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Steel Authority Of India Vs Indian Oil Corporation Ltd And Ors

Writ Appeal No. 316 Of 2020

Court: Chhattisgarh High Court

Date of Decision: Sept. 14, 2020

Acts Referred:
Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 â€" Section 9, 9(1)#Madhya Pradesh Uccha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 â€" Section 2(1)#Chhattisgarh High Court (Appeal to Division Bench) Act 2006 â€" Section 2#Code Of Civil Procedure 1908 â€" Order 9 Rule 13#Constitution Of India, 1950 â€" Article 226, 227, 311

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: Kishore Bhaduri, Anand Shukla, V.G.Tamaskar

Final Decision: Allowed

Judgement

P.R. Ramachandra Menon, CJ

1. Interference made by the learned Single Judge on alleged misinterpretation of Section 9 of the Public Premises (Eviction of Unauthorised

Occupants) Act, 1971 (for short 'the Act') as to the capacity/credential/eligibility of a Judicial Officer to act as Ã¢â‚¬ËœAppellate OfficerÃ¢â‚¬â„¢ to deal with

the appeals under Section 9 of the Act, is the subject matter of challenge in this appeal.

2. As per the verdict passed by the learned Single Judge, it has been held that that the appeal has to be considered and decided by the Ã¢â‚¬ËœDistrict

Judge of the DistrictÃ¢â‚¬â„¢ and if he assigns the function to any other Judicial Officer in the District, the latter should be such officer having a minimum

standing of 10 years as District Judge. It was accordingly, that the impugned order was set aside, it having been passed by the Additional District

Judge with a standing of only 5 years as District Judge and the matter has been remanded for fresh consideration, as specified.

3. We heard Shri Kishore Bhaduri, the learned counsel appearing for the Appellant, Shri Anand Shukla, the learned counsel appearing for the 1st and

2nd Respondents, as well as Shri V.G.Tamaskar, the learned counsel who entered appearance on behalf of the 3rd Respondent, at length.

4. The point raised in the appeal is mainly with regard to the correct interpretation of Section 9 of the Act. But there is a contention for the

Respondents that the appeal itself is not maintainable, the writ petition having been filed and dealt with by the learned Single Judge under Article 227

of the Constitution of India. There is another contention for the 3rd Respondent, that the Ã¢â‚¬ËœEstate OfficerÃ¢â‚¬â„¢ who passed the original order, being

an officer of the Appellant/Steel Authority of India Limited (for short 'the SAIL'), which is not a Department of the Government, is not a Ã¢â‚¬ËœGazetted

OfficerÃ¢â‚¬â„¢ to have assumed the power and jurisdiction to deal with the proceedings under the Act.

5. Before going into the legal questions raised, a brief description as to the sequence of events will be appropriate to understand the dispute involved.

Way back on 10.06.1981, a lease deed was executed between the Appellant and the Respondent-Indian Oil Corporation Limited (for short 'the

IOCL') in respect of the land in question for a period of 33 years, subject to the terms and conditions stipulated therein. The said lease which was

effective from 10.06.1981 expired on 20.03.2013. According to the Appellant, the Petitioner failed to exercise the option to continue the lease by

giving any notice in writing six months prior to expiry of the lease as stipulated. The Appellant, however, gave an opportunity on 03.04.2013 to renew

the lease even after expiry and demanded Land Premium of Rs. 1.35 Crores (25% of the applicable land premium i.e. the current market rate of the

land) Ground Rent and the Enhanced Lease Rent in accordance with the CompanyÃ¢â‚¬â„¢s rules. The Respondent-IOCL requested to reconsider the

Premium as well as such other charges. Even the enhanced lease rent, according to them, was to be of a maximum extent of 50% more of the

existing lease rent. This was not acceded to by the Appellant, who replied that the Respondent-IOCL was an unauthorized occupant and asked to

deposit the amount due, so as to enable them to continue. After a few correspondences in between, the Appellant sent a notice on 04/06.06.2014 that

the lease had expired on 20.03.2013 and in terms of sub-clause (9) of Clause 3 of the lease deed, it stood terminated; thus requiring to vacate the land.

This made the 3rd Respondent, who was operating a Petrol Pump in the premises (at the instance of the Respondent-IOCL) to move this Court by

filing Writ Petition (C) No. 1098 of 2014 wherein an interim order of status quo was granted. During pendency of the matter before this Court, the

Appellant moved the Ã¢â‚¬ËœEstate OfficerÃ¢â‚¬â„¢ appointed in terms of Section 9 of the Act, contending that the Respondents were continuing as

unauthorized occupants and to get the property vacated in terms of the Act. Meanwhile, the Respondent-IOCL also approached this Court by filing

Writ Petition (C) No. 2382/2014 challenging the proceedings of the Appellant passed on 04/06.06.2014 as to the termination of the lease; when the

learned Single Judge of this Court granted protection from dispossession, to the requisite extent.

6. It is seen that the parties appeared before the Estate Officer on 15.06.2017, but on the subsequent date i.e. on 15.07.2017, the Respondents did not

appear. After about two months, the Estate Officer passed the final order on 22.09.2017 holding that the Respondents were unauthorized occupants,

in turn ordering to vacate the premises.

7. On coming across the proceedings, the IOCL filed a petition under Order 9 Rule 13 of the Code of Civil Procedure, 1908 to set aside the ex-parte

order stating that the lawyer for the IOCL was not aware of the posting on 15.07.2017 and hence, he could not appear. This petition came to be

dismissed by the Estate Officer on 21.10.2017 for the reason stated therein, which made the aggrieved party to file appeal before the Appellate

Officer (District Judge, Durg) in terms of Section 9 of the Act. The District Judge designated the 4th Additional District Judge, Durg to hear the

appeal (as provided in the Act) who considered the matter and passed Annexure P/1 order after hearing both the sides on 22.04.2019; whereby the

orders passed by the Estate Officer were affirmed and the appeal was dismissed.

8. The orders passed by the statutory authorities including that of the Additional District Judge acting in his capacity as the Ã¢â‚¬ËœAppellate OfficerÃ¢â‚¬â„¢

were sought to be challenged by filing Writ Petition (C) No. 60 of 2020, shown as filed under Article 227 of the Constitution of India. Among the

grounds with regard to the merits involved, it was contended that the Court of the Additional District Judge, who was not having a standing of 10 years

as a District Judge did not have any power or competence to decide the appeal as per Section 9(1) of the Act. It was further contended that the

Estate Officer being an employee of the Appellant-SAIL, was not a Ã¢â‚¬ËœGazetted OfficerÃ¢â‚¬â„¢ to have acted as Estate Officer under the Act and

hence, the proceedings were per se wrong and illegal.

9. The learned Single Judge, placing reliance on the judgment passed by this Court in Writ Petition (C) No.6956 of 2011 (Bharat Prasad Sharma v.

Union of India & Others) and Writ Appeal No. 76 of 2013 (Bharat Prasad Sharma v. Chairman-cum-Managing Director & Others) held that an

officer of SAIL can be appointed as an Estate Officer under the Act and hence there was nothing wrong under this head. However, coming to the

authority and jurisdiction of the Additional District Judge who passed the appellate order, it was held that Section 9(1) of the Act was quite categoric

to the effect that, if the appeal was not to be considered by the Ã¢â‚¬ËœDistrict Judge himselfÃ¢â‚¬â„¢, but by another Judicial Officer of the same District, the

latter was to be such Officer having a minimum of 10 years standing. In the instant case, the Judicial Officer functioning as the 4th Additional District

Judge, having been promoted from the post of Civil Judge, Senior Division to the post of District Judge (Entry Level) only in the year 2014 (as verified

from the official website of this High Court) was in fact having a standing of only Ã¢â‚¬Ëœ5 yearsÃ¢â‚¬â„¢ as District Judge (Entry Level) when she heard the

appeal and passed the impugned order on 22.04.2019. It was accordingly, that a finding was rendered that the District Judge of the District Durg had

clearly overlooked the provisions under Section 9 of the Act when he transferred the case to a Judicial Officer, not being a Judge for a period of 10

years or more. In the said circumstance, the learned Single Judge held that there was no need to consider the merits of the case and since the

impugned order was one passed without jurisdiction and a nullity, it was set aside. The case was remanded to the Court of District Judge, Durg, with a

direction to have strict compliance of Section 9 of the Act observing that it may either be decided by the Ã¢â‚¬ËœDistrict Judge himselfÃ¢â‚¬â„¢ or if it was

found necessary to be transferred to any other Judicial Officer posted in the said District, the transfer shall be made ensuring Ã¢â‚¬Ëœcompetence of such

Judicial OfficerÃ¢â‚¬â„¢, in accordance with Section 9 of the Act.

10. Shri Kishore Bhaduri, the learned counsel for the Appellant submits that there is a total misconception as to the scope of Section 9 of the Act and

it has not been correctly interpreted by the learned Single Judge. The learned counsel submits that the said provision does not stipulate that the Judicial

Officer of the District to whom the case is transferred by the District Judge need not have a minimum of 10 years of standing as a District Judge .

The provision only says that, if the appeal is not decided by the District Judge himself, it shall be transferred to a Judicial Officer who is having a

standing of 10 years, which includes the tenure as Judicial Officer in the entire career, including as an Additional District Judge. The learned counsel

also sought to place reliance on the verdict passed by the Delhi High Court in Mir Akhtar Hussain v. District & Sessions Judge, {1996 AIHC 5723}

which was a case under Section 9 of the Act, where it has been clearly held that the Additional District Judge to whom the case is transferred by the

District Judge need not have 10 years of standing as a District Judge and that the Ã¢â‚¬Ëœ10 yearsÃ¢â‚¬â„¢ mentioned is only as a Judicial Officer in different

capacities, including the service prior to the Entry Level District Judge.

11. With regard to the challenge raised by the Respondents against the maintainability of the writ petition, Shri Kishore Bhaduri submits that the appeal

is maintainable as the jurisdiction exercised by the learned Single Judge was virtually under Article 226 and not under Article 227 of the Constitution of

India. The labelling of the writ petition as under Article 227 by the Petitioners cannot decide the nature of the proceedings. Reliance is sought to be

placed on the verdict passed by the Apex Court in Naresh Shridhar Mirajkar & Others v. State of Maharashtra & Another; {(AIR 1967 SC 1), 9

Judge Bench}. The Single Bench having not gone into the merits of the case, as to the correctness of the order passed by the Estate Officer or by the

Appellate Officer, it is not an instance of supervisory jurisdiction but the original jurisdiction. It is more so, since the point raised as to the power of the

Additional District Judge with reference to the scope of Section 9 of the Act, 1971, is a question mooted for the first time before this Court and was

never a subject matter of consideration before the statutory authorities under the Act. In support of the contention that the nature of the proceedings

has to be looked into, notwithstanding the labelling given, the learned counsel seeks to rely on the verdict passed by the Apex Court in Ram Kishan

Fauji v. State of Haryana & Others; {(2017) 5 SCC 533}. With regard to the judgment reported in Life Insurance Corporation of India v. Nandini J.

Shah & Others; {(2018) 15 SCC 356} cited by the Respondent-IOCL to contend that no appeal is maintainable (in respect of the order passed by the

Appellate Authority under Section 9(1) of the Act) from the verdict passed by the learned Single Judge, it being supervisory in nature, it is pointed out

that the observation of the Apex Court in Ã¢â‚¬Ëœparagraph 59Ã¢â‚¬â„¢ of the very same judgment supports the contention raised by the Appellant. It is added

that the basic issue considered by the Apex Court in Life Insurance Corporation of India (supra) was whether the Ã¢â‚¬ËœAppellate OfficerÃ¢â‚¬â„¢ acting

under Section 9 of the Act (District Judge/Additional District Judge) was a persona designata or a Civil Court, which was answered holding that the

Authority was acting as Court and not as a persona designata. It is contended that the said finding does not have any application as far as the authority

of the Additional District Judge under Section 9 of the Act is concerned, which only requires that if the issue is not considered and decided by the

District Judge himself and is transferred to some other Judicial Officer in the District, such Judicial Officer in the rank of District Judge should have a

total standing of 10 years and thatÃ¢â‚¬â„¢s all.

(l) Shri Anand Shukla, the learned counsel appearing for the 1st and 2nd Respondent submits that the appeal is not maintainable in view of the law

declared by the Apex Court in Life Insurance Corporation of India (supra). The learned counsel submits that, in view of the finding that the order

passed by the Appellate Officer under Section 9 of the Act, not being in the capacity as persona designata but as a Civil Court, the verdict passed by

the learned Single Judge can only be in exercise of the supervisory jurisdiction under Article 227 of the Constitution, from which no appeal lies. The

learned counsel also seeks to place reliance on the verdict passed by a Division Bench of this Court in Writ Appeal No. 438 of 2015 (Prahlad Tiwari

v. Steel Authority of India Ltd. & Another), stated as identical in all respects.

(xiii) Shri Tamaskar, the learned counsel for the 3rd Respondent submits wit reference to the statement of objections filed against the appeal that the

appeal is not maintainable; as the writ petition filed by the Petitioner as well as the verdict passed by the learned Single Judge was under Article 227

of the Constitution of India. The learned counsel further submits that the basic order (passed by the Estate Officer) itself is not maintainable, as the

Estate Officer appointed by the Appellant was not a Ã¢â‚¬ËœGazetted OfficerÃ¢â‚¬â„¢ to have any power or jurisdiction in terms of the Act. The learned

counsel submits that a Constitution Bench of the Apex Court has held in Dr. S.L.Agrawal v. General Manager, Hindustan Steel Limited, Bhilai and

Others, {1971 MPLJ 825} that the Hindustan Steel Limited is not a Department of the Government, and hence its employee was not entitled to

protection under Article 311 of the Constitution. The Appellant is also an Establishment like the Hindustan Steel Limited and as such, an employee of

the Appellant appointed as the Estate Officer is not a Ã¢â‚¬ËœGazetted OfficerÃ¢â‚¬â„¢. Reference is also made to the verdict passed by the Apex Court in

Steel Authority of India Ltd. v. Shri Ambica Mills Ltd. & Others; {AIR 1998 SC 418} wherein it has been categorically declared by the Apex Court

that the SAIL, though is a Company fully owned by the Government of India, is having its own identity and cannot be held to be a Department of the

Union of India.

(xiv) In reply, Shri Bhaduri, the learned counsel for the Appellant points out that the power and authority of an officer of the Appellant to be appointed

and to act as an Estate Officer under Section 9 of the Act stands declared by a Division Bench judgment of this Court in Writ Appeal No. 76 of 2013.

It will be worthwhile to extract the relevant portion of the judgment, which reads as follows:

1. The main question involved in these cases is whether an officer of Steel Authority of India Limited (SAIL) can be appointed as Estate Officer

under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (the Act).

xxx xxx xxx

The conclusions are as follows:

In view of the proviso to section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, the Writ Appeal 76 of 2013 is not

maintainable;

SAIL is a statutory authority within the meaning of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971;

SAIL has not appointed Shri Harishchandra as the Estate Officer under the Act. It has merely re-designated his post to be Estate Officer under

SAIL;

Ã, The Estate Officer of SAIL has been appointed as Estate Officer under the Act by the Central Government by GO dated 26.02.1997;

Ã, There is nothing on record to show that Shri Chandra is biased in favour of SAIL;

Ã, Shri Chandra is not a judge of his own cause. He is competent to perform to function as Estate Officer under the Act.

15. Considering the rival contentions, the points to be considered in this appeal are; firstly whether it is maintainable and secondly, whether the

declaration made by the learned Single Judge that, the Judicial Officer to whom the appeal is transferred by the District Judge should have 10

yearsÃ¢â‚¬â„¢ standing as a District Judge in terms of Section 9 of the Act, is correct or not? Though the matter has only been remanded by the learned

Single Judge and both the parties can assert the facts and figures before the District Judge/Additional District Judge, as the case may be, if the

declaration is not subjected to test by this Court, it will remain as a wrong precedent, if not otherwise liable to be sustained.

(xvi) Intra-court appeal from a verdict passed by the learned Single Judge of this Court is provided under Section 2(1) of the Chhattisgarh High Court

(Appeal to Division Bench) Act, 2006, which is reproduced below:

2. Appeal to the Division Bench of the High Court from a Judgment or order of one judge of the High Court made in exercise of original jurisdiction .

- (1) An appeal shall lie from a judgment or order passed by one judge of the High Court in exercise of original Jurisdiction under Article 226 of the

Constitution of India, to a Division Bench comprising of two Judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227

of the Constitution of India.

Explanation. - [x x x]

2. An appeal under sub-section (1) shall be filed within 45 days from the date of order passed by a single Judge:

Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had sufficient

cause for not preferring the appeal within such period.

Explanation. - The fact that the petitioner was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed

period may by sufficient cause within the meaning of this sub-section.

3. An appeal under sub-section (1) shall be filed, heard and decided in accordance with the procedure as may be prescribed by the High Court.

The above provision clearly says that no appeal will be maintainable before the Division Bench, if the verdict passed by the learned Single Judge is

under Article 227 of the Constitution. The question is whether the verdict under challenge can be branded as one in exercise of the supervisory

jurisdiction under Article 227 of the Constitution or is it on the Ã¢â‚¬Ëœoriginal sideÃ¢â‚¬â„¢ coming within the purview of Article 226, to sustain the appeal.

17. It is true that the writ petition was filed with the heading/label given by the writ petitioner as filed under Article 227 of the Constitution of India. In

the said writ petition, all the grounds raised under paragraph 9 (9.1 to 9.14) were in relation to the merits of the case, whereas, the ground at

Ã¢â‚¬Ëœparagraph 9.15Ã¢â‚¬â„¢ questions the authority of the Appellate Officer; contending that the Additional District Judge who is not having a standing of

10 years does not have the power or competence to decide the appeal as per Section 9(1) of the Act. Nothing is brought to our notice to infer that the

power and jurisdiction of the Additional District Judge was ever questioned by the Respondents when the appeal preferred by them was transferred

by the District Judge, Durg.

18. The question considered by the Apex Court in Life Insurance Corporation of India (supra) was whether the order passed by the City Civil Court in

exercise of power under Section 9 of the Act, 1971, as an Appellate Officer, is in the capacity of a civil court or as persona designata? In other words,

the question whether the Additional District Judge to whom the case was transferred by the District Judge of the District should have a minimum of

10. years of standing as District Judge to act as the Appellate Officer, to deal with an appeal filed under Section 9 of the Act, was not a question

involved. The factual position involved in the said case was that eviction proceedings were filed by the Appellant-LIC before the Estate Officer in

terms of the relevant provisions of the Act, for eviction of the respondent concerned on two grounds; that (a) there was illegal/unauthorised sub-letting

of the premises; and (b) the respondent concerned was in arrears of the repair and maintenance charges. The Estate Officer held that there was no

arrear of repair and maintenance charges but found that there was an Ã¢â‚¬Ëœunauthorised sub-lettingÃ¢â‚¬â„¢ which led to the final order for restoration of

the possession, also granting damages and interest as specified. This was challenged by the occupants by filing appeal under Section 9 of the Act

before the Principal Judge of the City Civil Court at Mumbai. The Appellate Officer held that there was no sub-letting to the partnership firm by the

2nd Respondent, but there was nothing to show that the Respondents 3 to 5 were also belonging to the original occupant and hence it amounted to

sub-letting. Thus, the order of eviction passed by the Estate Officer was upheld, sustaining the order for damages with interest.

19. The orders passed by the Estate Officer and Appellate Officer were subjected to challenge by the Respondents in a writ petition filed under

Ã¢â‚¬Å“Article 226/227Ã¢â‚¬ of the Constitution of India, before the Single Bench of the Bombay High Court. The learned Single Judge declined interference

and the writ petition was dismissed, which was challenged by the respondents concerned by filing Letters Patent Appeal before the Division Bench.

The Division Bench of the Bombay High Court rejected the preliminary objection of the LIC that the Letters Patent Appeal was not maintainable

against the order of the learned Single Judge and allowed the appeal on merits, which was subjected to challenge by filing a Special Leave Petition

before the Apex Court leading to the judgment as aforesaid. It was in the said circumstances, that the maintainability of the Letters Patent Appeal

was considered, based on the preliminary issue raised. After referring to the various case laws, the Apex Court observed that, even if the District

Judge/Principal District Judge of the City Civil Court might retire or gets transferred, his successor in office can pick up the thread of the proceedings

under Section 9 of the Act from the stage where it was left by his predecessor and can function as an Appellate Officer. It was further observed that

the District Judge/Principal District Judge of the City Civil Court and other Judicial Officers of these Courts possessing necessary qualification

constitute a class and cannot be considered as persona designata; that the Appellate Officer therefore has to function as a Court and that his decision

is final in terms of Section 10 of the Act.

6 As pointed out by the Apex Court, the legislative intent in providing an appeal under Section 9 of the Act before the Appellate Officer to be the

District Judge of the District Court concerned in which the public premises are situated (or such other Judicial Officer in that District possessing

necessary qualification to be designated by the District Judge for that purpose) is indicative of the fact that the power to be exercised by the Appellate

Officer is not in his capacity as persona designata but as a Judicial Officer of a pre-existing Court. Such an order passed by him will be an order of

the subordinate court; against which the remedy under Article 227 of the Constitution of India can be availed on matters delineated for exercise of

such jurisdiction (paragraph 58).

6 The observations made in Ã¢â‚¬Ëœparagraph 59Ã¢â‚¬â„¢ of the said verdict are also very much relevant and hence it is extracted below:

59. Reverting to the facts of the present case, the respondents had resorted to remedy of writ petition under Article 226 and 227 of the Constitution

of India. In view of our conclusion that the order passed by the District Judge (in this case, Judge, Bombay City Civil Court at Mumbai) as an

Appellate Officer is an order of the Subordinate Court, the challenge thereto must ordinarily proceed only under Article 227 of the Constitution of

India and not under Article 226. Moreover, on a close scrutiny of the decision of the learned Single Judge of the Bombay High Court dated 14.08.2012

we have no hesitation in taking the view that the true nature and substance of the order of the learned Single Judge was to exercise power under

Article 227 of the Constitution of India; and there is no indication of Court having exercised powers under Article 226 of the Constitution of India as

such. Indeed, the learned Single Judge has opened the judgment by fairly noting the fact that the writ petition filed by the respondents was under

Articles 226 and 227 of the Constitution of India. However, keeping in mind the exposition of this Court in Ram Kishan Fauji wherein it has been

explicated that in determining whether an order of the learned Single Judge is in exercise of powers under Article 226 or 227 the vital factor is the

nature of jurisdiction invoked by a party and the true nature and character of the order passed and the directions issued by the learned Single Judge.

From the above, it is clear that the writ petition filed by the parties to the above case was under Ã¢â‚¬Å“Article 226/227Ã¢â‚¬ of the Constitution of India.

The Bench observed that, in view of the finding that the order of the Appellate Officer is an order of the subordinate court, the challenge thereto must

ordinarily be proceeded only under Article 227 of the Constitution of India and not under Article 226. The Court made it clear that the true nature and

substance of the order of the learned Single Judge, as revealed from the proceedings, was to exercise the powers under Article 227 of the Constitution

of India and there was no indication of the Court having exercised powers under Article 226 of the Constitution of India. Placing reliance on the

verdict passed by the Apex Court earlier in Ram Kishan Fauji (supra), the Court observed that in determining whether an order of the learned Single

Judge is in exercise of powers under Article 226 or 227 of the Constitution, the vital factor is the nature of jurisdiction invoked by the party and the

true nature and character of the order passed and the directions issued by the learned Single Judge.

22. With the above declaration, the Apex Court proceeded further to observe in Ã¢â‚¬Ëœparagraph 63Ã¢â‚¬â„¢ of the same verdict that the impugned judgment

of the Division Bench entertaining the appeal was merely going by the decision of the Delhi High Court and of the own Court (in the cases

mentioned). It was noted that no analysis made by the Division Bench to entertain the Letters Patent Appeal, particularly as to in what manner the

judgment of the learned Single Judge would come in exercise of the power under Article 226 of the Constitution of India. To quote the words of the

Apex Court therein, ""Absent that analysis, the Division Bench could not have assumed jurisdiction to entertain the letters patent appeal, merely by

referring to the earlier decisions of the same High Court."" After holding that the Division Bench of the Bombay High Court ought to have dismissed

the Letters Patent Appeal, it was observed in Ã¢â‚¬Ëœparagraph 65Ã¢â‚¬â„¢, that it was not necessary to go into the merits of the case as to the eviction of the

respondents ordered by the Estate Officer, confirmed by the City Civil Court and the learned Single Judge of the High Court. Observing that the

merits cannot be examined in the appeal filed by the owner of the public premise i.e. the appellant before the Apex Court, liberty however was given

to challenge the decision of the learned Single Judge by way of appropriate remedy, if so advised, granting six weeksÃ¢â‚¬â„¢ time in this regard and

simultaneously ordering the coercive proceedings to be kept in abeyance till such time.

23 Considering the question whether the learned Single Judge in the instant case has invoked the power and jurisdiction under Article 226 or under

Article 227 of the Constitution, there was a Ã¢â‚¬ËœpresumptionÃ¢â‚¬â„¢ earlier, by way of Ã¢â‚¬ËœExplanationÃ¢â‚¬â„¢ under Section 2(1) proviso of the Chhattisgarh

High Court (Appeal to Division Bench) Act, 2006, that in case of orders/judgments passed by the subordinate Courts/Tribunal/Quasi-Judicial

Authority, the verdict passed by the Single Bench shall be presumed as in exercise of supervisory jurisdiction under Article 227 of the Constitution of

India. The said Ã¢â‚¬ËœExplanationÃ¢â‚¬â„¢ to the proviso to Section 2(1) of the said Act, which was introduced by the Chhattisgarh Act No. 2 of 2014 w.e.f

18.02.2014 reads as follows:

Ã¢â‚¬Å“Explanation Ã¢â‚¬" Where points raised in the petition before the Division Bench against the order or judgment of the single Judge were adjudicated

upon, by the Sub-ordinate Court, Tribunal or Quasi-Judicial Authority, as the case may be, it shall be presumed that such order or judgment by the

Single Judge of the High Court has been passed in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.Ã¢â‚¬â€‹

Taking a conscious decision by the Lawmakers, the said presumption was omitted by the Chhattisgarh Act No. 25 of 2016, w.e.f 06.08.2015. This

shows that each case has to be considered independently to ascertain the true nature of the Ã¢â‚¬ËœlisÃ¢â‚¬â„¢ and the point considered by the Single Judge to

infer the true nature of the jurisdiction exercised i.e. whether it was Ã¢â‚¬ËœSupervisoryÃ¢â‚¬â„¢ (invoking the power under Article 227) or Ã¢â‚¬ËœOriginalÃ¢â‚¬â„¢

(invoking the power under Article 226). We also find support from the ruling rendered by the Apex Court in Jogendrasinhji Vijaysinhji v. State of

Gujarat & Others; {(2015) 9 SCC 1}.

24. In this context, it will only be appropriate to refer to the verdict passed by the Apex Court in State of Madhya Pradesh & Others v. Visan Kumar

Shiv Charan Lal; (2008) 15 SCC 233. The issue agitated on behalf of the employee before the Labour Court came to be decided in favour of him

which was challenged by the employer by filing writ petition before the High Court. The learned Single Judge declined interference and dismissed the

writ petition, against which an intra-Court appeal was preferred before the Division Bench. Observing that the writ petition was filed under Article 227

of the Constitution and that no appeal was maintainable by virtue of the proviso to Section 2(1) of the Madhya Pradesh Uccha Nyayalaya (Khand

Nyaypeeth Ko Appeal) Adhiniyam, 2005, the appeal came to be dismissed; which ultimately reached the Apex Court. The Supreme Court, after

referring to the various case laws, observed that the nomenclature and description of the writ petition to be one under Article 227 of the Constitution,

was of no consequence and that the nature of the dispute had to be referred to. The prayer was mainly to set aside the verdict passed by the Labour

Court and hence the interference declined by the learned Single Judge was only to be under Article 226 and not in terms of Article 227 (supervisory

jurisdiction). It was accordingly held that the appeal was maintainable and the matter was remitted to the High Court for fresh consideration. A Full

Bench of the Madhya Pradesh High Court in Shailendra Kumar v. Divisional Forest Officer; {2017 (4) MPLJ 109} had also occasion to consider

whether an intra-Court appeal under Section 2(1) of the Adhiniyam, 2005 would be maintainable against the order passed by the learned Single Judge

assailing the award passed by the Labour Court. After referring to the case law till date including in Vishan Kumar Shiv Charan Lal (supra) and

Jogendrasinhji Vijay Sinhji (supra), it was categorically held that the verdict passed by the Labour Court/Industrial Tribunal is amenable to writ of

Certiorari under Article 226 of the Constitution, and therefore, an intra-Court appeal would be maintainable.

9 Applying the law laid down by the Apex Court to the case in hand, it is to be noted that the merits of the order passed by the Statutory Authorities

have not been considered by the learned Single Judge. This is discernible from Ã¢â‚¬Ëœparagraph 18Ã¢â‚¬â„¢ of the judgment under challenge, whereby the

impugned order passed by the Appellate Officer has been declared as without jurisdiction and a nullity and thus remanding the matter for fresh

consideration, as specified. As mentioned already, nothing is brought to the notice of this Court by the Respondent that they had ever raised a

challenge against the order passed by the District Judge, Durg transferring the appeal filed by the Respondents to the Additional District Judge or that

they had raised any issue or objection before the Additional District Judge, contending that she did not have the power or competence to entertain the

matter, for not having 10 years of standing Ã¢â‚¬Ëœas District JudgeÃ¢â‚¬â„¢ for dealing with the appeal in terms of Section 9 of the Act. Such a question was

raised for the first time only before the learned Single Judge, as contained in ground No. 9.15 of the writ petition. This ground alone was considered by

the learned Single Judge, when it was held that, by virtue of the mandate of Section 9 of the Act, the appeal, if transferred to any other Judicial

Officer in the same District, it could have been considered only by such officer in the rank of District Judge having

10. yearsÃ¢â‚¬â„¢ standing Ã¢â‚¬Ëœas a District JudgeÃ¢â‚¬â„¢. In other words, observing that the District Judge of the District Durg had clearly overlooked the

provisions under Section 9 of the Act when he transferred the appeal to the Additional district Judge, the learned Single Judge deemingly set aside that

order, though the transfer order was not specifically challenged by the writ petitioners. This being the position, even though the writ petition filed

before the learned SingleÃ, JudgeÃ, wasÃ, labelledÃ, asÃ, aÃ, petitionÃ, under ArticleÃ, 227,Ã, theÃ, actual jurisdiction exercised by the learned

Single Judge on the question raised for the first time before this Court as to the competence of the Appellate Officer can be considered only as a

jurisdiction exercised in terms of Article 226 of the Constitution of India and not under Article 227. For the said reasons, we hold that the appeal

preferred by the owner of the premises in terms of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, is maintainable.

26. The next question to be considered is as to the scope of Section 9 of the Act, dealing with the appeals; which is extracted below:

9. Appeals.Ã¢â‚¬"(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under section 5 or section 5B or

section 5C or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other

judicial officer in that district of not less than ten years standing as the district judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred,Ã¢â‚¬

(a) in the case of an appeal from an order under section 5, within twelve days from the date of publication of the order under sub-section (1) of that

section;

(b) in the case of an appeal from an order under section 5B or section 7, within twelve days from the date on which the order is communicated to the

appellant; and

(c) in the case of an appeal from an order under section 5C, within twelve days from the date of such order:

Provided that the appellate officer may entertain the appeal in exceptional cases after the expiry of the said period, if he is satisfied for reasons to be

recorded in writing that there was compelling reasons which prevented the person from filing the appeal in time.

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and

on such conditions as he deems fit:

Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the

day on which an order was made under section 5B for the demolition or removal of such building or other structure or fixture, the appellate officer

shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer,

has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible and every endeavour shall be made to

dispose of the appeal finally within one month from the date of filing the appeal, after providing the parties an opportunity of being heard.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge of the city civil court

therein shall be deemed to be the district judge of the district.

27. As pointed out already, appeal under Section 9 of the Act has to be considered by the Ã¢â‚¬ËœDistrict Judge of the DistrictÃ¢â‚¬â„¢ and if he does not

consider the matter himself, by virtue of the enabling provision it can be transferred to such other Judicial Officer of the same District, who shall be of

not less than 10 years of standing as the District Judge may designate in that behalf. The term 'such other Judicial Officer' means that the appeal can

be transferred to another Judge in the rank of District Judge and not to any other Judicial Officer of lesser rank in the District. Then the question is,

whether such Judicial Officer should have 10 years of standing as a District Judge or does it envisage only a total standing of 10 years as Judicial

Officer in the District. A focussed reading of the provision clearly shows that the statute only contemplates that the Appellate Officer shall be the

District Judge of the District and if it is not dealt with by the District Judge, who causes it to be transferred to such other Judicial Officer in that

District, that Judicial Officer/Additional District Judge as the District Judge may designate in this behalf, shall have not less than 10 years of standing.

In other words, the provision does not say that the transferee Judicial Officer/Additional District Judge should have a standing of 10 years as District

Judge . It appears that that there is a draftsmanÃ¢â‚¬â„¢s omission in giving a comma after the words '10 years standing', so as to read and give effect to

the remaining portion also, taking it to a logical conclusion. The term 'as' appearing after the words '10 years standing' and before the words 'the

District Judge may designate in this behalf' does not mean 10 years standing as District Judge, obviously for the reason that there is no full stop after

the terms 'District Judge'; but it continues 'as the District Judge may designate in this behalf'. If we take the stipulation of 10 years standing Ã¢â‚¬Ëœas a

District JudgeÃ¢â‚¬â„¢, the remaining words 'may designate in this behalf' will be otiose. It is the fundamental rule of interpretation, that effort shall be

taken to give effect to all the words appearing in the statute to reveal the intention of the Law-makers and hence, the terms 'as District Judge may

designate in this behalf' should be read together to deal with the qualification of Ã¢â‚¬Ëœ10 years standingÃ¢â‚¬â„¢ of the Judicial Officer to whom the appeal is

assigned by the District Judge.

28. The issue can be approached and analysed from a different angle as well. During the course of hearing, we raised a specific question to the

learned counsel for the Respondents as to whether there is any provision of law which stipulates that 10 yearsÃ¢â‚¬â„¢ minimum standing is necessary to

be appointed as a Ã¢â‚¬Å“District JudgeÃ¢â‚¬. No answer in the Ã¢â‚¬ËœpositiveÃ¢â‚¬â„¢ was given by the learned counsel for the Respondents, who fairly conceded

that they have not come across any such stipulation. If a Ã¢â‚¬ËœDistrict JudgeÃ¢â‚¬â„¢ of the District can be appointed with less than 10 years of service (in

the cadre of District Judge), the Additional District Judges appointed in the same District will naturally be of lesser standing by virtue of the seniority

position. When the statute confers power under Section 9 of the Act on the Ã¢â‚¬ËœDistrict JudgeÃ¢â‚¬â„¢ of the District (irrespective whether he is having 10

years of standing as a District Judge or not) to deal with an appeal under Section 9 as aforesaid, it will be a paradox to suggest or infer that, once the

appeal is transferred to be dealt with by an Additional District Judge, such Additional District Judge should have 10 years of standing as District

Judge. This is rather impossible, because no Additional District Judge having a 10 years of standing as District Judge will be there in the District

where the Ã¢â‚¬ËœDistrict JudgeÃ¢â‚¬â„¢ himself is having less than 10 years of standing.

29. So as to confirm the position in the above regard, we have gone through the relevant provisions of the Chhattisgarh Higher Judicial Service

(Recruitment and Conditions of Service) Rules 2006. Rule 2(d) of the said Rules defines the term ""District Judge"", that it includes Additional Judge to

the Court of District Judge, Additional District Judge, Sessions Judge and Additional Sessions Judge. Rule 3 of the said Rules stipulates that the

service shall consist of the following categories namely:

(a) the District Judge (Entry Level);

(b) District Judge (Selection Grade); and

(c) District Judge (Super Time Scale).

Rule 5 of the Rules deals with the method of recruitment and appointment and sub-rule (2) thereunder stipulates under its proviso that no member of

service shall be appointed as District Judge (Selection Grade) unless he has served a minimum of 5 years in the cadre of a District Judge and no

member of service shall be appointed to the category of District Judge (Super Time Scale) unless he has served minimum three years in the cadre of

Selection Grade District Judge. There is no bar in the Rules for appointing a member having less than 10 yearsÃ¢â‚¬â„¢ standing in the cadre of District

Judge as the Ã¢â‚¬Ëœ District Judge of the DistrictÃ¢â‚¬â„¢ and such appointment will naturally depend upon the seniority and availability of vacancies. If a

District Judge is appointed from the Super Time Scale District Judges or the Selection Grade District Judges having less than 10 years of service

(based on the availability of vacancy and the absence of more senior qualified hands), he has to discharge the duties as the Ã¢â‚¬ËœAppellate OfficerÃ¢â‚¬â„¢

in terms of Section 9 of the Act. At the same time, the said provision enables him to transfer the appeal to such other judicial officer in the District

(i.e. to an Additional District Judge) subject to a rider that such Judicial Officer shall have a total standing of 10 years. Since the Entry Level post of

District Judge is filled up both by Direct Recruitment and also by Promotion, if the available Ã¢â‚¬ËœDistrict JudgeÃ¢â‚¬â„¢ to whom the appeal is sought to be

transferred is a direct recruit, he/she naturally may not be having 10 years of service. But if he/she is a Ã¢â‚¬ËœPromotee JudgeÃ¢â‚¬â„¢, such Judicial Officer

in the cadre of District Judge will be having service in the lower cadre as well and by virtue of the stipulation in the statute, such transfer can be made

only to such officer who is having 10 years of standing; which does not mean that it shall be of 10 years as District Judge (which cannot happen in a

given District where the Principal District Judge is having only less than 10 years of service).

30. In the above circumstance, it is explicitly clear that the Judicial Officer whom the District Judge designates to deal with an appeal under Section 9

of the Act should be a District Judge having a standing of 10 years as a Judicial Officer and that the statute does not say that the standing of 10 years

shall exclusively be Ã¢â‚¬Ëœas a District JudgeÃ¢â‚¬â„¢. The declaration made by the learned Single Judge to the contrary is not correct and hence the said

declaration and the remand ordered for fresh consideration and to pass fresh orders either by the District Judge himself or to be considered by such

other Judicial Officer having 10 years of standing in the cadre of District Judge stand set aside. We hold that the Appellate Officer who passed the

order, though was having only a standing of 5 years as a District Judge (Entry Level) was competent to have passed the order, having 10 years of

standing as a Judicial Officer including as a District Judge.

31. Since the merit of the case has not been considered by the learned Single Judge, we find it appropriate to set aside the verdict passed by the

learned Single Judge to the above extent. The writ petition is restored to the file and the Registry is directed to cause the matter to be placed before

the appropriate Bench for consideration of the Ã¢â‚¬ËœmeritÃ¢â‚¬â„¢ of the orders passed by the statutory authorities, in exercise of the supervisory jurisdiction

under Article 227 of the Constitution of India.

Appeal stands allowed to the above extent. No cost.