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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO.89 OF 2013 IN  
WRIT PETITION NO.255 OF 1998

WITH

CIVIL APPLICATION NO.4766 OF 2012 WITH  
CIVIL APPLICATION NO.7254 OF 2013

1. Ramesh s/o Vithal Mane  
Age 39 years, Occu. Agriculture  
R/o Mahapur, Tq. Latur,  
District Latur.
  2. Satish s/o Vithal Mane,  
Age 48 years, Occu. Agriculture,  
R/o Mahapur, Tq. Latur,  
District Latur.
  3. Vithal s/o Hanumant Mane,  
Age 59 years, Occu. Agriculture,  
R/o Mahapur, Tq. Latur,  
District Latur.
  4. Shardabai Vithal Mane,  
Age 55 years, Occu. Agriculture,  
R/o Mahapur, Tq. Latur,  
District Latur.
- ... APPELLANTS

**VERSUS**

1. Gurling s/o Mahadeo Bhavare,  
Age 70 years, Occu. Service,  
R/o Khorli Galli, Latur,  
Tq. Latur, Dist. Latur.
2. Yeshodabai s/o Vishwanath Gurav,  
Age 50 years, Occu. Household,  
R/o Mahapur, Tq. Latur,  
District Latur.

(( 2 ))

3. Shevantabai Bandu Gurav,  
(since deceased, through her  
Legal Heirs:)
- 3A) Yeshodabai w/o Vishwanath Gurav,  
Age 50 years, Occu. Agriculture,  
R/o Mahapur, Tq. Latur,  
District Latur.
- 3B) Sow. Heerabai w/o Trimbak Vadarane,  
Age 40 years, Occu. Agriculture  
At Post Shirol Janapur, Tq. Udgir,  
Dist. Latur
- 3C) Sow. Pushpabai w/o Baburao Shirole,  
Age 39 years, Occu. Agriculture,  
R/o At Post Jambhalwadi,  
Tq. Shirur Anantpal, Dist. Latur.
4. Kashinath s/o Bandu Gurav,  
Age 52 years, Occu. Agriculture,  
R/o Mahapur, Tq. Latur,  
District Latur.

... RESPONDENTS

.....  
Shri S.S. Manale, Advocate holding for  
Shri V.D. Salunke, Advocate for appellants  
Shri S.B. Bhapkar, Advocate for respondent No.1

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CORAM:     T.V. NALAWADE AND  
                  SUNIL K. KOTWAL, JJ.

DATED :     28th FEBRUARY, 2018.

**JUDGMENT (PER SUNIL K. KOTWAL, J.) :**

1.            This Letters Patent Appeal is directed challenging the decision given by learned Single Judge of this Court, dated 12.3.2012, in Writ Petition No.255/1998, confirming the order of Deputy Collector, Land Reforms, Latur in File No.90/TN/0/8,

dated 26.11.1991, petition under Section 98 of Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred as Hyderabad Tenancy Act in short) for summary eviction, and order of Member, Maharashtra Revenue Tribunal, dated 4.12.1997, passed in Appeal No.102/A/91/L. This Letters Patent Appeal is disposed of along with Letters Patent Appeal No.90/2013.

2. Appellants claim to be owners of the disputed land Survey No.116 (Gat No.304) to the extent of 12 acres and 2 gunthas, situated at village Mahapur, Taluka and District Latur. The claim of respondent No.1 is as tenant of the disputed land.

3. Undisputedly, respondent No.1 filed an application under Section 8 of the Hyderabad Tenancy Act before the Tahsildar, Latur, seeking declaration that he is tenant over the land in question.

4. In that proceeding, the appellants were impleaded as respondents and the said proceeding ultimately came to be decided in favour of respondent No.1 Gurling. The order passed by Tahsildar was confirmed by learned Member, Maharashtra Revenue Tribunal as well as by this Court in Writ Petition No.221/1990. Against that decision, appellants preferred Letters Patent Appeal No.90/2013, which is also disposed by this Court today, but by passing separate judgment. Thus, present position

is that, respondent No.1 is held to be tenant over the disputed land.

5. The learned counsel for respondent No. 1 submitted that the appeal itself is not maintainable in view of clause 15 of Letters Patent and in view of the fact that the writ petition was filed by the present appellants against the decision of M.R.T., Tribunal, over which this Court has power of superintendence. The learned counsel for respondent placed reliance on the observations made by this Court (Division Bench) in the case reported as **Jagannath Vs. Gulabrao [1965 Mh.L.J. 426]** and also subsequent orders made by this Court in various matters. The learned counsel for respondent submitted that right from the year 1965, this Court has consistently held that writ petition filed against the order of M.R.T. needs to be treated as petition under Article 227 of Constitution of India and when learned Single Judge decides such petition, it needs to be presumed that the order was made by the learned Single Judge in exercise of power of superintendence and so, letters patent appeal does not lie. The learned counsel for appellants placed reliance on the observations made by full bench of this Court in two cases reported as **Jagdish Balwantrao Abhyankar and Ors. Vs. State of Maharashtra and Ors. [AIR 1994 Bombay 141]** and **Advani Oerlikon Ltd. Vs. Machindra Govind Makasare**

**and Ors. [2011 (2) Mh.L.J. 916].**

6. The Full Bench of this Court in case of **Jagdish** (cited supra) has laid down that when a proceeding is filed under Article 226 of the Constitution of India against the order of Court or Tribunal, this Court cannot treat it as one under Article 227, merely because Court or Tribunal, whose order is assailed, is subject to the power of superintendence of this Court. It is laid down that in some cases same subject can be considered under Articles 226 and 227 of Constitution of India. In second case, of **Adwani** (cited supra), the Full Bench of this Court has made following observations :-

"**20.** Upon this discussion, we now proceed to answer the question formulated in the order of reference:

Re: 1 : It is not a correct proposition in law that this Court cannot correct jurisdictional errors or errors resulting in miscarriage of justice committed by authorities which are subordinate to it by invoking powers under Article 226 of the Constitution.

Re: 2 : It is not a correct proposition in law that jurisdictional errors or errors resulting in miscarriage of justice committed by subordinate Courts/Tribunals can only be corrected by this Court in exercise of powers under Article 227 of the Constitution. The

writ of certiorari can be issued under Article 226 of the Constitution where the subordinate Court or Tribunal commits an error of jurisdiction. Where the subordinate Court or Tribunal acts without jurisdiction or in excess of it or fails to exercise jurisdiction, that error of jurisdiction can be corrected. Moreover when the Court or tribunal has acted illegally or improperly such as in breach of the principles of natural justice the writ of certiorari is available under Article 226.

Re: 3 : Where the facts justify the invocation of either Article 226 or Article 227 of the Constitution to correct a jurisdictional error or an error resulting in a miscarriage of justice committed by authorities subordinate to this Court, there is no reason or justification to deprive a party of the right to invoke the constitutional remedy under Article 226 of the Constitution.

Re: 4 : It is open to the Court while dealing with a petition filed under Articles 226 and/or 227 of the Constitution or a Letters Patent Appeal under Clause 15 of the Letters Patent arising from the judgment in such a petition to determine whether the facts justify the party in filing the petition under Article 226 and/or 227 of the Constitution.

Re : 5 : The cause title, the averments and prayers in the petition can be taken into account while deciding whether the petition is one under Article

226 and/or 227 of the Constitution.

Re : 6 : If the petitioner elects to invoke Article 226 and/or 227 of the Constitution and the facts justify such invocation, a Letters Patent Appeal against the order of the learned Single Judge would be maintainable even though the Single Judge has purported to exercise jurisdiction only under Article 227 of the Constitution. The fact that the learned Single Judge has adverted only to the provisions of Article 227 of the Constitution would not bar the maintainability of such an appeal. The true test is whether the facts justify the invocation of Articles 226 and 227 and this has to be determined on the facts of each case having due regard to (i) the nature of the jurisdiction invoked; (ii) the averments contained in the petition; (iii) the reliefs sought; and (iv) the true nature of the principal order passed by the Single Judge. The true nature of the order passed by the Single Judge has to be determined on the basis of the principal character of the relief granted. The fact that an ancillary direction has been issued under Article 227 of the Constitution would not dilute the character of an order as one with reference to Article 226. What has to be ascertained is the true nature of the order passed by the Single Judge and not what provision is mentioned while exercising this power.

Re : 7 : Where a petition is filed under Articles 226 and 227 of the Constitution and the facts justify the

filing of such a petition, it is not lawful for the Court to hold that jurisdictional errors or errors resulting in a miscarriage of justice committed by the subordinate Courts or Tribunals can be corrected only by exercising powers under Article 227 (and that the mentioning of Article 226 is redundant), thus depriving the party of a right of appeal under Clause 15 of the Letters Patent.

Re : 8 : When a petition is filed under Articles 226 and 227 of the Constitution and the facts justify the filing of such a petition, it is not open to the Court to hold that Article 226 need not have been invoked, on the ground that Article 227 is clothed with the power to grant the same relief thus depriving the party of a right to elect or choose a remedy.

Re : 9 : In a situation where a petition is filed under Article 227 of the Constitution and judgment is rendered in favour of the Petitioner, recourse to an appeal under Clause 15 of the Letters Patent is not barred to the Respondent merely on the ground that the petition was under Article 227. In *State of Madhya Pradesh vs. Visan Kumar Shiv Charanlal* (supra), the appeal before the Division Bench was filed by the Respondent to the proceedings before the Single Judge in a petition which had been instituted under Article 227. Accepting submission that a nomenclature is of no consequence and it is the nature of the reliefs sought and the controversy involved which determine which Article is applicable,

the Supreme Court held that the appeal before the Division Bench was maintainable. A similar position arose in the decision of the Supreme Court in *M.M.T.C. vs. Commissioner of Commercial Tax* (supra). The Division Bench of the High Court had held that since the petition before the Single Judge was under Article 227 of the Constitution, an appeal at the behest of the Respondent to the petition was not maintainable. The Supreme Court held that the High Court was not justified in holding that the Letters Patent Appeal was not maintainable since the High Court did not consider the nature of the controversy and the prayers involved in the Writ Petition.

21. Consequently, when a petition which is filed before the Single Judge invokes Article 227 of the Constitution and a decision is rendered in favour of the Petitioner, it is open to the Respondent to demonstrate before the Division Bench in appeal that the nature of the controversy, the averments contained in the petition, the reliefs sought and the principal character of the order of the learned Single Judge would support the maintainability of the appeal on the ground that the facts justify the invocation of both Articles 226 and 227 of the Constitution. Whether that is so will be determined by the Division Bench on the circumstances of each case."

7. Learned counsel for appellants submitted that, the

application filed by respondent No.1 under Section 98 of the Hyderabad Tenancy Act, dated 10.4.1990 before the Deputy Collector, Land Reforms, Latur, was itself barred by limitation and on that count itself, that application was not maintainable and consequently, the order passed by the authority directing removal of the appellants from the disputed property, is illegal and erroneous. He placed reliance on **Radhu Gokul Gawali and others Vs. Mohan Kisan Gawali and others** reported in **[2007 (6) Mh.L.J. 117]**. In the said matter, this Court held that, there should be reasonable period demonstrated for seeking restoration in terms of Section 98 of the Act. It is further observed that, facts in each case may differ and, therefore, Court has to record finding about maintainability of remedy available to the parties.

8. Learned counsel for respondent No.1 has drawn our attention to the case "**Kisan Sayaji Shelke Vs. Madhukar Deshpande and others**" reported in **[2010 (6) All MR 81]**, wherein this Court held that, for eviction proceedings under Section 98 of the Act, since there is no prescribed period of limitation in respect of available remedy, the petition could not be dismissed.

9. Learned counsel for respondent No.1 has also drawn our attention towards "**Vithal s/o Baba., since deceased**

**through L.Rs. Shevantabai w/o Vithal Andhare & ors. Vs. Ahmed Khan s/o Nanhe Khan & ors.”** reported in **[2004(1) Mh.L.J. 81]**, wherein this Court took view that the remedy available in law in favour of the tenant against the persons who are in unauthorised occupation of the property and who had acquired wrongful possession of land, is under Section 98 of the Hyderabad Tenancy Act.

10. In the case at hand, the respondent No.1 filed application before Tahsildar, Latur under Section 8 of the Hyderabad Tenancy Act on 16.8.1985, which was decided on 31.7.1987. That order was confirmed by Deputy Collector, Land Reforms, Latur on 8.3.1988 and by Maharashtra Revenue Tribunal, Aurangabad on 26.10.1989. Appellants purchased the disputed land under different sale deeds in between 1980 to 1984. Till 1980, possession of the respondent No.1 was also recorded in revenue record of the suit land. Thus, the respondent No.1 was dispossessed by appellants in the year 1980-81 after purchase of the suit land. Considering the time spent by respondent No.1 from 1985 in various tenancy appellate and revisional Courts, the application for summary eviction under Section 98 of the Act filed on 10.4.1990 is definitely filed within reasonable period from the date of dispossession. We hold that, in view of consistent view taken by this Court, the petition for

summary eviction is not barred by limitation.

11. As rightly pointed out by learned counsel for respondents, in "**Umabai & anr. Vs. Nilkanth Dhondiba Chavan (dead) by L.Rs. & anr.**" reported in **[2005(4) Mh.L.J. 306]**, "**Balaji Ganpati Manmode Vs. State of Maharashtra & ors.**" reported in **[2013(3) Mh.L.J. 955]**, "**Kanhaiyyalal Fttelalji Upadhyaya, deceased through L.Rs. Rukmani wd/o Kanhaiyyalal Upadhyay & ors. Vs. Mahavir Tea Company & ors**". reported in **[2007(4) Mh.L.J. 360]**s, "**Uttam Ambadasrao Gawali Vs. State of Maharashtra & ors.**" reported in **[2005(3) Mh.L.J. 550]**, "**Mansaram Sampat Patil, since deceased, through his L.Rs. Smt. Banubai Mansaram Patil & ors. Vs. Sambhu Harchand Chaudhary, since deceased through his L.Rs. Smt. Sumanbai w/o Harchand Chaudhary & ors.**" reported in **[2004(4) Mh.L.J. 1105]**, **Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte & anr.** reported in **[AIR 1975 SC 1297]**, the Hon'ble Apex Court and this Court consistently held that the powers of superintendence of High Court under Article 227 of the Constitution of India being extraordinary, is to be exercised most sparingly and only in appropriate cases. This power, as in the case of certiorari jurisdiction, cannot be invoked to correct an error of fact which only a superior court can do in exercise of its

statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court, or tribunal final on facts. The High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate court tribunal. It's function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.

12. Therefore, when Deputy Collector, Land Reforms, Latur and Member, Maharashtra Revenue Tribunal, Aurangabad, while acting within sphere of their respective jurisdiction, recorded finding of fact that present appellants being unauthorised possessors of disputed land of respondent No.1 tenant, are liable to be summarily evicted under Section 8 of the Hyderabad Tenancy Act, the same finding cannot be disturbed by learned Single Judge of this Court while exercising jurisdiction under Article 227 of the Constitution of India.

13. There was no jurisdictional error and there is nothing on record to show that some material was not considered either by Deputy Collector, Land Reforms or by first appellate authority. The facts do not justify invocation of Article 226 of the

Constitution of India. In view of these circumstances, in the present matter, it needs to be presumed that the learned Single Judge has considered the matter under Article 227 of the Constitution of India though in the petition appellants have mentioned Articles 226 and 227 of the Constitution of India. For these reasons, this Court holds that, the Letters Patent Appeal itself is not maintainable.

14. In the result, the Letters Patent Appeal stands dismissed. In view of dismissal of the Letters Patent Appeal, pending Civil Applications are disposed of.

15. Learned counsel for the appellants prayed for grant of continuation of interim protection granted by this Court for a period of six weeks. Learned counsel for respondents opposed this prayer. The interim protection granted by this Court is continued for a period of six weeks from the date of this order.

( SUNIL K. KOTWAL )  
JUDGE

( T.V. NALAWADE )  
JUDGE