

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

WPLRT No.51 of 2026

TRIMPLEX INVESTMENTS LIMITED

-Versus-

THE STATE OF WEST BENGAL and Others

For the petitioner	:	Mr. Arindam Banerjee, Sr. Adv., Mr. Saptarshi Banerjee, Mrs. Anisha Kochar, ... Advs.
For the respondents	:	Mr. Sk. Md. Galib, Sr. Govt. Adv., Ms. Priyamvada Singh, Adv.
Heard on	:	30.03.2026, 31.03.2026 & 06.04.2026
Reserved on	:	06.04.2026
Judgment on	:	09.06.2026

Sabyasachi Bhattacharyya, J.:-

1. Although the present application has been couched as an application under Article 226 of the Constitution of India arising out a decision passed by the West Bengal Land Reforms and Tenancy Tribunal, being classified as “WPLRT”, the same assails two orders passed by the Controller and Deputy

Controller, Kolkata Thika Tenancy, respectively on November 21, 2011 and June 9, 2022.

- 2.** The brief background of the case is that the petitioner filed an eviction suit against the private respondent no.5 in the year 1999 under the West Bengal Premises Tenancy Act, 1956. The defendant in the said suit (respondent no. 5 herein) was contesting the same.
- 3.** On July 31, 2017, the defendant/respondent no.5 produced a certificate issued by the Thika Controller dated September 22, 2016 whereby the said respondent was declared a Thika Tenant in respect of the suit property. The writ petitioner gave a representation to the Thika Controller on January 22, 2019, seeking recall of the certificate, upon which the Deputy Thika Controller initiated Miscellaneous Case No.130 of 2020. The said case was rejected on June 9, 2022, holding that the Thika Controller had already declared the respondent as a Thika Tenant on November 22, 2011 and, as such, the same could not be recalled.
- 4.** Challenging the said order dated June 9, 2022, the writ petitioner filed OA No.2472 of 2022 (LRTT) before the Tribunal.
- 5.** Subsequently, OA No.3032 of 2023 (LRTT) was also filed by the petitioner challenging the earlier order dated November 22, 2011, whereby the Controller had declared the respondent no.5 to be a Thika Tenant.
- 6.** Thereafter, the present challenge has been preferred, seeking quashing of the Form-“A” Return filed by the respondent no.5 before the Thika Controller as well as for setting aside the final order dated November 21, 2011 in R/F No.70/121, as well as the final order dated June 9, 2022, passed in

Miscellaneous Case No.130 of 2020 arising out of the same. Consequential reliefs have also been claimed.

7. Learned senior counsel appearing for the petitioner argues that the order dated November 21, 2011, is arbitrary and void since the same was passed without jurisdiction. Apart from no hearing being given to the landlord/owner of the premises, the procedure mandated under Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (for short “the Thika Tenancy Act”) was not followed. Moreover, the Thika Controller stepped beyond his jurisdiction under Section 5(3) in declaring the respondent no.5 as a Thika Tenant on return in Form-“A” despite the admission of respondent no.5 that the structures constructed were *pucca* in nature. It is argued that if a *pucca* structure is constructed without prior permission of the Thika Controller for residential purposes under Section 10A of the Calcutta Thika Tenancy Act, 1949 or without such prior permission, coupled with a sanctioned building plan, under the subsequent Thika Tenancy Acts, it fundamentally disentitles any person from claiming it to be a Thika Tenancy.
8. It is argued that after prosecuting the eviction suit from 1999 till 2017, the respondent no.5 suddenly relied on the alleged Thika Tenancy certificate-in-question, compelling the petitioner to move the Tribunal. In view of the sheer abuse of the process of law by respondent no.5, the petitioner has been compelled to take recourse to Article 226 of the Constitution of India before a Division Bench of this Court notwithstanding the pendency of the original applications before the Tribunal.

9. It is argued that the respondent no.5 cannot be permitted to approbate and reprobate in the same breath, having all along admitted itself to be a premises tenant in the eviction suit but all on a sudden claiming to be a Thika Tenant, which stands are mutually exclusive.
10. That apart, it is argued that the declaration by the Controller by simply approving portions of a previous note-sheet marked as 'X', 'Y' and 'Z' respectively simpliciter was palpably *de hors* the law.
11. The petitioner contends that such return being *ex facie* void, the jurisdiction of the Division Bench of this Court can be invoked. In support of such proposition, learned senior counsel for the petitioner cites *Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204.
12. As held in *State of U.P. v. Mohd. Nooh*, reported at AIR 1958 SC 86, the existence of any alternative remedy cannot be a bar to issuance of a writ of Certiorari and/or Prohibition by the jurisdictional High Court.
13. It is argued that the purported declaration of the Thika Tenancy in the year 2011 is manifestly void and without jurisdiction. In support of such contention, learned senior counsel cites the following judgments:
 - (i) *Lakshmimoni Das and others v. State of West Bengal and other*, reported at 1987 SCC OnLine Cal 140;
 - (ii) *Nemai Chandra Kumar v. Mani Square Ltd.*, reported at (2024) 17 SCC 743;
 - (iii) *Mani Square Ltd. v. State of W.B.*, reported at 2014 SCC OnLine Cal 5448; and

(iv) *An unreported judgment dated November 24, 2025 in WPLRT No.6 of 2014 [Dynamic Vyapar Private Limited v. M/s. Hindustan Petroleum Corporation Ltd. and Others].*

14. Learned senior counsel appearing for the petitioner next argues that where the facts of the case are not disputed but only a question of law is required to be answered, the writ court should entertain the challenge and not relegate the citizens to alternative remedies provided under the governing statutes, if any. In support of such argument, learned senior counsel cites *Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and others*, reported at 2023 SCC OnLine SC 95.

15. It is argued that jurisdiction is a coat of many colours and a jurisdictional error can occur when an authority tasked with adjudication fails to taken into account a fundamentally relevant point or takes into account a fundamentally extraneous point to arrive at a conclusion, the effect of which is to render such decision a nullity, being *de hors* jurisdiction. Learned senior counsel cites, in support of such proposition, *Shri M.L. Sethi v. Shri R.P. Sethi*, reported at (1972) 2 SCC 427, where the Hon'ble Supreme Court quoted with approval passages from *Anisminic Ltd. v. Foreign Compensation Commission*, reported at (1969) 2 AC 147.

16. Learned senior counsel next argues that the judgment of the Hon'ble Supreme Court in *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261, does not totally debar the present writ petition directly

before the Division Bench of this Court, as held in *Shahi Enclaves Private Limited (supra)*¹ by a Division Bench of this Court.

17. Again, in Paragraph No.392 of *Roger Mathew v. South Indian Bank Ltd.*, reported at (2020) 6 SCC 1, cited by the State, the Hon'ble Supreme Court recognized that a direct approach to the High Court under Article 226 of the Constitution of India is permissible when the Tribunal is not established or is not functioning. In *Rajendra Diwan v. Pradeep Kumar Ranibala*, reported at (2019) 20 SCC 143, also cited by the State, it was held that the High Court can interfere under Article 226 in cases of patent error of law going to the root, perversity, arbitrariness, unreasonableness, violation of principles of natural justice, lack of jurisdiction and usurpation of power and such power of the High Court cannot be abrogated by statutory enactment or even by a constitution amendment. Thus, there is no water-tight bar to an approach being made to the High Court under Article 226 of the Constitution of India.
18. It is next argued by the writ petitioner that the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (hereinafter referred to as "the 1997 Act") does not curtail the power of the High Court under Article 226 of the Constitution of India. Section 8 of the 1997 Act, it is argued, recognizes the fact that the High Court can be approached under Article 226 in respect of specified Acts within the meaning of Section 2(r) of the 1997 Act, which approach shall, however, be made to a Division Bench of the High Court.

¹ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**

19. In *T.K. Rangarajan v. Government of T.N. and others*, reported at (2003) 6 SCC 581, it was held that the High Court may be approached directly as well under Article 226 in exceptional cases.
20. Citing *Hari Vishnu Kamath v. Syed Ahmad Ishaque and others*, reported at (1954) 2 SCC 881, it is contended by the writ petitioner that Certiorari will be issued for correcting errors of jurisdiction as well as when the inferior Court or Tribunal acts without jurisdiction or in excess to it or fails to exercise it. Illegal acts in exercise of the jurisdiction of a Court or Tribunal may also prompt a Certiorari to be issued, particularly where there is a violation of the principles of natural justice.
21. Hence, it is argued that there is no absolute bar in invocation of Article 226 before a Division Bench of the High Court in a matter like the present one.
22. Learned Senior Government Advocate, appearing for the State, contends that only an appeal under Clause 15 of the Letters Patent is amenable to challenge before the Division Bench of a High Court. Learned Senior Government Advocate cites in this regard Chapter-II, Rule 5(a) and Chapter-VIII, Rule 2 (Notes) of the Appellate Side Rules of this Court. Further, writ jurisdiction under Article 226 can be exercised by a Division Bench of the High Court in case of a Public Interest Litigation as envisaged under Rule 57(a) of the Rules of the Calcutta High Court relating to applications under Article 226 of the Constitution of India (Appendix-IV, Appellate Side Rules).
23. It is submitted by the State that the availability of alternative remedy *per se* is not a bar to the invocation of Article 226 of the Constitution of India in four exceptional cases, being:

- (i) Where there is a violation of principles of natural justice;
- (ii) Infringement of fundamental rights;
- (iii) *Vires* of an Act is under challenge; and
- (iv) The authority passes the order without jurisdiction.

- 24.** In the present case, it is argued that even if it was to be assumed (without admitting) that the order passed by the Thika Controller under Section 5(3) of the Thika Tenancy Act was without jurisdiction, the forum to challenge the same should have been a learned Single Judge of this Court taking up applications under Article 226 of the Constitution of India.
- 25.** It is next contended that tribunalisation in India has taken place as the Courts of First Instance in respect of areas of law for which they were constituted. Their decisions on merit are amenable to challenge before a Division Bench of the High Court. However, in the present case, there is no “decision on merit” by the Tribunal.
- 26.** The Apex Court, in the Constitution Bench judgment of *L. Chandra Kumar (supra)*², has zealously guarded the existence, jurisdiction and power exercisable by the Constitutional Tribunals formed under Articles 323A and 323B of the Constitution of India. The object is never to bypass and/or short-circuit the power or jurisdiction of the said Tribunals.
- 27.** Learned Senior Government Advocate also cites *Rajendra Diwan (supra)*³ in support of such contention.

² *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

³ *Rajendra Diwan v. Pradeep Kumar Ranibala*, reported at (2019) 20 SCC 143

28. A litigant, it is argued, can invoke the Constitutional Writ Jurisdiction of a Single Bench of the High Court in respect of areas of law for which Constitutional Tribunals have been constituted under Articles 323A and 323B only under two circumstances:

- (i) Very very exceptional cases [*T.K. Rangarajan (supra)*⁴];
- (ii) When the Tribunals are not established or functioning [*Roger Mathew (supra)*⁵].

29. Learned Senior Government Advocate next contends that the 1997 Act came into force after the pronouncement of the judgment in *L. Chandra Kumar (supra)*⁶. Hence, its Preamble echoes the proposition of the said judgment. Section 2(r) enumerates the specified Acts. The Thika Tenancy Act is one of such Acts.

30. Section 7 of the 1997 Act invested the Tribunal with the jurisdiction and authority of a Single Bench of the High Court with effect from the date of its appointment. In tune with Section 7, Section 8 of the 1997 Act also excluded the jurisdiction of the High Court except that of a Division Bench meant for hearing an appeal or application against any decision of the Tribunal as contemplated under Section 11 of the said Act. Hence, the power of issuance of a Writ in the nature of Certiorari and the like are vested with the Tribunal akin to the power of a Single Bench of the High Court exercising Writ Jurisdiction.

⁴ *T.K. Rangarajan v. Government of T.N. and others*, reported at (2003) 6 SCC 581

⁵ *Roger Mathew v. South Indian Bank Ltd.*, reported at (2020) 6 SCC 1

⁶ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

31. However, the jurisdiction of the Division Bench cannot be directly invoked in respect of any matter for the adjudication of which Tribunals have been constituted.
32. In respect of the areas of law covered by the respective Tribunals, constituted under Articles 323A and 323B of the Constitution of India, a Division Bench can certainly issue a Writ, in the nature of Certiorari or otherwise, but there has to be a “decision” of the Constitutional Tribunal. For such proposition, learned Senior Government Advocate cites *Hari Vishnu Kamath (supra)*⁷.
33. It is argued that in *Shahi Enclaves Private Limited (supra)*⁸, the judgment of the Division Bench arose out of a pending proceeding before a Thika Controller where, as in the instant writ petition, the Controller had not already concluded the proceeding under Section 5(3) of the Thika Tenancy Act. Moreover, the Division Bench, in *Shahi Enclaves Private Limited (supra)*⁸, took cursory note of the Constitution Bench judgment of the Hon’ble Supreme Court in *L. Chandra Kumar (supra)*⁹.
34. The other judgments cited by the writ petitioner are not dealt with by the State since, as per the State, the writ petition itself is not maintainable before this Court.
35. Heard the rival contentions of the parties.

⁷ *Hari Vishnu Kamath v. Syed Ahmad Ishaque and others*, reported at (1954) 2 SCC 881

⁸ *Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204

⁹ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

- 36.** The issue of maintainability of the present writ petition hits at the root of the matter and, as such, is taken up for adjudication as a preliminary issue prior to entering into the merits of the matter.
- 37.** *L. Chandra Kumar (supra)*¹⁰, delivered by a Seven-Judge Constitution Bench of the Hon'ble Supreme Court, is of seminal importance in the context. The contents of the relevant paragraphs of the said judgment are set out below:

“1. The special leave petitions, civil appeals and writ petitions which together constitute the present batch of matters before us owe their origin to separate decisions of different High Courts and several provisions in different enactments which have been made the subject of challenge. Between them, they raise several distinct questions of law; they have, however, been grouped together as all of them involve the consideration of the following broad issues:

(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub-clause (d) of clause (2) of Article 323-A or by sub-clause (d) of clause (3) of Article 323-B of the Constitution, to totally exclude the jurisdiction of ‘all courts’, except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323-A or with regard to all or any of the matters specified in clause (2) of Article 323-B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?

(2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?

(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?

¹⁰ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**

90. *We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.*

91. *It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real*

and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In *R.K. Jain case* [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464], after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforestated contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional

set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

99. *In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles*

226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

- 38.** It is evident from the issues formulated in the very first paragraph of the said report that the Hon'ble Supreme Court was not confined to examining the *vires* and scope of Section 28 of the Administrative Tribunals Act but adjudicated upon the constitutionality and ambit of Tribunals constituted both under Articles 323A and 323B of the Constitution of India in general. Whereas Article 323A speaks exclusively about Administrative Tribunals, Article 323B provides for Tribunals in respect of other matters stipulated therein, including land reforms by way of acquisition by the State of any estate as defined in Article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way, ceiling on urban property, regulation and control and tenancy issues including the rights, title and interest of landlords and tenants as well as any matter incidental thereto.

- 39.** Clause (3) of Article 323B provides that a law made under Clause (1) thereof may provide for the establishment of a hierarchy of Tribunals, specify the jurisdiction, powers and authority of the Tribunals, provide for the procedure and exclude the jurisdiction of all courts, except that of the Supreme Court under Article 136, as well as contain such supplemental, incidental and consequential provisions as the appropriate Legislature may deem necessary for the effective functioning and for the speedy disposal of cases and the enforcement of the orders of such Tribunals.
- 40.** Clause (4) of Article 323B provides that the provisions of the Article shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force.
- 41.** Similar provisions find place in Article 323A as well.
- 42.** Insofar as the present case is concerned, the provisions of the 1997 Act have come up for consideration. The Tribunal under the said Act is formed within the contemplation of Article 323B.
- 43.** Apart from the issues enumerated in Paragraph No.1 of *L. Chandra Kumar (supra)*¹¹, from Paragraph No.99 of the said report as well, it is evident that the sweep of the judgment also covers Article 323B and Tribunals formed thereunder, thus extending much beyond the scope of the Administrative Tribunals Act, which was enacted pursuant to Article 323A, as opposed to Article 323B.

¹¹ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

44. Certain important conclusions were arrived at by the Hon'ble Supreme Court in *L. Chandra Kumar (supra)*¹², which are enumerated below:

- (i) The Tribunals constituted under Articles 323A and 323B will continue to act as the *only Courts of First Instance* in respect of areas of law for which they have been constituted ;
- (ii) The Tribunals constituted under both the said Articles shall be competent to hear matters where *vires* of statutory provisions are questioned, except the *vires* of their parent statutes, under which they are formed;
- (iii) It will *not be open* to litigants *to directly approach the High Courts* even in cases where the question of *vires* of statutory legislations (except the parent statute creating the Tribunals) is raised, *by overlooking the jurisdiction of the Tribunals*;
- (iv) The High Court can be approached directly when the *vires* of the parent statute creating the Tribunals is under challenge (it is not specified that such challenge will be before a Division Bench of a High Court);
- (v) All other *decisions of the Tribunals* under their parent statutes shall be subject to scrutiny by the High Court, sitting in *Division Bench*.

(EMPHASIS SUPPLIED BY US)

45. In Paragraph No.90 of *L. Chandra Kumar (supra)*¹³, the Hon'ble Supreme Court held that the Tribunals have jurisdiction to take up Original

¹² ***L. Chandra Kumar v. Union of India and others, reported at (1997) 3 SCC 261***

¹³ ***L. Chandra Kumar v. Union of India and others, reported at (1997) 3 SCC 261***

Applications in the respective areas of law for which they are created, whereas their decisions would be subject to challenge under Articles 226/227 before a Division bench of the High Court. By way of justification, the Hon'ble Supreme Court observed that such hierarchy ensures that frivolous claims are filtered out by the Tribunals and the High Courts would have the benefit of reasoned decisions on merits by the Tribunals.

46. Again, in Paragraph No.91 of the judgment, it was reiterated that the decisions of the Tribunals, created both under Articles 323A and 323B of the Constitution, would be subject to challenge under Article 226/227 before a Division Bench of the High Court.
47. In Paragraph No.92, it was laid down that no appeal from a decision of a Tribunal shall lie directly to the Supreme Court under Article 136 but shall be maintainable before the concerned High Court under Articles 226/227, sitting in Division Bench. A challenge under Article 136 of the Constitution of India, it was held, would lie against the judgment of the Division Bench of the High Court to the Supreme Court.
48. In Paragraph No.99 of *L. Chandra Kumar (supra)*¹⁴, the Hon'ble Supreme Court declared Article 323A(2)(d) and 323B(3)(d) to be *ultra vires* to the extent that they exclude the jurisdiction of the High Courts under Articles 226/227 and the Supreme Court under Article 32 of the Constitution. Conspicuously, such adumbration of law covers both Articles 323A and 323B, and is not confined only to Article 323A, which provides for constitution of Administrative Tribunals. Only thereafter, in Paragraph

¹⁴ ***L. Chandra Kumar v. Union of India and others, reported at (1997) 3 SCC 261***

No.99, the Hon'ble Supreme Court proceeded to hold Section 28 of the Administrative Tribunals Act *ultra vires* to the above extent.

49. Thus, although the genesis of challenge in *L. Chandra Kumar (supra)*¹⁵ was in relation to Section 28 of the Administrative Tribunals Act, the more fundamental question of constitutionality of all Tribunals constituted both under Articles 323A and 323B of the Constitution of India were considered and adjudicated upon by the Hon'ble Supreme Court. The propositions of law laid down therein are, thus, binding precedents, being the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution.
50. The petitioner relies heavily on *Shahi Enclaves Private Limited (supra)*¹⁶, where a Division Bench of this Court, while considering the propositions laid down in *L. Chandra Kumar (supra)*¹⁷, observed nonetheless that the said decision was rendered only in the context of Section 28 of the Administrative Tribunals Act. In Paragraph No. 43 of *Shahi Enclaves Private Limited (supra)*¹⁸, it was recorded by the Division Bench that a challenge had been thrown against the order of the Thika Controller, whereas in Paragraph Nos.133 and 134 thereof, the co-ordinate Bench observed that the writ petition before the Division Bench was directed against an order of the Tribunal allowing addition of parties and directing affidavits.

¹⁵ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**

¹⁶ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**

¹⁷ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**

¹⁸ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**

51. Certain portions of *L. Chandra Kumar (supra)*¹⁹ were quoted in Paragraph 133 of *Shahi Enclaves Private Limited (supra)*²⁰. However, in Paragraph 136 of *Shahi Enclaves Private Limited (supra)*²¹, the co-ordinate Bench held that *L. Chandra Kumar (supra)*²² was rendered only in relation to the Administrative Tribunals Act, 1985 and, on such premise, in Paragraph No. 145 it was observed that the 1997 Act or the decision of *L. Chandra Kumar (supra)*²³ do not affect the powers of the High Court under Article 226 to be invoked, provided such power is exercised by a Division Bench. Again, in Paragraph No. 152 of *Shahi Enclaves Private Limited (supra)*²⁴, the co-ordinate Bench held that the 1997 Act does not preclude the jurisdiction of the Division Bench of this Court under Article 226/227.
52. With utmost respect, the said proposition is diametrically contrary to the proposition laid down in *L. Chandra Kumar (supra)*²⁵ on the following grounds:
53. The co-ordinate Bench in *Shahi Enclaves Private Limited (supra)*²⁶ overlooked the specific proposition laid down in Paragraph No.93 of *L. Chandra Kumar (supra)*²⁷ that the Tribunals constituted both under Articles 323A and 323B would continue to act as the *only Courts of First Instance* in respect of the
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- ¹⁹ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**
- ²⁰ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**
- ²¹ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**
- ²² ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**
- ²³ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**
- ²⁴ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**
- ²⁵ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**
- ²⁶ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**
- ²⁷ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**

areas of law for which they have been constituted. Throughout the judgment in *L. Chandra Kumar (supra)*²⁸, the Hon'ble Supreme Court considered that a challenge before a Division Bench of the High Court shall only lie against a *decision taken by the Tribunal*, as opposed to a direct first challenge against order of the authorities constituted under the respective Acts from which such challenge is preferred. In fact, the Hon'ble Supreme Court explained that the hierarchy contemplated therein, that is, the Tribunal at the first instance, thereafter, a Division Bench of the High Court and from there under Article 136 before the Supreme Court, was to ensure that frivolous claims are filtered out by the Tribunals and the High Court would have the benefit of the Tribunals' reasoned decisions on merits, upon which the Supreme Court would have jurisdiction under Article 136 to scrutinize the decision of the Division Bench of the High Court.

54. Article 323A(2)(d) as well as Article 323B(3)(d) were held to be unconstitutional and *ultra vires* inasmuch as they excluded the jurisdiction of the Division Bench of the High Court and the power of the Supreme Court under Article 32. It was specifically enumerated that the challenge before the Division Bench of the High Court shall lie only against a decision of the Tribunal.
55. Such vital aspect, with utmost respect, was completely overlooked by the co-ordinate Bench in *Shahi Enclaves Private Limited (supra)*²⁹, which proceeded

²⁸ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**

²⁹ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**

on the basis that *L. Chandra Kumar (supra)*³⁰ was rendered only in relation to the Administrative Tribunals Act, 1985, losing sight of the issues formulated in the very first paragraph of the said judgment and the tenor of the judgment throughout, which took under its sweep of adjudication the constitutionality of all Tribunals, formed both under Articles 323A and 323B of the Constitution.

- 56.** Apart from misconstruing the proposition of *L. Chandra Kumar (supra)*³¹, *Shahi Enclaves Private Limited (supra)*³² on the above aspect, the co-ordinate Bench also (in our humble opinion, incorrectly) held that the 1997 Act does not exclude the jurisdiction of the Division Bench under Article 226/227 to entertain even a direct challenge against the order/inaction of first authorities under the specified Acts, thereby acting as the Court of First Instance. With respect, such a construction of the 1997 Act is alien to the very grain of the said Act itself as well as the purpose for which the Act was enacted.
- 57.** It is to be noted that the judgment in *L. Chandra Kumar (supra)*³³ was delivered on March 18, 1997 and immediately became a beacon with regard to several aspects of the constitutionality of the very concept of Tribunalisation. The 1997 Act was enacted by the State Legislature of West Bengal after March 18, 1997 and received the assent of the Governor only on December 12, 1997. Thus, the Legislature had the benefit of the law laid

³⁰ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

³¹ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

³² *Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204

³³ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

down in *L. Chandra Kumar (supra)*³⁴ while enacting the 1997 Act. Hence, the 1997 Act has to be construed in the context and backdrop of the proposition laid down in the said judgment as well as Article 323B of the Constitution of India.

58. Sections 6, 7, 8 and 11 of the 1997 Act are germane in the context and are set out below:

“6. Jurisdiction, power and authority of Tribunal.—Subject to the other provisions of this Act, the Tribunal shall, with effect from such date as may be appointed by the State Government by notification in this behalf, exercise jurisdiction, power and authority in relation to—

- (a) any order made by an Authority under a specified Act;
- (b) an application complaining inaction or culpable negligence of an Authority under a specified Act;
- (c) an appeal against an order of the Mines Tribunal appointed under section 36 of the West Bengal Estates Acquisition Act, 1953;
- (d) applications relating to matters under any provision of a specified Act or matters relating to any constitutional validity of any Act under the provisions of a specified Act;
- (e) adjudication of matters, proceedings, cases and appeals which stand transferred from the High Court and other Authorities to the Tribunal in accordance with the provisions of this Act.

7. Exercise by Tribunal of jurisdiction, power and authority exercisable by court.— Save as otherwise expressly provided in this Act, the Tribunal shall, with effect from the date appointed by the State Government under section 6, exercise all the jurisdiction power and authority exercisable immediately before that day by any court including the High Court, except the writ jurisdiction under Articles 226 and 227 of the Constitution exercised by a Division Bench of the High Court, but excluding the Supreme Court, for adjudication or trial of disputes and applications relating to land reforms and matters connected therewith or incidental thereto and other matters arising out of any provisions of a specified Act.

8. Exclusion of jurisdiction of courts.—On and from the date from which jurisdiction, power and authority become exercisable under this Act by the

³⁴ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

Tribunal, the High Court, except where that Court exercises writ jurisdiction under Articles 226 and 227 of the Constitution by a Division Bench, or any civil court, except the Supreme Court, shall not entertain any proceeding or application or exercise any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to land reforms or any matter connected therewith or incidental thereto or any other matter under any provision of a specified Act.

11. Appeal to lie to Division Bench of High Court.—*No appeal or application against any decision of the Tribunal in a proceeding shall lie to any court except the Supreme Court and the Division Bench of the High Court exercising writ jurisdiction under Articles 226 and 227 of the Constitution.”*

59. The co-ordinate Bench in *Shahi Enclaves Private Limited (supra)*³⁵ took into account Section 8 of the 1997 Act in isolation; however, without reference to Sections 6, 7 and 11 thereof. The said four Sections, between themselves, complement each other and form a tetrad.
60. Whereas Section 8 excludes the jurisdiction of the High Court under Articles 226 and 227 except as exercised by a Division Bench of such Court, Section 11 provides a road-map to the extent of such jurisdiction of the Division Bench. The latter provision stipulates that no appeal or application against *any decision of the Tribunal* shall lie to any court except the Supreme Court and the Division Bench of the High Court exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India.
61. Hence, Section 8 of the 1997 Act is circumscribed by Section 11 thereof. It would be an absurd proposition to hold that a Division Bench of the High Court simultaneously exercises jurisdiction as the Court of First Instance as

³⁵ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**

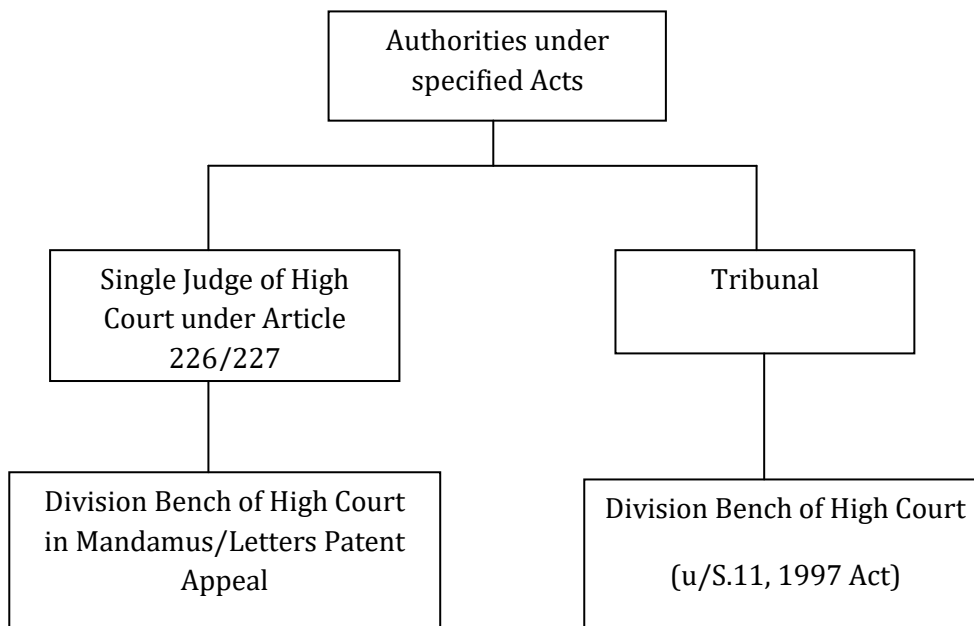
well as the Appellate Court, which would be the necessary fallout if the proposition laid down in *Shahi Enclaves Private Limited (supra)*³⁶ is to be taken to its logical conclusion.

- 62.** Notably, Section 8 excludes the jurisdiction of the High Court in matters in which jurisdiction, power and authority become exercisable under the 1997 Act by the Tribunal, except only *where the High Court exercises writ jurisdiction under Articles 226 and 227 of the Constitution by a Division Bench*. Thus, by necessary implication, the writ jurisdiction ordinarily exercisable by a learned Single Judge of the High Court is excluded. To understand the context of such exclusion, we are necessarily to look at Section 11 of the 1997 Act, which is the source of power of the Division Bench of the High Court in matters coming within the ambit of the said Act. The said Section confers exclusive jurisdiction to the Supreme Court and the Division Bench of the High Court under Articles 226 and 227 of the Constitution *against any decision of the Tribunal*. Hence, the expression “where the High Court exercises writ jurisdiction under Articles 226 and 227 of the Constitution by a Division Bench” in Section 8 of the 1997 Act quite obviously refers to the jurisdiction conferred by Section 11 of the said Act, which is restricted only to appeals and applications “against any decision of the Tribunal”, and does not extend to original writ petitions filed directly against the orders or inaction of the authorities under the specified Acts as stipulated in the 1997 Act.

³⁶ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**

- 63.** Such scheme of the Statute is further strengthened by the scope of exercise of jurisdiction by the Tribunals, as enumerated in Sections 6 and 7 of the 1997 Act. Section 6, in no uncertain terms, confers jurisdiction on the Tribunal constituted under the said Act in relation to “any order made by an Authority under a specified Act” and even applications “complaining inaction or culpable negligence of” such Authorities. Again, applications relating to “matters under any provision of a specified Act or matters relating to any constitutional validity of any Act under the provisions of a specified Act” have been brought within the fold of the Tribunal’s jurisdiction. Clause (e) of Section 6 empowers the Tribunal to adjudicate on matters, proceedings, cases and appeals which stand transferred from the High Court and other Authorities to the Tribunal. The transferred matters from the High Court would also include writ petitions pending before learned Single Judges of that Court.
- 64.** The aforementioned provisions, read in conjunction, clothe the Tribunal with the same powers which were previously exercisable by a learned Single Judge of the High Court. Section 7 of the 1997 Act vests the Tribunal with the jurisdiction, power and authority exercisable by any court, “including the High Court, except the writ jurisdiction under Articles 226 and 227 of the Constitution exercised by a Division Bench of the High Court”, thus specifically excluding the writ jurisdiction previously exercised by a learned Single Judge of the High Court. Powers of the Tribunal akin to issuance of writs of Certiorari and Mandamus, exercisable otherwise by a Single Judge of the High Court, are inbuilt in the said provisions.

- 65.** As discussed earlier, the expression “writ jurisdiction under Articles 226 and 227 of the Constitution exercised by a Division Bench of the High Court” clearly refers to the powers vested in the Division Bench by Section 11 of the 1997 Act itself, which is restricted to appeal and applications against *decisions of the Tribunal* and not direct challenges against orders/inaction of Authorities under the specified Acts, the latter species of challenges being vested exclusively with the Tribunal under Section 6 of the said Act.
- 66.** The hierarchy of fora, pre- and post-1997 Act, is depicted below (the progression on the left representing the pre-Act position and that on the right the post-Act scenario):



- 67.** From the above graphic, it is evident that the Tribunal has now replaced the learned Single Judge of the High Court (sitting in writ jurisdiction under Article 226/227 of the Constitution) as the forum of first instance to adjudicate upon direct challenges to any order/inaction of the Authorities designated under the specified Acts under the 1997 Act. Interestingly, the

Division Bench of the High Court has been retained as the next superior forum in hierarchy. The decision of a learned Single Judge of the High Court, sitting in writ jurisdiction over orders/inaction of statutory Authorities is otherwise amenable to a Mandamus/Letters Patent appeal before the Division Bench of the High Court, whereas the challenge against a decision of the Tribunal in respect of specified Acts now lies also before the Division Bench of the High Court, either in appeal or otherwise, under Section 11 of the 1997 Act (read with the specific provision of appeal, if any, in the specified Act). It is relevant to note that even Section 12 of the Thika Tenancy Act, which is a 'specified Act' under the 1997 Act, provides for an appeal against the order of an authority under the Thika Tenancy Act to the Tribunal.

- 68.** The scheme of the 1997 Act perfectly synchronizes with the hierarchy of challenge enumerated in *L. Chandra Kumar (supra)*³⁷, which was the clear intention of the State Legislature as well, since the 1997 Act was enacted soon after the said judgment and gives effect to it.
- 69.** A contrary interpretation of the provisions of the 1997 Act, thus, would create anarchy in hierarchy. If the proposition of *Shahi Enclaves Private Limited (supra)*³⁸ is to be followed, there would be two immediate and obvious anomalies:

- (i) The Division Bench of the High Court would simultaneously function as the court of first instance of challenge against an order

³⁷ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**

³⁸ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**

of the authorities under the specified Acts and also the court of second instance, sitting in appeal over the decision of the Tribunal, which acts as the first forum against orders of such authorities – thus, acting in principle as the original as well as appellate forum;

- (ii) Both parties would be deprived of one level of challenge if the Division Bench acts as the first forum of challenge against the order of authorities under the specified Act, since it would preclude a further challenge against its order to itself, whereas if the challenge to the authorities' order comes via the Tribunal route, a further challenge would be available before the Division Bench of the High Court – on a more fundamental premise, this would create gross inequality between litigants in whose cases the first challenge is decided by the Division Bench (depriving them of a second challenge, since it would have to be before the same Division Bench) and where it is decided by the Tribunal (in which case a further challenge would lie to the Division Bench).

70. Hence, the ratio laid down in the groundbreaking judgment of *L. Chandra Kumar (supra)*³⁹, read in conjunction with Sections 6, 7, 8 and 11 of the 1997 Act, necessarily lead to the sole conclusion that the Division Bench of the High Court shall only exercise supervisory powers against the decisions of the Tribunal and not usurp the powers of the Tribunal as the court of first instance, as categorically laid down in *L. Chandra Kumar (supra)*⁴⁰.

³⁹ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**

⁴⁰ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**

- 71.** Thus, with deepest respect, we cannot but hold that *Shahi Enclaves Private Limited (supra)*⁴¹ did not lay down the correct proposition of law and is *par incuriam* (being violative of the 1997 Act as well as the ratio laid down in *L. Chandra Kumar (supra)*⁴²) insofar as it held that the Division Bench of the High Court exercises original jurisdiction under Articles 226/227 of the Constitution over orders passed by authorities under the concerned statutes over which the Tribunals constituted under Articles 323A and 323B of the Constitution wield jurisdiction.
- 72.** The petitioner in the instant case relies on *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others*, reported at (1998) 8 SCC 1, where the Hon'ble Supreme Court held that the High Court, under Article 226, has plenary power and the discretion to entertain or not having regard to the facts of the case. Such reliance, however, is misplaced since it was reiterated in the selfsame judgment that such jurisdiction is normally not exercised. Certain exceptions to non-interference were carved out, where the issue relates to enforcement of fundamental rights, violation principles of natural justice, the order/proceeding is wholly without jurisdiction and the *vires* of an Act is under challenge. However, the said general proposition cannot be applied in the present context, in view of the specific propositions laid down in *L. Chandra Kumar (supra)*⁴³ as well as in the context of the 1997 Act itself.

⁴¹ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**

⁴² ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**

⁴³ ***L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261**

- 73.** In *Mohd. Nooh (supra)*⁴⁴, also cited by the petitioner, the Hon'ble Supreme Court merely laid down that Article 226 is to be interpreted broadly to interfere even in cases where part of the process started before the Constitution was enacted. The said judgment was rendered in a completely different context, during the formative years of Constitutional Jurisprudence of India, primarily dealing the applicability of judicial review under Article 226 in situations where the cause of action commenced in the pre-Constitution era. Thus, the same cannot be a valid precedent for the issue at hand in the present case.
- 74.** The judgment in *Godrej Sara Lee Ltd. (supra)*⁴⁵, also relied on by the petitioner, merely sets out the general proposition that where a controversy is purely legal and does not involve any disputed question of fact, the High Court should decide the writ petition concerned.
- 75.** None of the above general propositions are disputed. However, those are, as mentioned above, "general" and do not apply to the present context of the powers of the Division Bench of the High Court as charted out in *L. Chandra Kumar (supra)*⁴⁶ as well as the 1997 Act.
- 76.** The respondents, on the other hand, cite *Hari Vishnu Kamath (supra)*⁴⁷, where it was held by the Hon'ble Supreme Court that the decision of an Election Tribunal is amenable to challenge under Articles 226 and 227 of the Constitution of India before the High Courts. It was further observed

⁴⁴ ***State of U.P. v. Mohd. Nooh, reported at AIR 1958 SC 86***

⁴⁵ ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and others, reported at 2023 SCC OnLine SC 95***

⁴⁶ ***L. Chandra Kumar v. Union of India and others, reported at (1997) 3 SCC 261***

⁴⁷ ***Hari Vishnu Kamath v. Syed Ahmad Ishaque and others, reported at (1954) 2 SCC 881***

that whereas Certiorari could be issued under Article 226 to annul the decision of the Tribunal, under Article 227, apart from Certiorari, the High Court may issue further directions in the matter. Such proposition was rendered in the context of Article 329(b) of the Constitution of India, which was held to impose restriction only to initiation of a proceeding before the Election Tribunal and not to a subsequent challenge against the order of the Election Tribunal under Article 226/227. The context of the said judgment, however, is not relevant in the present backdrop.

- 77.** The respondent also relies on *Roger Mathew (supra)*⁴⁸, where it was held that Article 226 could be invoked by the High Court if a Bench of particular Tribunal in a State or Union Territory is not established or functioning. In the case at hand, however, there is no such issue. Thus, such proposition is also not germane in the case at hand.
- 78.** In *T.K. Rangarajan (supra)*⁴⁹, the Hon'ble Supreme Court reiterated that *L. Chandra Kumar (supra)*⁵⁰ is binding on it, having been rendered by a Larger Bench, but went on to hold that Article 226 can be invoked by the High Court in “*very very exceptional circumstances*”.
- 79.** For context, we are to look at the facts of the said case. The Tamil Nadu Government had, in an “unprecedented action” (an expression used by the Hon'ble Supreme Court itself), terminated the services of all employees who resorted to strike for their demands in one sweep. The said fact was

⁴⁸ *Roger Mathew v. South Indian Bank Ltd.*, reported at (2020) 6 SCC 1

⁴⁹ *T.K. Rangarajan v. Government of T.N. and others*, reported at (2003) 6 SCC 581

⁵⁰ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

recorded in Paragraph No.2 of *T.K. Rangarajan (supra)*⁵¹. In Paragraph No.9 thereof, it was observed that at that juncture, the Tamil Nadu Administrative Tribunal, was manned by only one man. In Paragraph No.10, it was taken into consideration that in such circumstances, the Tribunal would not be in a position to render justice to the cause if “thousands of employees are directed to approach the Administrative Tribunal”.

80. In the present case, however, no such exceptional circumstance has made out at all.

81. The respondent also relies on *Rajendra Diwan (supra)*⁵², which is apt in the context of the present case. In Paragraph Nos.85 to 87 of the said judgment, the Hon’ble Supreme Court reiterated categorically that the proposition laid down in *L. Chandra Kumar (supra)*⁵³ cannot be considered to enlarge the jurisdiction of High Courts under Article 226/227 to enable it to exercise appellate powers, since Article 227 is not an “appeal in disguise” but is sparingly used, where patent errors of law going to the root of the decision, perversity, arbitrariness and/or unreasonableness, violation of principles of natural justice, lack of jurisdiction and usurpation of powers are found.

82. In the present case, the invocation of the powers of the Division Bench of this Court is intended to be an appeal without any pretence, not even being “in disguise” as held in *Rajendra Diwan (supra)*⁵⁴. We say so since Section

⁵¹ ***T.K. Rangarajan v. Government of T.N. and others, reported at (2003) 6 SCC 581***

⁵² ***Rajendra Diwan v. Pradeep Kumar Ranibala, reported at (2019) 20 SCC 143***

⁵³ ***L. Chandra Kumar v. Union of India and others, reported at (1997) 3 SCC 261***

⁵⁴ ***Rajendra Diwan v. Pradeep Kumar Ranibala, reported at (2019) 20 SCC 143***

12(1) of the Thika Tenancy Act categorically provides that any person aggrieved by an order of a Controller, may prefer an appeal in writing before the Land Reforms and Tenancy Tribunal established under the 1997 Act.

83. Thus, under the concerned statute, an appeal is provided for specifically to the Tribunal, which is in complete consonance with the proposition laid down in *L. Chandra Kumar (supra)*⁵⁵ that the Tribunal shall act as the Court of First Instance against any action or decision of a statutory authority falling within the ambit of the Tribunal. Hence, in the event the Division Bench of this Court exercises its original power under Article 226/227, it will be in stark contravention of the proposition laid down by the Constitution Bench of the Hon'ble Supreme Court in *L. Chandra Kumar (supra)*⁵⁶ as well as in the teeth of Section 12 of the Thika Tenancy Act, read in conjunction with Section 11 of the 1997 Act.

84. Hence, this is not merely a matter of this Court exercising a self-imposed restriction to abstain from invoking Article 226/227 of the Constitution whereas it otherwise has the power to so invoke, but a case where the exercise of such jurisdiction by the Division Bench of the High Court, thereby usurping the power of the Tribunal as the Court of First Instance, is specifically debarred by the Constitution Bench judgment of *L. Chandra Kumar (supra)*⁵⁷, read in conjunction with the provisions of the 1997 Act.

⁵⁵ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

⁵⁶ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

⁵⁷ *L. Chandra Kumar v. Union of India and others*, reported at (1997) 3 SCC 261

- 85.** Thus, we conclude that the present Tribunal Application under Article 226 of the Constitution of India is not maintainable before this Court in the eye of law.
- 86.** Furthermore, the writ petitioner in the instant case has already preferred challenges against the two orders/actions of the Thika Controller, which are impugned herein, before the Tribunal within the contemplation of Section 12 of the 1997 Act, prior to approaching this Court against the self-same orders of the Thika Controller. Such challenges are still pending before the jurisdictional Tribunal. One of such challenges is accompanied by a condonation application, since it has been filed much beyond the limitation period of 30 days as enumerated in Section 12(1) of the Thika Tenancy Act. It would be a travesty of justice if the petitioner is permitted to go on shopping forums, in the process also seeking to bypass the statutory limitation period for preferring an appeal before the Tribunal at least in one of the challenges before the Tribunal.
- 87.** Thus, the present writ petition is fit to be dismissed on such grounds, as enumerated in the immediately foregoing paragraph, as well, irrespective of the issue of non-maintainability of the same in law before this Court.
- 88.** In view of the above findings, we deem it unnecessary and futile to enquire into and adjudicate upon the other issues urged in the present application on merits, since the present application is being turned down at the threshold as not maintainable. Also, such adjudication may touch upon the merits of the case prematurely and adversely affect either of the parties in the pending Original Applications before the concerned Tribunal.

- 89.** Accordingly, WPLRT No.51 of 2026 is dismissed as not maintainable.
- 90.** In view of the *mala fide* attempt on the part of the petitioner to forum shop by preferring the instant challenge against the self-same orders of the Thika Tenancy Controller against which prior challenges are already pending at its behest before the designated Tribunal, particularly to by-pass the bar of limitation in one of those pending matters, as well due to the consequent harassment caused to the respondents in being compelled to contest before different fora, we impose costs on the petitioner to the tune of Rs.20,000/-, payable collectively to the State-respondent nos.1 to 4, to be deposited in the account of any Public Scheme for the marginalised sections of society run by the State of West Bengal, as well as further costs of Rs.20,000/- payable by the petitioners to the private respondent no.5. Both components of costs shall be payable by the petitioner within a fortnight from date.
- 91.** We hasten to clarify that nothing in the above judgment shall preclude the writ petitioner from canvassing all issues on merits before the Tribunal in the pending Original Applications filed by the petitioner before the West Bengal Land & Land Reforms Tribunal, subject, of course, to the delay in filing one of those being condoned, if at all.
- 92.** Since we have, with utmost respect, expressed our reservations about and differed with the view expressed by a co-ordinate Bench in *Shahi Enclaves Private Limited (supra)*⁵⁸, we hereby refer the following questions to be

⁵⁸ ***Shahi Enclaves Private Limited v. State of West Bengal & Ors.*, reported at 2016 SCC OnLine Cal 1204**

answered by a Larger Bench, to be constituted by the Hon'ble the Chief Justice:

(i) *Whether a writ petition under Article 226/227 of the Constitution of India is maintainable before a Division Bench of the High Court directly against an order/inaction of an Authority under any of the specified Acts stipulated in the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, without first exhausting the remedy of appeal available under the concerned specified Act and/or under Section 11 of the 1997 Act.*

(ii) *If the answer to the first question is in the negative, whether the Division Bench judgment in **Shahi Enclaves Private Limited v. State of West Bengal & Ors.**, reported at **2016 SCC OnLine Cal 1204** is par incuriam to such extent.*

93. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)