

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.218 of 2016

Ramashankar, S/o Shri Ratiram, aged about 45 years, R/o Village Barbaspur, Post Borid, Police Station Ranitarai, Tahsil Patan, District Durg (C.G.).

---- Appellant/
(Respondent No.2)

Versus

1. Ishwari Prasad Thakur, S/o Kishun Lal Thakur, aged about 35 years, R/o Village Barbaspur, Post Borid, Police Station Ranitarai, Tahsil Patan, District Durg (C.G.).
(Petitioner)

2. Chairman, Revenue Board Chhattisgarh, Bilaspur, Circuit Court at Raipur (C.G.)
(Respondent)/
---- Respondents

For Appellant:	Mr. Sushobhit Singh, Advocate.
For Respondent No.1:	Mr. Praveen K. Dhurandhar, Advocate.
For Respondent No.2:	Mr. Vinod Deshmukh, Deputy Govt. Adv.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

Per Deepak Gupta, Chief Justice

27/06/2016

1. A preliminary objection has been raised to the maintainability of this writ appeal on two grounds, firstly, that under the proviso to Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (for short 'the Act of 2006'), no appeal lies to the Division Bench where the order has been passed by the learned Single Judge in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India and secondly, on

the ground that even if this Act was not there under the general law, no appeal lies to the Division Bench against a judgment or order passed by the Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

2. As far as the Act of 2006 is concerned, Section 2 reads as follows: -

“2. Appeal to the Division Bench of the High Court from a Judgment or order of one judge of the High Court made in exercise of original jurisdiction.—(1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court :

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.”

3. The proviso to Section 2 of the Act of 2006 makes it crystal clear that no appeal lies against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Further more, this has been a consistent view of the Apex Court and all other Courts even with regard to the exercise of appellate jurisdiction even under the letters patent where such letters patent are available and in those High Courts, the scope of the word “judgment” is very wide.
4. We are not required to multiply the judgments, but in a recent judgment in the matter of **Jogendrasinhji Vijaysinghji v. State of Gujarat and others**¹, the Apex Court held that if the Single

1 (2015) 9 SCC 1

Judge exercises jurisdiction under Article 227 of the Constitution of India then the appeal will not lie. Further, the Apex Court observed in para 30 as follows: -

“30. From the aforesaid pronouncements, it is graphically clear that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in *Radhey Shyam*² that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, needless to emphasise, would depend upon various aspects that have been emphasised in the aforesaid authorities of this Court. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The Division Bench would also be required to scrutinize whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. Be it stated, one of the conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court fees. We do not intend to comment on the same as that would depend upon the rules framed by the High Court.”

5. From the above quoted portion of the Supreme Court judgment,

2 *Radhey Shyam v. Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67

it is apparent that the appellate Court before deciding whether appeal is maintainable or not has to decide whether the learned Single Judge has exercised jurisdiction under Article 226 of the Constitution of India or under Article 227 of the Constitution or under both. While deciding this issue, the nomenclature given in the writ petition filed is not the deciding factor. The Court has to ascertain after going through the pleadings and the order, what is the nature of the jurisdiction exercised. Normally, in exercise of supervisory jurisdiction, the Court will only look into the supervisory aspect as to whether the procedure established by law has been followed or not. While exercising writ jurisdiction under Article 226 of the Constitution of India, the Court has much wider powers. The Court can even look into the merits of the dispute; it can decide whether the decision is arbitrary or not and if the decision is of this nature, then it would fall under Article 226 of the Constitution of India and not under Article 227 of the Constitution of India.

6. In the present case, we find that not the writ petition was filed only under Article 227 of the Constitution of India. The learned Single Judge has basically exercised his jurisdiction under Article 227 of the Constitution of India only.
7. It has been urged on behalf of the appellant that the order of the Board of Revenue can be set aside under Article 226 of the Constitution of India. In this behalf, a reference has been made to the judgment of the Apex Court in the matter of **RBF RIG**

Corporation, Mumbai v. Commissioner of Customs

(Imports), Mumbai³. There is no quarrel with this proposition that the Board of Revenue is amenable to the writ jurisdiction in the Court. The question that arises is what is the jurisdiction exercised by the writ Court. In the present case, the writ petition was filed only invoking the supervisory jurisdiction under Article 227 of the Constitution of India and the writ court has not gone into the merits of the case but has exercised its supervisory jurisdiction only to hold that the writ petitioner was not given an opportunity of being heard. We are not commenting on the correctness of this finding but only highlighting that this is the finding given in exercise of supervisory jurisdiction. In exercise of supervisory jurisdiction, the Court does not go into the merits, but only decides whether the procedure followed is correct or not. As far as the present case is concerned, on going through the order, we find that it squarely falls within the scope of Article 227 of the Constitution of India and therefore no writ appeal is maintainable. Accordingly, the writ appeal is rejected not on merits but only on the ground that it is not maintainable. We make it clear that we have not expressed any opinion on the merits of the case.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge