

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 64 OF 2014

1. Shri Gurudas Narayan Salgaonkar
(since deceased), through legal
representatives:
 - A) Mrs. Suhasini Gurudas Salgaonkar; major
 - B) Shri Vasant Gurudas Salgaonkar; major
 - C) Miss Gita Gurudas Salgaonkar, minor
 - D) Miss Gandhali Gurudas Salgaonkar; minor
 - E) Shri Girish Gurudas Salgaonkar, major
 - F) Shri Gaurish Gurudas Salgaonkar, majorAll represented by their mother,
the Petitioner No.1, residing at
House No. 43, Dr. Dada Vaidya
Road, Panaji- Goa.Petitioners.

Versus

Shri Avduta Savlaram Aras,
resident of House No. 43,
Dr. Dada Vaidya Road,
Panaji- Goa.Respondent.

Mr. S. D. Lotlikar, Senior Advocate with Ms. Neelam Patil,
Advocate for the petitioners.

Mr. M. B. D'Costa, Senior Advocate with Ms. K. Betquecar,
Advocate for respondent.

CORAM : NUTAN D.SARDESSAI, J.

RESERVED ON : 11th November, 2017.

PRONOUNCED ON: 1st February, 2018.

JUDGMENT:

1. The petitioners have taken exception to the order dated 03/01/2014 passed by the Appellate Board in Rent Appeal No.22 of 2013 invoking the jurisdiction of this Court of superintendence

in terms of Article 227 of the Constitution of India. It was the case of the petitioners that the learned Appellate Board had allowed the appeal filed by the respondents against the order dated 30/07/2003 passed by the Deputy Collector and Rent Controller whereby he had dismissed the application filed by the respondent under Section 22a and b (i) and (ii) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, Act for short hereinafter. Briefly, the respondent had filed the case for eviction against the original respondent Gurudas under the provisions of the said Act claiming to be the owner of the room on the ground floor of the building situated at Dada Vaidya Road being the suit premises for brevity's sake herein. The suit premises were leased out to the said Gurudas on monthly rent for the purpose of using the same as a motor work shop/garage. The said Gurudas was irregular in payment of rent and therefore the respondent was constrained to file an eviction case against him before the Rent Controller praying for his eviction. On being served with the notice, the said Gurudas deposited the arrears of the rent from June 1982 till July, 1987 apart from the costs and accordingly the said proceedings were dropped in terms of law.

2. The said Gurudas again failed and neglected to pay the rent constraining the respondent to initiate proceedings for his eviction not only on the ground of non-payment of rent but also for unauthorisedly and without the consent of the landlord having sublet the suit premises to some other person. The said Gurudas had taken a plea in his written statement that there was no written lease as mandatorily required in terms of Section 34 of the Act and insofar as the arrears of rent was concerned, he took a plea that the respondent had not issued receipts towards the payment of rent as required by law. The learned Deputy Collector and Rent Controller had however dismissed the eviction case giving rise to an appeal at the instance of the respondent under Section 45 of the Act which was subsequently transferred to the District Court being the Appellate Board. The Appellate Board took into consideration the Written submissions filed by the parties before the Administrative Tribunal and without giving an opportunity to advance arguments proceeded to decide the appeal and allowed the same holding that the petitioners being the legal heirs of the said Gurudas were liable to be evicted on the ground of arrears of rent giving rise to the present petition under Article 226 and 227 of the Constitution of India.

3. Heard Shri S.D. Lotlikar, learned Senior Counsel on behalf of the petitioners who contended at the outset that an important issue arose for determination whether in the absence of the written agreement of lease, the Rent Controller would have jurisdiction to deal with the eviction proceedings, a written lease agreement being mandatory to exercise jurisdiction and as otherwise a remedy was available to the landlord before the Civil Court. He adverted to Section 34 of the Act to contend that the lease Deed was mandatory since the Act had already come into force by the time the Lease Agreement came to be entered into. He referred to Section 21 of the Act providing such protection to the tenants coupled with the proviso and submitted that the Act provided for the eviction of tenants before the Civil Court in terms of the proviso to Section 21. He placed reliance in **Ankush Wadkar v/s. Shri Shaik Nuha Shaikh** (Writ Petition No.213/1986) where the issue of Section 34 and its applicability to proceedings before the Rent Controller fell for consideration before the High Court and a clear finding was rendered that in the absence of the written lease agreement there was no jurisdiction in the Rent Controller and the execution of the lease Deed was mandatory in terms of Section 34 of the Act.

4. Shri S.D. Lotlikar, learned Senior Counsel relied in **Tribhovandas Purshottamdas Thakkar v/s. Ratilal Matilal Patel and other** [AIR 1968 SC 372] and submitted that in case this Court was not inclined to agree with the Judgment in **Wadkar** (supra), in view of the Judgment rendered by another learned Single Judge in **Raj Prasanna Kondur v/s. Arif Khan and other** [2005(4) Bom.C.R. 383] then the matter had to be referred to the Chief Justice for reference to a larger bench. The impugned Judgement at paragraph 16 had correctly interpreted the judgment in **Wadkar** (supra). The Rent Controller had proceeded on the basis that there was no jurisdiction in the Court relying in **Wadkar** (supra), while the Appellate Court held to the contrary and that no rent was paid by the original petitioner. The Appellate Court was duty bound to examine the entire case and render appropriate findings which it had failed to do justifying interference with the Judgment under challenge.

5. Shri M.B. D'Costa, learned Senior Counsel for the respondent submitted that an application for eviction was filed in 1977 in which the said Gurudas had filed an application in terms

of Section 22(3) of the Act thereby admitting his status as a tenant and the arrears of rent due from him. Hence the principle of estoppel against law did not arise. A notice was issued to the said Gurudas a second time to pay the arrears of rent from October 1987 to November 1988 when no reply was filed to the said notice nor was he entitled to take the benefit of the proviso to Section 22 (3) of the Act in terms of making a deposit and which was followed by the eviction case filed against him. There was no plea in defence that there was any reasonable cause not to pay the rent in terms of Section 22(4) of the Act. Rather, the said Gurudas had taken a plea in defence that he was paying the licence fees of ₹125/- per month and occupying the suit premises from 01/07/1975 and disputing the status of landlord and tenant between them. If at all it was the case of the said Gurudas that the landlord was not issuing any receipts to him in terms of Section 17 of the Act, he ought to have taken resort to sub-section 3 and remitted the rent by money order as provided therein.

6. Shri M.B. D'Costa, learned Senior Counsel next adverted to the impugned judgment, the application dated 09/07/1987 filed by the petitioners under Section 22(3) seeking to deposit the

rent thereby admitting the status as tenant and hence the Appellate Board had duly held in his favour and against the petitioners. He adverted to the various provisions of the Act in the matter of deposit of rent as contemplated in Section 18, the control on the eviction of the tenant contained in Chapter V, the bar on eviction provided for in Section 21, the ground of eviction contained in Section 22 and the availability of an additional opportunity to the tenants in terms of Section 22(3) of the Act to make the deposit of the arrears. The Act was a beneficial legislation for the tenant and therefore there could be no interpretation to any provision which would take away the right of the tenant to the leased premises.

7. Mr. M.B. D'Costa, learned Senior Counsel further contended that Section 34 of the Act could not be treated and interpreted as mandatory looking to the scheme of the Act. He next referred to Section 59 of the Act dealing with the repeal and savings and of the Decree No.43525 being in force before the coming into force of the Act. He referred to Section 55 of the Maharashtra Land Revenue Code which required the Tenancy Agreement to be compulsorily registered and placed reliance in **Vishal N. Kalsaria v/s. Bank of India and others** [2016(3) SCC 762].

He distinguished the judgment in **Wadkar** (supra), and submitted that the contention on behalf of the petitioners was fallacious that it had interpreted Section 34 as mandatory as otherwise the learned Judge would not have felt the need to remand the matter to the Rent Controller. There was no clear finding that Section 34 of the Act was mandatory and the judgment did not in any manner advance the case of the petitioners. **Wadkar** (supra), also did not lay down that the relationship of a landlord and tenant could be established by a written Lease Deed. He further placed reliance in **Delhi Airtech Services Pvt.Ltd. And another v/s. State of Uttar Pradesh and another** [(2011) 9 SCC 354], the object of the legislation and once again reiterated that in case Section 34 of the Act was mandatory it would have taken within its sweep a penalty in case there was a failure in compliance which it did not entail. No case whatsoever was made out for interference with the impugned judgment and hence the petition had to be dismissed.

8. Shri S.D. Lotlikar, learned Senior Counsel for the petitioners submitted that the learned Appellate Board had considered the judgment in **Wadkar** (supra) holding that

Section 34 was mandatory. He too adverted to the Decree No.43525 and Article 8 thereof and submitted that an omission in the Act requiring a lease may be proved by other evidence was deliberate and Section 34 of the Act was mandatory in view of the non-obstante clause. The Rent Tribunal was a creature of the statute which had no inherent power like the Civil Court. There was every reason to interfere with the impugned judgment and hence the petition had to be allowed.

9. **Ankush Wadkar** (supra), challenged the order of eviction made by the Rent Controller, Margao and the order made by the Administrative Tribunal dismissing the appeal. In the brief facts, an application under Section 22(2)(a) of the Act was instituted against the petitioner for non-payment of rent and the notice was issued to the petitioner calling upon him to pay the arrears within thirty days. The petitioner by his reply contested the claim of the respondent no.1 and denied that he had ever paid any rent to him and took a specific plea that he was a Mundkar in respect of the premises and therefore protected by the provisions of the Mundkar Act. On initiation of the proceedings under Section 22(2)(a), he took up a similar plea compelling the Rent Controller to hold that once he adopted the stand of being

a mundkar and denied the title of the respondent and therefore ordered his eviction under Section 21 of the Act. The Controller on the basis of the evidence held that the petitioner was a tenant in respect of the room of the respondent and as he had taken a plea that he was a Mundkar denying the tenant-landlord relationship as also the payment of the rent, made an order directing his eviction under Section 21 of the Act. His appeal did not find favour with the Administrative Tribunal which endorsed the findings that as there was a denial of the title of the petitioner, he was rightly ordered to be evicted. During the pendency of the proceedings the petitioner had moved the Mamlatdar of Margao for a declaration that he was a Mundkar, who however found on the basis of the evidence before him that he was not a Mundkar.

10. In **Ankush Wadkar** (supra), the learned Single Judge considered Section 34 of the Act in the light of the Act being brought into force w.e.f. 01/10/1969 and observed that a Lease Deed shall have to be executed between the landlord and tenant whenever the building is let out on coming into force of the Act. It was contended on behalf of the petitioner that as no Lease Deed was produced on record, neither the Controller nor the

Tribunal could have rendered a finding that he was a tenant of the respondent and even conceding that he failed to obtain a declaration of mundkarship, the onus still lay on the respondents to prove that he was a tenant and which could be done only by producing the Lease Deed. It was also contended on behalf of the petitioner that if he was held to be a trespasser, the Controller would have no jurisdiction to make any order against him under the Act and the respondents would have to approach the Civil Court for eviction of the petitioner. The learned Judge found merit in this contention and held that by operation of Section 34 of the Act after coming into force of the Act, a Lease Deed shall be executed between the landlord and the tenant. It was observed that though his stand as a mundkar was rejected it would not ipso facto confer any jurisdiction on the Controller to evict the petitioner and much less under Section 21 of the Act if he is held not to be a tenant.

11. In **Ankush Wadkar** (supra), the learned Judge found from the material before him that there was no written Deed of Lease and therefore failed to appreciate how the Courts below could hold that the petitioner was required to bring in negative evidence. In that view of the matter, the learned Single Judge

held that the Tribunal which is not an appellate authority being a court of fact ought to render a finding firstly as to when if at all the respondent proves that the lease in favour of the petitioner commenced and secondly the effect of the non-existence of the Lease Deed in terms of Section 34 of the Act and in that view of the matter remanded the matter to the Tribunal to decide the eviction appeal afresh. A detailed reference is made to this Judgment since it has been the contention on behalf of Shri D'Costa, learned Senior Advocate that no ratio has been laid down in **Wadkar** (supra), that the learned Judge had discussed the fact and given his finding while ultimately remanding the matter to the Tribunal for a decision afresh.

12. With respect the judgment in **Wadkar** (supra) does not lay down any specific ratio on its proper and indepth reading as otherwise there was no basis for the learned Judge to relegate the case to the Rent Tribunal. There was a clear finding in **Wadkar** (supra) that Lease had come into force after the coming into force of the Act. A reading of paragraph 8 of the said judgment would indicate that no ratio was laid down in the said case. If at all the contention of Shri S.D. Lotlikar, learned Senior Advocate is to be accepted that the said judgment laid

down a proposition of law that Section 34 was mandatory; a reading of paragraph 11 thereof would indicate that the learned Judge had not opined on the status of the petitioner or the mandatory effect of Section 34 of the Act. The fact that the learned Judge remitted the matter back to the Tribunal to decide the eviction appeal afresh would also fortify a conclusion that no proposition of law as canvassed by Shri S.D. Lotlikar, learned Senior Counsel for the petitioners was laid down.

13. In **Raj Prasanna Kondur** (supra), the respondent Nos. 1 and 2 as the owners of the suit premises had permitted the petitioner to use the same for residential purposes since 1st April 2001 and an Agreement in that regard was executed by the parties on 3rd April 2001 for a period of 11 months with an option to the petitioner to extend the said Agreement for three further periods of 11 months each, subject to the license fees being increased by the petitioner after the second period of 11 months, and further that the petitioner as well as the respondents/owners were to have the right to terminate the Agreement by giving a three months' notice to each other. The said Agreement was lodged for registration by the respondents on 31st December, 2002. The respondents served a notice dated

13th January, 2003 which came to be served upon the petitioner by the respondents asking him to vacate the premises on 1st February, 2003 or within three months of the notice as they did not wish to renew the Agreement any further. Since the petitioner did not vacate the premises, the respondents filed an application before the Competent Authority under Section 24 of the Maharashtra Rent Control Act, 1999, for eviction of the petitioner from the suit premises and the summons came to be issued to the petitioner in respect of the said proceedings in accordance with the provisions of Section 43 of the said Act as well as by registered post. Since the petitioner failed to appear and to seek leave to defend in the matter within 30 days from the date of the service of the summons, the competent authority passed the order dated 15th July, 2003 for his eviction from the suit premises. He filed an application before the competent Authority on 13th October, 2003, for setting aside the said ex-parte order and which came to be dismissed by the order dated 12th November, 2003. The petitioner filed a Writ Petition before the High Court, which was subsequently withdrawn and moved the revisional authority which dismissed his application giving rise to the petition again before the High Court.

14. In **Raj Prasanna Kondur** (supra), the learned Single Judge considered Section 24 of the Act entitling the landlord to seek the eviction of the premises on the expiry of the period of lease. The provision of law comprised under Section 24 of the Act by itself nowhere deals in the manner in which the license is required to be granted nor does it prescribe any form or methodology for grant of license by the landlord. The said provision nowhere provided that the license had necessarily to be either in writing or that the Agreement in that regard has necessarily to be a registered one and therefore, on a plain reading of Section 24, it revealed that the moment the license granted to a party to occupy the premises has come to an end, the right of the landlord to get such person evicted from the premises arises and the competent authority thereupon is empowered to pass an order of eviction in case it is satisfied that the period of license had expired. The section nowhere imposes any embargo over such right of the landlord on account of the Agreement of license being not registered or even on account of such Agreement not being in writing. The learned Judge considered Section 55 of the Act dealing with the subject of requirement of registration of the Agreement executed between the landlord and the licensee and sub-section (2) of

Section 55 providing that the responsibility of getting such Agreement registered shall be upon the landlord and in the absence of the registered written agreement, the contention of the licensee about the terms and conditions subject to which a premises had been given to him by the landlord on leave and license or let out to him, shall prevail, unless proved otherwise. Sub-section (3) was also considered which provided that any landlord who contravenes the provisions of the said section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding ₹ 5,000/- or with both.

15. In **Raj Prasanna Kondur** (supra), the learned Judge on a plain reading of Section 55 of the Act observed that it would disclose that since the enforcement of the said Act, if any premises are allowed to be occupied on leave and license basis, then the Agreement in respect of such license has necessarily to be drawn in writing and it should be registered under the Registration Act, 1908. Sub-section (2) of Section 55 clarifies that it would be the responsibility of the landlord to get such Agreement registered. Two consequences are enumerated under Sub-sections (2) and (3) of Section 55, in case of failure to

comply with the obligation of the landlord to register such agreement. Under Sub-section (2), in the absence of registration of such agreement, the contention of the licensee regarding terms and conditions of the license would prevail unless proved otherwise. In other words, the contention regarding the terms and conditions by the licensee would have a presumptive value. Secondly, in terms of Sub-section (3) of Section 55 of the Act, the landlord would suffer penalty of punishment to the extent of three months' imprisonment or fine not exceeding ₹5,000/- or both. The said Act nowhere provided for any other consequences for failure on the part of the landlord to get the Agreement drawn in writing or being registered. In other words, the said Act specifically provides only for two consequences on account of failure on the part of the landlord to get the Agreement registered, as is otherwise required to be done under Sub-section (2) of Section 55 of the said Act. The said failure on the part of the landlord to get the Agreement registered, however, does not result in denying other rights assured to the landlord under the said Act. Obviously, therefore, the right of the landlord under Section 24 of the said Act to get the person evicted from the premises of expiry of the license is not curtailed in any manner on account of absence of the Agreement being in writing

or registered.

16. The respondent had filed the application under Section 22 (a) and b(i)(ii) for the eviction of the said Gurudas alleging that the suit premises leased to him for the stated purpose on payment of defined rent was not paid by him, that he was in arrears of rent and moreover he had sublet the premises to another for carrying on business therein. The said Gurudas had carved a specific case in defence that he had not executed any written Lease Deed with the respondent after the coming into force of Act w.e.f. 30/09/1969, that the provisions of the said Act were not applicable to him and there was no relationship of landlord and tenant between them thereby divesting the Court of the Rent Controller of the jurisdiction to deal with the application for eviction. The respondent had also not issued receipts in token of having received the license fees and without prejudice even assuming he was a tenant, the respondent had not issued the receipts and pressed for the dismissal of the execution proceedings.

17. The respondent had examined himself before the Rent Controller reiterating his case that Gurudas had defaulted in

payment of rent precipitating the earlier eviction application and produced the written statement filed by the said Gurudas wherein he had admitted that he was in arrears of rent. The said Gurudas had prayed that he be permitted to deposit the arrears of rent with the costs of the application and which relief was granted and the earlier eviction case was dropped against him. The respondent had then narrated the subsequent defaults by the said Gurudas, resulting in the arrears of rent and the fresh proceedings after notice for not only being in arrears of rent but for subletting the same to another and change of user of the suit premises being an additional ground for his eviction from the suit premises. The respondent was subjected to cross-examination at length when he maintained his case that he had let out the premises to the said Gurudas on rent from June 1975, that he was in arrears of rent and besides had sublet the premises to one Shah. Gurudas who had since expired during the pendency of the proceedings was represented by his widow who stated that the premises was let out to him in 1975 but without any written Agreement and that the licence fees were paid in respect of the suit premises but no rent receipts or any other mode of acknowledgment was issued to the said Gurudas. She too conceded that there was an earlier eviction case filed by

the respondent against her husband, that he had agreed to deposit the rent in arrears and upon the said deposit, the eviction proceedings were withdrawn against him. She reiterated that no receipts were issued by the respondent to the said Gurudas despite the payment of the requisite fees and yet the eviction case was filed against him despite paying the arrears.

18. She had examined a witness in support of her case but he stated that he did not know what was the relationship between the said Gurudas and Shah, the sub tenant as per the version of the respondent. Based on this material i.e. the evidence led by the respondent and the legal heirs of the said Gurudas and on considering the submissions on their behalf, the learned Deputy Collector and Rent Controller held that as the lease of the suit premises was subsequent to the coming into force of the Act, it had to be reduced to writing and in the absence thereof, there were no clarity as to the terms and conditions on which the suit premises was leased out to the said Gurudas. The Rent Controller held that no grounds were made out for the eviction of the said Gurudas in the absence of any documentary evidence and dismissed the eviction proceedings.

19. The respondent preferred the eviction appeal before the Administrative Tribunal assailing the judgment passed by the Rent Controller and the Appellate Board to whom the proceedings were assigned on the change of jurisdiction held that the respondent herein had established that the said Gurudas was the tenant of the suit premises and was liable for eviction. The learned Appellate Board found from the records that there was a previous application for eviction filed by the respondent and that the said Gurudas had deposited the arrears of rent consequent to which the proceedings for eviction were dropped. The learned Appellate Board was clearly seized of the fact that the legal heirs of the said Gurudas had moved an application under Section 32 of the Act dealing with the payment or deposit of rent during the pendency of the eviction proceedings clearly indicating that he was admitting that he was the tenant of the suit premises as otherwise he would not have taken recourse to the said provisions of the Act. The Appellate Board in its wisdom had interpreted the judgment in **Wadkar** (supra), at paragraph 16 but soon thereafter held that the judgment was of no assistance to the case of the said Gurudas.

20. The learned Appellate Board had also considered the testimony of the respondent wherein she had concluded that the suggestion put to him on the issuance of receipts only from the year 1987 confirmed that receipts were issued to the said Gurudas at least from 1987 onwards and he was subsequently in arrears of payment making him liable for eviction from the suit premises. On that premise too, the Appellate Board had concluded that the respondents had established that there was non-payment of rent / arrears of rent and on that ground had reversed the finding of the learned Deputy Collector and Rent Controller and directed the petitioners herein to vacate the suit premises and put the respondent in possession thereof within the defined time.

21. The Act has been enacted to provide for the control of rents and evictions and of rates of hotels and lodging houses, and for the requisition of the vacant buildings, in the Union territory of Goa, Daman and Diu. Section 12 contemplates the determination of the fair rent by the Rent Controller on an application either by the landlord or by the tenant and after holding such inquiry as it deems fit. An increase in the fair rate is also contemplated in terms of Section 13 of the Act provided

the conditions contained therein have been fulfilled in the nature of addition, improvement or alteration at the landlord's expense. A reading of Section 17 which requires the receipts to be given for the rent paid, Section 18 dealing with the deposit of the rent by the tenant, the bar on eviction of tenants contained in Section 21, the grounds of eviction contained in Section 22 including the opportunity to the tenant to deposit arrears of rent in terms of Section 22(3), the obligation of the landlord to keep the building in good and repaired condition would indicate that the Act is a beneficial legislation for the tenant and therefore there can be no interpretation to any of the provisions which will take away the rights of the tenant to the leased premises. The Decree No.43525 was in force prior to the coming into force of the Act. In terms of Article 8(2) a lease could be proved by any other means of evidence which is missing in the Act. However such an omission in the Act replacing the Decree No.43525 cannot clothe Section 34 with a mandatory character when there is no penal consequence attached to it for its non compliance.

22. There can be no dispute with the proposition laid down by the Hon'ble Apex Court in **Tribhovandas Thakkar** (supra) which holds at paragraph 8 that "Precedents which enunciate rules of law form the foundation of administration of justice

under our system. It has been held time and again that a Single Judge of the High Court is ordinarily bound to accept as correct judgments of the Courts of coordinate jurisdiction and of Division Benches and of the Full Benches of his Court and of the Supreme Court. The reason of the rule which makes a precedent binding lies in the desire to secure uniformity and certainty in the law.” Nonetheless, this judgment with respect does not buttress the contention of Shri S.D. Lotlikar, learned Senior Counsel for the petitioners that the judgment of the learned Single Judge of this Court in **Wadkar** (supra), laid down a proposition of law on the interpretation of Section 34 of the Act and to have a binding effect on this Court being that of coordinate jurisdiction.

23. In **Delhi Airtech Services (P) Ltd.** (supra), the Hon'ble Apex Court in the dissenting judgment of the Hon'ble Shri Swatanter Kumar, J.) dealt with the principles of statutory interpretation as approved by the Supreme Court at paragraph 117 as “ the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislation must govern, and these are to be

ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other". A further reliance was placed in **May George v/s. Special Tahsildar and others** [(2010) 13 SCC 98] where the Court stated the precepts as follows:

- (a) While determining whether a provision is mandatory or directory, somewhat on similar lines as aforenoticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;
- (b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;
- (c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;
- (d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;
- (e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance of such provisions;
- (f) Physiology of the provisions is not by itself a

determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.

(g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.

(h) The Court has to give due weightage to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.

24. In **Delhi Airtech Services (P) Ltd.** (supra), a reference was also made to **State of Haryana and Another v/s. Raghubir Dayal** [(1995) 1 SCC 133] where the Apex Court had held at paragraph 5 "The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which

it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word ,shall' as mandatory or as directory, accordingly.”

25. **Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil** [(2010) 8 SCC 329] 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.

26. In **Radhey Shyam & Anr. V/s. Chhabi Nath & Ors.** [(2015) 5 SCC 423], the Hon'ble Apex Court held that under Article 227 of the Constitution, the High Court did not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and Courts within the bounds of their authority. Under Article 227, orders of both Civil and Criminal Courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.

27. On a consideration of the Judgments, the interpretation of Section 34 of the Act, the scheme and intent of the Act and on a

consideration of the Judgment passed by the Appellate Board, this is not at all a fit case to exercise the power of superintendence either on the premise that the Appellate Board had acted beyond its jurisdiction or exercised jurisdiction which it did not possess. i, therefore, do not find any merit in the petition which is hereby dismissed.

NUTAN D. SARDESSAI,J.

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