

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 31 of 2022

Date of Decision: 09.11.2023

Smti. Treasure Irene Syiemlieh Vs. U Mestonath Kharshandi & 5 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. M. Deb, Adv.
Ms. N. Deb, Adv.

For the Respondent(s) : Mr. R. Debnath, Adv. (For R 1 & 2)
None for R 3-6

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

J U D G M E N T

1. This is an application under Article 227 (1) of the Constitution of India read with Section 151 of the Code of Civil Procedure and Rule-6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order, 2014.

2. Heard Ms. M. Deb, learned counsel for the petitioner who has submitted that the respondents No. 1, 2 & 3 as plaintiffs had filed a suit

before the court of the Subordinate District Council Court, Shillong registered as Title Suit No. 9 of 1999. The prayer made therein is for declaration of right, title, ownership and possession and for permanent injunction restraining the defendants from interfering with such title, ownership and possession of the plaintiffs/respondents herein. The defendants include one U Phromiwell Lyngdoh (since deceased) and two others who are the Secretary and Lyngdoh of the Village Dorbar, Nongpoh.

3. The learned counsel went on to submit that in course of proceedings in the said Title Suit No. 9 of 1999, the plaintiff No. 3 expired. The defendant No. 1 also expired and the counsel for the said defendant withdrew from the proceedings which was allowed. Vide order dated 26.06.2014, the suit against the defendant No. 1 stands abated. However, a petition for substitution of the deceased defendant No. 1 was filed by the plaintiff which was allowed. Thereafter, vide order dated 06.06.2016, the court recorded that the defendants have chosen to remain absent in spite of having received notice and accordingly proceeded ex parte against the defendants.

4. The learned Presiding Officer, Subordinate District Council Court then delivered the judgment and order on 02.02.2017 with the suit decreed in favour of the plaintiffs/respondents. The matter went further when it was endorsed for execution of the decree in Execution Case No. 3 of 2018 leading to the issuance of the warrant of execution on 03.12.2018. The bailiff of the court then submitted a report on 10.10.2019 that the execution was completed on 09.10.2019.

5. The learned counsel has further submitted that when the decree

issued vide judgment and order dated 02.02.2017 was executed on the strength of the said warrant of execution dated 03.12.2018, the land and building in question was under the possession of the petitioner herein who was accordingly dispossessed from her own land without even being aware of the existence of the preceding proceedings connected thereto.

6. The petitioner maintains that she was in possession of land measuring about 18236 sq. ft more or less situated at Nongpoh Downgate, in the Ri-Bhoi District with boundaries as follows:

North :	Land of Sri Leh and house of Bah Tynsong	– 187 ft
South :	Land of Deepak Sun	– 189 ft
East :	Village Road	– 94 ft
West :	G.S. Road (Now N.H.-40)	– 100 ft

7. The aforesaid land has been under the possession of the petitioner since December 1994. In the year 1998, the petitioner had constructed a two storied building measuring 60 ft. in length and 30 ft. in breadth which was given on rent to different persons from time to time. This was done with the knowledge and consent of (L) Phromiwell Lyngdoh, the deceased defendant No. 1 in the said Title Suit aforementioned.

8. The learned counsel has also submitted that the said suit land was subsequently purchased by the petitioner from (L) Phromiwell Lyngdoh on 25.03.2003 with the Village Dorbar Nongpoh issuing a No Objection Certificate dated 14.05.2008, whereupon the petitioner had executed a Deed of Declaration before the Sub-Registrar, Ri-Bhoi District, Nongpoh to confirm her ownership and possession over the said land.

9. The learned counsel then submitted that in the meantime, the Deputy Commissioner/Collector, Ri-Bhoi District had issued notice vide No.DCRB(LA)1/2009/20 dated 05.05.2009 to all land owners for acquisition of land for the purpose of construction of the 4-Laning. In the said notice, it is also indicated that a Joint Survey and Demarcation of the land to be acquired would be conducted by the office of the Collector and representatives of the National Highway Authority of India (NHAI). The name of the petitioner also figures in the said notice.

10. Eventually, after complying with all relevant aspects of the land acquisition process, the Collector, Ri-Bhoi District having acquired about 190 sq. meters of land along with RCC building boundary wall, CGI wooden wall flooring, etc., the petitioner was compensated for the same amounting to ₹ 19,80,946/- and ₹ 78,552/- respectively on 08.07.2010.

11. The learned counsel has again submitted that the petitioner has no knowledge about the said title suit filed by the respondents No. 1, 2 and 3 and on coming to know about the same on 15.10.2019 had immediately taken steps to apply for certified copy of the relevant orders and had also engaged a counsel to do the needful in this regard. However, the said counsel suddenly expired on 10.01.2020 and the petitioner could not take any further steps thereafter on account of the situation arising out of the COVID-19 pandemic. The petitioner was also personally handicapped as she was suffering and was under treatment and it was only after she had recovered that she had engaged a counsel to take necessary steps for filing this instant petition.

12. It is the contention of the petitioner that on perusal of the relevant papers connected to the subject matter of the said Title Suit No. 9 of 1999

and the Execution Case No. 3 of 2018 what could be seen is that the description of the suit land of the said Title Suit which is also not complete inasmuch as the area of the land has not been mentioned, is totally different from the land of the petitioner which was clearly demarcated and complete with proper measurements given. Again, no prayer has been made in the plaint for recovery of possession and as such, the proceeding before the learned Execution Court is totally illegal and without jurisdiction.

13. It is also noticed that in the plaint the respondents No. 1, 2 and 3/plaintiffs had enclosed a decision of the Village Court that is, Raid Nongpoh wherein vide order dated 10.04.1999, the said Village Court on a complaint made by the deceased defendant No. 1 against one Bli Kharshandi who is said to have claimed ownership over the land of the defendant No. 1, the opposing parties were summoned before it and on evidence being recorded, after hearing the argument from both sides, the Village Court had decided that the suit land belongs to the defendant No. 1 [(L) Promiwell Lyngdoh]. This, according to the learned counsel is an appealable order, however, the plaintiffs therein instead of filing an appeal had filed a suit before the court of the Subordinate District Council Court, Shillong, which is contrary to legal precedents and relevant principles and the relevant provisions of law. The impugned judgment and order is therefore, liable to be set aside only on this ground alone, submits the learned counsel.

14. The learned counsel has also submitted that ordinarily the High Court would not interfere with a decision of a Court or Tribunal by exercising its power under Article 227 of the Constitution of India if there

is a remedy for appeal available. However, when there has occurred an exercise of patent perversity or a gross manifest of failure of justice or that the principle of natural justice has been flouted in the orders of the Court and Tribunal subordinate to it, then the High Court is justified in interfering with such order. In this regard the case of **Radhey Shyam & Anr. v. Chhabi Nath & Ors., (2015) 5 SCC 423**, paras 21 and 23 has been cited to show that the Hon'ble Supreme Court has elaborated on the principle, power and jurisdiction under Article 227.

15. The learned counsel has reiterated that the learned Presiding Officer of the Subordinate District Council Court, Shillong by entertaining the Title Suit and by going through the process of disposing it in the manner it was done so culminating in the passing of the impugned Judgment and Order dated 02.02.2017, particularly when the dispute between the relevant parties was settled at the Village Court level, under the provision of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953, such order is appealable before the court of the Subordinate District Council which was not resorted to by the respondents No. 1, 2 & 3/plaintiffs, therefore, the same was done so without jurisdiction and accordingly, a revision would lie against such impugned order.

16. It is further submitted that this Court under the provision of Order 6 of 'The High Court of Meghalaya (Jurisdiction over District Council Courts) Order, 2014' is empowered to call for the proceedings of any civil or criminal case decided by or pending in any court in the Autonomous District Council constituted under the provisions of sub-paragraphs (1) and (2) of paragraph 4 of the Sixth Schedule to the Constitution and to

pass such orders as may deem fit. It is for the exercise of this revisional power that the petitioner has approached this Court not particularly for re-appreciation of the evidence or correction of the impugned judgment and order.

17. The learned counsel has also submitted that this Court, under the relevant provision of Order 6 of the said Order of 2014 has been vested with wide powers to deal with orders passed by the courts of the District Council and such power also provides for revision of an order passed by a subordinate court without any restriction. The case of **Idis Mary Kharkongor v. Ka Theirit Lyngdoh** reported in ALR 1969 Assam and Nagaland, 92 was cited by the petitioner to say that in the said case, the Full Bench of the Gauhati High Court while interpreting the provision of Rule 36 of the Administration of Justice and Police Rules in the Khasi and Jaintia Hills and also Order 6 of the Assam High Court (Jurisdiction over District Council Court) Order, 1954 which is para materia with Order 6 of 'The High Court of Meghalaya (Jurisdiction over District Council Courts) Order, 2014' has held that the High Court while exercising revisional powers, will be entitled to go into facts like an appellate Court. Therefore, there is no hard and fast rule that the impugned judgment and decree and corresponding execution process cannot be legally scrutinized by this Court to correct the irregularity and illegality found therein.

18. The learned counsel has then submitted under such circumstances, this Court may be pleased to allow this petition and to pass necessary order in this regard.

19. Per contra, Mr. R. Debnath, learned counsel for the respondents No. 1, 2 and 3 respectively, has submitted that at the outset, the

maintainability of this petition is questioned inasmuch as the petitioner has no locus standi to file this petition being a stranger to the said Title Suit No. 9 of 1999.

20. It is also submitted that the learned Judge of the District Council Court, Shillong has resorted to Rule 30 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 (As amended) to endorse the said Title Suit No. 9 of 1999 to the court of the learned Subordinate District Council Court, Shillong for disposal of the same.

21. The provision of Rule 18 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 (As amended) was also referred to by the learned counsel for the respondents to say that under the said rule, the Subordinate District Council Court is empowered to try cases when there is no village court and also if parties are not residents of the same village. The parties to the said Title Suit No. 9 of 1999 not being residents of the place where the suit land is situated, accordingly the village court could not have tried any suit or case related to such parties. This is more pronounced from the conduct of the defendants therein who have never objected to the jurisdiction of the trial court, that is, the Subordinate District Council Court and as such, after the matter was taken up in its entirety and the judgment and decree passed on conclusion of the proceedings therein, the petitioner cannot come at this point of time to object to such proceedings more so, when the execution proceedings have already been concluded.

22. Even if this Court would decide that the petitioner can agitate the matter in Court, the provision for assailing the impugned judgment and

decree is found under Rule 20, 30 and 31 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 (As amended) and Order 47 of the Code of Civil Procedure which provides for appeal. Therefore, the petitioner could not have resorted to Article 227 of the Constitution of India to prefer this instant petition when there is an alternative statutory remedy provided. The case of **Sadhana Lodh v. National Insurance Co. Ltd. & Anr., (2003) 3 SCC 524**, paras 6 & 7 and also the case of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. v. Tuticorin Educational Society & Ors., (2019) 9 SCC 538**, paras 13 & 14 was referred to in this regard by the learned counsel for the respondents to say that the Hon'ble Supreme Court has clearly observed that the High Court could not have entertained a petition under Article 227 of the Constitution of India if there is a statutory remedy.

23. The learned counsel has also touched upon the merits of the Title Suit to say that the main deceased defendant No. 1 had secretly sold the suit land to the petitioner herein on 25.03.2003 during pendency of the suit before the court and an injunction in this regard was also in place. The petitioner had also made the declaration deed on 22.05.2008 when the same was registered before the Sub-Registrar, Ri-Bhoi District Nongpoh, which is an illegal act since the matter is sub-judice at the relevant point of time. The case of **Jehal Tanti and Ors. v. Nageshwar Singh (Dead) Through LRS, (2013) 14 SCC 689**, para 13 and also the case of **Surjit Singh & Ors. v. Harbans Singh, (1995) 6 SCC 50**, para 52 was cited to support his contention.

24. The learned counsel has further stressed on this point by

submitting that the alleged sale transaction between the petitioner and deceased/defendant No. 1 is hit by the provision of Section 52 of the Transfer of Property Act, 1882 which provides as follows:

“52. Transfer of property pending suit relating thereto.—During the ¹[pendency] in any Court having authority ²[³within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by ⁴[the Central Government] ⁵[] of ⁶[any] suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.***

¹[Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]”

25. It is, therefore, the prayer of the learned counsel that this petition lacks merit and is liable to be dismissed.

26. The respective contention raised by the parties in support of their case and the submission made herein to persuade this Court to agree to their respective point of view, factually and legally has been duly noted and the basic facts found in such submission as detailed hereinabove need not be repeated except if so required.

27. From the submission of the parties what could be understood is that the trial of Title Suit No. 9 of 1999 before the court of the

Subordinate District Council Court, Shillong culminating in the passing of the judgment and order dated 02.02.2017 and following issue of such decree, the execution proceedings before the learned Execution Court resulting in the handing over of the suit land to the decree holder/respondents No 1, 2, & 3 respectively have now been brought to the attention of this Court in this instant application by the petitioner herein.

28. At the outset, the said relevant respondents have questioned the maintainability of this petition which was filed with reference to the provision of Article 227 of the Constitution of India and also the fact that the petitioner was never a party in the said Title Suit No. 9 of 1999, which according to the respondents would render this petition to be dismissed at the threshold.

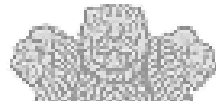
29. It is also noticed that the respondents No. 3-6 respectively have failed to appear before this Court in spite of receipt of notice. Accordingly, the matter shall proceed ex parte against such respondents.

30. The petitioner has laid claim to the entitlement of coming before this Court on the ground that the impugned judgment and order and more particularly, by the execution of the decree, she was dispossessed from her land which rightfully belonged to her without being given any opportunity to prove her right and title to such possession and as such, there being no alternative, the only way out for her is to approach this Court by this instant petition.

31. The admitted position of the petitioner is that though she was in possession of the suit land since the year 1994, yet she actually purchased

the same only on 25.03.2003, the sale being approved by the Village Dorbar on 14.05.2008 after which the petitioner got the same confirmed by execution of a Declaration Deed dated 15.10.2008. This would only show that the petitioner can claimed ownership and possession of the suit land only in the midst of the trial of the said Title Suit No. 9 of 1999.

32. The law as regard the doctrine of 'lis pendens' is well settled. With reference to the provision of Section 52 of the Transfer of Property Act (supra) the Hon'ble Supreme Court in the case of **Raj Kumar v. Sardari Lal & Ors., (2004) 2 SCC 601** at para 5 of the same has observed as follows:



"5. The doctrine of lis pendens expressed in the maxim "ut lite pendente nihil innovetur" (during a litigation nothing new should be introduced) has been statutorily incorporated in Section 52 of the Transfer of Property Act, 1882. A defendant cannot, by alienating property during the pendency of litigation, venture into depriving the successful plaintiff of the fruits of the decree. The transferee pendente lite is treated in the eye of the law as a representative-in-interest of the judgment-debtor and held bound by the decree passed against the judgment-debtor though neither has the defendant chosen to bring the transferee on record by apprising his opponent and the court of the transfer made by him nor has the transferee chosen to come on record by taking recourse to Order 22 Rule 10 CPC. In case of an assignment, creation or devolution of any interest during the pendency of any suit, Order 22 Rule 10 CPC confers a discretion on the court hearing the suit to grant leave for the person in or upon whom such interest has come to vest or devolve to be brought on record. Bringing of a lis pendens transferee on record is not as of right but in the discretion of the court. Though not brought on record the lis pendens transferee remains bound by the decree."

33. In the case of **Krishnaji Pandharinath v. Anusayabai and**

Anr. (AIR 1959 Bombay 475), it was held that the application of the doctrine of lis pendens does not depend upon the purchaser having notice of the suit; even if the transferee pendente lite from a party has no notice of the suit, the rights of the other party to a suit in which a right to immovable property is directly and specifically in question under the decree cannot be prejudicially affected by the transfer. In **Har Prasad v. Sita Ram (AIR 1940 Allahabad 141)**, it was held that even though Section 52 does not operate to annul a transfer pendente lite it renders the transfer subservient to the rights of the parties to the action as determined by the judgment or decree passed in the action.

34. In **Rajender Singh & Ors v. Santa Singh & Ors, AIR 1973 SC 2537**, para 15, Section 52 was further analysed as follows:

"15. The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of lis pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject matter of a litigation, to the power and jurisdiction of the Court so as to prevent the object of a pending action from being defeated."

35. In the light of the above proposition of law, what can be discerned is that the petitioner having acquired title and possession to the suit land pendente lite, she cannot at this juncture assert that the decree and the execution proceeding following thereto has deprived her of her right to

assert her title and ownership over the said suit land. The decree is accordingly binding upon her.

36. However, another aspect to be considered is to the manner in which the trial court, that is, the court of the Subordinate District Council Court, Shillong has proceeded with the trial since its inception.

37. From the materials on record, copy of the plaint and written statement in the said Title Suit No. 9 of 1999 has been annexed. It may be mentioned that in the said Suit, the plaintiffs/respondents No. 1, 2 and 3 respectively have impleaded the deceased Phromiwell Lyngdoh as defendant No. 1, Shri. P. Syngkli, Secretary, Raid Nongpoh and Shri. S. Lyngdoh, Lyngdoh Raid Nongpoh.

38. From the averments made in the plaint, the cause of action cited by the plaintiffs therein arose on 19.01.1999 when the defendant No. 1 filed a complaint before the defendants No. 2 and 3 with regard to the suit land and following such complaint the passing of the order dated 10.04.1999 by the said defendants No. 2 and 3.

39. Copy of the order dated 10.04.1999 was also annexed with the plaint and on perusal of the same, what is apparent is that the defendant No. 1 (L) Phromiwell Lyngdoh had made a complaint that one Shri. Bli Kharshandi had encroached upon his land which is bounded as follows:

East : 24 mt. land of Phromi well Lyngdoh

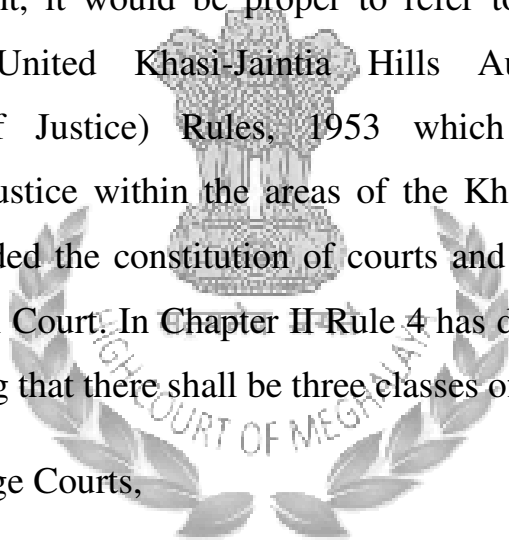
Sout : 14.7 mt.

West : GS Road

North : Land of Phromi well Lyngdoh

40. The Dorbar Raid Nongpoh taking cognizance of the said complaint had summon both the parties and on examination of witnesses and documents related thereto the Dorbar has passed judgment and order in favour of the complainant, that is, (L) Phromi well Lyngdoh. In the said order, the Dorbar Raid Nongpoh has also observed that the aggrieved party may appeal against the said judgment and order dated 10.04.1999 within three months from the date of such order.

41. At this point, it would be proper to refer to the relevant rules, particularly the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 which rules govern the administration of justice within the areas of the Khasi and Jaintia Hills wherein it is provided the constitution of courts and hierarchy known as the District Council Court. In Chapter II Rule 4 has described the Classes of Courts specifying that there shall be three classes of courts, namely:

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- (i) Village Courts,
 - (ii) Subordinate District Council Courts and Additional Subordinate District Council Courts,
 - (iii) District Council Court and Additional District Council Court.

42. Under Chapter III Rule 11 what is provided is that a Village Court shall try suits and cases including cases of a civil nature, provided that the property in dispute is situated within the jurisdiction of the Village Court and all the parties must reside or hold land within such jurisdiction.

43. Rule 16 of the said Rules of 1953 provides that appeal from a decision of the Village court would lie before the Court of the Subordinate District Council Courts and Additional Subordinate District Council Courts.

44. As has been observed above, it is evident that the plaintiffs/respondents No. 1, 2 and 3 herein have filed a Title Suit against the decision of the Dorbar Raid Nongpoh dated 10.04.1999. This is an action preferred contrary to the said provision of the 1953 Rules(supra), where instead of filing of a suit the parties ought to have preferred an appeal before the Subordinate District Council Court, Shillong. This, not having been done, the said Title Suit No. 9 of 1999 has been filed without jurisdiction and the same ought to have been dismissed in limine. The execution of the decree following the passing of the impugned judgment and order dated 02.02.2017 should not have taken place in such a situation.

45. The learned counsels for the respective parties have referred to relevant authorities on the jurisdiction and exercise of power of the High Court under Article 227 of the Constitution. All the authorities cited are found to be relevant. However, in the peculiar facts and circumstances of the proceedings entered into by the respondents No. 1, 2 and 3 by filing the said Title Suit before the Subordinate District Council Court, it is apparent that the said Subordinate District Council Court lacks inherent jurisdiction to try the suit and consequently, to pass the impugned judgment and order since under the relevant rules, it was incumbent upon the plaintiffs/respondents No. 1, 2 and 3 to have preferred an appeal against the order dated 10.04.1999 passed by the Dorbar Raid Nongpoh

but instead of such appeal, the said Title Suit was filed.

46. As to the jurisdiction of this Court to exercise power under Article 227, the case of **Radhey Shyam & Anr. v. Chhabi Nath & Ors.** (supra) is worth mentioning wherein at para 23 the Hon'ble Supreme Court has observed as follows:

“23. The Bench then referred to the history of writ of certiorari and its scope and concluded thus: (Surya Dev Rai Case (2003) 6 SCC 675)

18. ...

19. ...

24. The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram v. Radhikabai (1986 Supp SCC 401) Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 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. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised

*jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labeling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. **In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.***

47. In the case of **Nawab Shaquafath Ali Khan & Ors. v. Nawab Imdad Jah Bahadur & Ors., (2009) 5 SCC 162** at para 42 and 48 the Hon'ble Supreme Court has observed as follows:

“42. Reliance has also been placed by Mr. Rao on Ouseph Mathai (supra) wherein it was held:

"4. ...In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party."

48. If the High Court had the jurisdiction to entertain either an appeal or a revision application or a writ petition under Articles 226 and 227 of the Constitution of India, in a given case it, subject to fulfillment of other conditions, could even convert a revision application or a writ petition into an appeal or vice versa in exercise of its inherent power. Indisputably, however, for the said purpose, an appropriate case for exercise of such jurisdiction must be made out."

48. The Hon'ble Supreme Court has held that in an appropriate case the High Court can convert a revision application into an appeal vice versa. In the facts and circumstances of the case of the parties, where an apparent wrongful exercise of jurisdiction by the Subordinate District Council Court, Shillong has been made out, therefore, even if this instant petition is converted into an appeal, interference with the impugned judgment and order dated 02.02.2017 and the order for execution dated 03.12.2018 is found well justified.

49. Taking all aspects of the matter in hand into consideration, the relevant authorities cited by the parties also being duly considered and those found applicable to the facts and circumstances of this case being cited, this Court is of the considered opinion that the impugned judgment

and order dated 02.02.2017 and the order for execution dated 03.12.2018 are liable to be set aside and quashed which is done so herein.

50. To the extent indicated, this petition succeeds. The impugned judgment and order and the order of execution being held to be invalid, the relevant parties can take necessary steps for recovery of possession, if so advised.

51. With the above, this petition is hereby disposed of. No costs.

Meghalaya
09.11.2023
"Tiprilynti-PS"



Judge