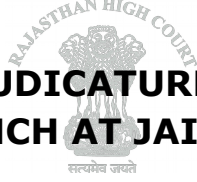


**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



(1) D. B. Civil Writ Petition (PIL) No. 12931/2023

Suo Motu.

----Petitioner

Versus

1. Commissioner, Jaipur Development Authority, Jaipur.
2. Jaipur Municipal Corporation Heritage through its Commissioner, Jaipur.
3. Jaipur Municipal Corporation Greater through its Commissioner, Jaipur.

----Respondents

Connected With

(2) D. B. Civil Writ Petition No. 5473/2022

Nizamuddin S/o Shri Gani Mohammad, aged about 75 years, Resident of Noor-E-Elahi Hotel, Moti Dungri Road, Maszid, Quresian, Jaipur.

----Petitioner

Versus

1. Municipal Corporation, through its Chief Executive Officer, Pandit Deen Dayal Bhawan, Lalkothi, Tonk Road, Jaipur (Now Nagar Nigam Greater, Jaipur)
2. Commissioner, Nagar Nigam, Jaipur, Moti Doongri Zone, Zone (East), Jaipur (Now Malviya Nagar Zone, Jaipur)
3. Secretary, Jamiatul Qureshi, Moti Doongri Road, through Islamuddin Quresh S/o Shri Mohammadin Quereshi, Moti Doongri Road, Jaipur.
4. Commissioner, Jaipur Development Authority, Jaipur.
5. Commissioner of Police, Jaipur (Raj.)
6. Jaipur Municipal Corporation Heritage, through its Commissioner, Jaipur.
7. Trilok Chand Agrawal S/o Late Shri Hari Narayan Ji Agrawal, aged about 49 years, Resident of 185, Purandar Ji Ki Dharmshala @ Purandar @ Pulandar Ji Ka Bagh @ Purandar Park, Moti Doongari Road, Jaipur.
8. Suraj Kumar Prajapat S/o Mohan Kumar, aged about 52 years, R/o Plot No. 616, Shyam Nath Tiwari Ka Bagh,



Adarsh Nagar, Jaipur.

9. Shyam Sunder Saini S/o Late Sh. Sitaram Saini, aged about 54 years, R/o B-155, Anandpuri, Moti Dungri Road, Jawahar Nagar, Jaipur.
10. Babulal Goyar S/o Ramdayal, Aged About 72 years, R/o Plot No. 1, Near Dada Bari, Gangwal Park, Moti Dungari Road, Near Naila House, Jaipur (Senior Citizen)
11. Ganpat Lal Vijay S/o Late Sh. Radhakishan, aged about 76 years, R/o Plot No. B-40, Anandpuri, Adarsh Nagar, Jaipur.
12. Vijay Gandhi S/o Radhey Shyam, aged about 74 years, R/o Shop No. 8, Moti Dungri Road, Near Naila House, Jaipur (Senior Citizen)
13. Khalak Raj S/o Rajesh Kumar, aged about 24 years, R/o 3, Moti Dungri Road, Satiji Ki Baghichi, Jawahar Nagar, Jaipur.
14. Rohit Saini S/o Gyarshilal Saini, aged about 42 years, R/o S-2, Anandpuri, Moti Dungri Road, Jaipur.
15. Chandra Prakash Saini S/o Satyanarayan Saini, aged about 48 years, R/o A-13, Anandpuri, Moti Dungri Road, Jaipur.
16. Shanti Devi W/o Shyam Narayan Meena, aged about 60 years, R/o 1895, Opposite Naila House, Moti Dungri Road, Jaipur.
17. Om Prakash Saini S/o Durgaprasad Saini, aged about 69 years, R/o P-5, Anandpuri, Moti Dungri Road, Jaipur.

----Respondents

(3) D. B. Civil Special Appeal (Writ) No. 326/2023

In

S. B. Civil Writ Petition No. 5473/2022

Trilok Chand Agrawal S/o Late Shri Hari Narayan Ji Agrawal, aged about 49 years, Resident of 185, Purandar Ji Ki Dharmshala @ Purandar @ Pulandar Ji Ka Bagh @ Purandar Park, Moti Doongari Road, Jaipur.

----Petitioner

Versus

1. Municipal Corporation, through its Chief Executive Officer, Pandit Deen Dayal Bhawan, Lal Kothi, Tonk Road, Jaipur

(Now Nagar Nigam Greater, Jaipur)

2. Commissioner, Nagar Nigam, Jaipur, Moti Doongri Zone (East) Jaipur (Now Malviya Nagar Zone, Jaipur)
3. Secretary, Jamiatul Quereshi, Mooti Dungari Road Through Islamuddin Qureshi S/o Mohammedin Quershi, Modi Doongari Road, Jaipur
4. Commissioner, Jaipur Development Authority, Jaipur.
5. Commissioner Of Police, Jaipur.
6. Jaipur Municipal Corporation Heritage, Through Its Commissioner Jaipur.
7. Nizamuddin S/o Shri Gani Mohammed, Aged About 75 Years, Resident Of Noor-E-Elahi Hotlel, Moti Doongri Road, Maszid Quresian, Jaipur.
8. Suraj Kumar Prajapat S/o Mohan Kumar, Aged About 52 Years, R/o Plot No. 616, Shyam Nath Tiwari Ka Bagh, Adarsh Nagar, Jaipur.
9. Shyam Sunder Saini S/o Late Sh. Sitaram Saini, Aged About 54 Years, R/o B-155, Anandpuri, Moti Dungri Road, Jawahar Nagar, Jaipur.
10. Babulal Goyar S/o Ramdayal, Aged About 72 Years, R/o Plot No. 1, Near Dada Bari, Gangwal Park, Moti Dungari Road, Near Naila House, Jaipur (Senior Citizen)
11. Ganpat Lal Vijay S/o Late Sh. Radhakishan, Aged About 76 Years, R/o Plot No. B-40, Anandpuri, Adarsh Nagar, Jaipur.
12. Vijay Gandhi S/o Radhey Shyam, Aged About 74 Years, R/o Shop No. 8, Moti Dungri Road, Near Naila House, Jaipur. (Senior Citizen)
13. Khalak Raj S/o Rajesh Kumar, Aged About 24 Years, R/o 3, Moti Dungri Road, Satiji Ki Baghichi, Jawahar Nagar, Jaipur.
14. Rohit Saini S/o Gyarshilal Saini, Aged About 42 Years, R/o S-2, Anandpuri, Moti Dungri Road, Jaipur.
15. Chandra Prakash Saini S/o Satyanarayan Saini, Aged About 48 Years, R/o A-13, Anandpuri, Moti Dungri Road, Jaipur.
16. Shanti Devi W/o Shyam Narayan Meena, Aged About 60 Years, R/o 1895, Opposite Naila House, Moti Dungari



Road, Jaipur.

17. Om Prakash Saini S/o Durgaprasad Saini, Aged About 69 Years, R/o P-5, Anandpuri, Moti Dungari Road, Jaipur.

----Respondents

(4) D. B. Civil Special Appeal (Writ) No. 706/2023

In

S. B. Civil Writ Petition No. 5473/2022

Trilok Chand Agrawal S/o Late Shri Hari Narayan Ji Agrawal, Aged About 49 Years, Resident Of 185, Purandar Ji Ki Dharmshala @ Purandar @ Pulandar Ji Ka Bagh @ Purandar Park, Moti Doongari Road, Jaipur.

----Petitioner

Versus

1. Municipal Corporation, Through Its Chief Executive Officer, Pandit Deen Dayal Bhawan, Lal Kothi, Tonk Road, Jaipur (Now Nagar Nigam Greater, Jaipur)
2. Commissioner, Nagar Nigam, Jaipur, Moti Doongri Zone(East) Jaipur (Now Malviya Nagar Zone, Jaipur)
3. Secretary, Jamiatul Quereshi, Mooti Dungari Road Through Islamuddin Qureshi S/o Mohammedin Quershi, Moti Doongari Road, Jaipur
4. Commissioner, Jaipur Development Authority, Jaipur.
5. Commissioner Of Police, Jaipur
6. Jaipur Municipal Corporation Heritage, Through Its Commissioner, Jaipur.

Respondent/Respondent

7. Nizamuddin S/o Shri Gani Mohammed, Aged About 75 Years, Resident Of Noor-E-Elahi Hotel, Moti Doongri Road, Maszid Quresian, Jaipur.

Respondent/Petitioner

8. Suraj Kumar Prajapat S/o Mohan Kumar, Aged About 52 Years, R/o Plot No. 616, Shyam Nath Tiwari Ka Bagh, Adarsh Nagar, Jaipur.
9. Shyam Sunder Saini S/o Late Sh. Sitaram Saini, Aged About 54 Years, R/o B-155, Anandpuri, Moti Dungri Road, Jawahar Nagar, Jaipur.
10. Babulal Goyar S/o Ramdayal, Aged About 72 Years, R/o Plot No. 1, Near Dada Bari, Gangwal Park, Moti Dungari

Road, Near Naila House, Jaipur (Senior Citizen)

11. Ganpat Lal Vijay S/o Late Sh. Radhakishan, Aged About 76 Years, R/o Plot No. B-40, Anandpuri, Adarsh Nagar, Jaipur.
12. Vijay Gandhi S/o Radhey Shyam, Aged About 74 Years, R/o Shop No. 8, Moti Dungri Road, Near Naila House, Jaipur. (Senior Citizen)
13. Khalak Raj S/o Rajesh Kumar, Aged About 24 Years, R/o 3, Moti Dungri Road, Satiji Ki Baghichi, Jawahar Nagar, Jaipur.
14. Rohit Saini S/o Gyarshilal Saini, Aged About 42 Years, R/o S-2, Anandpuri, Moti Dungri Road, Jaipur.
15. Chandra Prakash Saini S/o Satyanarayan Saini, Aged About 48 Years, R/o A-13, Anandpuri, Moti Dungri Road, Jaipur.
16. Shanti Devi W/o Shyam Narayan Meena, Aged About 60 Years, R/o 1895, Opposite Naila House, Moti Dungari Road, Jaipur.
17. Om Prakash Saini S/o Durgaprasad Saini, Aged About 69 Years, R/o P-5, Anandpuri, Moti Dungari Road, Jaipur.

----Respondent/Respondents

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For Petitioners/ Appellants	:	Mr. Ajeet Kumar Bhandari Senior Advocate assisted by Mr. Jitendra Mishra Advocate. Mr. Sunil Samdaria Advocate.
For Respondents	:	Mr. G.S. Gill Additional Advocate General with Ms. Shikha Sharma Advocate. Mr. Mukesh Kumar Verma Advocate. Mr. Aslam Khan Advocate. Mr. Yuvraj Samant Advocate. Mr. Abhijeet Panchariya Advocate.

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**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA**  
**HON'BLE MR. JUSTICE BHUWAN GOYAL**

**Order**

**21/05/2024**

1. Heard learned counsels appearing on behalf of respective petitioners, appellants and the respondents.
2. Petition No. 5473/2022 under Article 227 of the Constitution of India was filed by Nizamuddin against defendants-Municipal Corporation and private respondents in the matter of rejection of his application for temporary injunction as also dismissal of an appeal arising from rejection order. In that petition, learned Single Judge passed an order on 27.03.2023 assuming writ jurisdiction under Article 226 of the Constitution of India which order has been assailed by filing Special Appeal (Writ) No. 326/2023 wherein interim order was passed by this Court on 13.04.2023 which reads as below:

“Heard.

Taking into consideration the judgment of the Supreme Court in the case of **Radhey Shyam & Others Versus Chhabi Nath & Others, (2015) 5 SCC 423** that writ of jurisdiction under Article 226 of the Constitution of India could not be invoked against an order passed by the Civil Court, the matter requires consideration as to whether while hearing a petition under Article 227 of the Constitution of India against an order of Civil Court, jurisdiction under Article 226 of the Constitution of India could be invoked.

Issue notice to the respondents on payment of P.F. within a period of one week.

Rule is made returnable within a period of four weeks.

Till the next date of hearing, further proceedings in S.B. Civil Writ Petition No.5473/2022, insofar as invocation of Article 226 of the Constitution of India is concerned, shall remain in abeyance. This order shall not come in the way of the exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.”

3. It, however, appears that later on while interim order dated 13.04.2023 was in force, another order taking suo motu cognizance was passed on 04.08.2023. That order has also been challenged by filing Special Appeal (Writ) No. 706/2023. This has

eventually led to registration of Petition No. 12931/2023 titled as Suo Motu Vs. Jaipur Development Authority.

4. Submission of learned counsels for the appellants in Special Appeal (Writ) No. 326/2023 and 706/2023 is that while exercising supervisory jurisdiction under Article 227 of the Constitution of India in the matter of a dispute between private parties in private domain, suo motu cognizance ought not to have been take up by the learned Single Judge. Learned counsels would submit that since this Court had passed an interim order in Special Appeal (Writ) No. 326/2023 on 13.04.2023, therefore, no further exercise for invocation of jurisdiction under Article 226 of the Constitution of India, much less suo motu cognizance could be undertaken.

5. Learned counsel for the respondents would submit that nothing stopped learned Single Judge from taking suo motu cognizance of encroachments on public properties and, therefore, suo motu cognizance cannot be faulted with.

6. Having heard learned counsel for the parties, we are of the view that while exercising supervisory jurisdiction in the matter of dispute between the private parties, jurisdiction under Article 226 of the Constitution of India could not be invoked in view of the decision of the Hon'ble Supreme Court in the case of **Radhey Shyam & Another Vs. Chhabi Nath & Others, (2015) 5 SCC 423** wherein it has been authoritatively pronounced by the Hon'ble Supreme Court as below:

"**27.** Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a

private person not discharging any public duty. Scope of Article 227 is different from Article 226.

**28.** We may also deal with the submission made on behalf of the respondent that the view in *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675 stands approved by larger Benches in *Shail v. Manoj Kumar*, (2004) 4 SCC 785, *Mahendra Saree Emporium (2) v. G.V. Srinivasa Murthy*, (2005) 1 SCC 481 and *Salem Advocate Bar Assn. (2) v. Union of India*, (2005) 6 SCC 344 and on that ground correctness of the said view cannot be gone into by this Bench. In *Shail*, though reference has been made to *Surya Dev Rai*, the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In *Mahendra Saree Emporium (2)*, reference to *Surya Dev Rai* is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in *Salem Advocate Bar Assn. (2)* in para 40, reference to *Surya Dev Rai* is for the same purpose. We are, thus, unable to accept the submission of the learned counsel for the respondent.

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

**"29.1.** Judicial orders of the 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."

7. In view of above, invocation of jurisdiction under Article 226 of the Constitution of India by the learned Single Judge vide order dated 27.03.2023 and later on vide order dated 04.08.2023 cannot be sustained in law. Both the orders dated 27.03.2023 and 04.08.2023 are, therefore, set aside. However, this would eventually lead to nullification of all proceedings which have been





drawn in compliance of aforesaid two orders dated 27.03.2023 and 04.08.2023.

8. Consequently, Special Appeal (Writ) No. 326/2023 and 706/2023 are allowed. Writ Petition No. 12931/2023 also stands disposed off. However, this order shall not come in the way of exercise of suo motu jurisdiction independent and outside the proceedings of pending Writ Petition No. 5473/2022. Writ Petition No. 5473/2022 be placed for decision on its own merits before the appropriate Bench as per roster.

9. Office is directed to place a copy of this order on record of each connected petition/appeal.

(BHUWAN GOYAL),J

(MANINDRA MOHAN SHRIVASTAVA),CJ