject matters dealt with in Part V of the State Reorganisation Act, 1956.”

16. As per the dictum of the Full Bench in the aforesaid reference, the right to intra-court appeal did not stand abrogated with the Repealing Act of 2001 on the day, the Ordinance of 1949 was repealed. The Full Bench in the aforesaid reference

22 2003 (2) WLC (Raj.) 235

authoritatively opined that jurisdiction of the Division Bench to hear the appeal against the judgment of the learned Single Judge of the Court as was vested under Article 225 of the Constitution of India and later on, conferred under Section 52 of the States Reorganisation Act, 1956 (hereinafter referred to as 'the Act of 1956') and the Rajasthan High Court Rules was not affected or abrogated by repeal of the Ordinance of 1949.

17. However, another uncertainty prevailing in law with regard to maintainability of intra-court appeal against order/judgment rendered by the learned Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India again led to reference to another Full Bench of this Court in the case of **Ramesh Chand Tiwari & Others Vs. Board of Revenue & Others (supra)** for adjudication of following question:

“Whether intra court appeal to the Division Bench is maintainable against the order judgment rendered by the learned Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India?”

18. After having surveyed several decisions of the Hon'ble Supreme Court explaining supervisory jurisdiction of the High Court under Article 227 of the Constitution of India, the issue with regard to maintainability of intra-court appeal was examined. An important development of repeal of the Ordinance of 1949 by the Repeal Act of 2001 was noted and determination of issue with regard to maintainability of intra-court appeal as answered in reference by the Full Bench of this Court in the case of **State of Rajasthan Vs. V.R.C. Misra & 6 Ors.(supra)** was also taken into consideration. The then existing Rule 134 of the Rajasthan

High Court Rules was also taken into consideration. The full Bench, taking into consideration Section 18 of the Ordinance of 1949 and Rule 134 of the Rajasthan High Court Rules arrived at the conclusion as below:

“**29.** We sum up our conclusion, thus:-

(i) The power of superintendence conferred on the High Court under Article 227 of the Constitution is always in addition to the revisional jurisdiction. It is wider than one conferred by Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Jurisdiction under Article 227 is not an original jurisdiction but it is akin to appellate, revisional or corrective jurisdiction.

(ii) Any person desiring to prefer intra-court appeal from the judgment/order of the Single Judge, may present the same before the Division Bench but if the Division Bench finds that the judgment/order of the Single Judge was rendered purely in exercise of revisional jurisdiction, the intra-court appeal shall stand dismissed as not maintainable. Judgments/orders passed by the Single Judge in exercise of wider supervisory jurisdiction under Article 227 are amenable to intra-court appeals.”

19. The basis for forming the opinion that judgments/orders passed by the learned Single Judge in exercise of wider supervisory jurisdiction under Article 227 of the Constitution of India are amenable to intra-court appeals was based on conjoint reading of Section 18 of the Ordinance of 1949 and Rule 134 of the Rajasthan High Court Rules.

20. However, as an important development, Rule 134 of the Rajasthan High Court Rules was substituted vide notification dated 21.07.2005 which now provided as below:

“**134. Appeal to the High Court from Judgment of Judges of the Court.**-(i) An appeal shall lie to the High Court from the Judgment or a final order (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 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 or in the exercise of criminal Jurisdiction) of one Judge of the High Court.

(ii) Special appeal.- A person desiring to prefer a special appeal from the judgment of the Single Judge shall present a duly stamped memorandum of appeal within sixty days from the date of such judgment. Where such appeal is presented after the period mentioned above, it shall be accompanied by an application supported by an affidavit explaining the cause of delay and it shall be rejected unless the appellant satisfied the court that he had sufficient cause for non preferring the appeal within the aforesaid time.

The memorandum of appeal shall be drawn-up in accordance with Rules 125, 130 and 131 of this Chapter and shall be accompanied by a certified copy of the judgment or order appealed from alongwith two extra typed copies of the judgment or order.”

21. If pre-substituted Rule 134 and new substituted Rule 134 of the Rajasthan High Court Rules are juxtaposed, it would be clear that new substituted Rule 134 contained specific provision with regard to intra-court appeal. At that time and until the Ordinance of 1949 was repealed, substantive provision for intra-court appeal was provided in Section 18 of the Ordinance of 1949 and after its repeal and before substitution of Rule 134 of the Rajasthan High Court Rules in 2005, the legal position as adumbrated by the Full Bench in the case of **State of Rajasthan Vs. V.R.C. Misra & 6 Ors.(supra)** clearly provided that the right to intra-court appeal in the High Court of Judicature for Rajasthan and jurisdiction of the Division Bench to hear the appeal against the order/judgment of the learned Single Judge of the High Court as are vested under Article 225 of the Constitution of India and later on, conferred under Section 52 of the Act of 1956 and the Rajasthan High Court

Rules, shall not be affected and abrogated by the repeal of the Ordinance of 1949.

22. The significant change in the legal position, after coming into force of newly substituted provision contained in Rule 134 of the Rajasthan High Court Rules was that an order made in exercise of power of superintendence was excluded from the purview of intra-court appeal, as would be clear from the provisions contained in sub-rule (i) of new Rule 134 of the Rajasthan High Court Rules.

23. A Division Bench of this Court in the case of **Sukh Dev Vs. Prakash Chandra (supra)** held that no intra-court appeal shall lie from an order passed by the learned Single Judge while exercising power under Article 227 of the Constitution of India, resulting in dismissal of appeal as not maintainable. However, later on, another Division Bench of this Court in the case of **Kartar Singh Vs. Board of Revenue & Others (supra)** relying upon the decision of the Full Bench in the case of **State of Rajasthan Vs. V.R.C. Misra & 6 Ors.(supra)** and **Ramesh Chand Tiwari & Others Vs. Board of Revenue & Others (supra)** held that intra-court appeal against an order passed by a Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India would be maintainable. This decision was rendered on the basis of two Full Bench decisions which rendered opinion and answered reference applying the then existing law, i.e., Section 18 of the Act of 1949 (when it was in force) and Rule 134 of the Rajasthan High Court Rules (as it stood before substitution) providing for intra-court appeal without there being any exception to an order passed by a learned Single Judge in

exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

24. Significant change in the legal position after repeal of the Ordinance of 1949 completely altered the regime of law. Right to intra-court appeal in the High Court of Judicature for Rajasthan and the jurisdiction of the Division Bench to hear the appeal against the judgment/order of the learned Single Judge as vested in Article 225 of the Constitution of India and later on conferred under Section 52 of the Act of 1956 and the Rajasthan High Court Rules were not affected or abrogated as held in the case of **State of Rajasthan Vs. V.R.C. Misra & 6 Ors.(supra)** but restricted in the manner as provided by substituted Rule 134 of the Rajasthan High Court Rules with effect from 21.07.2005.

25. In view of above consideration, submission of one of the learned Amicus Curiae that Rule 134 of the Rajasthan High Court Rules does not create a bar and appeal against an order passed by learned Single Judge in exercise of power of superintendence under Article 227 of the Constitution of India would also be maintainable, cannot be countenanced and liable to be rejected.

26. Maintainability of an intra-court appeal under the scheme of various letter patent rules and other act/rules regulating intra-court appeal in various High Courts particularly when petitions are filed both under Article 226 and 227 of the Constitution of India has been subject matter of consideration by the Hon'ble Apex Court in plethora of decisions. We shall now navigate through legal landscape and jurisprudential evolution as to when and under what circumstances, an intra-court appeal would be maintainable against an order/judgment of learned Single Judge where petition

has been filed both under Articles 226 and 227 of the Constitution of India assailing an order passed by a court or tribunal.

27. Scope of jurisdiction under Article 226 of the Constitution of India while dealing with a writ of certiorari came up for consideration before the Hon'ble Supreme Court in the case of **T.C. Basappa Vs. T. Nagappa & Another**²³. The question as to the scope of jurisdiction under Article 226 of the Constitution of India was considered in the background of principles followed by the superior courts in England which generally formed the basis of decision by Indian courts. The Hon'ble Apex Court held that while broad and fundamental norms regulating exercise of writ jurisdiction had to be kept in mind, it was not necessary for Indian courts to look back to the early history or procedural technicalities of the writ jurisdiction in England in view of the express constitutional provisions. It was further held that writ of certiorari was meant to supervise "judicial acts" which included quasi-judicial functions by administrative bodies. It was also explained that the court issuing such writ quashes patently erroneous and without jurisdiction order, but the court does not review the evidence as an appellate court, nor substitute its own findings for that of the inferior tribunal. Following pertinent observations made by the Hon'ble Supreme Court are extracted as below:

"(6) The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of 'habeas corpus, mandamus, quo warranto, prohibition and certiorari' as may be considered necessary for enforcement of the

23 AIR 1954 SC 440

fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of 'certiorari' in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.

(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- 'Rex v. Electricity Commissioners', 1924-1 KB 171 at p. 205 (C):

"Whenever any body 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."

The second essential feature of a writ of 'certiorari' is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of 'certiorari' the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person, vide per Lord Cairns in-'Walsall's Overseers v. L. & N. W. Rly. Co.', (1879) 4 AC 30 at p. 39 (D).

(8) The supervision of the superior court exercised through writs of 'certiorari' goes on two points, as has been expressed by Lord Sumner in-'King v. Nat Bell Liquors Ltd.', (1922) 2 AC 128 at p. 156 (E). One is the area of inferior jurisdiction and the qualifications and

conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of 'certiorari' could be demanded. In fact there is little difficulty in the enunciation of the principles; the difficulty really arises in applying the principles to the facts of a particular case.

(9) 'Certiorari' may and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances, vide 'Halsbury, 2nd edition, Vol. IX, page 880. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess, vide- 'Bunbury v. Fuller', (1854) 9 Ex 111 (F); -R. v. Income Tax Special Purposes Commissioners', (1889) 21 QBD 313 (G).

(10) A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of 'certiorari' may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of 'certiorari' but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision.

The essential features of the remedy by way of 'certiorari' have been stated with remarkable brevity and clearness by Morris L. J. in the recent case of-'Rex v. Northumberland Compensation Appellate Tribunal', 1952-1 KB 338 at p. 357 (H). The Lord Justice says :

"It is plain that 'certiorari' will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown."

28. Several judgments rendered by the Hon'ble Supreme Court on the scope of writ jurisdiction under Article 226 of the

Constitution of India as also the distinction and difference between Articles 226 and 227 of the Constitution of India were explained in the aforesaid case, which we need not consider necessary to refer to at this stage.

29. In the case of **Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil (supra)**, the scope of jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India was explained and differentiated by the Hon'ble Supreme Court as below:

"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 v. Amarnath*, AIR 1954 SC 215 and the principles in *Waryam Singh* have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh*, 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 v. Union of India* (1997) 3 SCC 261 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 Civil Procedure Code by the Civil Procedure Code (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.”

30. The difference and distinction between Articles 226 and 227 of the Constitution of India was considered and explained by Their Lordships in the Hon’ble Supreme Court in one of its earlier decision in the case of **Umaji Keshao Meshram & Others Vs. Radhikabai, Widow of Anandrao Banapurkar & Another(supra)**. It was held that the proceedings under Article 226 of the Constitution of India are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution of India are not original, but only supervisory. It was also held that Article 227 of the Constitution of India substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 except that the power of superintendence has been extended by Article 227 of the Constitution of India to Tribunals as well. The distinction was explained in the manner that though the power is akin to that of an ordinary court of appeal yet the power under Article 227 of the Constitution of India 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. It was further propounded that the

power may be exercised in cases occasioning grave injustice or failure of justice.

31. The question which fell for consideration of the Hon'ble Supreme Court in the case of **Umaji Keshao Meshram & Others Vs. Radhikabai, Widow of Anandrao Banapurkar & Another(supra)** was whether an appeal lies under Clause 15 of the Letters Patent of the Bombay High Court to a Division Bench of two Judges of that High Court from the judgment of a Single Judge of that High Court in a petition filed under Article 226 or Article 227 of the Constitution of India. Clause 15 of the Letters Patent inter alia provided that an appeal shall lie to the High Court of Judicature at Bombay from a judgment of one Judge of the High Court, containing a similar provision as in Rule 134 of the Rajasthan High Court Rules in the present case, excluding from the purview of letters patent appeal and order made in exercise of powers of superintendence under the provisions of Section 107 of the Government of India Act, 1915. Upon survey of various judicial pronouncements, provisions contained in the Letters Patent and the provisions contained in Articles 226 and 227 of the Constitution of India, following pertinent observations were made:

"104. Under Clause 15 of the Letters Patent of the Bombay High Court no intra-court appeal lay against an "order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act". By the same process of interpretation by reason of which the phrase "pursuant to Section 108 of the Government of India Act" in Clause 15 is to be read as "pursuant to Article 225 of the Constitution of India", the phrase "order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act" is to be read as "order passed or made in the exercise of the power of superintendence under the provisions of Article 227 of the Constitution". The result is that an intra-court appeal does not lie against the

judgment of a Single Judge of the Bombay High Court given in a petition under Article 227 by reason of such appeal being expressly barred by Clause 15 of the Letters Patent of that High Court.

105.

106. As we have seen above, an intra-court appeal against the judgment of a Single Judge in a petition under Article 226 is not barred while Clause 15 itself bars an intra-court appeal against the judgment of a Single Judge in a petition under Article 227.

107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of Hari Vishnu Kamath v. Syed Ahmad Ishaque AIR 1955 SC 233 before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the 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, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.”

32. The aforesaid principles propounded in the case of **Umaji Keshao Meshram & Others Vs. Radhikabai, Widow of Anandrao Banapurkar & Another(supra)** have been relied upon and restated by the Hon’ble Supreme Court in its various judgments.

33. In the case of **Sushilabai Laxminarayan Mudliyar & Others Vs. Nihalchand Waghajibhai Shaha & Others**²⁴, an

²⁴ 1993 Supp (1) SCC 11

issue with regard to maintainability of intra court appeal under the Letters Patent of Bombay High Court again arose for consideration where the grounds taken in the writ petition indicated that it was a petition under Article 226 of the Constitution of India and the order passed by the learned Single Judge was also under Article 226 of the Constitution of India. It was held thus:

“4. The Full Bench of the Bombay High Court wrongly understood the above Umaji Kesho Meshram case. In Umaji case it was clearly held 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, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Rule 18 of the Bombay High Court Appellate Side Rules read with clause 15 of the Letters Patent provides for appeal to the Division Bench of the High Court from a judgment of the learned Single Judge passed on a writ petition under Article 226 of the Constitution. In the present case the Division Bench was clearly wrong in holding that the appeal was not maintainable against the order of the learned Single Judge. In these circumstances we set aside the impugned order of the Division Bench and direct that the Letters Patent Appeal filed against the judgment of the learned Single Judge would now be heard and decided on merits. In view of the fact that it is an old matter we request the High Court to decide the Letters Patent Appeal within six months. It is further directed that till the final disposal of the Letters Patent Appeal the operation of the order of the Single Judge shall remain stayed. The appeals are allowed in part with no order as to costs.”

34. However, after a decade, in the case of **Surya Dev Rai Vs. Ram Chander Rai & Others (supra)**, it was held that an order of civil court was amenable to writ jurisdiction under Article 226 of the Constitution of India. It was further held that the distinction

between two jurisdictions, one under Article 226 of the Constitution of India and other under Article 227 of the Constitution of India stands almost obliterated in practice and that is the reason why it has become customary that the lawyers are labelling their petitions as one under Articles 226 and 227 of the Constitution of India though such practice has been deprecated in some judicial pronouncements. It was held that even the orders passed by the civil courts are amenable to writ jurisdiction under Article 226 of the Constitution of India.

35. In the case of **Kishorilal Vs. Sales Officer, District Land Development Bank & Others**²⁵, an issue with regard to maintainability of intra court appeal arose for consideration in the factual backdrop that recovery proceedings were initiated on alleged failure to repay the amount of loan advanced by the co-operative bank. The land mortgaged with the bank was sold. Sale proceedings were assailed in appeal filed before the Joint Registrar, Cooperative Societies, Bhopal which was also dismissed. Against that order, second appeal provided under the cooperative laws was preferred before the Board of Revenue which was allowed. Against the order passed by the Board of Revenue, Sales Officer of the Bank filed a writ petition before the High Court which was allowed. A letters patent appeal filed by the borrower before the Division Bench of the High Court was dismissed holding that the same was not maintainable on the premise that the learned Single Judge had exercised jurisdiction under Article 227 of the Constitution of India. Taking note of the fact that writ petition was filed both under Articles 226 and 227 of the Constitution of India

25 (2006) 7 SCC 496

and relying upon its earlier decision in the case of **Sushilabai Laxminarayan Mudliyar & Others Vs. Nihalchand Waghajibhai Shaha & Others**, it was held by the Hon'ble Supreme Court as below:

"**13.** The learned Single Judge of the High Court, in our opinion, committed an error in interfering with the findings of fact arrived at by the Board of Revenue. The Division Bench of the High Court also wrongly dismissed the LPA without noticing that an appeal would be maintainable if the writ petition was filed under Articles 226 and 227 of the Constitution of India as was held by this Court in **Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha**."

36. In the case of **Ashok K. Jha & Others Vs. Garden Silk Mills Limited & Another (supra)**, one of the questions which arose for consideration was whether Letters Patent Appeal under Clause 15 of the Letters Patent of the Bombay High Court was maintainable from the judgment and order passed by the learned Single Judge.

In the matter of dispute between the employer and the employees, the Labour Court passed an order under the Bombay Industrial Relations Act, 1946. The challenge to the transfer order was repelled. The employee and the Union then preferred a joint appeal before the Industrial Court, Surat. The Industrial Court set aside the order of the Labour Court and directed the employer to withdraw the transfer order. This order was challenged by filing a petition under Articles 226 and 227 of the Constitution of India before the High Court of Gujarat. The petition having been dismissed, the employer preferred Letters Patent Appeal under Clause 15 of the Letters Patent before the Division Bench. Apropos the question which arose for consideration, the Hon'ble Apex Court referred to and relied upon its earlier decision in the

case of **Umaji Keshao Meshram & Others Vs. Radhikabai, Widow of Anandrao Banapurkar & Another(supra)**, [relevant observations of that decision have already been referred to hereinabove].

37. The Hon'ble Apex Court in the aforesaid case of **Ashok K. Jha & Others Vs. Garden Silk Mills Limited & Another (supra)** considered its earlier decisions dealing with identical issue regarding maintainability of appeal where writ petition was filed under Articles 226 and 227 of the Constitution of India and jurisprudential developments as below:

"**29.** In *Ratnagiri Distt. Central Coop. Bank Ltd. v. Dinkar Kashinath Watve* 1993 Supp (1) SCC 9 this Court held that for determining the question of maintainability of an appeal against the judgment of the Single Judge in a writ petition where both Articles 226 and 227 of the Constitution have been mentioned, 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.

30. The Court held thus: (*Ratnagiri Distt. Coop. Bank Ltd. case*, SCC pp. 9-10, para 2-3)

"2. The only question involved in this matter is as to whether the High Court was right in holding that a Letters Patent Appeal will not lie against the judgment delivered by a learned Single Judge in a petition which was filed under both Articles 226 and 227 of the Constitution. Having gone through the judgment of the learned Single Judge and the Division Bench and having heard learned counsel for the parties, in our opinion, the question about the scope of Letters Patent Appeal under Clause 15 has been clearly laid down by this Court in a judgment reported in *Umaji Keshao Meshram v. Radhikabai* wherein it was observed as follows: (SCC p. 473, para 107)

'107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of *Hari Vishnu Kamath v. Ahmad Ishaque* before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or

orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the 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, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in Aidal Singh v. Karan Singh AIR 1957 All 414 and by the Punjab High Court in Raj Kishan Jain v. Tulsi Dass AIR 1959 Punj 291 and Barham Dutt v. Peoples' Coop. Transport Society Ltd. AIR 1961 Punj 24 and we are in agreement with it.'

3. It is clear that so far as the present case was concerned the relief granted by the learned Single Judge clearly indicate that he was exercising jurisdiction under Article 226 and not under Article 227 of the Constitution and in this view of the matter and in the light of what has been laid down by this Hon'ble Court in the judgment referred to above a Letters Patent Appeal under Clause 15 would be maintainable before the Division Bench of the High Court. The appeal is, therefore, allowed and the judgment passed by the learned Division Bench is set aside. The matter is sent back to the High Court and it is expected that the Division Bench will hear the appeal on merits and dispose it of in accordance with law expeditiously preferably within four months from today."

31. In *Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha* the Court held: (SCC p. 14, para 4)

"4. The Full Bench of the Bombay High Court wrongly understood the above *Umaji Keshao Meshram* case. In *Umaji* case it was clearly held 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, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Rule 18 of the Bombay High Court Appellate Side Rules read with Clause 15 of the Letters Patent provides for appeal to the Division Bench of the High Court from a judgment of the learned Single Judge passed on a writ petition under Article 226 of the Constitution. In the present case the Division Bench was clearly wrong in holding that the appeal was not maintainable against the order of the learned Single Judge. In these circumstances we set aside the impugned order of the Division Bench and direct that the Letters Patent Appeal filed against the judgment of the learned Single Judge would now be heard and decided on merits."

32. The issue concerning maintainability of a letters patent appeal from an order of the Single Judge in the writ petition filed under Articles 226 and 227 of the Constitution of India again came up for consideration before this Court in *Kishorilal v. District Land Development Bank*. This Court held: (SCC p. 500, para 13)

"13. The learned Single Judge of the High Court, in our opinion, committed an error in interfering with the findings of fact arrived at by the Board of Revenue. The Division Bench of the High Court also wrongly dismissed the LPA without noticing that an appeal would be maintainable if the writ petition was filed under Articles 226 and 227 of the Constitution of India as was held by this Court in *Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha*."

33. The discussion on the subject would be incomplete without reference to two recent decisions of this Court viz. (i) *State of M.P. v. Visan Kumar Shiv Charan Lal* (2008) 15 SCC 233, and (ii) *Ramesh Chandra Sankla v. Vikram Cement* (2008) 14 SCC 58.

34. In *Visan Kumar Shiv Charan Lal* this Court referred to earlier decisions in *Umaji*, *Sushilabai Laxminarayan*

and Ratnagiri Distt. Coop. Bank Ltd., and held: (Visan Kumar Shiv Charan Lal case, SCC pp. 237-38, para 4)

"4. ... '1. ... Even when in the cause-title of an application both Article 226 and Article 227 of the Constitution have been mentioned, the learned Single Judge is at liberty to decide, according to facts of each particular case, whether the said application ought to be dealt with only under Article 226 of the Constitution. 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. Clause 15 of the Letters Patent expressly bars appeals against orders of Single Judges passed under revisional or supervisory powers. Even when the learned Single Judge's order has been passed under both the articles, for deciding the maintainability against such an order what would be relevant is the principal or main relief granted by the judgment passed by learned Single Judge and not the ancillary directions given by him. The expression 'ancillary' means, in the context, incidental or consequential to the main part of the order. ..."

35. In Visan Kumar Shiv Charan Lal this Court further held that the determining factor is the real nature of principal order passed by the Single Judge which is appealed against and 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 and in each case the Division Bench must consider the substance of the judgment under appeal to ascertain whether the Single Judge has mainly or principally exercised his jurisdiction under Article 226 or Article 227 of the Constitution. In Ramesh Chandra Sankla this Court held: (SCC p. 75, para 47)

"47. In our judgment, the learned counsel for the appellant is right in submitting that nomenclature of the proceeding or reference to a particular article of the Constitution is not final or conclusive. He is also right in submitting that an observation by a Single Judge as to how he had dealt with the matter is also not decisive. If it were so, a petition

strictly falling under Article 226 simpliciter can be disposed of by a Single Judge observing that he is exercising power of superintendence under Article 227 of the Constitution. Can such statement by a Single Judge take away from the party aggrieved a right of appeal against the judgment if otherwise the petition is under Article 226 of the Constitution and subject to an intra-court/letters patent appeal? The reply unquestionably is in the negative...."

36. If the judgment under appeal falls squarely within four corners of Article 227, it goes without saying that intra-court appeal from such judgment would not be maintainable. On the other hand, if the petitioner has invoked the jurisdiction of the High Court for issuance of certain writ under Article 226, although Article 227 is also mentioned, and principally the judgment appealed against falls under Article 226, the appeal would be maintainable. What is important to be ascertained is the true nature of order passed by the Single Judge and not what provision he mentions while exercising such powers.

37. We agree with the view of this Court in Ramesh Chandra Sankla that a statement by a learned Single Judge that he has exercised power under Article 227, cannot take away right of appeal against such judgment if power is otherwise found to have been exercised under Article 226. The vital factor for determination of maintainability of the intra-court appeal is the nature of jurisdiction invoked by the party and the true nature of principal order passed by the Single Judge.

38. Insofar as the present case is concerned, in the cause-title of the writ petition (special civil application), Articles 226 and 227 of the Constitution have been mentioned. A careful reading of the writ petition shows that the writ petition is not confined to supervisory jurisdiction of the High Court. The employer has invoked jurisdiction of the High Court by praying for a writ of certiorari. The prayer clause in the writ petition reads, "In view of the aforesaid premises Your Lordships may be pleased to issue a writ of certiorari or any other appropriate order...." The judgment of the Single Judge is, thus, traceable to Article 226. The statement made by the Single Judge in his order that no case for interference is made out under Article 227 of the Constitution is not decisive.

39. Moreover, the Division Bench in its order observed, "though long-drawn arguments were advanced on the question of maintainability of this appeal, there really

was not a serious contest on the question of maintainability of the appeal".

40. For all these reasons, we hold that the letters patent appeal was maintainable from the order dated 1-10-2007 passed by the learned Single Judge. We answer Question (2) in affirmative."

38. However, later on, correctness of the view taken in **Surya Dev Rai Vs. Ram Chander Rai & Others (supra)** to the extent it declared that orders of civil courts are amenable to writ jurisdiction under Article 226 of the Constitution of India, was doubted being contrary to the ratio of the decisions in the cases of **Naresh Shridhar Mirajkar v. State of Maharashtra & Another**²⁶ and **Rupa Ashok Hurra Vs. Ashok Hurra & Another**²⁷, which led to reference to a Larger Bench of the Hon'ble Supreme Court in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)**. The reference order, inter alia, reads:

"30. ... Therefore, this Court unfortunately is in disagreement with the view which has been expressed in **Surya Dev Rai** insofar as correction of or any interference with judicial orders of civil court by a writ of certiorari is concerned.

31. Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and law.

32. The essential distinctions in the exercise of power between Articles 226 and 227 are well known and pointed out in **Surya Dev Rai** and with that we have no disagreement. But we are unable to agree with the legal proposition laid down in **Surya Dev Rai** that judicial orders passed by a civil court can be examined and then

²⁶ AIR 1967 SC 1

²⁷ (2002) 4 SCC 388

corrected/reversed by the writ court under Article 226 in exercise of its power under a writ of certiorari. We are of the view that the aforesaid proposition laid down in Surya Dev Rai, is contrary to the ratio in Mirajkar and the ratio in Mirajkar has not been overruled in Rupa Ashok Hurra.

33. In view of our difference of opinion with the views expressed in Surya Dev Rai, matter may be placed before His Lordship the Hon'ble the Chief Justice of India for constituting a larger Bench, to consider the correctness or otherwise of the law laid down in Surya Dev Rai on the question discussed above."

39. The Larger Bench of the Hon'ble Supreme Court in the beginning of consideration in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** observed thus:

"3. As already mentioned, the Bench of two Hon'ble Judges who heard the matter was not persuaded to follow the law laid down in Surya Dev Rai. It was observed that the judgment in Surya Dev Rai did not correctly appreciate the ratio laid down in the earlier nine-Judge Bench judgment of this Court in Naresh Shridhar Mirajkar v. State of Maharashtra wherein this Court came to the conclusion that "Certiorari does not lie to quash the judgments of inferior courts of civil jurisdiction (para 62)."

40. Placing reliance upon the decision of the Hon'ble Supreme Court in the case of **T.C. Basappa Vs. T. Nagappa & Another (supra)** and having traced the historical origin of writ of certiorari in England and its application in India before and after coming into force the Constitution of India, it was pertinently observed by the Hon'ble Supreme Court in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** thus:

"11. It is necessary to clarify that the expression "judicial acts" is not meant to refer to judicial orders of civil courts as the matter before this Court arose out of the order of the Election Tribunal and no direct decision of this Court, except Surya Dev Rai, has been brought to our notice where writ of certiorari may have been issued against an order of a judicial court. In fact, when the question as to scope of jurisdiction arose in subsequent decisions, it was clarified that orders of the

judicial courts stood on different footing from the quasi-judicial orders of authorities or tribunals.”

41. Another decision in the case of **Smt. Ujjam Bai Vs. State of Uttar Pradesh & Another**²⁸ was also referred to and relied upon in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** as below:

“12. In Ujjam Bai v. State of U.P., matter was referred to a Bench of seven Judges on the scope of writ of certiorari against an order of assessment under the provisions of sales tax law passed in violation of a fundamental right. Majority of six Judges took the view that except an order under a void law or an "ultra vires" or "without jurisdiction" order, there could be no violation of fundamental right by a quasi-judicial order or a statutory authority and such order could not be challenged under Article 32. A writ of certiorari could however, lie against a patently erroneous order under Article 226. It was observed that the judicial orders of courts stood on different footing. Ayyangar, J. observed: (AIR pp. 1679-80, para 155)

"155. Before concluding it is necessary to advert to one matter which was just touched on in the course of the arguments as one which might be reserved for consideration when it actually arose, and this related to the question whether the decision or order of a regular ordinary court of law as distinguished from a tribunal or quasi-judicial authority constituted or created under particular statutes could be complained of as violating a fundamental right. It is a salutary principle that this Court should not pronounce on points which are not involved in the questions raised before it and that is the reason why I am not dealing with it in any fullness and am certainly not expressing any decided opinion on it. Without doing either however, I consider it proper to make these observations. There is not any substantial identity between a court of law adjudicating on the rights of parties in the lis before it and designed as the High Courts and this Court are to investigate inter alia whether any fundamental rights are infringed and vested with power to protect them, and quasi-judicial authorities which are created under particular statutes and with a view to implement and administer their provisions. I shall be content to leave the topic at this."

The view taken in **Smt. Ujjam Bai Vs. State of Uttar Pradesh & Another (supra)** was noticed that judicial orders of courts stood on different footing as against a quasi-judicial order or an order passed by statutory authority.

42. In the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)**, heavy reliance was placed on the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **Naresh Shridhar Mirajkar v. State of Maharashtra & Another (supra)** to arrive at conclusion that orders of courts exercising civil jurisdiction or to say orders of civil courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India. It was observed thus:

“**13.** In Mirajkar a nine-Judge Bench judgment, a judicial order of the High Court was challenged as being violative of fundamental right. This Court by majority held that a judicial order of a competent court could not violate a fundamental right. Even if there was incidental violation, it could not be held to be violative of the fundamental right.”

43. Pertinent observations made in the case of **Naresh Shridhar Mirajkar v. State of Maharashtra & Another (supra)**, which dealt with a legal position in England on the question of scope of writ of certiorari against judicial order, as contained in Para 63 thereof, were also noted by the Hon'ble Supreme Court in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** as below:

“**16.** This Court then dealt with the legal position in England on the question of scope of writ of certiorari against a judicial order. Noting that the writ of certiorari did not lie against a judicial order, it was observed: (Mirajkar's case, AIR pp. 18-19, paras 63-64)

“63. Whilst we are dealing with this aspect of the matter, we may incidentally refer to the relevant

observations made by Halsbury on this point. 'In the case of judgments of inferior courts of civil jurisdiction', says Halsbury in the footnote-

'it has been suggested that certiorari might be granted to quash them for want of jurisdiction (Kemp v. Balne (1844) 1 Dow & L 885, Dow & L at p. 887), inasmuch as an error did not lie upon that ground. But there appears to be no reported case in which the judgment of an inferior court of civil jurisdiction has been quashed on certiorari, either for want of jurisdiction or on any other ground (Halsbury Laws of England, 3rd Edn., Vol. 11, p. 129)'. The ultimate proposition is set out in the terms: 'Certiorari does not lie to quash the judgments of inferior courts of civil jurisdiction'. These observations would indicate that in England the judicial orders passed by civil courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the jurisdiction to issue writs of certiorari."

The proposition pertinently noted was that certiorari does not lie to quash the judgments of inferior courts of civil jurisdiction, meaning thereby that the judicial orders passed by civil courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the jurisdiction to issue writs of certiorari.

44. Another observation made in the case of **Naresh Shridhar Mirajkar v. State of Maharashtra & Another (supra)** with reference to decision in the case of **Rex v. Chancellor of St. Edmundsbury and Ipswich Diocese Ex Parte White**²⁹, was also referred to in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)**. Observations made in this regard were as below:

"64. In R. v. Chancellor of St. Edmundsbury and Ipswich Diocese, ex p White, the question which arose was whether certiorari would lie from the Court of King's Bench to an ecclesiastical court; and the answer rendered

by the court was that certiorari would not lie against the decision of an ecclesiastical court.”

45. Having considered the Constitution Bench judgment in the case of **Naresh Shridhar Mirajkar v. State of Maharashtra & Another (supra)**, Larger Bench of the Hon’ble Supreme Court in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others (supra)** held as below:

“**18.** While the above judgments dealt with the question whether judicial order could violate a fundamental right, it was clearly laid down that challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Articles 226 and 32.”

46. Reference was also made to earlier decision of the Hon’ble Supreme Court in the case of **Qamruddin Vs. Rasul Baksh**³⁰ to come to a conclusion that an order of civil court could be challenged under Article 227 and not under Article 226 of the Constitution of India. Following are the pertinent observations:

“**20.** This Court in judgment dated 6-2-1989 in Qamruddin v. Rasul Baksh which has been quoted in the Allahabad High Court judgment in Ganga Saran v. Civil Judge, Hapur 1991 SCC OnLine All 63 considered the issue of writ of certiorari and mandamus against interim order of the civil court and held: (Qamruddin case, AWC p. 309, para 4)

"4. ... If the order of injunction is passed by a competent court having jurisdiction in the matter, it is not permissible for the High Court under Article 226 of the Constitution to quash the same by issuing a writ of certiorari. In the instant case the learned Single Judge of the High Court further failed to realise that a writ of mandamus could not be issued in this case. A writ of mandamus cannot be issued to a private individual unless he is under a statutory duty to perform a public duty. The dispute involved in the instant case was entirely between two private parties, which could not be a subject-matter of writ of mandamus under Article 226 of the Constitution. The learned Single Judge ignored this basic principle of writ jurisdiction conferred on the High Court under Article 226 of the Constitution. There was no occasion or justification for

issue of a writ of certiorari or mandamus. The High Court committed serious error of jurisdiction in interfering with the order of the District Judge."

21. Thus, it has been clearly laid down by this Court that an order of the civil court could be challenged under Article 227 and not under Article 226."

47. Finally, overruling the law laid down in the case of **Surya Dev Rai Vs. Ram Chander Rai & Others (supra)** to the extent it declared that orders of civil court are amenable to writ of certiorari, it was concluded thus:

"25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all the other courts having limited jurisdiction subject to the supervision of the King's Court. Courts are set up under the Constitution or the laws. All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to the judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above.

26.

27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

28.

29. Accordingly, we answer the question referred as follows:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3. Contrary view in Surya Dev Rai is overruled.”

48. Thus, the jurisprudential development of law, surveyed by us as above, settles the legal position that where the petitions are filed both under Articles 226 and 227 of the Constitution of India and facts of the case justify filing petition seeking issuance of writ of certiorari, order passed by the quasi-judicial authorities and tribunals are amenable to certiorari jurisdiction of the High Court under Article 226 of the Constitution of India with the explanation that judicial orders of civil courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India. Therefore, where the orders are passed by the civil courts and there does not exist any remedy of appeal or revision, supervisory jurisdiction under Article 227 of the Constitution of India may be invoked.

49. In the cases in hand, the orders were passed by Revenue Courts and Revenue Appellate Authority and the Board of Revenue in exercise of its appellate and revisional jurisdiction. Whether the orders passed by the Board of Revenue can be said to be an order passed by a civil court is the last issue requiring our determination. If the Board of Revenue is not a civil court as considered in plethora of decisions referred to above, then in that event where petition is filed under Articles 226 as well as 227 of the Constitution of India and facts of the case justify filing petition

under Article 226 of the Constitution of India as well and certiorari jurisdiction of the Court is also invoked, certainly, intra-court appeal provided under Rule 134 of the Rajasthan High Court Rules would be maintainable. On the other hand, if it is held that while deciding revision or review arising either from orders passed in various proceedings or orders passed in review arising from revenue suits in exercise of appellate jurisdiction, the Board of Revenue acts as civil court, its order would be amenable to jurisdiction under Article 227 of the Constitution of India and in that case, the petition essentially would be one under Article 227 of the Constitution of India against which intra-court would not be maintainable.

50. Civil courts, as a part of ordinary judicial system, are courts constituted and established to address disputes relating to private civil rights. Civil courts are entrusted with jurisdiction to decide private rights and liabilities between the individuals. Civil courts are courts of plenary jurisdiction, established under laws of the State and governed by the relevant statutes and the provisions contained in the CPC. The civil courts in the State of Rajasthan have been established under the Rajasthan Civil Courts Ordinance, 1950 (hereinafter referred to as 'the Ordinance of 1950') which provides for constitution of civil courts, their jurisdiction and other supplementary provisions. The hierarchical structure of civil courts is provided under Section 6 of the Ordinance of 1950 as the Court of the District, the Special Civil Court and the Court of the Civil Judge/Additional Civil Judge (Senior Division) and the Court of the Civil Judge/Additional Civil Judge (Junior Division). The local limits of the jurisdiction created under the Ordinance of 1950 lie with the

State Government as provided in Section 7 of the Ordinance of 1950. While appointment of the District Judge is governed by the provisions of Article 233 of the Constitution of India, the provisions with regard to appointment of Additional Civil Judges (Senior Division) and Additional Civil Judges (Junior Division) is provided under Article 234 of the Constitution of India. The Jurisdiction of the civil courts is provided in Chapter III, from Section 18 to Section 24 of the Ordinance of 1950. Appointment of persons as District Judges in any State and appointment of persons other than District Judges to the judicial services of the State are made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to the said State. The recruitment rules framed by the Governor regulate recruitment and appointment of a person as District Judge and Judges other than District Judge. The courts constituted under the Ordinance of 1950 as District Courts and the courts subordinate thereto are subject to the control of the High Court, as provided under Article 235 of the Constitution of India.

The civil courts are manned by judicial officers, who are so recruited in accordance with the provisions contained in Article 233 and 234 of the Constitution of India read with the relevant recruitment rules framed by the Governor of the State concerned in consultation with the High Court.

51. The Court of District Judge and other courts subordinate thereto constitute civil courts of the State under different hierarchical nomenclature mentioned in Article 236 of the Constitution of India. The civil courts are manned by judicial officers appointed in the manner as prescribed above.

52. As already stated, it is well settled that the civil courts or the courts of civil jurisdiction exercise plenary jurisdiction as provided under Section 9 of the CPC which reads as below:

"9. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I].—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II].—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]"

53. The civil courts, thus, have jurisdiction to try all suits of civil nature except the suits of which cognizance is either expressly or impliedly barred. Thus, except where jurisdiction is expressly or impliedly barred, civil courts exercise plenary jurisdiction to try all disputes of civil nature.

54. The Board of Revenue in the State of Rajasthan was established under the Rajasthan Board of Revenue Ordinance, 1949 (hereinafter referred to as 'the Rajasthan Board of Revenue Ordinance'). While Section 3 of the Rajasthan Board of Revenue Ordinance provided for establishment of the Board of Revenue for Rajasthan, provisions contained in Section 4 provided for composition of the Board of Revenue. Section 5 of the above Ordinance provided for rank and precedence. Section 6 talks of tenures of the members. Section 7 provides for place of sitting. Section 8 provides for seal of the Board of Revenue. Section 9 deals with sealing of summons etc. Section 11 deals with the power of the Board of Revenue. It declares that subject to

provisions of any special law for the time being in force in the whole or any part of Rajasthan, the Board of Revenue shall be the highest revenue Court of appeal, revision and reference in Rajasthan. Power of general superintendence and control over all other revenue courts and officers has been conferred under Section 12 of the Rajasthan Board of Revenue Ordinance which declares that all such courts and officers shall be subordinate to the Board of Revenue. Section 13 provides for the jurisdiction of the Board of Revenue. Section 14 confers power to refer to a Bench and Section 15 deals with power to refer question of law to the High Court. The Board of Revenue has also been entrusted with power under Section 18 to make the rules. The Rajasthan Revenue Courts (Designation) Ordinance, 1949 contain provisions to effect a change in the designation of certain revenue courts. It is also relevant to mention that prior to enactment of the Act of 1955, the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951 was enacted to provide for and regulate the jurisdiction and procedure of revenue courts and officers in Rajasthan, which however, has been repealed by the Act of 1955 being included in the First Schedule appended to the Act of 1955 under the heading list of Enactments repealed, referable to Section 3, sub-section (1) of the Act of 1955.

55. Constitution of revenue courts is provided under the revenue laws made by respective States, particularly, in the State of Rajasthan under two principal revenue laws, namely, the Rajasthan Tenancy Act, 1955 and the Rajasthan Land Revenue Act, 1956. Sub-section (35) of Section 5 of the Act of 1955 defines revenue court as below:

"5. Definitions.-In this Act, unless the context otherwise requires-

"(35) **"Revenue Court"** shall mean a court or an officer having jurisdiction to entertain suits or other proceedings relating to agricultural tenancies, profits and other matters, connected with land or any right or interest in land, wherein such court or officer is required to act judicially; it shall include the Board and every member thereof, a revenue appellate authority, a Collector, a Sub-Divisional Officer, an Assistant Collector, a Tehsildar or any other revenue officer while so acting:"

56. The definition of revenue court includes a court as also an officer which exercise jurisdiction to entertain suits or other proceedings relating to certain revenue matters provided therein. Moreover, the definition clause clearly reflects that such court or officer is required to act judicially and includes a Board and every member of the Board, a revenue appellate authority and other class of revenue officers who act judicially in respect of the proceedings relating to various subjects enumerated in definition clause. As establishment of the Board of Revenue is governed by the Rajasthan Board of Revenue Ordinance, 1949, there is no specific provision contained in the Act of 1955 which provides for establishment of the revenue courts. However, the provisions contained in Chapter XV of the Act of 1955 govern the procedure and jurisdiction of the revenue courts. While Section 206 of the Act of 1955 provides for pending cases, Section 207 clearly provides that all suits and application of the nature which are specified in Schedule III shall be heard and determined by a revenue court and also expressly bars jurisdiction of all other courts including civil courts by providing that no court other than a revenue court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect

of which any relief could be obtained by means of any such suit or application. Section 208 of the Act of 1955 provides for applicability of the Code of Civil Procedure to the extent the same is not in consistent with anything contained in the Act of 1955.

Section 208 of the Act of 1955 reads thus:

"208. Application of Civil Procedure Code— The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), except:

(a) provisions inconsistent with anything in this Act, so far as the inconsistency extends.

(b) provisions applicable only to special suits or proceedings outside the scope of this Act, and

(c) provisions contained in List I of the Fourth Schedule, shall apply to all suit and proceedings under this Act, subject to the modifications contained in List II of the Fourth Schedule."

57. Section 218 of the Act of 1955 provides for inherent powers of revenue courts. Section 221 of the Act of 1955 provides that general superintendence and control over all revenue courts shall be vested in, and all such courts shall be subordinate to the Board of Revenue and subject to such superintendence, control and subordination, hierarchy of appellate courts is provided under the provisions of Section 222 to Section 228 of the Act of 1955. In addition, powers of review and revision are also provided under Sections 229 and 230 of the Act of 1955, subject to restriction as provided under Section 230-A of the Act of 1955. Section 231 of the Act of 1955 provides for powers to the High Court to call for cases whereas Section 232 of the Act of 1955 confers power of making reference by the Collector.

58. Chapter VIII of the Act of 1955 contains provisions with regard to declaratory suits and the subject matter of declaratory suit is contained in Section 88 to Section 92A of the Act of 1955.

59. Under the Scheme of the Act of 1955 as also the Act of 1956, while disputes of certain nature and claim of certain rights are required to be adjudicated by the revenue courts in revenue suits, powers in relation to other matters provided in the revenue laws are exercised by the revenue officers, for example, mutation proceedings. In those matters also, the scheme of both the Acts provides for appeal and revision up to the Board of Revenue.

60. The Board of Revenue, being the highest revenue court of the State, acts as second appellate authority in matters arising out of orders of the revenue courts passed in revenue suits. It acts as a court of reference or a court of revision as the case may be in the matters arising out of the disputes other than those which are determinable as revenue suits by the revenue courts.

61. Revenue courts do not have any plenary jurisdiction as such but are constituted as revenue courts to deal with certain matters relating to land, agricultural property, collection of land revenue, tenancy rights and kashtkari rights and other disputes arising therefrom. Thus, the revenue courts deal with the matters provided under the revenue laws and, therefore, all revenue courts and revenue authorities are under an obligation to act judicially in the matter of determining disputes or matters provided under the revenue laws as special courts performing judicial functions or tribunals exercising quasi-judicial or judicial functions. The revenue courts, therefore, are not courts of plenary jurisdiction but special courts to deal with subject matters.

62. As referred to hereinabove, Section 207 of the Act of 1955 bars jurisdiction of all other courts including civil courts in respect of those matters in which cognizance can be taken by the revenue

courts. The provisions contained in Section 239 of the Act of 1955 clearly provides that when a dispute with regard to any proprietary right arises for consideration in a revenue suit, the revenue court is obligated to frame and refer the issue relating to proprietary rights for adjudication of the civil court and the civil court then has jurisdiction to decide that issue and return the finding to the revenue court on the basis of which, the revenue court may proceed to decide the suit. It has also been provided under Section 242 of the Act of 1955 that where any question of tenancy right arises while trying of a civil suit, the civil court shall refer the issue for determination of the revenue court and after return of findings by the revenue court on that matter, civil court will proceed to decide the suit.

The aforesaid provision clearly makes distinction and division of jurisdiction of the civil courts and the revenue courts. However, the marked distinction made is that while the revenue courts decide only those matters which are provided under the special law, i.e., revenue laws, civil courts exercise plenary jurisdiction unless their jurisdiction in respect of any particular matter or dispute is barred expressly or by necessary implication of law.

63. Section 5 of the CPC provides for application of the Code of Civil Procedure, 1908 to the revenue courts which reads as below:

"5. Application of the Code to Revenue Courts.—(1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the State Government [***] may, by notification in the Official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the State Government [***] may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature."

64. From the aforesaid provision, it is clear that applicability of the provisions of the CPC is governed by the provisions contained in sub-section (1) above. Further, the revenue court has also been defined as the court having jurisdiction under any local law to entertain suit or other proceedings relating to land revenue or proceeds of land used for agricultural purposes but it does not include a civil court having original jurisdiction under the CPC to try such suits or proceedings as being suits or proceedings of civil nature.

65. Therefore, the judicial system is categorised by distinction between the civil courts and the revenue courts. Indeed, judicial system is structured in the manner that provides different courts with different jurisdiction over different type of matters and apart from such classification of courts, the civil courts and the revenue courts constituted under different laws exercise jurisdiction differently, governing and regulating their own procedures and provisions relating to appeal, revision and review under their respective enactments and the CPC.

66. One of the key distinction between the revenue courts and the civil courts is that while civil courts are part of ordinary justice delivery system, revenue courts deal with specialised matters pertaining to revenue laws only. The other important distinctive feature is that civil courts are judicial courts where judicial powers

are exercised and which are manned by judicial officers who are appointed in accordance with the provisions contained in Articles 233 and 234 of the Constitution of India and the rules framed by the Governor in consultation with the High Court, the revenue courts are not manned by judicial officers as such appointed under Articles 233 and 234 of the Constitution of India, but by revenue officers who belong to the State Executive and Administrative Services. While all district courts and the courts subordinate thereto are subject to control of the High Court under Article 235 of the Constitution of India, all revenue courts are subject to supervisory jurisdiction of the Board of Revenue.

It is a different matter that all the courts or tribunals, which essentially includes revenue courts and the Board of Revenue, are subject to supervisory jurisdiction of the High Court as provided under Article 227 of the Constitution of India.

67. It has been submitted before us that as the revenue courts and the Board of Revenue being the highest revenue appellate court, exercise judicial function in revenue suits tried by revenue courts, they are civil courts. Merely because they perform judicial functions or are constituted as court and decide revenue suits, the argument is not acceptable in view of the detailed consideration which has been made hereinabove. We shall now deal with some of the decisions which have been cited at the Bar by learned Senior Counsel appearing for the respondent-objector in this regard.

68. Learned Senior Counsel for the respondent-objector has referred to the decision in the case of **Ethiopian Airlines Vs.**

Ganesh Narain Saboo (supra). In the matter of appeal against judgment and order of the National Consumer Disputes Redressal Commission, New Delhi, reference was made to Larger Bench in view of conflicting decisions on the question as to whether proceedings before the Consumer Forum are suits. Having extensively referred to the provisions contained in the Consumer Protection Act, 1986 with respect to jurisdiction, powers and procedures of the Commission as also the provisions contained in the CPC, the terms, "suit" having not been defined under the Carriage by Air Act, 1972 and the Consumer Protection Act, 1986, it was held that the terms, "suit" has to be understood in its ordinary dictionary meaning and in that sense, is a generic term taking within its sweep all proceedings initiated by a party for realisation of a right vested in him under law. Pertinent observations made by the Hon'ble Supreme Court in this regard are as under:

"59. The term "suit" has not been defined in the Carriage by Air Act, 1972 nor is it provided in the said Act that the term "suit" will have the same meaning as in the Civil Procedure Code. Therefore, the term "suit" has to be understood in its ordinary dictionary meaning. In that sense, the term "suit" is a generic term taking within its sweep all the proceedings initiated by a party for realisation of the right vested in him in law. In this view of the matter, we have to look to the dictionary meaning of the word "suit"."

Dictionary meaning of the word, "suit" was also explained as below:

"60. According to Black's Law Dictionary, the word "suit" means "any proceeding by a party or parties against another in a court of law". In common parlance, the term "suit" is taken to include all the proceedings of a judicial or quasi-judicial nature in which the disputes of the aggrieved parties are adjudicated before an impartial

forum. Proceedings before the Consumer Fora fall squarely within that definition."

The Hon'ble Apex Court in the aforesaid case also referred to certain decisions with regard to meaning of the word, "suit" as below:

"61. It has been held in *Patel Roadways Ltd. v. Birla Yamaha Ltd.* (2000) 4 SCC 91 that the proceedings before the Consumer Forums come within the sweep of the term "suit". This judgment has been approved by a Constitution Bench of this Court in *Economic Transport Organization v. Charan Spg. Mills (P) Ltd.* (2010) 4 SCC 114. Therefore, the controversy involved in this case is finally settled and we are bound by the decision of the Constitution Bench and this case has to be ruled in terms of what has been decided by the Constitution Bench in *Economic Transport Organization*.

62. In the same vein, the US Supreme Court has read the term "suit" broadly, finding that a "suit" is "any proceeding in a court of justice, by which [a person] pursues that remedy in a court of justice which the law affords him," vide *Upshur County v. Rich* 34 L Ed 196. Likewise: (L Ed p. 199)

"... `... The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought, is a suit.'*"

63. The Michigan Supreme Court similarly found that "the word 'suit', as applied to legal controversies, both by the legal profession and others, is now used and recognized as a generic term of broad significance, often understood and used, even by legislatures and courts, to designate almost any proceeding". (Vide *Patterson v. Standard Accident Insurance Co.* 178 Mich. 288)"

69. Holding that the proceedings before the National Consumer Forum are in the nature of suit, the law declared was that the suit is generic term taking within its sweep all proceedings initiated by a party for realisation of the right vested in him in law and further that in common parlance, the term, "suit" include all proceedings

of a judicial or quasi-judicial nature in which disputes of aggrieved parties are adjudicated before impartial forum.

70. Importantly, referring to the provisions contained in Section 2 of the CPC, it was held that terms, "court" in CPC exclusively refers to civil courts and hence, other quasi-judicial bodies like Consumer Redressal Bodies fall outside the purview of term, "court" as provided under Section 2 of the CPC.

Thus, it would be seen that merely because the proceedings before the National Consumer Disputes Redressal Commission were held to be in the nature of suit, yet it was not held to be a court.

71. In the case of **Trans Mediterranean Airways Vs. Universal Exports & Another (supra)**, the question which arose for consideration of the Hon'ble Supreme Court was that whether the National Consumer Disputes Redressal Commission is a Court. Following pertinent observations were made:

"49. In State of T.N. v. G.N. Venkataswamy, this Court observed that the primary function of a court was to adjudicate disputes, while holding that a Collector constitutes a Revenue Court within the meaning of Schedule VII List III Entry 11-A of the Constitution."

Relying upon its earlier decision in the case of **Canara Bank Vs. Nuclear Corporation of India Limited**³¹, it was pertinently observed by the Hon'ble Supreme Court as below:

"50. In Canara Bank v. Nuclear Power Corpn. of India Ltd., this Court observed: (SCC p. 98, para 26)

"26. In our view, the word 'court' must be read in the context in which it is used in a statute. It is permissible, given the context, to read it as comprehending the courts of civil judicature and courts or some tribunals exercising curial, or judicial powers."

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Therefore, the law is that it is permissible given the context, to read it as comprehending the courts of civil judicature and courts or some tribunals exercising curial or judicial powers while explaining the meaning of the word, "court" in the context in which it is used in a statute. Meaning of the word, "court" was further explained thus:

"52. The aforesaid observation has been strongly relied upon by Shri Jaideep Gupta in reply to the contention of Shri Bhagat that the National Commission was not a court, and therefore, lacked jurisdiction to decide the complaint filed by the opposite party.

53. In *P. Sarathy v. SBI* (2000) 5 SCC 355, this Court took the view that the term "court" in Section 14 of the Limitation Act, 1963, meant any authority or tribunal having the trappings of a court. It may also be relevant to notice that a Constitution Bench of this Court in *Kihoto Hollohan v. Zachillhu* 1992 Supp (2) SCC 651 held that all tribunals may not be courts, but all courts are tribunals.

54. Now let us look at the definition of the term "court" as commonly understood. Oxford Advanced Learner's Dictionary (8th Edn.) defines it as "the place where legal trials take place and where crimes, etc. are judged". Oxford Thesaurus of English (3rd Edn.) gives the following synonyms: "court of law, law court, Bench, Bar, court of justice, judicature, tribunal, forum, chancery, assizes, courtroom". The Chamber's Dictionary (10th Edn.) has described a court as "a body of persons assembled to decide causes". In Stroud's Judicial Dictionary (5th Edn.), the word "court" has been described as "a place where justice is judicially ministered, and is derived", and is further observed, "but such a matter involves a judicial act which may be brought up on certiorari".

55. The above dictionary meaning and decision of this Court in *Canara Bank* and also the observations of the Constitution Bench decision of this Court in *Union of India v. Madras Bar Assn.* (2010) 11 SCC 1 reveal that the word "court" must be understood in the context of a body that is constituted in order to settle disputes and decide rights and liabilities of the parties before it. "Courts" are those bodies that bring about resolutions to disputes between persons. As already mentioned, this Court has held that the tribunal and Commissions do not fall under the definition of "court". However, in some situations, the word "court" may be used in a wide, generic sense and not in a

narrow and pedantic sense, and must, in those cases, be interpreted thus."

Finally, it was concluded as below:

"**57.** The use of the word "court" in Rule 29 of the Second Schedule of the CA Act has been borrowed from the Warsaw Convention. We are of the view that the word "court" has not been used in the strict sense in the Convention as has come to be in our procedural law. The word "court" has been employed to mean a body that adjudicates a dispute arising under the provisions of the CP Act. The CP Act gives the District Forums, State Forums and National Commission the power to decide disputes of consumers. The jurisdiction, the power and procedure of these forums are all clearly enumerated by the CP Act. Though, these forums decide matters after following a summary procedure, their main function is still to decide disputes, which is the main function and purpose of a court. We are of the view that for the purpose of the CA Act and the Warsaw Convention, the consumer forums can fall within the meaning of the expression "court"."

72. In the case of **Pyarelal Vs. Shubhendra Pilonia (Minor) through Natural Guardian (Father) Shri Pradeep Kumar Pilonia & Others (supra)**, while dealing with the provisions contained in Rajasthan Tenancy Act, 1955, scope and ambit of the provisions contained in Section 256 which bars jurisdiction of civil court was considered.

73. All the aforesaid decisions which have been cited by learned Senior Counsel for the respondent-objector deal with the broad meaning of the words, "suit" and "court" in generic sense but do not support the submission of learned Senior Counsel that all the courts or other tribunals dealing with and deciding the suits are necessarily civil courts or courts of civil jurisdiction. The aforesaid decisions, on the contrary, held that even when the proceedings are held before adjudicatory bodies created under special statutes dealing with the subject matter of dispute provided under those

special statutes, the proceedings before that adjudicatory bodies may be called suit and by legal fiction such adjudicatory bodies may have the trappings of a court though they may be acting as tribunals or special courts constituted under special laws.

However, in view of detailed considerations which we have made hereinabove, a clear distinction, in the eyes of law, exists between a civil court and revenue court and they are not one and the same.

74. Having referred to the decisions cited at the Bar by learned Senior Counsel for the respondent-objector, we now consider it apposite to refer to few more decisions on the point.

75. In the case of **Harinagar Sugar Mills Ltd. Vs. Shyam Sunder Jhunjhunwala & Others (supra)**, it was declared that all tribunals are not courts, though all courts are tribunals. Distinction between ordinary civil courts and tribunals constituted under special enactment was explained thus:

“(31) When rights are infringed or invaded, the aggrieved party can go and commence a querela before the ordinary Civil Courts. These Courts which are instrumentalities of Government, are invested with the judicial power of the State, and their authority is derived from the Constitution or some Act of legislature constituting them. Their number is ordinarily fixed and they are ordinarily permanent, and can try any suit or cause within their jurisdiction. Their numbers may be increased or decreased, but they are almost always permanent and go under the compendious name of "Courts of Civil Judicature". There can thus be no doubt that the Central Government does not come within this class.

(32) With the growth of civilisation and the problems of modern life, a large number of administrative tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary Courts of Civil Judicature. They share the exercise of the judicial power of the State,

but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to Courts, but are not Courts. When the Constitution speaks of 'Courts' in Art. 136, 227 or 228 or in Arts. 233 to 237 or in the Lists, it contemplates Courts of Civil Judicature but not tribunals other than such Courts. This is the reason for using both the expressions in Arts. 136 and 227.

By "Courts" is meant Courts of Civil Judicature and by "tribunals", those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary Courts of Civil Judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that Courts have "an air of detachment". But this is more a matter of age and tradition and is not of the essence. Many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient. Lord Sankey, L. C. in *Shell Co. of Australia v. Federal Commissioner of Taxation*, (1931) A. C. 275 (296) observed:

"The authorities are clear to show that there are tribunals with many of the trappings of a Court, which, nevertheless, are not Courts in the strict sense of exercising judicial power... In that connection it may be useful to enumerate some negative propositions on this subject: 1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body. See *Rex v. Electricity Commrs.*, (1924) 1 K. B. 171.

(33) In my opinion, a Court in the strict sense is a tribunal which is a part of the ordinary hierarchy of Courts of Civil Judicature maintained by the State under its constitution to exercise the judicial power of the State. These Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word "judicial", be it noted, is itself capable of two meanings. They were admirably stated by Lopes L. J. in *Royal*

Aquarium and Summer and Winter Garden Society v. Parkinson, (1892) 1 QB 431 (452) in these words:

"The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in Court, or to administrative duties which need not be performed in Court, but in respect of which it is necessary to bring to bear a judicial mind-that is, a mind to determine what is fair and just in respect of the matters under consideration."

That an officer is required to decide matters before him "judicially" in the second sense does not make him a Court or even a tribunal, because that only establishes that he is following a standard of conduct, and is free from bias or interest."

76. In the case of **Jaswant Sugar Mills Ltd. Meerut Vs. Lakshmi Chand & Others**³² it was highlighted that the power to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State and even the administrative and executive authorities are often by virtue of their constitution required to act judicially in dealign with the question affecting the rights of citizens. It was observed thus:

"(19) The duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State. Even administrative or executive authorities are often by virtue of their constitution, required to act judicially in dealing with question affecting the rights of citizens. Boards of Revenue, Customs Authorities, Motor Vehicles Authorities, Income-tax and Sales-tax, Officers are illustrations prima facie of such administrative authorities, who though under a duty to act judicially, either by the express provisions of the statutes constituting them or by the rules framed thereunder or by the implication either of the statutes or the powers conferred upon them are still not delegates of the judicial power of the State. Their primary function is administrative and not judicial. In deciding whether an authority required to act judicially when dealing with matters affecting rights of citizens may be regarded as a tribunal, though not a court the principal incident is the investiture of the "trappings of a court"-such as authority

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to determine matters in cases initiated by parties, sitting in public, power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence (though not the strict rules of the Evidence Act), provision for imposing sanctions by way of imprisonment, fine, damages or mandatory or prohibitory orders to enforce obedience to their commands. The list is illustrative; some though not necessarily all such trappings will ordinarily, make the authority which is under a duty to act judicially, a 'tribunal'."

77. For the reasons stated hereinabove, we are of the firm view that revenue courts are not civil courts, nor can be said to be courts of civil jurisdiction but only special courts or to say a statutory tribunal empowered to act judicially while dealing with the matters provided under the Rajasthan Tenancy Act, 1955 and the Rajasthan Land Revenue Act, 1956.

78. Heavy reliance has been placed on the Full Bench Judgment of this Court in the case of **Mahendra Kumar Jain Vs. Appellate Rent Tribunal, Ajmer (supra)**. The question which arose for consideration in that case was whether judicial order passed by the Rent Tribunal and Appellate Rent Tribunal could be questioned by invoking the powers of superintendence under Article 227 of the Constitution of India alone and not amenable to writ jurisdiction under Article 226 of the Constitution of India. The operative reason to hold that it has all the trappings of the Court and akin to judicial function discharged by the civil court was that the law mandates such tribunal to be presided over by designated officer of the rank of Civil Judge (Senior Division) and District Judge respectively. It was observed thus:

"**71.** This takes us to consider the contention raised by the learned counsel that the Rent Tribunal and Appellate Rent Tribunal constituted under Sections 13 and 19 of the Act of 2001 respectively, are mandated to be presided over by

designated officer of the rank of Civil Judge (Sr. Division) and District Judge Cadre respectively and thus, they being persona designata, not conferred with the jurisdiction of any pre-existing Court, could not be construed to be civil Courts.”

79. The aforesaid decision is not an authority for the proposition that even when the tribunals are presided over by administrative officials and not judicial officers, then also it would be a civil court. Further, that was not a case dealing with the constitution, jurisdiction, powers and functions of revenue courts constituted as special courts under the revenue laws.

80. As a matter of law, the principles laid down by the Hon'ble Supreme Court in the case of **Life Insurance Corporation of India Vs. Nandini J. Shah & Others (supra)** was the basis for decision in the case of **Mahendra Kumar Jain Vs. Appellate Rent Tribunal, Ajmer (supra)**. In that case, an issue with regard to maintainability of letters patent appeal against the decision of the Single Judge of the High Court, on correctness of decision of the Appellate Officer constituted under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 arose for consideration. The Scheme of the Act required Appellate Officer to be judicial officer in the district (being a District Judge or Judicial Officer designated by the District Judge), possessing essential qualifications. It was held that said Appellate Officer while exercising power under the aforesaid Act does not act as a persona designata but his capacity as a pre-existing judicial authority in the District and that the order passed by the officer is an order of the subordinate court and, therefore, the challenge thereto must ordinarily proceed only under Article 227 of the

Constitution of India and not under Article 226 thereof. On such consideration, letters patent appeal against the judgment of Single Judge was held not maintainable.

81. In the final conclusion, we, therefore, conclude that revenue courts are not civil courts and, therefore, the Board of Revenue while acting either as an appellate revenue court or as an revisional or reference authority as tribunal is not civil court or court of civil jurisdiction. Therefore, the decision in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others(supra)** is not applicable in the mattes of orders passed by the Board of Revenue and, therefore, we are unable to hold that orders passed by the Board of Revenue are challengable before the High Court only in exercise of power of superintendence under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India.

82. In view of above, we respectfully beg to differ from the views taken by some of the High Courts wherein an order passed by the Board of Revenue has been held to be amenable only to supervisory jurisdiction under Article 227 and not under Article 226 of the Constitution of India.

83. It would be a different thing that in a given case, even against the order passed by the Board of Revenue, only supervisory jurisdiction has been invoked and the aggrieved party has chosen not to invoke certiorari jurisdiction under Article 226 of the Constitution of India. In such a case, on facts, one may contend that the order was passed by the High Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of

India and for that reason, remedy of writ-appeal as provided under Rule 134 of the Rajasthan High Court Rules would not be maintainable. However, merely because order has been passed by the Board of Revenue, where an aggrieved party has approached the High Court by filing petition under Articles 226 and 227 of the Constitution of India and where the facts of the case justify filing of petition under Articles 226 and 227 of the Constitution of India both, writ appeal would be maintainable.

84. The objection to the maintainability of these intra-court appeals is, accordingly, repelled as all these appeal arise out of the orders passed by the learned Single Judge in the petitions filed under Articles 226 and 227 of the Constitution of India against the orders passed by the Board of Revenue whether as Appellate Revenue Court or as Revisional Court. These appeals are held to be maintainable in law.

85. All these appeals be listed for final hearing on their own merits.

86. A copy of this order be placed on record of each connected appeal.

(SHUBHA MEHTA),J

(MANINDRA MOHAN SHRIVASTAVA),CJ