

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

**LETTERS PATENT APPEAL NO.248 OF 2011**  
**IN**  
**WRIT PETITION NO.2403 OF 1995**  
**WITH**  
**CIVIL APPLICATION NO.9643 OF 2011**  
**IN**  
**LETTERS PATENT APPEAL NO.248 OF 2011**

1. Aasaram s/o Trimbak Bodkhe,  
Age : 48 years, Occu. Agri.
2. Maheboob Khan Shahabaz Khan,  
Age : 55 years, Occu. Agri.
3. Trimbak s/o Limbaji Chorghade,  
Age : 52 years, Occu. Agri.
4. Sushilabai w/o Kashinath Paithane,  
Age : 60 years, Occu. Agri.

All r/o deodi, Tq. Wadwani,  
District Beed

5. Ashok s/o Pandurang Gilbile,  
Age : 48 years, Occu. Agri.  
R/o Khalwat Limbgaon,  
Tq. Majalgaon, District Beed

**APPELLANTS/  
APPLICANTS  
(Orig. Respondent  
Nos. 5 to 9)**

**VERSUS**

1. The State of Maharashtra
2. The Surplus Land Determination  
Tribunal, Majalgaon, Taluka  
Majalgaon, District Beed,  
through its Chairman :  
Tahsildar, Majalgaon, Taluka  
Majalgaon, District Beed
3. The Surplus Land Distribution  
Tribunal, Majalgaon, Taluka  
Majalgaon, District Beed

4. Maharashtra Land Revenue Tribunal,  
Aurangabad, at Aurangabad

5. Bhagwan s/o Nagorao Aghe,  
Since deceased through L.Rs :

5-A Kantabai w/o Bhagwan Aghe,  
Age : 60 yrs. Occu. Household

5-B Sudam s/o Bhagwan Aghe,  
Age : 45 yrs. Occu. Agri.

5-C Anant s/o Bhagwan Aghe,  
Age : 42 yrs. Occu. Agri.

5-D Sunil s/o Bhagwan Aghe,  
Age : 39 yrs. Occu. Agri.

All r/o Devdi, Tq. Wadwani,  
District Beed

5-E Smt. Sumanbai w/o Bhagwanrao shinde,  
Age : 35 yrs. Occu. Household,  
R/o Mardasgaon, Taluka and  
District Parbhani

**RESPONDENTS**  
**(Respondent Nos.**  
**5-A to 5-E –**  
**orig. petitioners)**

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Mr. B.R. Sable, Advocate for the appellants/applicants  
Mr. P.N. Kutty, A.G.P. for respondent No.1/State  
Mr. V.D. Salunke, Advocate for respondent No.2  
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**CORAM : T.V. NALAWADE AND**  
**SUNIL K. KOTWAL, JJ.**

**DATE : 21st FEBRUARY, 2019**

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

This Letters Patent Appeal is directed against  
the order dated 27<sup>th</sup> June, 2011, passed by the learned

Single Judge of this Court in Writ Petition No.2403 of 1995. The appellants are original respondent Nos.5 to 9 in Writ Petition. Respondent Nos.1 and 2 are respondent Nos.1 and 2 in Writ Petition. Respondent Nos.5A to 5E are original petitioners.

2. The facts involved in this appeal are that the original petitioner had filed Return under Section 12 of the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961. He has shown 84 Acres and 32 Gunthas of land and seven members in his family. The Surplus Land Determination Tribunal ("SLDT", for short) disallowed the claim of the mother and declared the petitioner as surplus holder to the extent of 18 Acres and 23 Gunthas. Being aggrieved by that order, the petitioner filed appeal before the Maharashtra Revenue Tribunal (for short, "M.R.T."). The M.R.T. Dismissed the said appeal in the year 1976. The stay application filed by the petitioner before the M.R.T. was also rejected before dismissal of the appeal. Petitioner had then filed Writ Petition No.2528/1976 at Bombay. Initially, stay was granted. In the year 1997, the Tahsildar ordered distributing the said surplus land to the original respondent Nos.5 to 9. Thereafter, the original

petitioner filed Writ Petition No.2403/1995 before the learned Single Judge of this Court, to set aside the order passed by the M.R.T. and SLDT. That writ petition was allowed on 27<sup>th</sup> June, 2011 and the order passed by the SLDT and order of allotment/disbursement of surplus land passed by original respondent Nos.2 and 3 dated 20<sup>th</sup> April, 1987 and the judgment and order passed by M.R.T. were set aside and it was declared that petitioner is not surplus holder. Against that order, the present Letters Patent Appeal is filed.

3. Heard Mr. B.R. Sable, learned counsel for the appellants, Mr. P.N. Kutti, learned A.G.P. for the State and Mr. V.D. Salunke, learned counsel for original petitioner.

4. On the point of tenability of Letters Patent Appeal, learned counsel for the appellants submits that though writ petition was filed against the order passed by the M.R.T., the learned Single Judge invoked jurisdiction under Article 226 of the Constitution of India and therefore, against the order passed by the Single Judge, Letters Patent Appeal is tenable under Clause 15 of the Letters Patent of High Court.

5. In reply, learned A.G.P. and learned counsel for the original petitioner, submit that after going through the contents of writ petition and nature of the order passed by the learned Single Judge, it becomes clear that the learned Single Judge invoked supervisory jurisdiction of the High Court under Article 227 of the Constitution of India and therefore, Letters Patent Appeal is not tenable.

6. The Full Bench of this Court in the case of **Jagdish Balwantrao Abhyankar and others Vs. State of Maharashtra and others (AIR 1994 Bombay 141)**, held that when a proceeding is filed under Article 226 of the Constitution of India against the order of Court or Tribunal, this Court cannot treat it as one under Article 227, merely because Court or Tribunal, whose order is assailed, is subject to the power of superintendence of this Court. In some cases, same subject can be considered under Articles 226 and 227 of the Constitution of India.

7. In **Advani Oerlikon Ltd. Vs. Machindra Govind Makasare and others [2011 (2) Mh.L.J.916]**, the Full

Bench of this Court has observed as follows :

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

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

Re: 2 : It is not a correct proposition in law that jurisdictional errors or errors resulting in miscarriage of justice committed by subordinate Courts/Tribunals can only be corrected by this Court in exercise of powers under Article 227 of the Constitution. The writ of certiorari can be issued under Article 226 of the Constitution where the subordinate Court or Tribunal commits an error of jurisdiction. Where the subordinate Court or Tribunal acts without jurisdiction or in excess of it or fails to exercise jurisdiction, that error of jurisdiction can be corrected. Moreover when the Court or tribunal has acted illegally or improperly such as in breach of the principles of natural justice the writ of certiorari is available under Article 226.

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

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

Re : 5 : The cause title, the averments and prayers in the petition can be taken into account while deciding whether the petition is one under Article 226 and/or 227 of the Constitution.

Re : 6 : If the petitioner elects to invoke Article 226 and/or 227 of the Constitution and the facts justify such invocation, a Letters Patent Appeal against the order of the learned Single Judge would be maintainable even though

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

Re : 7 : Where a petition is filed under Articles 226 and 227 of the Constitution and the facts justify the filing of such a petition, it is not lawful for the Court to hold that jurisdictional errors or errors

resulting in a miscarriage of justice committed by the subordinate Courts or Tribunals can be corrected only by exercising powers under Article 227 (and that the mentioning of Article 226 is redundant), thus depriving the party of a right of appeal under Clause 15 of the Letters Patent.

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

Re : 9 : In a situation where a petition is filed under Article 227 of the Constitution and judgment is rendered in favour of the Petitioner, recourse to an appeal under Clause 15 of the Letters Patent is not barred to the Respondent merely on the ground that the petition was under Article 227. In *State of Madhya Pradesh vs. Visan Kumar Shiv Charanlal* (supra), the appeal before the Division Bench was filed by the Respondent to the proceedings before the Single Judge in a petition which had been instituted under Article 227. Accepting submission that a nomenclature is of

no consequence and it is the nature of the reliefs sought and the controversy involved which determine which Article is applicable, the Supreme Court held that the appeal before the Division Bench was maintainable. A similar position arose in the decision of the Supreme Court in *M.M.T.C. vs. Commissioner of Commercial Tax* (supra). The Division Bench of the High Court had held that since the petition before the Single Judge was under Article 227 of the Constitution, an appeal at the behest of the Respondent to the petition was not maintainable. The Supreme Court held that the High Court was not justified in holding that the Letters Patent Appeal was not maintainable since the High Court did not consider the nature of the controversy and the prayers involved in the Writ Petition.

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

Articles 226 and 227 of the Constitution  
Whether that is so will be determined by the  
Division Bench on the circumstances of each  
case."

8. As rightly pointed out by learned counsel for respondents, in *"Umabai & anr. Vs. Nilkanth Dhondiba Chavan (dead) by L.Rs. & anr."* reported in [2005(4) Mh.L.J. 306], *"Balaji Ganpati Manmode Vs. State of Maharashtra & ors."* reported in [2013(3) Mh.L.J. 955], *"Kanhaiyyalal Fttelalji Upadhyaya, deceased through L.Rs. Rukmani wd/o Kanhaiyyalal Upadhyay & ors. Vs. Mahavir Tea Company & ors"*. reported in [2007(4) Mh.L.J. 360]s, *"Uttam Ambadasrao Gawali Vs. State of Maharashtra & ors."* reported in [2005(3) Mh.L.J. 550], *"Mansaram Sampat Patil, since deceased, through his L.Rs. Smt. Banubai Mansaram Patil & ors. Vs. Sambhu Harchand Chaudhary, since deceased through his L.Rs. Smt. Sumanbai w/o Harchand Chaudhary & ors."* reported in [2004(4) Mh.L.J. 1105], *Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte & anr.* reported in [AIR 1975 SC 1297], the Hon'ble Apex Court and this Court consistently held that the powers of superintendence of High Court under Article 227 of the Constitution of India being

extraordinary, is to be exercised most sparingly and only in appropriate cases. This power, as in the case of certiorari jurisdiction, cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court, or tribunal final on facts. The High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate court tribunal. It's function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.

9. Recently in ***Jogendrasinhji Vijay Singhji Vs. State of Gujarat and others (2015)9 SCC 1***, the Apex Court held as under :-

*"Where the facts justify a party in filing an application either under Article 226 or 227 of*

*the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. If the judgment under appeal falls squarely within four corners of Article 227, it goes without saying that intra-court appeal from such judgment would not be maintainable. On the other hand, if the petitioner has invoked the jurisdiction of the High Court for issuance of certain writ under Article 226, although Article 227 is also mentioned, and principally the judgment appealed against falls under Article 226, the appeal would be maintainable. What is important to be ascertained is the true nature of order passed by the Single Judge and not what provision he mentions while exercising such powers. A statement by a Single Judge that he has exercised power under Article 227, cannot take away right of appeal against such judgment if power is otherwise found to have been exercised under Article 226. The vital*

*factor for determination of maintainability of the intra-court appeal is the nature of jurisdiction invoked by the party and the true nature of principal order passed by the Single Judge."*

*"Thus, maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. Whether a letters patent appeal would lie against the order passed by the Single Judge that has travelled to him from the other tribunals or authorities, would depend upon many a facet."*

10. In view of these settled principles of law, if the impugned order is perused along with prayers in the Writ Petition, it becomes clear that the original petitioner simply challenged the correctness of the orders passed by the SLDT and M.R.T., Aurangabad. The SLDT as well as M.R.T. have full jurisdiction to decide the legal controversy in between the parties. Thus, there was no jurisdictional error committed by SLDT or M.R.T. Under prayer clauses also, the petitioner had simply prayed to set aside the impugned orders. Even

after going through the order passed by the learned Single Judge, it emerges that the learned Single Judge has considered the correctness of orders passed by the SLDT and M.R.T., holding that the petitioner is surplus holder of the land to the extent of 18 Acres 23 Gunthas. The learned Single Judge found that SLDT and M.R.T. disallowed the share of the mother in the agricultural land held by the family of the petitioner. Even though objection regarding delay in filing Writ Petition has been considered by the learned Single Judge, holding that the delay is properly explained. Due to communication gap between the petitioner and his counsel. Before the subordinate Authorities, the M.R.T. and before the High court, full opportunity of hearing was given to the parties. Therefore, there was no violation of principles of natural justice. As observed above, SLDT and M.R.T. acted within four corners of their respective jurisdiction and even it is not contention of the original petitioner that these Authorities exceeded their jurisdiction. Thus, as observed, there is no jurisdictional error while passing the impugned order. The nature of the order passed by the learned Single Judge is sufficient to hold that the learned Single Judge invoked supervisory jurisdiction

under Article 227 of the Constitution of India and not writ jurisdiction under Article 226 of the Constitution of India. Therefore, in view of above settled principles of law, Letters Patent Appeal against the order passed by the learned Single Judge in Writ Petition No.2403 of 1995 is not tenable. Accordingly, Letters Patent Appeal No.248 of 2011 is dismissed. The parties to bear their respective costs.

11. In view of dismissal of Letters Patent Appeal, Civil Application No.9643 of 2011 is disposed of.

12. Learned counsel for the appellants prays for continuation of interim relief previously granted by this Court. Learned counsel for the respondents do not oppose this prayer. The interim relief granted earlier, therefore, is continued for next four weeks from today.

**[SUNIL K. KOTWAL]**  
**JUDGE**

**[T.V. NALAWADE]**  
**JUDGE**