

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

LETTERS PATENT APPEAL NO. 294 OF 2011

IN

WRIT PETITION NO. 3132 OF 1991

Hari Vishwanath Mali
Since deceased through L.Rs.

- 1A) Ramesh S/o Hari Mali,
Aged: 40 years, Occ: Agril.
- 1B) Smt. Sundrabai W/o Hari Mali
Aged: 65 years, Occ: Household.
- 1C) Bhausahab S/o Hari Mali,
Aged: 45 years, Occ: Agril.
- 1D) Sau. Seetabai Machindra Barde,
Aged: 42 years, Occ: Agril.
- 1E) Raosahed S/o Haribau Mali,
Aged: 50 years, Occ: Agril,

All R/o Karegaon, Tq. Shrirampur,
Dist. Ahmednagar.

... **APPELLANTS**
(Ori. Petitioners)

VERSUS

- 1) Ashok S/o Sajaba Jadhav
Aged: Major, Occ: Agril.
- 2) Chabubai Sajaba Jadhav,
Aged: Major, Occ: Agril.

- 3) Thakubai Namdeo Bhigare,
Aged: Major, Occ: Agril.

All R/o Manori, Tq. Rahuri,
Dist. Ahmednagar.

... **RESPONDENTS**
(Ori. Respondents)

...
Mr. P. S. Dighe, Advocate i/b Mr. V. R. Dhorde, Advocate for Appellants.
Mr. Yogesh B. Bolkar, Advocate for Respondents (Appointed).
...

CORAM : **T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATE : 22nd February, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed to challenge the decision given by the learned Single Judge of this Court in Writ Petition No.3132 of 1991. The said proceeding was filed by the present Appellants to challenge the decision given by the Authority created under Section 36-A of the Maharashtra Land Revenue Code, 1966 and also the decision given by Maharashtra Revenue Tribunal in a proceeding, which was filed by the present Appellants.

2 Both the sides are heard.

3 The dispute is in respect of agricultural land bearing Gat No.404 situated at village Manori, Tahsil Rahuri, District Ahmednagar and it was owned by present Respondent No.1, Ashok Jadhav, who belongs to Scheduled Tribe. Respondent No.1 had sold the land to Respondent No.3 in the year 1984 and Respondent No.3 does not belong to Scheduled Tribe. It is contended that by using the sale proceeds, Respondent No.1 had purchased other land in the same area. In 1985, Respondent No.3 sold this land to the Petitioners. On 2nd January, 1990, Respondent Nos.1 and 2, original owners filed proceeding before the Collector for restoration of land by claiming that they were tribals and they were deceived by Respondent No.3 to grab their land. The said case was registered as *Adivasi* case and the case was decided by Tahsildar in favour of Respondent Nos.1 and 2, original owners. The decision was challenged before the Maharashtra Revenue Tribunal in appeal. The Maharashtra Revenue Tribunal confirmed the order on 6th June, 1991 and this decision was challenged in Writ Petition No.3132 of 1991.

4 While deciding the proceeding, the learned Single Judge

has referred the relevant provisions of the Maharashtra Land Revenue Code and also the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975. It is not disputed that the authority, which decided the matter against purchaser, had the jurisdiction to entertain such matter and the matter was filed within the prescribed period under the Act, within 30 years. As the matter was filed within six years and the limitation period was 30 years, the learned Single Judge held that in view of the provisions of aforesaid special enactment made to protect the tribal people, no fault can be found with the order made by the competent authority. As the sale was to non-tribal, there was no possibility of giving *ex-post facto* sanction to such sale and as it was not possible to sell the land, the learned Single Judge dismissed the proceeding.

5 The aforesaid circumstances show that the Authorities, which decided the matter were competent to entertain and decide the matters. The Maharashtra Land Revenue Tribunal is mentioned in Chapter XVII Rule 18 of the Appellate Side Rules of this Court and this Court has supervisory jurisdiction over that Tribunal under Article 227 of the Constitution of India. As the point of jurisdiction is involved

and as there were aforesaid circumstances, it needs to be inferred that the supervisory jurisdiction under Article 227 of the Constitution of India was exercised by the learned Single Judge of this Court. On that point the case of the Apex Court reported as **(2015) 9 Supreme Court Cases 1**, (*Jogendrasinhji Vijaysinhji Vs. State of Gujarat and others*) can be referred and the relevant observation are as follows:

“18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in *Radhey Shyam*, which is a binding precedent. Needless to emphasise that once it is exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable.

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30. From the aforesaid pronouncements, it is graphically clear that 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 learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. Barring the

civil court, from which order as held by the three-Judge Bench in *Radhey Shyam* that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, needless to emphasise, would depend upon various aspects that have been emphasised in the aforestated authorities of this Court. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The Division Bench would also be required to scrutinise whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. Be it stated, one of the conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court fees. We do not intend to comment on the same as that would depend upon the rules framed by

the High Court.”

6 In view of the discussion of law and facts above, this Court holds that both points on merit and tenability, there is no case to the Appellant. In the result, the following order is passed:

ORDER

- I. The letters patent appeal is dismissed.
- II. The fees of the appointed counsel who represented Respondent / Tribal is quantified as Rs.5,000/- and it is to be paid through the High Court Legal Services Authority.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

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