



§~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 358/2019

KIRTI

..... Appellant

Through: Mr. N. K. Kantawala and Mr. A. M.
Nair, Advocates

versus

RENU ANAND & ORS

..... Respondents

Through: Mr. K. K. Bhuchar and Mr. Atul
Bhuchar, Advocates for R-1 & R-3Reserved on: 7th March, 2024

%

Date of Decision: 20th March, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:**

1. The present Letters Patent Appeal has been filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, challenging the impugned judgment dated 24th April, 2019, passed in W.P.(C) 12318/2015, whereby the learned Single Judge has allowed the said writ petition and set aside the order dated 12th December, 2015, passed by the Respondent No. 6 i.e., the Maintenance Tribunal (Central District), Delhi ('the Maintenance Tribunal').

Brief Facts

2. An application was filed by late Smt. Satya Rani Chopra (predecessor-in-interest of the parties) before the Maintenance Tribunal under Section 23 of the Maintenance and Welfare of Parents and Senior



Citizens Act, 2007 ('Act of 2007') seeking cancellation of the gift deed dated 10th February, 2009 ('the gift deed'), executed by her in favour of Respondent Nos.1 and 3 herein with respect to third floor with roof rights of property no. 51/15, Old Rajinder Nagar, New Delhi ('subject property').

2.1. The Maintenance Tribunal by its order dated 12th December, 2015, allowed the said application and granted the declaration that the gift deed is null and void for all purposes and further, issued directions to the concerned Sub-Registrar for cancellation of the said gift deed.

2.2. The order dated 12th December, 2015, was impugned by the Respondent No.1 herein by filing the underlying writ petition under Articles 226 and 227 of the Constitution, seeking issuance of writ of certiorari for setting aside the said order of the Maintenance Tribunal. During the pendency of the writ petition, Smt. Satya Rani Chopra expired on 1st April, 2017 and the Court recorded the petitioner's submission that the right to sue survives to her legal heirs.

2.3. The writ petition has been allowed by the learned Single Judge and the order of the Maintenance Tribunal dated 12th December, 2015, has been set aside. The present Letters Patent Appeal has been filed by the legal heir of late Smt. Satya Rani Chopra.

3. The contesting Respondent Nos. 1 and 3 have raised a preliminary objection to the maintainability of the intra-court appeal. The arguments of the parties were heard and order was reserved qua the said preliminary objection, on 7th March, 2024. This judgment deals with the said objection only of the Respondent Nos. 1 and 3.



Arguments of counsels for parties

4. Mr. K. K. Bhuchar, learned counsel for the contesting Respondent Nos. 1 and 3 has raised a preliminary objection to the maintainability of this appeal on the ground that the impugned judgment has been passed by learned Single Judge in exercise of his supervisory jurisdiction under Article 227 of the Constitution. He stated that the Maintenance Tribunal constituted under the Act of 2007 is a quasi-judicial tribunal, inasmuch as, it is competent to take evidence, conduct examination and cross-examination. He stated that the learned Single Judge, while setting aside the order of the Maintenance Tribunal, did not exercise its original jurisdiction under Article 226 of the Constitution but the supervisory jurisdiction under Article 227 of the Constitution and therefore, the present intra-court appeal is not maintainable against the impugned judgment.

4.1. He relied upon the judgments of the Supreme Court in *Sh. Jogendrasinhji Vijaysinghji v. State of Gujarat*¹, *Radhey Shyam v. Chhabi Nath*² and judgment of the Coordinate Bench of this Court in *South Delhi Municipal Corporation v. Bharat Bhushan Jain*³ to contend that against an order passed by the learned Single Judge under Article 227 of the Constitution, no intra-court appeal is maintainable.

5. In reply, Mr. N. K. Kantawala, learned counsel for the Appellant stated that a perusal of the writ petition would show that Respondent No. 1 filed the said petition expressly invoking the jurisdiction of the Court under both Articles 226 and 227 of the Constitution. He stated that on account of

¹ AIR 2015 SC 3623 (paras 4, 16, 17 and 25)

² (2015) 5 SCC 423 (paras 21 to 25)

³ 236 (2017) DLT 452 (DB) (paras 12-16, 18-20, 22 and 24)



the said invocation, the petition was labelled as a writ petition and placed before the roster Bench assigned to hear writ petitions. He stated that in contrast, if the Respondent No.1 had filed the petition under Article 227 only of the Constitution, the petition would have been labelled as Civil Miscellaneous Main petition and placed before a different roster Bench. He relied upon the judgment of the Supreme Court in ***Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shah***⁴ and contended that the Respondent No. 1 having elected to file the writ petition under both the Articles 226 and 227 of the Constitution, the Court cannot now deprive the Appellant herein of the valuable right of appeal under Clause 10 of the Letters Patent of the High Court at Lahore, as applicable to this Court.

5.1. He stated that in the prayer clause, the Respondent No. 1 prayed for issuance of a writ of certiorari for setting aside the order dated 12th December, 2015 passed by the Maintenance Tribunal. He stated that the Maintenance Tribunal was arrayed as Respondent No. 1 in the writ petition. He stated that for all intent and purposes the writ petitioner invoked the jurisdiction under Article 226 of the Constitution. He stated that, therefore, the learned Single Judge while setting aside the order of the Maintenance Tribunal exercised his original civil jurisdiction under Article 226 of the Constitution.

6. We have heard the learned counsels for the parties and perused the record.

7. *Vide* the impugned judgment, the learned Single Judge has allowed the writ petition filed under Articles 226 and 227 of the Constitution and set

⁴ 1993 Supp (1) SCC (para 3)



aside the order dated 12th December, 2015 passed by the Maintenance Tribunal. The learned Single Judge while setting aside the order came to the conclusion⁵ that the jurisdictional facts or averments necessary for invoking Section 23 of the Act of 2007 and seeking cancellation of the registered gift deed were wholly absent in the original application filed by late Smt. Satya Rani Chopra before the Maintenance Tribunal. The learned Single Judge, therefore, concluded that in the absence of the said necessary averments, the application could not have been allowed by the Maintenance Tribunal. The learned Single Judge thus, set aside the order of the Maintenance Tribunal finding the same to be invalid and consequently, the proceedings filed before the Maintenance Tribunal stood quashed.

8. In the facts of this case, as a matter of record, the Respondent No. 1 filed the writ petition invoking the jurisdiction of the High Court both under Articles 226 and 227 of the Constitution and had prayed for issuance of a ‘writ of certiorari’ for setting aside the order of the Maintenance Tribunal. The Respondent No.1 impleaded the Maintenance Tribunal as a party Respondent. The petition was accordingly, labelled as a writ petition [W.P.(C)] and was placed before the roster Bench hearing writ petitions; as opposed to being labelled as civil miscellaneous main petition [CM(M)] filed under Article 227 of the Constitution, which is heard by a distinct Roster Bench.

9. The scope of jurisdiction of the High Court under Article 226 of the Constitution in dealing with the ‘writ of certiorari’ against the order of the Election Tribunal was the question, which arose for consideration before the

⁵ Paras 23, 24, 25, 29 and 30



Constitutional Bench of the Supreme Court in *T.C. Basappa vs. T. Nagappa*⁶. In the said decision, the Supreme Court held at paragraph 7 that judicial acts are amenable to the ‘writ of certiorari’, which reads as under:

“7. ***One of the fundamental principles in regard to the issuing of a writ of certiorari, is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression “judicial acts” includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts.*** *Atkin, L.J. thus summed up the law on this point in R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd. [R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd., (1924) 1 KB 171 at p. 205 (CA)] : (KB p. 205)*

“... Whenever anybody or persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.””

(Emphasis Supplied)

9.1. The Supreme Court in *Radhey Shyam vs. Chhabinath*⁷ (decided on 26th February, 2015), while referring to the aforesaid judgment in *T.C. Basappa* (Supra) clarified that the expression ‘judicial acts’ at paragraph 7 in the aforesaid judgment is not meant to refer to judicial orders of Civil Courts. The Supreme Court held that judicial orders of the Civil Courts can be challenged by a party in a petition filed under Article 227 of the Constitution alone and not under Article 226 of the Constitution.

9.2. In view of the aforesaid judgments, with the exception of the judicial orders of the civil courts, it is well settled that the orders passed by tribunals as well as the judicial acts by administrative bodies or authorities or persons exercising quasi-judicial functions are all amenable to challenge under

⁶ (1954) 1 SCC 905

⁷ (2015) 5 SCC 423 (para 11)



Article 226 of the Constitution. Therefore, the order dated 12th December, 2015 passed by the Maintenance Tribunal was certainly amenable to the jurisdiction of the Court under Article 226 of the Constitution.

9.3. The orders passed by tribunals⁸ are, however, separately also amenable to challenge under Article 227 of the Constitution.

9.4. As against the order of a tribunal such as the Maintenance Tribunal, the aggrieved party, therefore, has the option to either invoke Article 226 or Article 227 of the Constitution depending upon the nature of relief sought in the petition.

10. Under Rule 22 (3) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (as amended in 2016), the Maintenance Tribunal is presided over by the Dy. Commissioner/District Magistrate ('DM'). The appeal against the order passed by the Maintenance Tribunal lies before the Divisional Commissioner, Delhi as per Section 16 of the Act of 2007 at the instance of the senior citizen alone. The orders passed by the Maintenance Tribunal are, therefore, an exercise of quasi-judicial function by administrative persons as contemplated in paragraph 7 of the judgment of the Supreme Court in *T.C. Basappa* (Supra).

11. The Respondent No.1 elected to invoke the jurisdiction of the High Court, both under Articles 226 and 227 of the Constitution and filed the proceeding as a writ petition. In the facts of this case, as noted above, the learned Single Judge after examining the scope of Section 23 of the Act of 2007, concluded that the Maintenance Tribunal acted in excess of its jurisdiction as the necessary averments or essential facts for invoking the



said tribunal's jurisdiction were not pleaded and proved by the original applicant i.e., late Smt. Satya Rani Chopra. The learned Single Judge thus, set aside the order of the Maintenance Tribunal and consequently, the original proceedings stood quashed. The learned Single Judge set aside the order of the Maintenance Tribunal for being in excess of its statutory jurisdiction and brought to an end the entire original proceeding before the Maintenance Tribunal. The learned Single Judge was not called upon to issue any further ancillary directions under Article 227 of the Constitution to the Maintenance Tribunal. In these facts, we are of the considered opinion that the learned Single Judge passed the impugned judgment setting aside the order of the Maintenance Tribunal was in exercise of his power under Article 226 and not under Article 227 of the Constitution of India.

12. The impugned judgment of the learned Single Judge by itself does not state that the final order has been passed by the Court in exercise of Article 227 of the Constitution. The judgment is silent and makes no reference to either Article 226 or Article 227 of the Constitution. The writ petition impugning the order of the Maintenance Tribunal was maintainable both under Article 226 and 227 of the Constitution [as held above], the Petitioner however, invoked both the Articles in the title of the petition, impleaded the Maintenance Tribunal as a party as per requirement of Article 226, prayed for writ of certiorari under Article 226 and labelled it as a writ petition as per the rules applicable to Article 226. Due to the frame of the writ petition, as per the roster allocation, the same was listed before the learned Single Judge

⁸ Ibrat Faizan vs. Omaxe Buildhome Pvt. Ltd., (2022) SCC OnLine SC 620; Associated Cement Companies Ltd. v. P.N. Sharma and Anr., 1964 SCC OnLine SC 62



hearing writs filed under Article 226 of the Constitution and not the Judge hearing petitions under Article 227 of the Constitution.

13. The right of filing an intra-court appeal under Letters Patent became available to all the parties at the commencement of the proceedings when Respondent No. 1 filed the writ petition invoking Article 226 of the Constitution. The matter proceeded before the learned Single Judge, without any reservation on the invocation of the jurisdiction under Article 226 and resulted in the passing of the impugned judgment in favour of Respondent Nos. 1 and 3. The Respondent No. 1 having succeeded in the writ petition cannot dispute the maintainability of the appeal at the appellate stage having permitted the learned Single Judge as per roster allocation to exercise his writ jurisdiction.

13.1. In this regard, it would be appropriate to refer to the judgment of the Supreme Court in *Umaji Keshao Meshram v. Radhikabai*⁹, wherein the Supreme Court observed as under: -

*“107. **Petitions are at times filed both under Articles 226 and 227 of the Constitution.** The case of *Hari Vishnu Kamath v. Syed Ahmad Ishaque* [AIR 1955 SC 233 : (1955) 1 SCR 1104] before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the Tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. **In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause***

⁹ 1986 Supp. SCC 401



15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in *Aidal Singh v. Karan Singh* [AIR 1957 All 414 : 1957 All LJ 388 (FB)] and by the Punjab High Court in *Raj Kishan Jain v. Tulsi Dass* [AIR 1959 Punj 291] and *Barham Dutt v. Peoples' Cooperative Transport Society Ltd., New Delhi* [AIR 1961 Punj 24 : ILR (1961) 1 Punj 283] and we are in agreement with it.”

(Emphasis supplied)

13.2. The ratio of the judgment of **Umaji Keshao** (Supra) was explained by Supreme Court in **Sushilabai** (Supra) and expressed thus:

“4. The Full Bench of the Bombay High Court wrongly understood the above Umaji Kesho Meshram case [1986 Supp SCC 401 : (1986) 1 SCR 731] . In Umaji case [1986 Supp SCC 401 : (1986) 1 SCR 731] it was clearly held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application under both these articles in fairness of justice to party and in order not to deprive him of valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Rule 18 of the Bombay High Court Appellate Side Rules read with clause 15 of the Letters Patent provides for appeal to the Division Bench of the High Court from a judgment of the learned Single Judge passed on a writ petition under Article 226 of the Constitution. In the present case the Division Bench was clearly wrong in holding that the appeal was not maintainable against the order of the learned Single Judge. In these circumstances we set aside the impugned order of the Division Bench and direct that the Letters Patent Appeal filed against the judgment of the learned Single Judge would now be heard and decided on merits. In view of the fact that it is an old matter we request the High Court to decide the Letters Patent Appeal within six months. It is further directed that till the final disposal of the Letters Patent Appeal the operation of the order of the Single Judge shall remain stayed. The appeals are allowed in part with no order as to costs.”

(Emphasis Supplied)



13.3. This was also of the view expressed by Supreme Court in *Lokmat Newspapers (P) Ltd. v. Shankarprasad*¹⁰ and in *State of Madhya Pradesh and Ors. v. Visan Kumar Shiv Charan Lal*¹¹.

14. The judgments relied upon by Respondent Nos. 1 and 3 are not applicable to the facts of this case. In *SDMC* (Supra), the Division Bench of this Court concluded that the jurisdiction exercised by the Single Judge in its supervisory jurisdiction was under Article 227 of the Constitution. Similarly, Supreme Court in *Jogendrasinhji* (Supra) and *Radhey Shyam* (Supra) reiterated that judicial orders passed by the Civil Court can only be assailed before the High Court under Article 227 of the Constitution. However, in the facts of this case admittedly, the order of the Maintenance Tribunal impugned before the learned Single Judge was not the judicial order of a Civil Court.

15. In view of the aforementioned facts and position of law, the preliminary objection to the maintainability of the Letters Patent Appeal raised by the learned counsel for Respondent Nos. 1 and 3 is hereby rejected and the present appeal is held to be maintainable.

16. It is accordingly directed that the appeal shall now be heard on merits.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

MARCH 20, 2024/rhc/aa

¹⁰ (1999) 6 SCC 275 (para 16)

¹¹ (2008) 15 SCC 233