Jai Singh & Ors vs M.C.D. & Anr on 23 September, 2010

Author: Surinder Singh Nijjar

Bench: Surinder Singh Nijjar, B.Sudershan Reddy

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8233 OF 2010
[Arising out of SLP [C] No.16995 of 2009]

Jai Singh and Ors. .. Appellants

VERSUS

Municipal Corporation of Delhi and Anr. ..Respondents

WITH

CIVIL APPEAL NO. 8234 OF 2010
[Arising out of SLP [C] No.1925 of 2008]

Municipal Corporation of Delhi .. Appellant

VERSUS

Sh. Jai Singh and Ors. ..Respondents

JUDGMENT

SURINDER SINGH NIJJAR, J.

1. In this special leave petition, the petitioners have challenged the judgment of the Delhi High Court in a Writ petition under Article 227 of the Constitution of India, CM (M) No.516 of 2007, dated 23rd March, 2009, whereby the High Court has quashed and set aside the order passed by the Additional Rent Control Tribunal ["ARCT" for short] dated 12th March, 2001, upholding the order passed by the Additional Rent Controller ["ARC" for brevity].

2. Heard counsel. Leave granted.

The facts, as noticed by the High Court, are that the appellants are claiming themselves to be the landlords in respect of premises constructed on the plot of land No.2, Block B, transport area of Jhandewalan Estate, Desh Bandhu Gupta Road, Karol Bagh, New Delhi.

3. In the eviction petition, it was stated that the premises were let out to respondent No.2, Delhi Transport Corporation [for short "DTC"], on a monthly rental of Rs.3500/-. DTC has sublet/assigned the premises in favour of respondent No.1, Municipal Corporation of Delhi [for short "MCD"] and parted with possession in favour of MCD without the written consent of the appellants. Therefore, both DTC and MCD were liable for eviction. The High Court has noticed the sequence of events since the transport services were being run by Gwalior Northern India Transport Company (for short "GNIT") to the time when DTC stepped into its shoes. The appellants claimed that the tenancy of the premises was with DTC. MCD had, however, claimed that the legal possession was retained by MCD; rent was being paid by MCD to DTC.

4. The ARC by an order dated 11th November, 1989, upon consideration of the rival contentions, held:

> "19. Admittedly it is respondent No.2 (MCD) who is in possession of the premises in question. It is also admitted that respondent No.2 (MCD) pays a sum of Rs.3500/- as rent to respondent No.1 (DTC) by way of cheques. It is not the case of the respondent that any written consent of the petitioners was obtained in this regard. Therefore, it has to be held that respondent no.1 (DTC) has either sublet, assigned or otherwise parted with the possession of the tenanted premises illegally to respondent No.2 (MCD). It is well settled that in voluntarily (sic) transfers are also included with the meaning of sub-letting etc. in Section 14(1)(b) DRC Act.".

5. The order passed by the ARC was upheld by the ARCT with the following observations:

> "15. After having heard up the matter in all its possible aspects I do not find any infirmity or illegality in the finding of the learned trial court by holding that there exists relationship of landlord and tenant between the parties and since the exclusive possession of the premises was handed over by the erstwhile tenant to the Municipal Corporation of Delhi, i.e., respondent No.2 which is itself a separate and independent legal entity, it amounts to sub- letting."

6. The High Court set aside the concurrent findings recorded by the ARC and ARCT with the following observations:

> "The orders passed by learned ARC and the learned ARCT categorically show that neither the learned ARC nor learned ARCT has devolved upon the facts of the case and nor had even considered the concept of tenancy and sub tenancy in this case in the peculiar circumstances of this case."

7. The High Court held that this is not a case of sub- letting as Delhi Transport Services (for short "DTS"), Delhi Transport Undertaking (for short "DTU"), MCD and DTC were the creation of statute. The premises had come to them after it was acquired by Union of India (UOI) from GNIT on nationalization of the business. There was no parting with possession by DTC to MCD, therefore, it was not sub-letting. The DTC was incorporated in lieu of DTU as a separate company to facilitate running of transport business. Mere payment of Rs.3500/- per month by MCD to DTC does not show sub-letting or parting with possession. Relying on a judgment of this Court in Madras Bangalore Transport Co. [West] Vs. Inder Singh & Ors. [AIR 1986 SC 1564], the High Court has held that:

> "In the case in hand, the situation, is much better. The alleged original tenant GNIT stood acquired by a Legislative Act and the premises went to DTS. DTS was converted to DTU and DTU was further converted into DTC. The premises remained in occupation of the same entity which changed its form from one to another. Thus it cannot be said that it was a case of sub-letting under any circumstances. The orders passed by learned ARC and learned ARTC are liable to be set aside for non application of law and non consideration of facts at all."

8. The objection raised by the appellants to the entertainment of the petition under Article 227, on the ground of laches, has been rejected with the following observations:

> "The respondent in this case has strongly objected to entertaining the petition on the ground of limitation. The petitioner has filed this petition under Article 227 of the Constitution of India. In exercise of this power, interfering with the orders of the Court of Tribunal has to be done where this Court finds that there was a serious dereliction of duty and blatant violation of the fundamental principles of law and justice and where, the order caused grave injustice and needs to be corrected. Although the petitioner herein had not been vigilant in prosecuting the appeal below but that cannot prevent his Court from correcting the patent illegality writ large on the face of the orders of the ARC and Tribunal below. Both the ARC and ARCT passed orders without considering the facts of the case in a very mechanical manner. Neither the learned ARC nor learned ARCT had taken into account the sequence of facts brought before them regarding acquisition of the entire assets of GNIT and conversion of DTS to DTU and then to DTC by the Legislative Act and the order has been passed merely on the ground that amount of Rs.3500/- was being remitted by the MCD to DTC. The Courts below did not even consider the issue as to who was the tenant and how MCD became the sub-tenant of respondent once the premises was owned by Union of India and the leasehold rights of the entire land vested in Union of India. This Court can set aside the findings and the orders of the Tribunal below if there was no evidence at all to justify the findings and the findings were perverse. The order can also be set aside if no reasonable or prudent person can possibly come to such a conclusion despite the fact that the petition was not brought before this Court by the petitioner soon after the passing of the order. In Badlu and another Vs. Shiv Charan and Others [(1980) 4 SCC 401], Supreme Court observed that the delay

caused in prosecuting the case in bona fide and good faith in wrong court due to mistake of law or facts can be condoned, I, therefore, consider that petition is not liable to be dismissed on the ground of delay, nor learned ARCT was justified in dismissing the application. Learned ARCT went wrong in dismissing the application of the petitioner for condonation of delay. The order of learned ARCT on this count also is liable to set aside. It is ordered accordingly."

9. Mr. Altaf Ahmad, learned senior counsel appearing for the appellants submits :

1. The exercise of power under Article 227 of the Constitution of India, by the High Court, in the peculiar facts of this case was improper.

2. The petition was liable to be dismissed on the ground of delay and laches alone.

3. Even otherwise, the High Court exceeded its jurisdiction by acting as an appellate court.

4. The High Court erroneously decided the question of ownership of the premises which was not even an issue in the proceedings, under Article 227 of the Constitution of India.

5. Even on facts, the findings are contrary to the material on record.

10. On the other hand, Ms. Madhu Tewatia, learned counsel appearing for the respondents submits that the High Court was fully justified in exercising its jurisdiction under Article 227 of the Constitution to correct the patent, factual and legal errors committed by ARC and ARCT. She has emphasised the entire history of transformation of GNIT into DTC. According to the learned counsel, there was no landlord and tenant relationship between the predecessor of the appellants and GNIT. The payment of Rs.3500/- per month was a misnomer. The plot vested in the Government under the agreement dated 23rd April, 1948, therefore, GNIT was incompetent to transfer any perpetual lease to Bharat Singh. The amount of Rs.3500/- was being paid to Bharat Singh as compensation for the amount spent by him on behalf of GNIT for construction of the depot. She further submits that the land vested in DDA, i.e., Government. Therefore, Rent Controller had no jurisdiction. In any case, the appellants have failed to prove that there has been any parting with possession, without the written consent of the landlord. The ARC and ARCT ignored vital documents in concluding that there has been subletting by DTC to MCD. In fact, MCD has retained the legal possession all along. The payment of Rs.3500/- was only being routed through DTC, as a matter of convenience. On the question of delay and laches, it is submitted that the High Court had converted the RCSA to a petition under Article 227. The delay has been condoned as the MCD had been bona fide pursuing the wrong legal remedy. The High Court in a petition under Article 227 of the Constitution of India had the jurisdiction to undo the injustice caused to the MCD by the orders of ARC and ARCT. In support of her submissions, learned counsel relied on a number of judgments of this Court, viz. , on subletting: Resham Singh Vs. Raghbir Singh & Anr. [1999 (7) SCC 263]; Bharat Sales Ltd. Vs. Life Insurance Coropration of India [1998 (3) SCC 1] and on

jurisdiction of the High Court under Article 227 of the Constitution of India, Estralla Rubber Vs. Dass Estates (P) Ltd. 2001 (8) SCC 97.

11. Mr. Ahmad, in reply submits that the sub-tenant DTC, cannot be permitted to plead a case which even the tenant could not have pleaded.

12. We have anxiously considered the submissions of the learned counsel.

13. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It can not be exercised like a `bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it can not substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice.

14. In our opinion, the High Court in this case, has traveled beyond the limits of its jurisdiction under Article 227 of the Constitution. Both ARC and ARCT had acted within the limits of the jurisdiction vested in them. The conclusions reached cannot be said to be based on no evidence. All relevant material has been taken into consideration. Therefore, there was hardly any justification for the High Court to undertake an investigation into issues which did not even arise in the lis.

15. The appellants had filed a simple eviction petition before the ARC, under Section 14(1)(b) of Delhi Rent Control Act, 1958 (in short "DRC Act"). They had stated that DTC was their tenants in premises as the entire plot No.2 with the construction thereon at Jhandewalan known as Karol Bagh Depot, as per plan attached. Monthly rent was stated to be Rs.3500/-. It was claimed that DTC has sublet the premises to MCD, without permission of the landlord. Therefore, both DTC and MCD were liable for eviction.

16. Both DTC and MCD took identical pleas. Their defence was that the appellants are neither the owners nor the landlords of the demised premises. They claimed that Late Bharat Singh (LBS) had agreed to construct the depot for and on behalf of GNIT. He was receiving Rs.3500/- p.m. for the money spent on construction. Therefore, the term rent is a misnomer. Allegations of subletting were denied. The business of GNIT was nationalized and taken over by the government vide agreement dated 23rd April, 1948. The plot was mutated in the name of Government of India. Thereafter, Delhi Road Transport Corporation Act, 1950, was enforced. Under this Act, Delhi Transport Services (DTS) was established. From then the onward DTS was in occupation and started paying the rent of Rs.3500/- till the enactment of DMC Act, 1957. Under this Act, the transport service in Delhi was given to Delhi Transport Undertaking (DTU), which was made a wing of MCD. Since then MCD started releasing Rs.3500/- to LBS through its wing, DTU. After the death of LBS, the amount has been paid to the appellants, without any objection. On passing of Delhi Road Transport Laws (Amendment) Act, 1971, Delhi Transport Corporation, came into existence as a statutory body. But the possession of the demised premises remained with MCD. As DTC had taken the place of DTU, the rent amount, thereafter, was routed through DTC. Therefore, there was no subletting. In any event, since the property vests in Government of India, Delhi Rent Control Act would not be applicable.

17. Taking into consideration the aforesaid claims of the parties, the ARC concluded that there is no dispute with regard to construction and ownership of the depot by LBS. The appellants are successors of LBS. The issues as crystallized by the ARC are as follows:-

> "(i) The tenant has sublet, assigned or otherwise parted with possession.
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> (ii) It may be in respect of the whole or any part of the premises.
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> (iii) Such subletting etc has taken place on or after the 9th day of June, 1952.
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> (iv) Such subletting etc has taken place without obtaining the consent in writing of the landlord.
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> (v) The first and the foremost ground that requires to be seen is whether
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> relationship of landlord and tenant exist between the petitioners and respondent No.1 or not."

Thereafter in Para 9 ARC observes :-

> "Whether relationship of landlord and tenant was contemplated or not is the most important fact which has to be seen."

18. Thereafter, ARC proceeds to consider the implications of the agreement dated 10th November, 1944, wherein LBS agreed to develop the plot of land. He is referred to as the prospective purchaser.

The lease with GNIT was provided for, LBS was to pay all taxes. GNIT had to pay 10% p.a. of the entire cost of the building. GNIT were to execute a ten year lease. Rent of Rs.3500/- was regularly paid. The ARC noticed that Government of India had moved the Rent Controller, New Delhi for fixation of fair rent in June, 1950. The Rent Controller, after conducting an enquiry had fixed the agreed rent as the fair rent. An appeal against the order of Rent Controller, New Delhi dated 26th December, 1950 was dismissed by the learned District Judge at Delhi by an order dated 3.5.1951. Not only this, ARC notices that during the course of present proceedings, rent was deposited in court for the period 1.4.93 to 30.11.93, by DTC. Therefore, they can not now be permitted to say that MCD is the tenant, in possession. In such circumstances, the ARC held that DTC has sublet the premises to MCD.

19. Thereafter, MCD challenged the aforesaid order before the ARCT in RCA No.9 of 2001. The aforesaid appeal was beyond limitation by 431 days. It appears that even though the ARCT did not find any substance in the reasons given by the MCD for seeking condonation of delay, the appeal was still considered on merits. ARCT discussed at length the negligent attitude of the MCD in pursuing the proceedings in the court of ARC. Ultimately, the ARC was left with no alternative but to proceed against the MCD ex-parte on 25th of August, 1999. It was observed by the ARCT that the delay was wholly unjustified as well as wholly unexplained. We may notice the observations made by the ARCT which are as follows:

> "Now, looking to the appellant's stand through another angle, I find that the appellant and respondent/DTC are both governmental organization and it does not stand to mind that respondent/DTC or its representative would not intimate the appellant/MCD about its not being represented to some advocate or about its having been proceeded ex-parte. The case was admittedly on last state and it appears that the appellant took chance and stayed out of the scene and has now come up with this hopelessly delayed appeal with a cock and bull story which does not seem to be any way bonafide, reasonable and acceptable to mind. Strangely enough, the appellant even did not disclose in the application as to on which date or month, the court bailiff had gone to the demises premises, and this lengthy delay of about 431 days (or 393 days after excluding the time taken in obtaining the certified copies) has remained completely unexplained. The application for seeking condonation of delay, thus, is found to be without any sufficient or reasonable ground and needs to be dismissed. Order as such with the dismissal of the appellant is application for condonation of delay - this appeal meets the same fate."

Having observed as such, the ARCT considered the appeal on merits on the assumption that the application of MCD for condonation of delay has been allowed, though it had not been allowed. The ARCT thereafter considered the entire gamut of facts and circumstances in detail. The ARCT noticed the submissions made by the learned counsel for the MCD and considered each submission in detail.

20. It was submitted that ARC had failed to distinguish the three expressions: sublet, assigned and otherwise parted with possession. This was answered as follows:

"I feel that the submissions made by learned counsel Sh.Chachra do not gather any support from the records because the learned ARC has dealt with insufficient details of the needed requirements and it was only thereafter that he came to a conclusion of the respondent/DTC having sublet, assigned or otherwise parted with the possession of the demised premises in favour of this appellant. For attracting the applicability of a ground of eviction u/s 14(1)(b) of the Act, it has either to be direct circumstance of subletting which ordinarily may not be possible to be detected since it is, in most cases, a secret deal between the tenant and the alleged sub-tenant or it is the assignment where under the tenant has to divest himself of all the rights that he had as a tenant or parting with possession which circumstances postulates the parting with legal possession also i.e. the tenant surrenders his legal right of are-entry to the premises. This mischief of Section 14(1)(b) of the Act is complete if any of the three expressions gets established. It is certainly no necessary and nor has it been so held by any of the pronouncements of any superior courts that pleadings on this aspect must state in specific terms that it either sublet or assignment or parting with possession. In case a party succeeds in establishing the first expression sublet the to my mind. It goes to establish that even the other two expressions assignment and parting with possession stand proved because the moment a tenant indulge a third person as his tenant (sub-tenant) qua the demised premises-he (tenant) squarely assigns and also parts with possession in both ways as he divests himself of all the rights as he had as a tenant and part with possession to delivering and only physical possession but also fully surrendering his legal possession over the tenanted premises. The impugned judgment did discuss evidence with a clear angle that the appellant had been parting rent of Rs.3,500/- per month to respondent / DTC every month. The respondent DTC was admittedly not in possession any way of the demised premises as the appellant's own stand on this point is admittedly the same. In case, the first expression sublet has been established, almost in an admitted style, through various acts admitted documents and stands taken in various court proceedings, the other two expressions would also go hand in hand and the Ld. ARC was not any way required to state as to under which of the three expressions, parties case felt Evidence or specific admissions through deeds and conduct find duly discussed through various admitted or proved documents and these negates the plea of the appellant that the evidence had not been discussed by the Ld. Trial Court. I feel the impugned judgment carries all these necessary details and these need not be repeated here any further."

ARCT thereafter considered in detail the relationship of landlord and tenant between LBS and various statutory entities, in succession. The transformation of GNIT, through DTS to DTC was duly noticed, and dilated upon. It was noticed that DTC which was a government undertaking, was a successor in interest of a private transport company. It was further noticed that the "land underneath the superstructure / the demised premises might or might not belong to the government and the superstructure was built around May, 1948 by predecessor-in-interest of respondents 1 to 3 and an amount of Rs.3,500/- per month was agreed to be paid being a fair return against the investment made towards construction of superstructure". The submission that Rs.3,500/- per

month was paid as compensation for construction of the superstructure was considered and rejected with the observations :-

> "The submission of appellant's Ld. Counsel that the amount was agreed to be paid only with a vie to compensate the predecessor-in- interest of respondents 1 to 3 and was not the rental of the super-structure does not seem to be carrying any weight and to my mind this submission cannot stand because the moment, we speak of compensation - it indicates to some specific amount of a specific period by which the liability would be deemed to have been discharged. It never means a flowing steam of payments to continue till infinity. It has got to be the rental only and it was also to understand, taken and acted upon by the parties as is clearly and unambiguously indicated from the admitted stand of respondent/DTC. The respondent / DTC had in its written statement admitted this amount as rent though at other point it denied it being so. Really, respondent / DTC could not suppress the truth and at times, it honestly leaned towards it and described this sum of Rs.3,500/- as monthly rental. Paras(a), (f) and
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> (k) of brief facts of the written statement of respondent/DTC clearly reflect the above stand. In para (e), the words used are and would give it on rental basis to GNIT. The words used in para (f) are that Sh. Bharat Singh constructed a depot on plot No. 2 and rented out the same structure to GNIT at a monthly rental of Rs.3,500/-. Para (k) states...

and the GNIT company continued paying a rent of Rs.3,500/- per month to Sh. Bharat Singh for the amount he had invested on the super-structure and also for the amount he had financed to GNIT company. These terms are no misnomers and actually they pump out the real intent of the parties under which respondent / DTC started making payments of monthly rentals to respondents 1 to 3 their predecessor-in-interest".

21. We have been constrained to make elaborate reference to the orders of ARC and ARCT only to demonstrate that High Court was not justified in observing that there has been `serious dereliction of duty' or that there has been `blatant violation of the fundamental principles of law and justice' by the ARC and ARCT. We also cannot accept the observations of the High Court that both ARC and ARCT have considered the facts in a very mechanical way, or that the orders passed by ARC and ARCT exhibited any patent illegality writ large on the face of the orders. We also do not agree that the ARC and ARCT ignored the sequence of events through which GNIT was substituted by DTC. The entire sequence of metamorphosis of GNIT into DTC have been elaborately explained and dilated upon.

22. We are of the considered opinion that the High Court ought not to have exercised the extra ordinary jurisdiction under Article 227 of the Constitution in the peculiar circumstances of this case. We may briefly indicate the reasons for saying so:-

(i) Initially the appellants filed a petition for eviction against DTC and MCD. They had clarified that MCD has been impleaded only to avoid multiplicity of proceedings.

(ii) Decree of eviction was passed. DTC lost in appeal, lost in RCSA in the High Court.

However, the High Court clarified it shall have no bearing on the appeal filed by MCD. The order dated 31/01/2001, passed by the High Court in CM (M) No.31 of 2001 reads as under:-

"There is a concurrent findings of facts and law against the petitioner. It is not for this Court to substantiate for judgment over the judgment of the Court below through the proceedings under Article 227 of the Constitution of India. Dismissed.

I am informed that the MCD has challenged the impugned order before the Rent Control Tribunal. Dismissal of this petition shall have no bearing on the determination of the Appeal filed by the MCD. "

Following the aforesaid order, RCSA No: 17/2001 & CMs 74-75/2001 filed by the MCD was also dismissed vide order dated 03/09/2004, with the following observations:-

"It appears that the order of the Additional Rent Controller was challenged before the Tribunal, which order has been adjudicated upon by other bench of this court which uphold the order of the Additional Rent Controller. In view of the matter, I see no reason to entertain this appeal. SAO 17/2001 is accordingly dismissed."

In our opinion the aforesaid order was unexceptional since the pleas taken by the DTC and MCD before the Additional Rent Controller were identical. Therefore, it was in fitness of things that the subsequent coordinate bench also dismissed the appeal filed by MCD. The aforesaid order was however recalled without any justification with the following observations:-

"Heard counsel for the parties and have gone through the order dated September 03, 2004 as also January 30, 2001. It appears to me that while disposing of RCSA 17/2001 reference has been made purely CM(M) 31/2001. What escaped notice was that the order dated January 30, 2001 in CM(M) would have no bearing on the determination of the appeal by the Municipal Corporation of Delhi."

Thereafter MCD, moved CM 4639/2007 with the prayer that the appeal be treated as a petition under Article 227 of the Constitution of India as the appeal is not maintainable. The application was disposed off by the following order dated 30/3/2007:-

"Counsel for the appellant has moved CM No: 4639/2007 praying that this appeal be treated as a petition under Article 227 of the Constitution of India as the appeal is not maintainable. He further submits that the appellant should file a fresh petition under Article 227 of the Constitution of India or under any other law if the same is permissible under law. On instruction from the respondent who is present in Court,

> counsel will not proceed with the execution petition for a period of 15 days from today. Subject to this condition as prayed by counsel for the appellant RCSA 17/01 is dismissed as withdrawn.
>
> CM 4639/07 also stands disposed off."

A perusal of the aforesaid order clearly shows that the application was disposed off on the statement made by the learned counsel for MCD that the appellant (MCD) should file a fresh petition under Article 227 of the Constitution of India if the same is permissible under law. (emphasis supplied) Therefore, the aforesaid order cannot be treated as an order passed by the High Court permitting MCD to file a petition under Article 227 of the Constitution of India. However using the aforesaid order of the High Court as an excuse, MCD filed the petition under Article 227 of the Constitution of India on 09/04/2007, being CM (Main) No. 57/2007, challenging the order which was passed by the ARC dated 11/11/1989 and the order passed by ARCT dated 12/3/2001. At this stage, in our opinion, the High Court failed to bestow proper attention to the objections taken by the appellants to the maintainability of the writ petition on the ground of delay and laches. Proceedings under Article 227 can be initiated in the absence of the availability of an alternative efficacious remedy. In the present case, MCD had consciously withdrawn RCSA which had been filed under Section 39(1) of the Delhi Rent Control Act. The appeal had been filed against the order of the ARCT dated 12.3.2001. However, the objection on the ground of delay and laches was brushed aside by the High Court on two wholly untenable grounds, i.e:-

> (i) The orders passed by the ARC and ARCT suffered from patent illegality on the face of the orders.
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> (ii) The MCD was bona fide prosecuting a case in the wrong court, due to mistake of law.

23. We are of the opinion that the High Court committed a patent error of jurisdiction in entertaining the writ petition under Article 227 of the Constitution which was unconscionably belated. Both reasons stated by the High Court in support of its conclusions, are contrary to the facts on the record.

It must be remembered that in these proceedings, the pleas raised by the DTC and MCD before the ARC as well as the ARCT were identical. The order passed by the ARCT has been upheld by a coordinate bench of the High Court. The RCSA No: 17/2001 filed by MCD on identical grounds was thus dismissed by a subsequent coordinate bench. That was indeed in conformity with the high traditions, procedures and practices established by the courts to maintain judicial discipline and decorum. The underlying principle being, to avoid conflicting views taken by coordinate benches of the same court. Except in compelling circumstances, such as where the order of the earlier bench can be said to be per incurium, in that it is passed in ignorance of an earlier binding precedent/ statutory or constitutional provision, the subsequent bench would follow the earlier coordinate bench.

24. It appears that the entire proceedings adopted by MCD after the dismissal of the RCSA - CM(M) No.31 of 2001, on 31.1.2001 were a subterfuge to avoid the execution proceedings in a decree which had become final between the parties. In the application seeking conversion of RCSA No: 17/2001 to a petition under Article 227 of the Constitution of India, it was categorically stated by MCD that the aforesaid RCSA was not maintainable. The aforesaid statement is a clear admission that the appeal filed by the MCD did not involve a substantial question of law. It is apparent from the fact that under Section 39(1) of the DRC Act subject to the provisions of sub-section (2), an appeal lies to the High Court from an order made by the ARCT. Sub- section (2) provides as under :-

> "No appeal shall lie under sub-section (1), unless the appeal involves some substantial question of law."

Having made an admission that no substantial question of law was raised in the RCSA, withdrawal of the same could not possibly have been used as a justification for filing a petition under Article 227 of the Constitution of India. If the RCSA was devoid of any substantial question of law, the petition under Article 227, based on the same facts, would be equally devoid of any substantial question of law. This categoric admission of the MCD was ignored by the High Court whilst recording the finding that the orders of ARC and ARCT were passed "in blatant violation of fundamental principles of law and justice." This apart in the peculiar facts of this case, noticed above, it could not be held that MCD had been bona fide prosecuting a case in the wrong court. It was seeking a remedy provided under Section 39(1) of DRC Act. Even this appeal was filed beyond limitation. It was delayed by 431 days. In the meantime possession of a part of the premises had already been taken by the appellants. Inspite of the objections having been raised to the maintainability of a writ petition under Article 227 of the Constitution of India, they were rejected by the High Court with the observations noticed in the earlier part of the judgment. In such circumstances, in our opinion, it was wholly inappropriate for the High Court to entertain the writ petition under Article 227 of the Constitution of India.

25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India had been discussed in the case of The Estralla Rubber Vs. Dass Estate (P) Ltd., [(2001) 8 SCC 97] wherein it was observed as follows:

> "The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an

> appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

In our opinion, the High Court committed a serious error of jurisdiction in entertaining the writ petition filed by MCD under Article 227 of the Constitution of India in the peculiar circumstances of this case. The decision to exercise jurisdiction had to be taken in accordance with the accepted norms of care, caution, circumspection. The issue herein only related to a tenancy and subletting. There was no lis relating to the ownership of the land on which the superstructure or the demised premises had been constructed. The whole issue of ownership of plot of land No:2, Block-B, transport area of Jhandewalan Estate, Desh Bandhu Gupta Road, Karol Bagh, New Delhi is the subject matter of a civil suit being Suit No:

> 361 of 1980 in the High Court of Delhi. The High Court, therefore, ought not to have given any opinion on the question of ownership.

26. We are of the opinion the High Court traveled beyond the well defined contours of its jurisdiction under Article 227 of the Constitution of India.

27. We, therefore, allow this appeal and set aside the impugned judgment and order.

Civil Appeal No. 8234 of 2010 @ Special Leave Petition (C) No.1925 of 2008 :

> 1. Leave granted.
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> 2. In view of the judgment in Civil Appeal No.8233 of 2010 @ SLP (C) No. 16995 of 2009, this appeal becomes infructuous and is dismissed as such.

.....J. [B.Sudershan Reddy] .....J. [Surinder Singh Nijjar] New Delhi;

September 23, 2010.