

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WA No. 489 of 2017**

(Arising out of order dated 13.10.2017 in WP(227) No.234 of 2009)

Gopal Rao (died) through Lrs

1. Vinod Kumar, Son Of Late Gopal Rao Shesh, Aged About 71 Years
  2. Mukund Rao, S/o Late Gopal Rao Shesh, Aged About 64 Years
  3. Milind Kumar, S/o Late Gopal Rao Shesh, Aged About 56 Years
- No.1 to 3 are R/o Tatyapara, Raipur, Chhattisgarh.
4. Jyoti Kiran, D/o Gopal Rao Shesh, Aged About 65 Years R/o Anand Van, Wardha, District Chandrapur, Maharashtra.
  5. Sunanda, D/o Gopal Rao Shesh, Aged About 63 Years R/o A. T. I. Campus Shayan, Mumbai, Maharashtra.
  6. Madhuri, D/o Gopal Rao Shesh, Aged About 56 Years R/o Jawahar Nagar, Durg, Chhattisgarh. Civil And Revenue District Durg, Chhattisgarh.

**---- Appellants**

**Versus**

1. State of Chhattisgarh through the Secretary, Department of Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. The Board of Revenue, Bilaspur Circuit Court, Raipur, Chhattisgarh.

**---- Respondents**

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| For Appellants        | : Shri BP Sharma and Shri Hari Agrawal, Advocates |
| For Respondents/State | : Shri PN Bharat, Additional Advocate General     |

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**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**  
**Hon'ble Shri Justice Sharad Kumar Gupta**

**Judgment on Board**

**Per Thottathil B. Radhakrishnan, Chief Justice**  
**22.11.2017**

1) This appeal is filed invoking Section 2 of the Chhattisgarh High Court (Appeal to Division Bench), Act 2007 (for short, the Act). It is instituted against the order passed on 13.10.2017 by the learned Single Judge. While the appeal is one with reference to sub-Section 1 of Section

2 of the Act, the proviso to that Section enjoins that no such appeal shall lie against, *inter alia* an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. This appeal is opposed by the learned Additional Advocate General pointing out that this appeal does not lie in view of the afore noted proviso.

2) The learned counsel for the appellant relying on the judgments of the Apex Court in **JogendraSinhji Vijaysinghji Vs State of Gujarat and Others** {2015 (9) SCC 1}, **Arun K Jha and others Vs Garden Silk Mills Limited and another** {2009 (10) SCC 584} as well as the judgment in **Ram Kishan Fauji Vs State of Haryana and others** {2017 (5) SCC 533} argued, quite rightly, for the position, that the question whether the appeal is to be entertained or not is a matter to be decided by the Division Bench with reference to the quality and nature of the order sought to be appealed against and the jurisdiction which is found to have been exercised by the learned Single Judge. He further argued that the nature of pleadings in the Writ Petition, its nomenclature and nature of reliefs sought for in the Writ Petition could be treated as indicative of the jurisdiction that is invoked by the writ petitioner, be it Article 226 or Article 227 of the Constitution. He is right. The learned counsel for the appellant also, rightly, argued that the quality of findings and the nature of adjudication of the learned Single Judge is necessarily indicative of the power that has been exercised by the learned Single Judge; as to whether it is referable to Article 226 or 227, or 226 and 227 conjointly.

3) Bearing aforesaid principles of law in mind, looking at the Writ Petition, we see that the petitioner before the learned Single Judge,

namely, the State of Chhattisgarh, had mentioned only Article 227 in the caption of the Writ Petition. It is true that issuance of writ of certiorari was sought for. A writ in the nature of certiorari is among the writs, directions or orders which find reflected in Article 226 of the Constitution. The intention of seeking such relief in the Writ Petition is only to request the Court to annul the decision that is challenged. The fundamental requirement for the appellate Court in an intra Court appeal is to consider as to what is the power that has been actually exercised by the learned Single Judge. In the case in hand, the learned Single Judge opens the impugned judgment by making reference to Article 227 of the Constitution. Reasonableness of judicial prudence requires us to assume that the learned Single Judge would have maintained in his mind, the clear distinctions between Articles 226 and 227 of the Constitution. We say this in the context of the fact that the challenge of the State Government before the learned Single Judge through the Writ Petition under Article 227 was limited to the ground that the Board of Revenue had passed the order impugned in the writ petition, in violation of the directions issued by this Court, through the order dated 21.06.2005 in Misc Petition- 4184 of 1988, in an earlier round. Looking at the quality of findings in the impugned order issued by the learned Single Judge, it can be seen that the finding in paragraph 8 of the impugned order is specifically that the Board of Revenue acted in breach of directions contained in the order of remand issued by this Court on 21.06.2005 in Misc Petition- 4184 of 1988. The impugned order is not founded on appreciation of rival facts, evidence or other such grounds. It rests squarely on the finding that the Board of Revenue acted in violation of the directions issued by the High Court in

the earlier round of litigation as between the parties and hence, the Board of Revenue was in clear breach of jurisdiction in passing orders in violation of the binding order of remand passed by this Court in Misc Petition- 4184 of 1988. This being the content of the judgment in the writ petition, it can be treated only as one rendered in exercise of power under Article 227 of the Constitution. It does not need the aid and support of Article 226 to sustain it. In this view of the matter this intra Court appeal does not lie in the light of the proviso of sub-Section 1 of Section 2 of the Act. Hence, this appeal is not maintainable.

4) In the result, this appeal is dismissed.

Sd/-  
**(Thottathil B. Radhakrishnan)**  
Chief Justice

Sd/-  
**(Sharad Kumar Gupta)**  
Judge