

GAHC010110792024



2024:GAU-AS:11896

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : W.P.(Crl.)/18/2024

PRIYANKA CHOUDHURY
W/O- PANDESWARAMADHUSUDAN,
C/O- DIPA GOSWAMI MAHANTA,
32 ROSES , NR HOUSING COMPLEX, C-2 NEAR ADHITI,
SUPER MARKET DOWN TOWN , MATHURA NAGAR,
P.O- DISPUR, P.S- DISPUR, DIST- KAMRUP (M), PIN-781006

VERSUS

PANDESWARA MADHUSUDAN
S/O- LATE P. V KRISHNA,
R/O- KANSAS AVENUE H.NO-1,
TRILOK TRISTAR VILLA NEAR ROYAL CHAMBER HOTEL,
P.O- COIMBATORE CIVIL,
AERODROME, COIMBATORE,
P.S-E2 PEELAMEDU, TAMILNADU, PIN-641014

Advocate for the Petitioner : DR. B N GOGOI, MR N PATIRI,MR. P TALUKDAR

Advocate for the Respondent : MR. M I HUSSAIN, MS. P AHMED,N. UDDIN

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 29.11.2024

[K.R. Surana, J]

Heard Mr. A. Lal, learned counsel for the petitioner. Also heard Mr. A.I. Hussain, learned counsel for the respondents.

2. We take note of the order dated 04.03.2024, passed by the Supreme Court of India in Petition(s) for Special Leave to Appeal (Crl.) No(s). 2935/2024, by which although the Special Leave Petition was dismissed, but liberty was reserved for the petitioner to file a writ petition under Article 227 of the Constitution of India, if so advised.

3. We also take note of paragraph 62, 72, 74, 80, 81, 82 and 83 of the decision of the Supreme Court of India in the case of *Shalini Shyam Shetty vs. Rajendra Shankar Patil*, (2010) 0 Supreme (SC) 609, which reads as follows :-

62. 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 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, on 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 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 its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh and another vs. Amarnath and another, AIR 1954 SC 215 and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), 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 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) 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 the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement 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 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 counter-productive and will divest this extraordinary power of its strength and vitality.

72. Therefore, a private person becomes amenable to writ jurisdiction only if he is connected with a statutory authority or only if he/she discharges any official duty.

74. It has repeatedly been held by this Court that a proceeding under Article 226 of the Constitution is not the appropriate forum for adjudication of property disputes or disputes relating to title. In Mohammed Hanif vs. The State of Assam, (1969) 2 SCC 782, a three Judge Bench of this Court, explaining the general principles governing writ jurisdiction under Article 226, held that this jurisdiction is extraordinary in nature and is not meant for declaring the private rights of the parties. [See para 5, page 786 of the report].

80. We may also observe that in some High Courts there is tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in Surya Dev Rai vs. Ram Chander Rai, (2003) 6 SCC 675 and in view of the recent amendment to Section 115 of the Civil Procedure Code by Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 of CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

81. As a result of frequent interference by Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice.

82. This Court hopes and trusts that in exercising its power either under Article 226 or 227, Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest Courts of justice within their jurisdiction will adhere to them strictly.

83. For the reasons aforesaid, it is held that the High Court committed an error in entertaining the writ petition in a dispute between landlord and tenant and where the only respondent is a private landlord. The course adopted by the High Court cannot be approved. Of course, High Court's order of noninterference in view of concurrent findings of facts is unexceptionable. Consequently, the appeal is dismissed. However, there shall be no order as to costs.

4. In the present case, in the cause-title at page no. 1 of the writ petition, the application is under Article 226 of the Constitution of India. However, in the statement made in paragraph 1 of the writ petition, the present application is stated to be preferred under Article 227 of the Constitution of India. Therefore, going by the cause-title, the present writ petition has been registered as Writ Petition (Crl.) no. 18/2024 and laid before the Division Bench of this Court.

5. We also take note of the fact that in an earlier round of challenge to the impugned order dated 28.07.2023, passed by the learned Principal Judge, Family Court-II, Kamrup (M), Guwahati in F.C.(Crl.) Case no. 162/2023, filed by the petitioner, Criminal Revision Petition no. 399/2023 was registered and order passed therein was assailed before the Supreme Court of India, as referred

herein before.

6. Be that as it may, at this stage, the learned counsel for the petitioner seeks liberty to withdraw this petition and to approach this Court in terms of the liberty granted by the Supreme Court of India.

7. The prayer is allowed.

8. The matter stands dismissed on withdrawal with liberty, as prayed for.

JUDGE

JUDGE

Comparing Assistant