

M/S Shiv Baba Industry Lalpur, ... vs State Of U.P. And 3 Ors. on 28 May, 2018

Equivalent citations: AIRONLINE 2018 ALL 2923

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. - 53

Case :- MATTERS UNDER ARTICLE 227 No. - 3626 of 2018

Petitioner :- M/S Shiv Baba Industry Lalpur, Shahjahanpur

Respondent :- State Of U.P. And 3 Ors.

Counsel for Petitioner :- Arvind Kumar Srivastava, Bhaju Ram Pprasad Sharma

Counsel for Respondent :- G.A.

Hon'ble J.J. Munir, J.

1. This petition under Article 227 of the Constitution is styled as a writ petition, and, that too, a Criminal Misc. Writ Petition, with the following prayer:

"(1) Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 30.11.2017 (Annexure no.2) and order dated 30.03.2018 (Annexure no.4) of the writ petition.

(2) Issue a writ, order or direction in the nature of Mandamus commanding to the respondents to permit forthwith to the petitioner to handover the rice to the concerned centre which is remain in possession."

2. Heard Sri Arvind Kumar Srivastava, learned counsel for the petitioner and learned A.G.A. for the State.

3. Learned counsel for the petitioner on being asked as to how a petition under Article 227 of the Constitution could be maintained that asks for issue of writs, orders or directions in the nature of certiorari and mandamus submits that a petition under Article 227 is also a writ petition. He submits that in any case it has been the practice of this Court of long standing to entertain writ petitions under "Articles 226/227 of the Constitution". In his submission this petition as framed is maintainable. The submission aforesaid, though not tenable, is based on reasons that would be indicated in some detail.

4. It may be mentioned at the out set that the powers of this Court under Article 227 of the Constitution do not postulate the power to issue writs of the kind contemplated under Article 226 of the Constitution. The said jurisdiction is a jurisdiction of superintendence over all Courts and Tribunals subordinate within the territory of the High Court to be exercised on a petition or suo motu under Article 227 of the Constitution; it can never be a writ petition. It may be styled as a Criminal Misc. Petition or Civil Misc. Petition or Civil Misc. Application or Criminal Misc. Application but never as a Writ Petition of any description. No writ as understood in the context of Article 226 can be asked for in a petition under Article 227 of the Constitution. This petition for the reliefs claimed under Article 227 styled as a writ petition is, therefore, ill framed to an extent that goes to the root of the matter. In its present form it is not maintainable.

5. One of the early decisions, if not the earliest, where this Court explored as to whether there was a generic difference between the power and also the remedy flowing from that power under Article 226 of the Constitution on the one hand and under Article 227 on the other, is the Full Bench decision in Aidal Singh and others vs. Karan Singh and others, AIR 1957 All. 414, where their Lordships after a searching review of the historical origins of the power of the High Court under Article 226 of the Constitution to issue writs, orders or directions and the power of superintendence under Article 227 summed up the distinction, thus:-

"120. To sum up, the powers contemplated by the Constitution makers under Articles 226 and 227 appear to be different. The former is described as the power to issue certain writs orders or directions. The latter is described as the power of superintendence. There are two separate sections in the Constitution next door to each other dealing with these powers. The power under Article 226 is only judicial. The power under Article 227 is both judicial and administrative. The power under Article 226 is exercised on the application of a party and for the enforcement of a legal right.

The power under Article 227 can be exercised suo motu by the Court as the custodian of all justice within the limits of its territorial jurisdiction and for the vindication of its position as such. For the exercise of the power under Article 226, the Court has framed rules. There are no such rules for the exercise of power under Article 227. Article 226 appears to be self-restrictive. On the other hand, there are no restrictions

indicated in Article 227 itself, and the restrictions, if any, are self-imposed. The power under Article 227 is a power that can be exercised only over courts and tribunals.

On the other hand, the power under Article 226 is a power that can be exercised not only over courts and tribunals, but also over other bodies like the Government. Article 226 confers a new power, at any rate, so far as the Allahabad High Court is concerned. On the other hand, Article 227 relates to a power which is merely a continuation of an old power. In India, legislative history discloses that there has been in the past and there is at present a rupture between the two powers. Prior to the Constitution, the power to issue writs could not be considered to be a branch of the power of superintendence, because the Power of superintendence possessed by the High Courts did not carry with it the power to issue writs.

Even under the Constitution, the power of superintendence is treated as a power divorced from the power to issue writs. This is borne out by the fact that the Supreme Court possesses the power to issue writs, yet it does not possess the power of superintendence. The analogy of English law cannot hold good in India. In England the power to issue writs is a part and parcel of the power of superintendence, because the power there is exercised by the court as a delegate of the Sovereign who is the fountain of all justice."

(emphasis by Court)

6. Again in Aidal Singh (supra) in an earlier part of the judgment of the Full Bench, their Lordships took note of the fact that no rules were framed regulating the practice and procedure about the form and manner of dealing with applications under Article 227 of the Constitution, whereas there were elaborate rules for dealing with applications under Article 226 holding thus:-

"77. The intention of the framers of the rules of the High Court 1952 also appears to be to treat Article 226 on a footing different from Article 227. This is borne out by the fact that whereas they framed elaborate rules relating to the issue of various writs under Article 226, no such rules have been framed for action under Article 227. The rules framed under Article 226 are contained in Chapters XXI and XXII of Rules of Court, 1952. Rule 1 of Chap. XXII relates to the form of application. Rule 2 lays down the method of the service of notice.

It further requires that notice of the application shall be given not only to the parties to the proceedings, but also to the Court or officer concerned. It also enjoins the filing of an affidavit along with the application. Rule 3 relates to the costs and giving of security before issue of notice. There are other rules relating to the procedure to be observed and evidence to be imported in such cases. Thus there is the rule relating to the admission of affidavits as pieces of evidence on which the case may be decided. On the other hand, no such rules are framed under Article 227 of the Constitution.

The position is deliberately left flexible with a view to provide for a greater discretion on the part of the Court and a larger elasticity in the method of procedure, for here the Court is approached and moved on a different level. Under Article 227 the Court is moved to action by circumstances which shock the conscience of the Court. The Court finds that the position created is one of negation of law and justice. The Court finds itself faced with a situation fraught with danger to the administration of justice. It finds the administrative foundations of justice shaken or its judicial structure imperilled."

(emphasis by Court)

7. Still again, in Aidal Singh (supra) a much earlier decision of this Court in Ram Prasad vs. State, AIR 1952 All. 843 (W) has been referred to, that brought out the seminal difference in the rules of this Court about the manner in which petitions under Article 226 were provided for and regulated, whereas not those under Article 227 of the Constitution. It was said thus:-

"81. In Ram Prasad v. State, AIR 1952 All 843 (W) it was held that:

"Under the rules of the Allahabad High Court, applications under Article 226 and those under Art, 227 of the Constitution are treated and dealt with differently. There are special rules for the institution and disposal of applications under Article 226, while there are no such rules for applications under Article 227."

(emphasis by Court)

8. It was this absence of rules in this Court for decades on end that did not give a distinct identity to this very potent and important power and jurisdiction as an established form of a distinct remedy. No independent applications or petitions for that reason were moved in this Court for a long time. This is not to say that the Court was not aware or did not invoke jurisdiction under Article 227 of the Constitution. In practice of this Court, for a long period of time, it was invoked as a complement and supplement to the writ jurisdiction under Article 226 of the Constitution. This was done on the basis of the principle that the power under Article 227 was always there with the Court unbridled by any rules that could be invoked in aid while the Court was seized of any other form of proceeding about which rules were in existence, such as writ petitions. Rarely though, this Court fell back upon its power under Article 227 of the Constitution to the aid of its civil revisional jurisdiction where that jurisdiction faced a legislative inhibition or embargo on account of a State amendment to the Civil Procedure Code prohibiting this Court from exercising its civil revisional jurisdiction against orders passed by a subordinate court in the exercise of its civil appellate or revisional jurisdiction. This Court did invoke its jurisdiction under Article 227 of the Constitution in aid of its civil appellate jurisdiction in Kirat Singh vs. Madho Singh, 1979 AWC 296, where it was held:-

"2. It is doubtful whether a revision lies to this Court against an order passed by the court below under Section 115 of the Code of Civil Procedure. This Court can exercise the supervisory jurisdiction under Article 227 of the Constitution. This, in my

opinion, is a fit case for the exercise of this jurisdiction. The defendant claimed that the plaintiff was interfering with his possession of the property in dispute; and, therefore, the plaintiff should be restrained by an injunction. Clause (a) of Order XXXIX Rule 1 authorises the court to issue a temporary injunction to any party to the suit but only in a case where the property in dispute is in danger of being wasted, damaged or alienated by any party. In other words, the court has no jurisdiction to restrain the plaintiff at the instance of the defendant. In such a situation a temporary injunction can be issued only against the defendant. There is no finding that the property in dispute was in danger of being wasted, damaged or alienated by any party to the suit. Section 151 of the Code of Civil Procedure does not confer any additional jurisdiction on the courts. If a particular order is outside the purview of the express provision of the Code of Civil Procedure, such a situation cannot be tackled under Section 151 of the Code of Civil Procedure."

9. On lines of the aforesaid decision and the fact that in some other High Courts like the Calcutta High Court, and, in certain cases, the Delhi High Court, Article 227 of the Constitution, perhaps there too on account of want of a definitive form of proceedings associated with the said Article, was invoked in aid of the civil revisional jurisdiction, that attempt was also made in this Court to associate the power under Article 227 of the Constitution with the civil revisional jurisdiction. There is no authority brought to the notice of the Court where Article 227 might have been invoked in aid of the criminal revisional jurisdiction.

10. One of the most illustrative cases where this Court was confronted with the question about the precise proceedings in form of which the Court should exercise its powers under Article 227 of the Constitution was Mathan Singh vs. IInd Additional District Judge, Meerut, 1996(1) ARC 117. The absence of a recognized and established form of proceedings and remedy associated with an appropriate nomenclature to Article 227 is evident from the fact that the order that was challenged was an order passed by the Additional District Judge in exercise of his civil appellate jurisdiction dealing with a recall application in a Misc. Civil Appeal. The petition that was filed before this Court was filed as a Civil Misc. Writ Petition and the provisions invoked were "Article 226/ 227 of the Constitution of India". This is evident from the opening paragraph of the judgment, which reads:-

"The present petition has been sought to be moved under Article 226/227 of the Constitution of India against the order dated 2nd September, 1995 passed by the learned IInd Additional District Judge, Meerut in Misc. Appeal No. 78 of 1992 arising out of the order dated 14th February, 1992 passed by the learned Civil Judge, Meerut in Original Suit No. 1225 of 1991."

11. This Court in Matthan Singh (supra) going by the nature of proceedings involved and the order sought to be challenged found that neither a writ petition would lie to challenge the order impugned or could a Civil Revision be maintained under Section 115 C.P.C. The Court had the assured jurisdiction to deal with it under Article 227 of the Constitution but in the absence of rules, a defined and recognized form of remedy associated with Article 227 of the Constitution, the decision in Matthan Singh (supra) shows the court ingenuously working out of a remedy under Article 227 of

the Constitution by treating the writ petition filed under Article 226/ 227 of the Constitution as a petition under Article 227 though its nomenclature stayed formally as a Civil Misc. Writ Petition. The Court dealt with the matter as a Petition under Article 227 of the Constitution, its nomenclature under accepted forms of the time, could not be altered to an identity of its own in the absence of rules recognizing the power under Article 227 as an independent remedy with a specified nomenclature distinct from a writ petition. A reading of the judgment in Matthan Singh (supra) allows one to peep into the difficulty encountered by the Court where the effort to associate the power under Article 227 of the Constitution with an accepted form of remedy and an established jurisdiction being the civil revisional jurisdiction of the Court was made. In this connection the following observation in the judgment are apposite:-

"..... Qamruddin's case proceeds on the question as to whether writ Jurisdiction can be invoked in respect of a civil suit between two private persons and had decided that it cannot be. One of the additional reason was that such an order could be revised by the High Court under Section 115 of the Code. In fact the power of revision of the High Court exists even without Section 115 of the Code, namely, under Article 227 of the Constitution which vests the High Court with the power of superintendence under which the High Court can exercise revisional power in respect of orders passed by the civil courts. Therefore, it cannot be said that there was no revisional power of the High Court at all and, therefore, writ Jurisdiction can be resorted to or invoked....."

(emphasis by Court)

12. The difficulty again associated with the power under Article 226 with an open form of an established remedy is most eloquent in Matthan Singh (supra), where it is said:-

"25. The learned Counsel, however, while posed with the said question of maintainability, he had pointed out that he had also sought to make this application under Article 227 as well and had drawn my attention to the inscription in the cause title, namely. "Under Article 226/227, Constitution of India" and submitted that he may be permitted to maintain this application under Article 227 of the Constitution of India.

26. On the basis of the said submission, the present petition is being treated as a petition under Article 227 of the Constitution and decided as such."

13. What is most noticeable is the fact that though the petitioner elected to have his petition treated as one under Article 227 and the Court permitted him to do so dealing with the petition as one under Article 227 of the Constitution, but in the absence of a recognized form and remedy in the rules of Court then in force, the petition though treated as one under Article 227, the nomenclature stayed as that of a writ petition and Matthan Singh (supra) was decided in the records of this Court as Civil Misc. Writ Petition no.28463 of 1995, decided on November 30, 1995.

14. In Ram Pher Yadav vs. Union Bank of India, Varanasi and others, 1999(4) AWC 3520, this Court while deciding Civil Misc. Writ Petition no.34572 of 1999 dealt with the matter as a petition under Article 227 on the same parameters and within the same scope as powers in a Civil Revision are exercised which would appear from what is said in the judgment in this connection. It was held thus:-

"9. Therefore, there is no illegality or irregularity in the exercise of jurisdiction. Neither there exists any of the grounds on which this Court can entertain a revisional application. The Court exercises revisional jurisdiction under Article 227 of the Constitution on the same grounds on which such jurisdiction is exercised by the High Court under Section 115 of the Code of Civil Procedure.

10. Therefore, for all these reasons, I am not inclined to interfere with the orders impugned. In the result the petition under Article 227 of the Constitution fails and is accordingly dismissed."

15. Again though the Court in Ram Pher Yadav (supra) proceeded to decide the matter clearly as a petition under Article 227 of the Constitution alone, formally in the records of this Court, Ram Pher Yadav (supra) was decided as Civil Misc. Writ Petition no.34572 of 1999, decided on August 16, 1999. In short a petition under Article 227 of the Constitution did not have a distinct nomenclature or acknowledged form as an independent remedy. This would further be evident by another decision of this Court in Om Rice Mill, Jaspur and others vs. Banaras State Bank Ltd., Kashipur and another, AIR 2000 All 90, where this Court while deciding a civil revision drew upon the power under Article 227 of the Constitution and observed thus:-

"12. But the fact remains that the jurisdiction under Article 226 of the Constitution related to the issue of writs but no writ can be issued against a court exercising judicial function. In fact Article 226 is being invoked by reason of the decision in the case of Ganga Saran v. Civil Judge, Hapur AIR 1991 All 114 [FB], on the ground that the scope of Section 115 of the C.P.C. has been confined to the District Judge where the valuation of a suit is below a particular amount which was originally Rs.20,000 and now Rs.1 lakh and therefore, there having been no alternative remedy Article 226 was allowed to be invoked though in effect it was a jurisdiction under Article 227 that was supposed to be exercised. Be that as it may, there cannot be any distinction with regard to a proceeding under Articles 226 and 227 and Section 115 of the C.P.C. when it relates to a proceeding arising out of the order of the civil court. Whatever might be the nature of the petition, it remains a revisional jurisdiction. While exercising jurisdiction under Article 226, this court exercises its revisional jurisdiction. Therefore, it cannot be said that the ratio laid down in the case of Bashir Ahmad v. Third Addl. District Judge [1992] 1 AWC 154 cannot be attracted in the present case. The same principle would very much apply even in a revision whether under Articles 226 and 227 of the Constitution of India or under Section 115 of the Civil Procedure Code."

(emphasis by Court)

16. These observations again are an acknowledgment of the power under Article 227, but not distinctly associated with a particular and specific form of proceedings and remedy. There is a further instance of the utilization of this until then formless power under Article 227 of the Constitution in *Smt. Brijendra Kaur and others vs. Ram Agarwal and another*, (2000) 38 ALR 602, where this Court while dealing with a civil revision against an order of an Additional District Judge passed in an appeal under Section 39 of the Arbitration Act, which the Court found not to be maintainable, permitted conversion of the writ petition to an application under Article 227 of the Constitution. The following words in *Smt. Brijendra* (supra) are eloquent:-

"10. At this stage Mr. Budhwar had filed an application for amendment of the cause title and conversion of the application under Section 115 of the Code into one under Article 227 of the Constitution by payment of court fees therefore. Mr. Tarun Agarwal objects to the conversion. But it is by now a well settled principle that it is open to a court to convert an application under Section 115 of the Code. Even when it is not maintainable into one under Article 227, the power conferred under Article 227 of the Constitution upon High Court is a power of superintendence which can be exercised even without any application as soon it is brought to the notice of the court if the court so thinks fit. The question of conversion is no more *res integra* in view of the various decisions of the High Court including our own High Court as well as the Apex Court for which reference may be made in the following cases: (i) *The Reliable Water Service of India (P.) Ltd. v. The Union of India and others*, AIR 1971 SC 2083, (ii) *Arunlata v. The Civil Judge Bulandshahar and another*, 1997 (31) ALR 30 (Sum)-AIR 1998 All 29. In such circumstances leave is granted to convert this application into under Article 227 of the Constitution and the said application for conversion stands allowed."

17. Though *Smt. Brijendra* (supra) was decided on merits after conversion into an application under Article 227 of the Constitution in the records of this Court, it was decided as Civil Revision no.376 of 1999, decided on October 14, 1999.

18. Between the years 1995 and 2000 a number of matters under Article 227 of the Constitution were dealt with and decided as Civil Revisions, and, in some cases, filed as Writ Petitions under Articles 226/227 of the Constitution, they were permitted to be converted into petitions under Article 227, but came to be decided formally as Civil Misc. Writ Petitions. In cases, however, where the Civil Revisions were filed under Article 227 against appellate or revisional orders of subordinate courts, it appears that there would an objection by the stamp reporter that a civil revision against an order of a subordinate civil court passed in exercise of appellate or revisional jurisdiction was not maintainable in view of the decision in *M/s. Jupiter Chit Fund (Pvt.) Ltd. vs. Dwarka Diesh Dayal and Ors.*, AIR 1979 All. 218 (FB). Generally, most of the cases that came to be decided as Civil Revisions with this objection had the Court set aside those reports by the stamp reporters and proceed to decide the case as a Civil Revision under Article 227.

19. In G.D. Sharma vs. Praveen Sharma, 2000 (4) AWC 2931, that was filed as a Civil Revision against an appellate order of a subordinate court with an objection from the stamp reporter that a civil revision did not lie in view of the decision of the Full Bench in M/s. Jupiter Chit Fund (supra), this Court doubted the correctness of the practice of entertaining civil revisions under Article 227 of the Constitution of India and noticed the difficulty that there was no specific rule or form of remedy with a particular nomenclature prescribed to entertain and decide a case where Article 227 of the Constitution alone was invoked which no doubt was an independent power of the Court distinct from its writ jurisdiction under Article 226. The Court after going through most of the decisions referred to hereinbefore proceeded to frame and refer to a Larger Bench, five questions of law that are to the following effect:-

"5. For all these reasons the following questions are referred for being decided by a larger Bench :

- (1) Whether a civil revision is maintainable under Article 227 of the Constitution?
- (2) Whether by paying Rs. 100 as court fee, a revision against an order passed by the civil court against which a revision under Section 115, C.P.C. has been barred can be entertained by this Court under Article 227 of the Constitution?
- (3) Whether under the rules of the Court, the power under Article 227 can be exercised by this Court In a writ petition against an order passed by civil court in appeal or revision?
- (4) Whether in absence of any procedure prescribed by the rules of the Court, what procedure would apply for exercising power under Article 227 of the Constitution?
- (5) Whether a person against whom an order has been passed by civil court in appeal or revision has no remedy?"

(emphasis by Court)

20. There is no record to show that the reference made to the Larger Bench in G.D. Sharma (supra) came to be decided. But sometime in the latter part of the year 2000, it appears that a category of proceeding under the nomenclature "Matters under Article 227 of the Constitution" were shown as Division Bench matters. There were, however, no rules of Court framed under which proceedings could be filed or registered as a "Matter under Article 227 of the Constitution". Therefore, what appears from the records of the court from the year 2000, since this category of cases was shown as one of the determinations of the court, until the year 2002, it remained a dysfunctional remedy for which there were neither rules or mechanism or form to avail. The first matter under Article 227 of the Constitution to be filed in the then newly shown determination was that of Smt. Rajeshwari Devi and others vs. Mohan Lal Sharma and others, that was registered on 09.09.2002 as Civil Misc. Application no.1 of 2002 under Article 227 of the Constitution. It was entertained, as would appear from the record without a classification of proceeding and other necessary amendments being made

to the Rules of Court under administrative orders of the Hon'ble the Chief Justice that were subsequently notified on 16.09.2002. The administrative order dated 16.09.2002, is quoted below:-

"I.C.C. D.R.(L) D.R.(J) S.O.Stamp Reporting Section For application/ petition under Article 227 of the Constitution of India Hon'ble The Chief Justice has been pleased to direct as under:-

I. The Stamp Reporting Section will submit the report regarding sufficiency of Court fee, lodgment of caveat etc. in these matters as when these applications/ petitions are presented.

II. Files of these matters shall be kept in Judicial Misc. Section.

III. A separate code namely 185100 - matters under Article 227 of the Constitution of India, be included in the book relating to classification of cases and category code.

IV. Stamp Reporter will entertain caveat in these matters and to report whenever such matters are filed.

Sd./- illegible (D.N. AGARWAL) JOINT REGISTRAR(LISTING) 16.9.2002"

21. Matters under Article 227 of the Constitution that were filed between 16 September, 2002 and 23.09.2005 were exclusively governed by the above quoted order dated 16.09.2002 of the Hon'ble the Chief Justice. Thereafter, by notification no. R50/VIII-C-2 (C.S. no.235) dated 16.09.2005, an amendment was made to Chapter XXII of the Allahabad High Court Rules making it the relevant chapter to govern not only writ petitions under Article 226 other than a petition for a writ in the nature of habeas corpus but to an application for a direction or order or writ under Article 227. After the aforesaid amendment a definitive structure of rules, process, mechanism and all became available to Matters under Article 227 of the Constitution as a distinct form of proceeding and remedy. The data about filing available on record of this Court would show that in the first year after the remedy was made viable and the first matter entertained, that is to say, in the year 2002, 17 matters under Article 227 were filed that have shown a steady increase with a more pronounced acknowledgment by the Hon'ble Supreme Court of the distinct nature of the High Courts jurisdiction under Article 227 of the Constitution different from its writ jurisdiction under Article 226. Year wise institution of the Matters under Article 227 of the Constitution commencing from the year 2002 to 2009 and during the year 2017 and the current year 2018 depicts an increase in invocation of the remedy. The said figures based on the records of the Court are as under:-

Year wise Institution of Matter under Article 227 S. No. Year Total

22. Some obliteration and doubt again crept in about nomenclature on account of amendment to the High Court Rules above referred made in the year 2005, inasmuch as, matters under Article 227 were placed along side applications under Article 226 for direction, order or writs other than a writ in the nature of habeas corpus. This position would be evident from a verbatim reproduction of

Chapter XXII of the Allahabad High Court Rules with the title of the chapter and the opening part of Rule 1 thereof:-

CHAPTER XXII DIRECTION, ORDER OR WRIT UNDER ARTICLE 226 [AND ARTICLE 227] OF THE CONSTITUTION OTHER THAN A WRIT IN THE NATURE OF HABEAS CORPUS

1. Application. - (1) An application for a direction or order or writ under Article 226 [and Article 227] of the Constitution other than a writ in the nature of habeas corpus shall be made to the Division Bench appointed to receive applications or, on any day on which no such Bench is sitting, to the Judge appointed to receive applications in civil matters. In the latter event the Judge shall direct that the applicant be laid before a Division Bench for orders."

23. It appears from the records of Matters under Article 227 of the Constitution post amendment to the High Court Rules in the year 2005 that though petitions were filed under a Computer Code, category and nomenclature of Matters under Article 227 of the Constitution, there was for sometime again an insistence to style a petition under Article 227 of the Constitution as a writ petition. This insistence based on one interpretation of Chapter XXII of the High Court Rules would have obliterated the distinct identity of an Application or Matter under Article 227 of the Constitution, but the cloud about the distinct nature and character of the remedy was removed by the Hon'ble Supreme Court by their Lordships' decision in Shalini Shyam Shetty and another vs. Rajendra Shankar Patil, 2010(6) AWC 5814 (SC), where it has been held thus:-

29. Apart from that, writ proceeding by its very nature is a different species of proceeding.

30. Before the coming of the Constitution on 26th January, 1950, no Court in India except three High Courts of Calcutta, Bombay and Madras could issue the writs, that too within their original jurisdiction. Prior to Article 226 of the Constitution, under Section of the Specific Relief Act, the power to issue an order in the nature of mandamus was there. This power of Courts to issue writs was very truncated and the position has been summarized in the law of writs by V.G. Ramchandran, Volume 1 (Easter Book Company). At page 12, the learned author observed:

...The power to issue writs was limited to three High courts. The other High Courts in India, however, were created by the Crown under Section of the High Courts Act, 1861 but they had no such power. It is necessary to mention that under Section of the Specific Relief Act, 1877, even the High Courts of Madras, Calcutta and Bombay could not issue the writs of prohibition and certiorari or an order outside the local limits of their original civil jurisdiction.

31. The power to issue writs underwent a sea-change with the coming of the Constitution from 26th January, 1950. Now writs can be issued by High Courts only

under Article 226 of the Constitution and by the Supreme Court only under Article of the Constitution.

32. No writ petition can be moved under Article 227 of the Constitution nor can a writ be issued under Article 227 of the Constitution. Therefore, a petition filed under Article 227 of the Constitution cannot be called a writ petition. This is clearly the Constitutional position. No rule of any High Court can amend or alter this clear Constitutional scheme. In fact the rules of Bombay High Court have not done that and proceedings under Articles 226 and 227 have been separately dealt with under the said rules.

(emphasis supplied)

24. Despite the crystal clear ratio in *Shalini Shyam Shetty* (supra) to the effect that a petition filed under Article 227 cannot be called a writ petition, some discord or atleast doubt in opinion still survived in practice that in the celebrated case of *Radhey Shyam vs. Chhabbi Nath*, 2015 (5) SCC 423 (which incidentally was an appeal to their Lordships of the Supreme Court by Special Leave Petition from a judgment and order of this Court in a Writ Petition under Article 226 of the Constitution) came to be settled by a Three Judge Bench of the Hon'ble Supreme Court on a difference of opinion by a Two Judge Bench expressed in *Radhey Shyam* and another vs. *Chhabi Nath* and others, 2009 (5) SCC 616 with another Two Judge Bench decision of their Lordships of Supreme Court in *Surya Dev Rai vs. Ram Chander Rai* others, (2003) 6 SCC 675, where too there was no disagreement on the point that a petition under Article 227 of the Constitution is not a writ petition. But there is an observation in *Surya Dev Rai* (supra), which reads thus:-

"24. Upon a review of decided cases and a survey of the occasions wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement."

(emphasis by Court)

25. The order of reference in *Radhey Shyam vs. Chhabbi Nath* (supra) by the Two Judge Bench of their Lordships as quoted in the Three Judge Bench decision in *Radhey Shyam* (supra) may be quoted in extenso in order to better understand the answers rendered:-

"1. This matter has been placed before the Bench of three Judges in pursuance of an order dated April 15, 2009 passed by the bench of two Hon'ble Judges to consider the correctness of the law laid down by this Court in *Surya Dev Rai v. Ram Chander Rai* and Ors. 2003 (6) SCC 675 that an order of civil court was amenable to writ

jurisdiction Under Article 226 of the Constitution. The reference order, inter alia, reads:

30...Therefore, this Court unfortunately is in disagreement with the view which has been expressed in Surya Dev Rai insofar as correction of or any interference with judicial orders of civil court by a writ of certiorari is concerned.

31. Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.

32. The essential distinctions in the exercise of power between Articles 226 and 227 are well known and pointed out in Surya Dev Rai and with that we have no disagreement. But we are unable to agree with the legal proposition laid down in Surya Dev Rai that judicial orders passed by a civil court can be examined and then corrected/reversed by the writ court Under Article 226 in exercise of its power under a writ of certiorari. We are of the view that the aforesaid proposition laid down in Surya Dev Rai, is contrary to the ratio in Mirajkar and the ratio in Mirajkar has not been overruled in Rupa Ashok Hurra 2002 (4) SCC 388].

33. In view of our difference of opinion with the views expressed in Surya Dev Rai, matter may be placed before His Lordship the Hon'ble the Chief Justice of India for constituting a larger Bench, to consider the correctness or otherwise of the law laid down in Surya Dev Rai on the question discussed above."

26. Their Lordships while answering the questions in the Three Judge Bench decision in Radhey Shyam held as under:

"29. Accordingly, we answer the question referred as follows:

29.1. Judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction from jurisdiction under Article 226.

29.3. Contrary view in Surya Dev Rai is overruled.

(emphasis by Court)

27. Thus after the consistent expression of unanimous opinion by their Lordships of the Supreme Court in *Shalini Shyam Shetty* (supra) and the decision of Three Judge Bench of their Lordships in *Radhey Shyam* (supra), there remains no cavil notwithstanding any kind of interpretation that might have been earlier placed on the amended Rules of Chapter XXII of the High Court Rules that a petition under Article 227 of the Constitution can never be styled as a writ petition and styling it as a writ petition is certainly a defect that goes to the root of the matter rendering such a petition ill-framed beyond maintainability. A petition under Article 227 of the Constitution in order to be in tune with the jurisdiction it invokes may be styled as a Civil Misc. Applications or Criminal Misc. Applications or may be labelled by any appropriate nomenclature which eschews the use of the word writ. In addition, the relief clause should not ask for issue of any of the writs or orders in the nature of writs as are enumerated in Article 226 of the Constitution, that includes mandamus, certiorari, prohibition or quo-warranto. The relief in a matter under Article 227 of the Constitution may not only seek setting aside of the order under challenge, but reversal of the same and further orders on the applications made to the subordinate court or tribunal in the same manner as a court of appeal or revision, subject of course to limitations on the exercise of the power under Article 227, could have passed including injunctions and directions of an appropriate kind to private parties or in the context of criminal proceedings like one involving reversal of an interlocutory order, refusing discharge by the Trial Court and the Sessions Judge in revision concurrently.

28. Moreover, proceedings under challenge are one that arise under Section 6A of the Essential Commodities Act that are proceeding for confiscation of essential commodities. Proceedings for confiscation of essential commodities, without the registration of a crime, may be done for violation of a particular Control Order issued under the Essential Commodities Act are not criminal proceedings. Confiscation proceedings are fundamentally civil. As such, for the reliefs claimed, the petitioner would have his remedies by invoking the appropriate jurisdiction of this Court by way of a Civil Misc. Petition. On both grounds this petition is held to be not maintainable and is, accordingly, dismissed as not maintainable.

29. It is clarified that this Court has not at all adjudicated any issue, other than what has been said above, about the merits of the case. The petitioner is free to pursue such remedy against the orders impugned as may be advised.

30. Let certified copies of the orders that have been annexed to this petition be returned to the learned counsel for the petitioner upon photostat copies of the same, duly attested by counsel being retained.

Order Date :- 28.5.2018 Shahroz/ Anoop