

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

**LETTERS PATENT APPEAL NO. 191 OF 2008
IN
WRIT PETITION NO. 2625 OF 1989
WITH
CIVIL APPLICATION NO. 12793 OF 2008
AND
CIVIL APPLICATION NO.6279 OF 2010
IN
LETTERS PATENT APPEAL NO.191 OF 2008**

Kausalyabai Laxminarayan
W/o Gangakishan
Age : 75 years, occu.: agri.,
R/o Shirasdevi, Tal.Georai,
District Beed.

Appellant.

Versus

1. Rukhminibai w/o Zelaji Wakte
Age : 75 years, occu.: household
R/o Sirasdevi, Taluka Georai,
District Bee.
2. Bhima Zelaji Wakte
Age : 55 years, occu.: labourer
R/o as above.
3. Arjun Zelaji Wakte
Age : 53 years, occu.: labourer
R/o as above.
4. Shantabai w/o Hiralal Lahoti
Age : 51 years, occu.: agri.,
R/o as above.

5. Badrivishal Hiralal Lahoti
Age : 60 years, occu.: agri.,
R/o as above.
6. Surya Prakash Hiralal Lahoti
Age : 30 years, occu.: agri.,
R/o as above.
7. Ganesh Hiralal Lahoti
Age : 24 years, occu.: business,
R/o as above.
8. Ravindra Hiralal Lahoti
Age : 22 years, occu.: agri.,
R/o as above.
9. The State of Maharashtra
Through Lands Tribunal,
Georai, District Beed.

Respondents.

Mr. P.G. Godhamgaonkar, Advocate for the appellant.

Mr. P.P. Mandlik, Advocate holding for

Mr. A.S. Gandhi, Advocate for respondent Nos.1 to 3.

Mr. A.V. Deshmukh, A.G.P. for respondent No.9.

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

Judgment reserved on : 26 February 2019.

Judgment pronounced on : 29 March 2019.

JUDGMENT (Per Sunil K. Kotwal).

. This Letters Patent Appeal is directed by the respondent in Writ Petition No.2625 of 1989 against the judgment passed by the learned Single Judge of this Court,

whereas Writ Petition was allowed and the impugned order passed by Maharashtra Revenue Tribunal (hereinafter referred as "M.R.T.") in Revision Application No.11-B-1988-Beed was set aside and the judgment and order passed by Deputy Collector in File No.86/tnc/a/23 dated 21.01.1988 was restored.

2. Heard Mr. P.G. Godhamgaonkar, learned Counsel for the appellant, Mr. P.P. Mandlik, learned Counsel holding for learned Counsel Mr. A.S. Gandhi for respondent Nos.1 to 3 and Mr. A.V. Deshmukh, Additional Government Pleader for respondent No.9.

3. From the submissions of the learned Counsels for the parties, following facts have become clear.

Deceased Zela Yada Wakte was the tenant in respect of the agricultural land bearing Survey No.235 admeasuring 4 Acres 4 Gunthas situated at village Sirasdevi. He was declared as protected tenant thereof. He deposited purchase price of Rs.1,487=25 on 02.05.1984. Thereafter he filed an application before Tenancy Tribunal under Section 38 (6) and under Section 38 (E) (1) Explanation of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "HT and

AL Act”) in his favour. He also claimed recovery of possession of the land in question on the ground that though he was in possession, he was dispossessed later on by the landlord. Notice was issued to original landlord Laxminarayan, who was found to be dead. His legal representatives appeared and resisted the proceeding on the ground that the tenant was not evicted by use of force, but he had himself willingly left the possession. It is submitted that by application dated 22.12.1959, filed in the office of Tahsildar, the deceased tenant had declared that he was no more interested in the continuation of possession and the declared land was not required by him. He sought cancellation of declaration made in his favour. He had not deposited the price fixed by Tahsildar up till the outer limit which was shown in the relevant order dated 21.11.1968. So the legal representatives of the landlord asserted that the tenant lost all the rights available to him on account of surrender of tenancy and due to non-compliance of direction to deposit the amount on or before 21.01.1968.

4. The Additional Tahsildar, by his order dated 10.10.1986, was pleased to dismiss the application for issuance of

ownership certificate under Section 38 (E) and for possession in favour of deceased Zela. So he preferred an appeal which came to be allowed by order dated 21.01.1988 passed by the learned Deputy Collector (Land Reforms). The order of Deputy Collector was challenged by the legal representatives of the deceased landlord before the M.R.T. The M.R.T. Reversed the judgment of Deputy Collector for the reason that the rights of deceased tenant came to be abrogated due to non-compliance of the directions to deposit the amount of price within the stipulated period and for the reason that the earlier proceedings initiated for the purpose of price fixation under Section 38 (E) (1) Explanation had terminated in the year 1962, which amounted to res-judicata.

5. After hearing learned Counsels for both parties, the learned Single Judge of this Court held that merely by filing of application dated 22.12.1959 the tenancy rights of the deceased tenant could not brought to an end without further enquiry or specific approval of the Competent Authority in respect of such surrender. Learned Single Judge also held that the principles of res-judicata are not applicable in tenancy proceeding. In the

result, the order passed by the Deputy Collector (Land Reforms) was restored and the orders passed by M.R.T. as well as Tahasildar were set aside. Therefore, this Letters Patent Appeal arises.

6. Learned Counsel for the appellant, on merits of the case, submitted that the learned Deputy Collector (Land Reforms) committed jurisdictional error while allowing the tenant to deposit the price of land beyond outer limit of 21.11.1968. According to learned Counsel for the appellant, such type of jurisdictional error can be corrected by Single Judge, only by invoking writ jurisdiction under Article 226 of the Constitution of India, and therefore, Letters Patent Appeal is tenable. His next contention is that the grounds taken in Writ Petition is regarding judicial error committed by Deputy Collector (Land Reforms) and such judicial error can be corrected by invoking powers under Article 226 of the Constitution of India.

7. The next contention of the learned Counsel for the appellant is that once the tenant had voluntarily surrendered his tenancy right, later on he cannot claim restoration of possession of that land. To substantiate his contention he placed reliance on

the cases of **“Umaji Kesho Meshram and others Vs. Smt. Radhikabai and another”** (AIR 1986 SC 1272), **“Sushilabai Laxminarayan Mudliyar Vs. Nihalchand Waghajibhai Saha and others”** (1989 Mh.L.J. 695) and Full Bench Judgment of Apex Court in the case of **“Mangalbai and others Vs. Dr. Radheyshyam Parischandra Agarwal”** [1993 (1) Mh.L.J. 567].

8. In reply, learned Counsel for respondent Nos.1 to 3 submits that the case of **Umaji Vs Radhikabai** (supra) is explained by the Full Bench of this Court in the case of **Sushilabai Vs. Nihalchand** (supra) which shows that jurisdictional error committed by the Tribunal can be corrected by High Court under Article 227 of the Constitution of India. He submits that this Court may look into the substance of the order passed by the Single Judge and can ascertain what jurisdiction the Single Judge has exercised. The contention of learned Counsel for respondent Nos.1 to 3 is that as in the pleading of Writ Petition the petitioner sought correction of judicial errors committed by M.R.T., while passing the order in Writ Petition, this Court exercised only supervisory jurisdiction under Article

227 of the Constitution of India, and therefore, Letters Patent Appeal is not tenable under Clause 15 of the Letters Patent. He has also drawn our attention to the case of “**Jogendrasinghi Vijaysinghi Vs. State of Gujrat and others**” [(2015) 9 SCC 1] and “**Radhey Shyam and another Vs. Chhabi Nath and others**” [(2015) 5 SCC 423].

9. In the case of **Sushilabai Vs Nihalchand** (supra), Full Bench of this Court has explained the law laid down by the Apex Court in the case of **Umaji Vs Radhikabai** (supra). It has been made clear that in case of Tribunal or Court situated within the territorial jurisdiction of the High Court commits jurisdictional error, the High Court may interfere either by exercising its supervisory powers under Article 227 or by issuing Writ in the nature of certiorari or prohibition as might be appropriate. When combined application under Article 227 read with Article 226 of the Constitution of India is filed, complaining of jurisdictional error by the Court or Tribunal, which is subject to High Court's superintendence, ordinarily it would be more appropriate to deal with the matter by exercising High Court's powers under Article 227 and not by invoking its extraordinary

and discretionary original jurisdiction under Article 226 of the Constitution of India. In order to decide whether the judgment passed by the learned Single Judge upon the application under Article 226 or 227 of the Constitution would be appealable under Clause 15, the Appellate Bench may look into the substance of the order and ascertain what particular jurisdiction the Single Judge has in fact exercised. When writ petition challenges 'vires' of the statute under which the subordinate Court or tribunal in question had been set up, Article 226 and not Article 227 is the appropriate provision to be applied. When writ application is filed for enforcement of a right guaranteed by Part III of the Constitution, the Single Judge may deal with the matter under his jurisdiction under Article 226 of the Constitution. The cause title of the petition is irrelevant.

10. No doubt, in subsequent judgment in the case of **“Surya Dev Rai Vs. Ram Chandra Rai and others” (AIR 2002 SC 3044)**, the Apex Court ruled that interlocutory orders passed by the Courts subordinate to High Court, are open to challenge in and continue to be the subject to certiorari and supervisory jurisdiction of the High Court. This view is

overruled by the Larger Bench of the Apex Court in the case of **Radhye Shyam Vs. Chhabinath** (supra) by holding that judicial orders of the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution. In this case the Larger Bench of the Apex Court has made it clear that there are no precedents in India for the High Courts to issue writs to the subordinate Courts. The control of working of subordinate Courts in dealing with their judicial orders is exercised by way of appeal or revisional powers or powers of superintendence under Article 227 of the Constitution. The orders of Civil Courts stand on different footing from the orders of the Authorities or Tribunals or Courts other than Judicial / Civil Courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression “inferior Courts” is not referable to judicial Courts. In this case the Apex Court has also made it clear that the power under Article 227 is intended to be used sparingly only in appropriate cases for the purpose of keeping the subordinate Courts or Tribunals within the bounds of their authority and not for correcting mere errors. The power 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.

11. In subsequent judgment of the Apex Court in the case of **Jogendrasinghi Vs. State of Gujrat** (supra), the Apex Court has reiterated the legal principle that judicial order of Civil Court is only assailable under Article 227 and is not amenable to writ jurisdiction under Article 226 of the Constitution. The Division Bench to which Letters Patent Appeal is made, is required to ascertain whether the facts justify the assertions made in the writ petition to invoke the jurisdiction under Article 227 or 226 of the Constitution or under both, having regard to nature, contour and character of his order. The maintainability of Letters Patent Appeal would depend upon the pleadings in writ petition, nature and character of the order passed by the Single Judge, type of directions issued regard being had to the jurisdictional perspective in the constitutional context.

12. In view of the above-discussed legal position, the contention of learned Counsel for the appellant is not acceptable that because in the writ petition the objection regarding jurisdictional error committed by revenue appellate Court has been raised, the Single Judge exercised jurisdiction under Article 226 of the Constitution of India.

13. Otherwise also, after going through the copy of Writ Petition (Exhibit 'D'), it emerges that it was filed only under Article 227 of the Constitution of India. After going through the contents of writ petition and grounds, it emerges that the legality of the order passed by M.R.T. is challenged by the petitioner. No '*vires*' of any provision under HT and AL Act has been challenged by the petitioner. Even it is not the contention of petitioner that his constitutional right was violated in any manner. One of the ground in writ petition is that the Courts below failed to exercise their jurisdiction properly and passed order in excess of their jurisdiction. It is trite that the judicial error committed by lower Authority or even the alleged jurisdictional error can be corrected by this Court only under Article 227 of the Constitution of India. Even in the writ petition under prayer clause the petitioner /

tenant prayed for setting aside the order passed by the M.R.T. Thus, after going through the contents of writ petition, it becomes clear that it was filed only under the supervisory powers of the High Court under Article 227 of the Constitution of India.

14. After going through the impugned order passed in Writ Petition No.2625 of 1989, it emerges that the learned Single Judge has mainly considered two points; (1) whether the tenant can surrender his tenancy right merely by filing the application and without further enquiry or specific approval of Competent Authority in respect of such surrendered and (2) whether the proceeding before the Authority was hit under the principle of res-judicata. The learned Single Judge, by considering the judgment of Division Bench of this Court in the case of “*Ganpat Sakharam Deshmukh Vs. Yeshwant Digambar Deshmukh*” [2000 (1) *Mh.L.J.* 126], held that right of the protected tenant to claim certificate of statutory ownership under Section 38 (E) remains intact, notwithstanding failure to deposit the price amount within the stipulated period. It was open for the Competent Authority to recover the price as if it is a land revenue. Court found that no such attempt was made for recovery of the price

amount.

15. Regarding the validity of voluntary surrender of the tenancy right by the tenant, the learned Single Judge considered Section 19 of the HT & AL Act and has made it clear that Rule 7 of Hyderabad Tenancy Rules makes obligatory on Tahasildar to satisfy himself that it was voluntary surrender of tenancy right. In order to satisfy himself that the surrender of tenancy by tenant is made voluntarily and in good faith, it is mandated that the Tahasildar shall secure the presence of tenant and examine him on oath by putting necessary questions to ascertain the consequences which may follow on account of surrender and to ascertain his awareness of the future implications. It is essential for the Competent Authority to satisfy itself on the basis of due verification of the application and also after collecting necessary information that the surrender of tenancy rights is on own volition of the tenant. The learned Single Judge found that in this case absolutely nothing was on record to show that the deceased tenant gave any statement regarding his surrender of the tenancy rights on his own volition. Mere filing of an application dated 22.12.1959 could not amount to valid surrender

of tenancy rights.

16. Regarding the principle of res-judicata, the learned Single Judge found that the principle of res-judicata has no place in such kin of proceedings under the HT & AL Act. Accordingly, the learned Single Judge set aside the order passed by the M.R.T. and restored the order passed by Deputy Collector (Land Reforms) in tenancy appeal.

17. Thus, after going through the substance of the order passed by the learned Single Judge, it becomes clear that the learned Single Judge has examined only legality of the order passed by the subordinate quasi-judicial authority, under the provisions of HT & AL Act, by exercising supervisory jurisdiction of the High Court under Article 227 of the Constitution of India. By no stretch of imagination it can be held that the High Court exercised writ jurisdiction under Article 226 of the Constitution of India.

18. Therefore, after going through the contents of writ petition, prayer made in the writ petition as well as substance in the order passed by learned Single Judge of this Court, we have no hesitation to hold that the learned Single Judge exercised only

supervisory jurisdiction under Article 227 of the Constitution of India. Therefore, against this order Letters Patent Appeal is not tenable in view of the Clause 15 Letters Patent. Thus, the Letters Patent Appeal deserves to be dismissed on the ground of maintainability. Otherwise also, as observed above, on merits the learned Single Judge has not committed any error while holding that surrender of tenancy rights by tenant without proper enquiry and satisfaction of Competent Authority, is meaningless. Relying on the judgment of Division Bench of this Court, the learned Single Judge rightly held that there cannot be outer limits to pay the price of the tenanted land. The proceeding before the subordinate authority is not hit by the principle of res-judicata. Thus, otherwise also, on merits this Letters Patent Appeal being devoid of merits, deserves to be dismissed.

19. Before parting with the judgment, we must make it clear that the cases of **Mangalabai Vs Radheyshyam** (supra) and **Sushilabai Vs Nihalchand** (supra) are distinguishable on facts and need no more consideration, in view of the law settled by the Larger Bench of the Apex Court.

20. Accordingly, Letters Patent Appeal No.191 of 2008 is dismissed. Pending Civil Applications are disposed of. Parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

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