

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 71 of 2016

M/s. Suvarn Rajaram Bandekar .. Petitioner
 Discretionary Trust, .
 having office at Suvarn Bandekar
 Building,
 P.O.Box No.111, Vasco-da-Gama, Goa.
 Pincode 403 802,
 represented herein by its Trustee, Shri
 Suvarn Bandekar.

versus

- 1 Advocate Sunifer Cardozo,
 Resident of House No.107/A,
 Ambexir, Sernabatim,
 Salcete – Goa.
- 2 Mr. Jovek Cardozo
 Resident of House No.107/A,
 Ambexir, Sernabatim,
 Salcete – Goa.
- 3 M/s. Narayan Rajaram Bandekar
 Discretionary Trust,
 Office No.601, Dr. Ozler Forum,
 Near St.Andrew's Church,
 P.O. Box No.31,
 Vasco-da-Gama, Goa 403 802.
- 4 Mr.s Maria Leticia Cardozo
- 5 Miss Sweta Cardozo
- 6 Mrs. Audrey Cardozo Fernandes
- 7 Mr. James Sebastiao Fernandes

All residents of House No.107/A,
 Ambexir, Sernabatim,
 Salcete – Goa.

- 8 Joint Mamlatdar of Salcete at Margao
Office of the Mamlatdar of Salcete at
Margao,
Mathany Saldanha Administrative
Complex,
Margao, Salcete, Goa.
- 9 Deputy Collector and S.D.O.
Office of the Deputy Collector S.D.O.
Margao,
Mathany Saldanha Administrative
Complex,
Margao, Salcete, Goa.
- 10 Administrative Tribunal of Goa at
Panaji ... Respondents
Dr. Vaidya Building, Panaji, Goa.

Shri J.E. Coelho Pereira, Senior Advocate with Shri V. Braganza, Advocate for the petitioner.

Shri Parag Rao, Advocate for the respondent Nos.1 and 2.

CORAM : NUTAN D. SARDESSAI, J.

RESERVED ON : 9th April, 2018.

PRONOUNCED ON : 4th May, 2018.

JUDGMENT:

1. Shri J.E. Coelho Pereira, learned Senior Advocate came to be heard on behalf of the petitioners and Shri Parag Rao, learned Advocate on behalf of the respondent Nos.1 and 2.

2. Rule. Heard forthwith with the consent of the learned Counsels. The learned Counsel appearing for the respondent

Nos.1 and 2 waives service.

3. This petition under Article 226 and 227 of the Constitution of India takes exception to the two judgments passed by the Administrative Tribunal dated 21/12/2015 in Mundkar Revision Application Nos.2 of 2015 and 3 of 2015 respectively apart from the Judgment and order of the Mamlatdar dated 21/12/2012 and those of the Deputy Collector dated 04/11/2014 in Mundkarial Appeal Nos.31 of 2013 and 4 of 2013. The petitioner as the original plaintiff had filed the Suit No.461/2000/III (Old Special Civil Suit No.64/1992/A) and Regular Civil Suit No.466/2000/III (Old Special Civil Suit No.153/1992/B) against one Armando Cardozo for the removal of the encroachments made in their property. The said Armando had taken a defence in the written statement that the encroachments claimed by the petitioner were part of their mundkarial dwelling house. The first suit was filed in February, 1992, but in view of the fact that there were further encroachments by the said Armando, the plaintiff was compelled to file the second suit and where the stand taken by Armando in the written statement was the same. The mundkarial issue was framed based on the pleadings in both the suits but the issue of mundkarship was referred in the subsequent Suit No.153/1992/B. The said Armando had expired during the conclusion of the Trial

before the Joint Mamlatdar and the respondent Nos.1 and 2 as his legal representatives preferred two separate appeals before the Deputy Collector on the premise that although they were brought on record as the legal representatives, they were not given an opportunity to participate in the proceedings before the Mamlatdar and were also not given a notice in the said proceedings. The respondents No.3 was joined in the proceedings before the Mamlatdar by the said Armando being aware that his mundkarial structures were in the property belonging to the respondents No.3.

4. The petitioner's case was that the property bearing Survey No.76/1-A belonging to the petitioner being the southern half of the larger property bearing Survey No.76/1 was partitioned around 30/06/1985. The original property bearing Survey No. 76/1 was divided by a katcha motorable road and the northern half belonged to the respondents no.3 and the southern half belonged to the petitioner separated by a strip of road having a width of 6-8 mts. The Mamlatdar by the judgment and order dated 21/12/2012 declared the applicants i.e. the legal representatives of late Armando as mundkars of the respondents No.3 and held that they had no right to claim mundkarial right in respect of the structures situated in the petitioner's property. The

respondent No.2 filed an appeal before the Deputy Collector challenging the said judgment and Order and the respondent No.1 also independently challenged the same judgment and order before the Deputy Collector, while there was no challenge at the instance of the widow of the said Armando. The respondent No.1 in her appeal challenging the judgment of the Mamlatdar had taken a plea that the proceedings had gone ahead without affording an opportunity to her of being heard and the said judgement on that ground alone could not be sustained. The Deputy Collector and the Sub-Divisional Officer held in the appeal of the respondent No.2 that the Mamlatdar had no jurisdiction to add or delete any party when the issue was referred to the Civil Court and/or to frame additional issues. In the other appeal at the instance of the respondent No.1 the Deputy Collector held that although she was brought on record as one of the legal representatives of the Armando, she was not allowed to participate in the said proceedings, that when the other heirs i.e. the respondent no.2 had filed an appeal, she would not have an independent right of appeal.

5. The petitioner had preferred two revision applications challenging the Judgment and Order of the Deputy Collector and by two separate Judgments and Orders dated 21/12/2015, the

revisions preferred by the petitioner were partly allowed and the Judgment and Order of the Deputy Collector was ordered to be revised whereby the Mamlatdar was directed to decide the issue referred by the Civil Court after giving reasonable opportunity of hearing to all the parties. Since, the petitioner had instituted the suits in 1992 and the trial was being protracted, they were compelled to file the Writ Petition No.102 of 2011 seeking directions for expeditious disposal of the proceedings before the Mamlatdar followed by another Writ Petition No.199 of 2014 seeking directions to dispose off the proceedings before the Deputy Collector expeditiously. This Court vide the order dated 25/02/2011 passed in the Writ Petition No.102 of 2011 ordered the expeditious disposal of the matter and also in the Writ Petition No.199 of 2014 vide its order dated 28/04/2014 to dispose off the Mundkar Appeals expeditiously.

6. Heard Shri J. E. Coelho Pereira, learned Senior Advocate on behalf of the petitioner who adverted to the pleadings, the order passed by the Mamlatdar, that by the learned Single Judge of this Court (S. Radhakrishnan,J) in **M/s. Suvarn Rajaram Bandekar v/s. Dy. Collector & S.D.O. and others (Writ Petition No.201 of 2002)** apart from the judgment of the Deputy Collector being contrary to the finding of the said learned Single Judge. He placed

reliance in **Santosh Hazari v/s. Purushottam Tiwari (Deceased) by Lrs. [2001(3) SCC 179]** and **Bal Krishnan v/s. Om Prakash and another [(1996) 4 SCC 155]**, adverted to the impugned Judgments of the Administrative Tribunal and submitted that the provisions of the Code of Civil Procedure applied to the proceedings under the Mundkar Act. It was his contention next that the judgment of the Administrative Tribunal was contrary to the findings rendered by the Mamlatdar considering the judgment in **Nagush V. Bodke v/s. Vassudev R. Poi [Writ Petition No.395 of 2012]** and the subsequent judgment in **Nagesh Bodke v/s. Vassudev R. Poi [Letters Patent Appeal No.7 of 2012]**. The judgment of the Administrative Tribunal was contrary to the law laid down by this Court and was not sustainable.

7. It was the contention of Shri J. E. Coelho Pereira, learned Senior Counsel while adverting to the judgment of the Deputy Collector in the case of the respondent No.1 that the application to bring the legal representatives on record was allowed pursuant to which the respondent No.1 was brought on record alongwith the other legal representatives. He adverted to Rule 14(12), 14(13) and 14(14) of The Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 ('the Act' for short) and the

Rules, 1977 and submitted that no question arose of issuing any notice to the respondent No.2 who was substituted in place of the original applicant i.e. late Armando. The Deputy Collector was therefore not justified in reversing the order for want of notice. He also adverted to the judgment of the Administrative Tribunal and submitted that there were perversity in the findings and the said judgment was not tenable. He placed reliance in **Surya Dev Rai v/s Ram Chander Rai and others [(2003) 6 SCC 675]**. It was his contention further that the defence available to the legal representatives was not larger than that available to the original defendant and therefore there was no scope to hold that there was no notice to the respondent No.1. He placed reliance in **Bal Kishan v/s. Om Prakash and another [(1986) 4 SCC 155]**. The order passed by the learned Administrative Tribunal was against the provisions of the Act and therefore the power of superintendence had to be exercised under Article 227 of the Constitution of India. He placed reliance in **Annaimuthu Thevar (Dead) By Lrs. V/s. Alagammal and others [(2005) 6 SCC 202]**.

8. Shri P.S. Rao, learned Advocate for the respondent No.2 raised preliminary objections to the maintainability of one single Writ Petition against the two impugned orders and submitted that

it was for the petitioner to elect which impugned order it sought to challenge when separate revision petitions were filed before the Administrative Tribunal. The scope and power of superintendence of this Court was restrictive under Article 227 of the Constitution of India and in that context he relied in **Shalini Shyam Shetty and another v/s. Rajendra Shankar Patil [(2010) 8 SCC 329]**. There was no miscarriage of justice to the petitioner pursuant to the impugned orders. He placed reliance in **Alfredo M. Rodrigues and others v/s. Gokulanant Bascara Naik and others [(2017) 6 AIR Bom R 646]** and submitted that no rights were finally adjudicated in favour of the parties. Reliance was also placed in **Jai Singh and others v/s. Municipal Corporation of Delhi and Another [(2010) 9 SCC 385]**. He adverted to the impugned order in Mundkar Revision Application No.3 of 2015 and submitted that there was no perversity in the finding of the Administrative Tribunal. He referred to the impugned order in the Mundkar Revision Application No.2 of 2015 and submitted that when a specific issue was referred to the Mamlatdar for determination by the Civil Court, it had to answer the issue and send back the reference. However, the issue was framed in the midst of the Judgment and the Mamlatdar had no jurisdiction to add or subtract from the issues. He submitted that Section 32 of the Act was akin to Order XLI Rule 25 C.P.C. An application under

Section 8A of the said Act conferred an original jurisdiction on the Mamlatdar where there was no intervention of the Civil Court unlike under Section 32 of the Act where the Mamlatdar had to act within the parameters of the issue referred to it for determination. He referred to the judgment under challenge of the Administrative Tribunal and to certain paragraphs and submitted that there was gross violation of the principles of natural justice. However, there was no manifest injustice to the parties.

9. Shri P. S. Rao, learned Advocate for the respondent No.2 placed reliance in **Employees' State Insurance Corporation v/s. A.K. Abdul Samad and Another [(2016) 4 SCC 785]**, **Grid Corporation of Orissa Ltd and others v/s. Eastern Metals and Ferro Alloys and others [(2011) 11 SCC 334]**, **Union of India and another v/s. Hansoli Devi and others [(2002) 7 SCC 273]** and **Phool Patti and another v/s. Ram Singh (Dead) Through Lrs and another [(2009)13 SCC 22]** in the matter of interpretation of Section 32 of the Act. There was no reference on the issue of mundkarship framed in the first Suit No.64/1992 where the structures referred to were A, AC, AC1 and AC2 and it was only the mundkarship issue in the second Suit No.153 of 1992 which was referred to the Mamlatdar for adjudication. The finding of the learned Tribunal was therefore

incorrect since the issue No.5 was referred in connection with the second suit alone. Yet, the Mamlatdar held that there were 9 structures by confusing those in respect of the first suit. It was his contention that in the judgment in **M/s. Suvarn Rajaram Bandekar v/s. Dy. Collector & S.D.O. and others (S. Radhakrishnan,J) (Writ Petition No.201 of 2002)**, Section 32 of the Act never came up for consideration. He also referred to the Rule 14(12) of the Rules and submitted that there were no powers in the Mamlatdar to recast the issue though it was incumbent on the Mamlatdar to add parties in an effective manner. He placed reliance in **Union of India and others v/s. Dhanwanti Devi and others [(1996) 6 SCC 44]** and **Davinder Singh and others v/s. State of Punjab and others [(2010) 13 SCC 88]** and submitted that unlike the observation of the Mamlatdar, there was a bounden duty on him in terms of 14(14) to serve the legal representatives. In that context, he adverted to Rule 14(13) on the Mamlatdar's powers and 14(14) to show that there was no bar to issue a notice to the applicant.

10. Shri P. S. Rao, learned Advocate for the respondent No.2 next adverted to the written submissions filed on behalf of the petitioners and the contesting respondents as also the further reply and additional submissions to show how false and

misleading submissions were made on behalf of the petitioners that the issues in both the suits were referred for determination. A reference was also made to Section 13 of the Act in the matter of transfer of pending suit or other proceedings for eviction vis a vis Section 32 where the jurisdiction of the Mamlatdar was restricted to the issue framed by the Civil Court and referred to him for decision. It was incumbent on the Mamlatdar to hold an enquiry and decide the issue so referred and not to re-frame an issue or travel beyond. The order passed by the Administrative Tribunal did not call for any reversal and, therefore, the petition had to be dismissed.

11. Shri J. E. Coelho Pereira, learned Senior Counsel in reply met the objection of Shri P. S. Rao, learned Advocate for the respondent No.2 on a single petition being filed to challenge the two orders of the Tribunal by contending that this Court was not exercising the power of revision but that of superintendence being under Article 227 of the Constitution of India. A challenge was offered to the orders of the Mamlatdar and Tribunal and the petition under Article 227 of the Constitution of India was for scrutiny of such orders and therefore there was no necessity of filing two separate petitions. Insofar as the contention of Shri P. S. Rao, learned Advocate for the respondent No.2 was concerned

regarding the absence of any scope for interference, it was the contention of Shri J.E. Coelho Pereira, learned Senior Advocate that the petitioner would be prejudiced in the case. He referred to the pleadings, the application moved for bringing the legal representatives on record, the order of the Mamlatdar thereon and submitted that the Mamlatdar had rightly considered the issues in both the suits since they were interlinked and dealt with the issue of mundkarship and moreover the parties had gone through the trial based on these issues. He adverted to Section 31(2) of the Act which dealt with the bar of the Civil Court jurisdiction to deal with the matter under the Act but repelled the contention of Shri P.S. Rao, learned Advocate for the respondent No.2 that the scope of Section 32 was restrictive and submitted that the Mamlatdar had ample powers to decide on all the issues which arose for consideration before him. He placed reliance in **Custodian of Branches of BANCO National Ultramarino v/s. Nalini Bai Naique [AIR 1989 SC 1589]** and submitted that judicial discipline was flouted, that the judgments in **Jai Singh** and **Shalini** (supra) were not applicable to the facts of the case and pressed for the reliefs in his favour.

12. i would advert to their submissions, the judgments relied upon, the pleadings and the various judgments apart from the

relevant provisions of the Act and the Rules framed thereunder to better appreciate their case.

13. At the outset, i would deal with the objection of Shri P.S. Rao, learned Advocate for the respondent Nos.1 and 2 to the maintainability of the solitary petition challenging the two orders of the Administrative Tribunal considering also that two revision petitions were preferred by the petitioners assailing the judgment and orders of the Deputy Collector in appeal from that of the Mamlatdar. At the outset, this is not a revision but a petition under Article 227 of the Constitution of India where this Court exercises the powers of superintendence and in view thereof the objection of Shri P.S. Rao, learned Advocate for the respondent no.2 to the maintainability of the petition would not survive when this Court would scrutinise the orders of the Courts below in exercise of its power of superintendence. Therefore, there was no necessity to file two separate petitions assailing the judgment in revision and hence, the objection to the maintainability of the petition would not survive and is hereby dismissed.

14. The petitioner had filed the Special Civil Suit No.64 of 1992 before the Court of the Senior Civil Judge, Margao against Armando, since deceased, claiming to be the owner of a part of the property bearing Survey No.76/1 pursuant to the Gift Deed

executed in their favour by late Rajaram and his wife and alleging that the said Armando had undertaken illegal construction by constructing an illegal residential house with thatched roof and two store rooms identified as A, AC, AC1 and AC2. It was also their case that the said Armando was neither a mundkar nor a tenant who had done illegal construction and sought for the relief of demolition of the illegal structures and costs. The said Armando had raised a plea that the suit was bad for non-joinder of necessary parties and that he was a mundkar in respect of the suit property having his residential house therein and other structures and resisted the suit. Issues were framed in the said suit and an additional issue framed by the Court whether the defendant i.e. Armando was a mundkar in respect of the suit structure as referred to in the plaint. Admittedly, this issue was somehow not referred to the Mamlatdar for determination in accordance with the Act. Be that as it may, the very same petitioners had filed the Special Civil Suit No.153/1992 two months after the first carving a right to a part of the property 76/1, that the said Armando had undertaken illegal construction by constructing a structure of 8 x 5 sq.mts. which he had failed to demolish, that he was neither a mundkar nor a tenant, referred to the earlier Special Civil Suit No. 64/1992/A and pressed for the relief of demolition of further illegal structures, delivery of vacant

possession and other consequential reliefs.

15. The said Armando, since deceased, had opposed the second suit too taking a plea that he was a mundkar in respect of the suit structure and besides claimed that apart from the residential house, there was a cowshed a bhatti (local distillery), a toilet, a garage, a firewood storage and a well constructed by him and his family members and which were existing since long and pressed for the dismissal of the suit. Here too the issues were framed by the Judge and the issue No.5 in particular being "whether he proved that he was a mundkar of a part of the suit property as stated in paragraph 3 alone was referred to the Mamlatdar for decision". The learned Mamlatdar had made a pertinent reference that what arose before him for consideration was the issue No.5 referred by Court of the Senior Civil Judge, Margao in Special Civil Suit No.153 of 1992 i.e. "Whether the defendant proves that he is a mundkar of the part of the suit property as mentioned in paragraph 3 of the suit. The Mamlatdar had also observed that pursuant to the reference of the issue, the said Armando, since deceased, was reflected as the applicant in the said proceedings at large before him, that he had expired and his legal representatives were brought on record as applicants No.1a to 1f.

16. The Mamlatdar was seized of the fact that the petitioner

herein as the respondent before him had taken a plea that the issue of mundkarship in both the suits were referred to him for determination unlike the contention on behalf of the said Armando, since deceased, that the only issue that had been referred was from the Civil Suit No.153 of 1992. The Mamlatdar for that matter had noticed that there were two letters received from the Senior Civil Judge, one forwarding the issue in the said Special Civil Suit No.153/1992 and the other was a reminder letter to decide the said issue. The learned Mamlatdar however in his wisdom took it upon himself to record that whenever the mundkarial issue was referred by the Civil Court to the Mamlatdar for enquiry and decision, he was required to take an enquiry under Section 8A of the Act which had to be a detailed enquiry and could not be haphazard. The learned Mamlatdar, however, in view of the fact that the petitioners had annexed the pleadings in the Special Civil Suit No.64 of 1992 apart from that in Special Civil Suit No.153/1992 where alone the issue No.5 was referred for the determination, took it upon himself to consider also the other structures referred to in the first suit and whether they formed a part of the mundkarial house.

17. The said Armando, since deceased, had examined himself in the proceedings before the Mamlatdar and another witness to

which a reference was made by Shri J.E. Coelho Pereira, learned Senior Advocate. The Mamlatdar had found that his name was not figuring in the survey records of Survey No.76/1-A, considered the case brought forth by the petitioners herein and in the ultimate answered the issue partly in the affirmative declaring the legal representatives of the said Armando who were brought on record in the meantime to be the mundkars of the dwelling house situated in the property bearing Survey No.76/1 and held that they were not mundkars of the other structures and haystack situated in the southern portion i.e.Survey No.76/1-A belonging to the petitioners herein.

18. Pausing for a moment, a reference was made to the application moved on behalf of the said Armando and ultimately the order of the learned Single Judge in the Writ Petition arising from the orders passed by the Court's below. In that context, the said Armando during the pendency of the mundkarial proceedings had moved an application under Rule 14(12) of the Rules, 1977 seeking to implead the respondents No.3 as a party respondent to the proceedings on the premise that it was a necessary party and as the property stood partitioned between the present petitioner and the respondents No.3. The Mamlatdar vide his order dated 29/01/2001 held that it was not within his domain to

add the parties in the proceedings under the Act and dismissed the application giving rise to the revision petition at the instance of said Armando before the Deputy Collector. The Deputy Collector by the judgment and order dated 05/10/2001 held that the Mamlatdar was empowered to exercise the powers of the Civil Court under the Code of Civil Procedure in exercise of the powers under Section 27 of the Act and in that view of the matter set aside the order of the Mamlatdar and directed him to proceed with the enquiry envisaged under Section 8A of the Act and Rules relating to such enquiry being applicable thereto.

19. The petitioner did not rest easy on this order and challenged the same before this Court in Writ Petition No.201 of 2002 where a learned Single Judge considered the facts of the case, Rule 14(12) of the 1977 Rules and ultimately held that the Mamlatdar had adequate power to decide whether a particular party was necessary or not, did not find any illegality in the order and dismissed the petition of the petitioners being devoid of merit. The petitioners challenged the same in the Letters Patent Appeal where the Division Bench of this Court found that the approach of the learned Single Judge was correct, that no interference was called for with the said order and disposed off the Letters Patent Appeal thereby bringing the case a full circle whereby the

respondents No.3 came to be impleaded as a necessary party in the proceedings before the Mamlatdar prior to the death of the said Armando.

20. An issue was raised about the notice on the legal representatives and whether the Rules did at all postulate issuance of a notice to the legal representatives of the applicant in terms of Rule 14(14) of the 1977 Rules. A reference in that context was made to the application to bring the legal representatives of the deceased Armando on record dated 04/10/2012. The said application was not objected to and allowed by the Mamlatdar permitting the amendment of the cause title within a period of 15 days. The respondent No.1 in the appeal filed by her challenging the judgment of the Mamlatdar dated 21/12/2012 had raised the plea amongst others that the Mamlatdar could not have passed the order without affording an opportunity of being heard amongst other grounds and further prayed for a remand of the matter. In that context, it would be appropriate to refer to the said Rules in question. Rule 14 deals with the manner of conducting enquiries and in terms of sub-Rule (12) empowers the Mamlatdar at any stage of the proceedings to order that the name of any person to whom possession of the dwelling house or any part thereof may have been transferred or

the addition of whom as a party appears necessary in order to enable the Court effectually and completely to adjudicate upon the issues be added as an applicant or opponent as the circumstances of the case may require: provided that no person shall be added as an applicant without his consent.

21. Sub Rule (13) indicates a situation where in case of death of any party while the case is pending if an application is made within one month of such death, the Mamlatdar shall determine summarily who is the legal representative of the deceased party and subject to the provisions of the Act shall enter on the record the name of such representative and if no such application is made, the case shall abate as regards that party. Sub Rule (14) is material which reads thus : Where the Mamlatdar orders the name of any person to be added as opponent or enters on the record the name of **any person** as the legal representative of the deceased party, he shall issue to such person a notice as provided in sub-rule (7) and the trial shall proceed on the date fixed in such notice. Therefore, on a proper reading and construction of sub-Rule (14), it would be obvious that the Mamlatdar is bound to issue a notice to the legal representative of the deceased party as provided in Sub-Rule (7). Thus, there is no basis in the contention of Shri J.E. Coelho Pereira, learned Senior Advocate

that there was no necessity of giving a notice to the respondent No.1 as the legal representative of the late Armando when she was brought on record as his legal representative and as otherwise the very purpose of the proceedings would be defeated if a pedantic approach is adopted of applying the Rule only to the issuance of notices to the opponents.

22. The Deputy Collector while dealing with the appeal of the respondent No.1 challenging the judgment of the Mamlatdar dated 21/12/2012 was seized of the relief claimed by her to remand the matter with directions to the Mamlatdar to hear her after notifying all the concerned heirs of the said Armando to file her say in the proceedings and to allow her to participate in the proceedings from the stage at which the same stood on the death of her father Armando. A similar plea was raised on behalf of the petitioners before the Deputy Collector that it was her duty to come before the Mamlatdar as the legal heir of the original applicant and pursue her case. The Deputy Collector, however, on a consideration of the oral and written submissions was of the view that although she was brought on record as one of the legal representatives, she was not given an opportunity to participate in the proceedings, was not heard nor an opportunity given to her to represent her case and that the principles of natural justice

demanded that she be given an opportunity of being heard and in that view of the matter allowed her appeal and quashed and set aside the judgment of the Mamlatdar. The respondent No.2 too had filed an appeal before the Deputy Collector challenging the judgment and order of the Mamlatdar dated 21/12/2012 which was allowed quashing the judgment of the Mamlatdar and to hear him as per the issue referred by the Civil Court in Regular Civil Suit No.153 of 1992. In these proceedings too there was clarity in the mind of the learned Deputy Collector that what was at large before the Mamlatdar for determination was the issue referred by the Civil Court in Special Civil Suit No.153 of 1992 and not the issues in both the suits instituted by the petitioners herein. This judgment of the Deputy Collector in appeal dated 15/12/2014 was challenged by the petitioners herein in two separate revision applications No.2 and 3 of 2015 against the respondent No.2 and the respondent No. 3 separately.

23. In **Bal Krishnan** (supra), the Apex Court held that a person impleaded as a legal representative of the deceased defendant and not in his personal capacity cannot raise pleas which were personal to the deceased. Even if the Court allows him to be impleaded in his personal capacity also, the Court cannot permit him to raise such pleas which would oust the jurisdiction of the

Court itself to try the case. This judgment in no manner buttresses the case of Shri J.E. Coelho Pereira, learned Senior Advocate that there was no scope for the respondents to allege that there was no notice to the respondent No.1 – Sunifer Cardozo though there may be force in his arguments that the defences available to the legal representatives are not larger than the original defendant.

24. The learned Administrative Tribunal dealing with the revision filed by the petitioners against the respondent No.1 in particular amongst others was seized of the fact that the proceedings before the Mamlatdar had started from the issue referred by the Senior Civil Judge, Margao in Special Civil Suit No.153 of 1992 and in which the respondents No.3 was subsequently joined as a party in the proceedings before the Mamlatdar. He was equally seized of the fact that the original applicant in the mundkarial proceedings had expired and his legal representatives were brought on record as the respondent Nos.1a to 1f and that the respondent No.1 was the daughter of the said Armando who though brought on record as one of his legal representatives was not given opportunity to participate in the proceedings before the Mamlatdar. He was equally seized of the fact that she had preferred an appeal before the Deputy Collector and observed that the Mamlatdar should

have invited the legal representatives, though she was brought on record no opportunity of hearing was given to her to which she was legally entitled and in that view of the matter allowed the revision application partly and directed the Mamlatdar to decide the issue referred by the Civil Court without discarding the evidence on record after giving reasonable opportunity of hearing to the parties. In the revision application filed by the petitioners against the other legal heirs Jovek Cardozo amongst others, the learned Tribunal observed that the Mamlatdar had passed an order declaring late Armando and his heirs as mundkars of the northern portion of the property belonging to the respondents No.3 and not that of the applicant and suo motu framed the additional issue without the request from any party. He had also considered that the respondent No.1–son of late Armando had filed an appeal challenging the order of the Mamlatdar and so too his sister claiming that she was not heard and seeking the remand of the matter to the Mamlatdar for proper hearing. The learned Tribunal had found on a consideration of the judgment of the Mamlatdar that the issue referred by the Civil Court was altered by the Mamlatdar based on the written arguments of the petitioner herein.

25. In that context a reference was made to Section 32 of the

Act which reads thus:

“32. Suits involving issues required to be decided under this Act.— (1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by the Mamlatdar or the Collector under this Act the Civil Court shall stay the suit and refer such issues to the Mamlatdar or the Collector, as the case may be, for determination.

(2) On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate his decisions to the Civil Court and such Court shall thereupon decide the suit in accordance with the procedure applicable thereof.”

The learned Tribunal on a bare reading of Section 32 of the Act observed that it was clear that on receipt of the reference of the Civil Court, the Mamlatdar or the Collector was duty bound to deal with and decide such issues in accordance with the provisions of the Act and communicate its decision to the Civil Court which shall thereupon decide the suit in accordance with the procedure applicable. He had also held and rightly so that it would be binding not only on the Mamlatdar but also on the learned Collector to deal with and decide the issues framed and referred by the Civil Court in accordance with the provisions of the Act; that Section 32 nowhere provided for powers in the Mamlatdar to add / alter /

modify or amend the issues framed and referred by the Civil Court and from the provision it was crystal clear that the act of the Mamlatdar was not in consonance with law and could not be justified. Further the Tribunal observed that the Mamlatdar had added an additional issue in the final judgment itself and without giving any opportunity of hearing to the parties and decided the matter finally.

26. Shri J.E. Coelho Pereira, learned Senior Advocate made a frantic effort to negate the findings of the learned Administrative Tribunal on the scope and ambit of the jurisdiction of the Mamlatdar and the Deputy Collector qua the issue referred to it by the Civil Court for determination and within the fold of a reference under Section 32 of the Act and placed reliance in **Ram Keshav Shilkar v/s. Anand M. Sinai Kaisore (Dec.) Thr. his LRs. and others [Writ Petition No. 1149 of 2016]**. It was his contention that it was clearly held in this judgment that since the Mamlatdar had all the powers of the Civil Court while conducting an enquiry in terms of Section 27 of the Act, therefore, it had also the powers to recast the issue. However, **Ram Keshav Shilkar** (supra), was primarily challenging the concurrent findings of the dismissal of his application under Section **8A** of the Act unlike the decision of the Revenue Court in terms of the reference of an

issue in accordance with Section 32 of the Act. In the brief facts, the petitioner had purchased 360 sq.mts. of land from the respondent No.1 under the Sale Deed dated 26/12/1985. His brother-in-law filed a Civil Suit against him, his wife and the petitioner for declaring the Sale Deed null and void and for eviction of the petitioner which was partly decreed and challenged in appeal before the District Judge. The District Court by its judgment and decree set aside the judgment of the Trial Court, challenged by the said Sirvoicar in Second Appeal which came to be allowed by the consent of the parties and the Regular Civil Appeal was remanded to the District Court for deciding it afresh in accordance with law. The District Judge dismissed the appeal and which the judgment came to be challenged in the Second Appeal by the petitioner and dismissed by this Court thereby bringing a finality to the judgment and decree of eviction passed against the petitioner.

27. In **Ram Keshav Shilkar** (supra), the respondent No.6– Sirvoicar filed Execution Proceedings and at that stage the petitioner approached the Mamlatdar under Section 8A of the Act, seeking declaration that he was the mundkar of the suit dwelling house. A preliminary objection was raised before the Mamlatdar that the application was barred on the principles of res judicata,

who upheld the petition and dismissed the application for declaration which was confirmed by the Deputy Collector and by the Administrative Tribunal who further held that the principle of res judicata cannot be attracted. A plea was taken that the impugned order was passed without conducting an enquiry and that the Mamlatdar could not entertain a preliminary objection or that in the nature of Order VII Rule 11 CPC while the contesting respondents took a plea that the application filed by the petitioner was a dishonest attempt to forestall the execution of the decree which had attained finality. Reliance was also placed on Section 27 of the Act to submit that the Mamlatdar could exercise all the powers of the Civil Court under CPC and there was no prohibition from entertaining the preliminary objection. It was in that context that the learned Single Judge observed that Section 27 of the Act clearly envisages that the Mamlatdar, while conducting the enquiry can exercising all the powers of the Civil Court under the Civil Procedure Code, 1908, but did not propose to laid down any binding precedent on this point. In any event, this was observed in the context of the proceedings initiated by the petitioner suo motu under Section 8A of the Act where the Mamlatdar could have much latitude to exercise the powers of Civil Court in accordance with Section 27 of the Act and which cannot find parity while dealing with the issue referred to the Mamlatdar by the Civil Court

and the Mamlatdar having to act within the confines of Section 32 thereof. No fault can be found with the findings of the Tribunal in that regard.

28. On a bare reading of Section 32 of the Act which provides that if in any suit instituted in the Civil Court involves any issues which are required to be settled, decided or dealt by the Mamlatdar or the Collector under the Act, the Civil Court shall stay the said suit and refer such issues to the Mamlatdar or the Collector, as the case may be, for determination. On a receipt of such reference from the Court, the Mamlatdar or the Collector **shall deal with and decide such issues** in accordance with the provisions of the Act and shall communicate his decisions to the Civil Court and such Court shall decide the suit in accordance with the procedure applicable thereof. In other words, the Mamlatdar or the Deputy Collector as the case may be has no latitude to go beyond the issues framed and referred by the Civil Court for determination to it unlike the power of the Mamlatdar in terms of Section 8A of the Act whereupon he would dwell at large on the application made to him by any person entitled to any right under the Act and upon holding an enquiry as may be prescribed. Therefore it cannot at all be heard on behalf of Shri J.E. Coelho Pereira, learned Senior Advocate on behalf of the petitioner that

the Mamlatdar had powers to alter or modify or amend the issues framed. A proper reading and construction of Section 32 of the Act does not behove such an interpretation and hence there is no force in the contention of Shri J.E. Coelho Pereira, learned Senior Advocate that there was patent error committed by the learned Tribunal in rendering these findings. Moreover, as rightly contended by Shri P. S. Rao, learned Advocate for the respondents that although there was power in the Court to frame an issue at any stage prior to judgment, the same could not be framed and decided finally without providing opportunity to the parties to lead evidence and without hearing the parties. This would be on a broad spectrum of the case but the fact would remain that the Mamlatdar or the Collector as the case may be would have to decide the issue within the framework of what was referred to it for determination and not to alter or amend the same. No fault whatsoever could be found with the findings recorded by the learned Tribunal and therefore the contention of Shri J.E. Coelho Pereira, learned Senior Advocate that the impugned judgment was liable for interference cannot stand the test of legal scrutiny.

29. In **Santosh Hazari** (supra), the learned Apex Court while dealing with the appeal by leave observed at paragraph 15 that the appellate Court has jurisdiction to reverse or affirm the

findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising alongwith the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice. We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment.

30. Santosh Hazari (supra), further observed that this certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact. The rule is – and it is nothing more than a rule of practice– that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact. Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate

Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one.

31. In **Nagush Bodke** (supra), the learned Single Judge of this Court formulated a short point for consideration namely whether the structure/premises which are located beyond the area which a mundkar is entitled to purchase, can be included within the definition of the word "mundkar" as provided under the Mundkar Act. The respondent Nos.1 and 2 had filed a suit before the Civil Judge, Senior Division, Panaji, against the Petitioner for his eviction from the mill on the ground that he was a tenant of the said premises. However, in view of the stand taken by the petitioner that the flour mill was a part of his dwelling house and an issue was framed as to whether the petitioner was a mundkar of the suit premises which came to be referred to the learned Mamlatdar who after holding an inquiry and recording of evidence,

answered the issue in the negative. It further declared that the suit premises i.e. rice flour mill was the part of the dwelling house and thereafter an appeal came to be preferred before the learned Deputy Collector who allowed the appeal preferred by the respondents and quashed and set aside the order of the Mamltadar holding that the flour mill was not a part of the dwelling house.

32. In **Nagush Bodke** (supra), the petitioner preferred a revision before the Tribunal which was dismissed giving rise to the petition at his instance. The learned Single Judge on consideration of an earlier judgment of another Single Judge in **Antonio Salvador Francisco Joaquim Clemente Mesquita & anr. V/s. Pedro Carvalho & Anr. [1999(2) Goa L.T. 351]** and on a consideration of the submissions on behalf of the petitioner and that of the respondent held that all structures beyond the maximum area which the mundkar is entitled to purchase within the provision of the Mundkar Act cannot form a part of the dwelling house and dismissed the petition. The petitioner challenged this judgment in a Letters Patent Appeal. The question for consideration was whether the suit premises which admittedly lay outside the limits prescribed by Section 2(i)(i) of the Mundkars Act was a part of the dwelling house of the appellant. In that context, the Division Bench of this Court considered the

definition of “dwelling house” as contained in Section 2(i) of the Act alongwith the explanation, the object behind the enacting the Act and the right of the mundkar to purchase the dwelling house contained in Section 15 and in the factual matrix found that the mundkarial residential house of the appellant was situated in the property bearing Survey No.55/0 and the suit premises connected with his business was situated at a distance of about 500 metres away from the residential house and in the property bearing Survey No.54/3. The suit premises was beyond the maximum area as indicated under section 2(i) of the Act and it was, therefore, clear that the appellant would not be in a position to purchase the land beneath the flour mill being beyond the permitted area.

33. In **Naguesh Bodke** (supra), ultimately the Division Bench found that the view taken by the Single Judge in **Antonio Salvador Francisco Joaquim Clemente Mesquita** and that in **Naguesh Bodke** (supra), was in consonance with the Mundkars Act and being a correct view summarily rejected the Letters Patent Appeal. A reading and construction of the judgment in **Naguesh Bodke** (supra), decided by the learned Single Judge and in the Letters Patent Appeal do not buttress the contention of Shri J.E. Coelho Pereira, learned Senior Advocate, that the

judgment of the learned Administrative Tribunal was contrary to the finding rendered by the Mamlatdar and considering these judgments. It also does not lie for the petitioners to contend by buttressing the judgments in both these cases that the judgment of the Administrative Tribunal was contrary to the law laid down by this Court and/or that the judgment of the Tribunal was not sustainable.

34. Surya dev Rai (supra), held that the powers of the High Court under Articles 226 and 227 of the Constitution of India are always in addition to the revisional jurisdiction conferred on it. The curtailment of the revisional jurisdiction of the High Court under Section 115 C.P.C. by the Amendment Act No.46 of 1999 does not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a Civil Court nor the powers of superintendence conferred on the High Court under Article 227 of the Constitution of India are taken away or whittled down. The powers exist untrammelled by the amendment in Section 115 of the CPC, and is available to be exercised subject to the rules of self discipline and practice which are well settled. The Hon'ble Apex Court held at para 24 that 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 powers 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. The Hon'ble Apex Court further held at para 38 that be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

35. Shalini Shyam Shetty (supra), on a consideration of various judgments including that in **Surya Dev Rai vs Ram Chander Rai and others [(2003) 6 SCC 675]** culled out the following principles on the exercise of the High Court jurisdiction under Article 227 of the Constitution

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* (supra) 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 v/s. Union of India & others*, [(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.

36. Jai Singh (supra), held that the High Court under Article 227 of the Constitution of India has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the

jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of the judgment of a Court, or Tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. It quoted the Judgment in **The Estralla Rubber Vs. Dass Estate (P) Ltd. [(2001) 8 SCC 97]** where the scope and ambit of Article 227 of the Constitution was observed in paragraph 6 thus : "The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate Courts or tribunals. Exercise of this power and

interfering with the orders of the Courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of the fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate Court or substitute its own judgment in place of that of the subordinate Court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the Court or tribunal has come to."

37. In **Jai Singh** (supra), the Hon'ble Apex Court considered the nature and scope of the power of the High Court under Article 227 of the Constitution of India being supervisory and observed at para 15 as below.

"15..... Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High

Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of judgment of a Court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice."

38. Guljar Singh (supra), it was observed that the High Court in the exercise of its revisional - cum- supervisory power cannot

go into intricate details of facts and decide the questions raised therein. It is only in the exceptional cases, such orders which are based on perversity and arbitrariness which can be interfered with by the High Court.

39. In **Employee's State Insurance Corporation** (supra) the Hon'ble Apex Court while interpreting the import of words "shall also be liable to fine" held that the law is well settled that when the wordings of the Statute are clear, interpretation is required unless there is a requirement of saving the provisions from the vice of unconstitutionality or absurdity and that neither of the twin situations was attracted in the case at large before them.

40. In **Grid Corporation of Orissa Ltd** (supra), another two Judge Bench of the Hon'ble Apex Court while interpreting the tariff provision in the provisional supply and distribution License issued under the Orissa Electricity Reforms Act, 1995 and clause 9.1 thereof held at paragraph 25 that "The golden rule of interpretation is that the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following

questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the Court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the provision is capable of more than one construction." In the facts at large their Lordships found that clause 9.1 was reasonably capable of more than one construction and therefore proceeded to assert the true meaning of the provision by answering the these questions.

41. In **Hansoli Devi** (supra), a five Judge Bench of the Hon'ble Apex Court while considering the provision of Section 28-A of the Land Acquisition Act, 1894 dealing with the re-determination on the basis of the amount of compensation awarded by the Court, thought it appropriate to bear in mind certain basic principles of interpretation of statute, quoted the Rule stated by Tindal, CJ in *Sussex Peerage* case, namely that "If the words of the statute are in themselves precise and unambiguous, then no more can be

necessary than to expound those words in their natural and ordinary sense. The words themselves do alone, in such, cases best declare the intent of the lawgiver." It is a cardinal principle of construction of statute that when the language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, CJ in the case of **Aswini Kumar Ghose v. Arabinda Bose, [1953] SCR 1**, had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.

42. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by

the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the Court to reject the surplus words, so as to make the statute effective.

43. Phool Patti (supra), a two Judge Bench of the Hon'ble Apex Court was interpreting Section 17(2) (vi) of the Registration Act, 1908 when it held at paragraph 9 as below:

"9. It is a well settled principle of interpretation that the Court cannot add words to the statute or change its language, particularly when on a plain reading the meaning seems to be clear. Since there is no mention of any pre-existing right in the exception in clause (vi), we have found it difficult to accept the views in Bhoop Singh's case (supra). It seems that there is inconsistency in the decisions of this Court in Bhoop Singh's case (supra) and K. Raghunandan's case (supra) and since we are finding it difficult to agree with the decision of this Court in Bhoop Singh's case (supra), the matter should be considered by a larger Bench of this

Court.”

44. In **Davinder Singh** (supra), a two Judge Bench of the Hon'ble Apex Court held at paragraph 18 that the judgment, as is well known, is that authority for the proposition which it decides and not what can logically be deduced therefrom. It quoted the judgment in *Union of India v/s. Major Bahadur Singh* [(2006)1 SC C 368] where it had observed at paragraphs 9 and 11 as below:

“9. The Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not

proper. "

45. Therefore on a consideration of all the aspects of the matter and the judgments relied upon, there is no scope for interference with the judgments rendered by the learned Administrative Tribunal and in exercise of the power of superintendence of the Court under Article 227 of the Constitution of India.

46. In view thereof i pass the following :

ORDER

The Writ Petition is dismissed with no order as to costs.

Rule stands discharged.

NUTAN D. SARDESSAI, J.