(2008) 12 AHC CK 0016

Allahabad High Court

Case No: None

Kapil Dhawan		APPELLANT
	Vs	
Chhotey Lal Gaya Prasad Trust and Others		RESPONDENT

Date of Decision: Dec. 5, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 33 Rule 3, 92

Citation: (2009) 1 AWC 831

Hon'ble Judges: Shishir Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Shishir Kumar, J.
This writ petition has been preferred by petitioner for quashing the compromise decree dated 21.5.2005 (Annexure-9 to writ petition) passed by Additional Sessions Judge, Court No. 3, Kanpur Nagar.

2. The factual background of present case is that there is a Public Charitable Trust known as Committee Sadavart Va Dharmshala Chhotey Lal Gaya Prasad. The Trust is meant for providing free education to the helpless, poor peoples, free medical services by opening hospitals and also providing helps to all needy peoples from the income of trust property owned by trust. The trust is owner of property Bearing Bunglow No. 84, Cantonment, Kanpur. The father of defendant-respondent No. 2 was tenant and after his death, respondent No. 2 succeeded the tenancy, which was alleged to have been terminated on 29.7.1999 when the notice of terminating the tenancy was served. The defendant-respondent No. 2 did not vacate the premises and occupied the same and used Bunglow No. 84 wrongfully for which he is liable to pay damages after the date of termination of tenancy. One Pashupathi Nath Mehrotra, one of the trustee of the

aforesaid Trust filed a Suit No. 265 of 2000 with a relief for decree of ejectment of the actual dispossession of defendant from Bunglow No. 84, Cantt. Kanpur and also for arrears of rent alongwith damages and pendente lite and future damages. The suit was contested by respondent No. 2 and he filed a written statement challenging the authority of Sri Pashupati Nath Mehrotra regarding institution of suit against respondent No. 2 on the ground that he has no authority in law to institute the suit on behalf of Trust as Trust has never authorised Sri Pashupati Nath Mehrotra for filing the aforesaid suit. The suit was registered before the Judge, Small Causes Court Bearing Suit No. 265 of 2000 and following issues were framed:

1. Whether Sri Pashupati Nath Mehrotra has authority in law to file a suit and if he has authority, then what is the effect?

2. Whether after service of notice of terminating the tenancy, the tenancy of defendant-respondent No. 2 has come to an end and presently he is occupying the said premises as trespasser?

3. For what relief, plaintiff is entitled.

3. The suit was contested and was dismissed by order dated 22.3.2005 by holding that Trust has not authorised Sri Pashupati Nath Mehrotra to file a suit and he alone has no authority to file the said suit for ejectment of a tenant. During pendency of suit aforestated, in a pending Suit No. 8 of 2003 u/s 92 of Civil Procedure Code, Receiver was appointed by court below on 11.10.2004 and one Rama Shanker Srivastava was appointed as receiver. The said order was challenged by way of filing First Appeal From Order Bearing No. 3063 of 2004 and receiver was substituted in place of Rama Shanker Srivastava as Sri A. H. Ansari, retired District Judge, Kanpur Dehat as receiver. Though in S.C.C. Suit No. 265 of 2000, Sri A. H. Ansari was not substituted nor he has filed any application for substitution nor there is any order to substitute Sri A. H. Ansari as receiver in the suit. A revision was preferred against Judgment by Receiver as J.S.C.C. Revision No. 37 of 2005 on 12.4.2005. In the aforesaid revision, on 21.5.2005 an application was filed for compromise between Receiver and Director of M/s. Bellevue Hotel Company Private Ltd. Though the company was not a party in original suit, the revision as framed and filed was decided on the terms and conditions of the compromise entered into between the Receiver and the Director of M/s. Bellevue Hotel Company Private Ltd. vide compromise decree dated 21.5.2005. Petitioner who is one of the trustee and his forefather has created Trust and in order to protect the Trust, filed present writ petition challenging the compromise decree dated 21.5.2005. In writ petition, interim order was granted and counter and rejoinder-affidavits have already been exchanged.

4. The basic ground raised by petitioner in present writ petition is that the judgment and order dated 21.5.2005 is bad in law because Receiver has got no authority to enter into compromise in view of provisions contained in Order XLI, Rule 1 (1) (d) of the CPC as well as the compromise decree was bad in the eyes of law in view of provisions contained

in Order XXIII, Rule 3 of the Civil Procedure Code. The relevant portion is being quoted below:

1. Appointment of receivers.- (1) Where it appears to the Court to be just and convenient, the Court may by order:

(a) appoint a Receiver of any property, whether before or after decree ;

(b) remove any person from the possession or custody of the property ;

(c) confer upon the Receiver all such powers, as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court think fit.

That so far provisions contained in Order XXIII, Rule 3 of the Code of Civil Procedure, is also necessary to be brought on record, therefore, the same is being quoted below:

Compromise of suit.- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, (in writing and signed by the parties) or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit):

(Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction had been arrived at, the Court shall decide the question ; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment).

(Explanation. - An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872) shall not be deemed to be lawful within the meaning of this Rule).

5. So far as provisions contained under Order XLI, Rule 1 (1) (d) of CPC is concerned, admittedly Court while appointing Receiver is in legal obligation to confer upon Receiver all such powers as to bringing and defending suits and for realisation, management, protection, preservation and improvement of property, the collection of rents and profits thereof, the application and disposal of such rents and profits and execution of documents as owner himself has or such of those powers as Court thinks fit. In the present case, since vide order dated 11.10.2004 when the Receiver was appointed, the Court appointing Receiver did not confer upon him any power as to bringing and defending suits, therefore, the compromise entered between receiver and Director was

not maintainable and therefore, court below has committed error on the basis of record by passing the judgment and compromise decree dated 21.5.2005. As regards Order XXIII, Rule 3 of Civil Procedure Code, it provides that where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties). The word in writing and signed by the parties, which is referred in column has been inserted by Act No. 104 of 1976 effective from 1.9.1977. Thus, from the aforesaid provisions of law, it is clear that compromise can always be entered in writing and signed by the parties, but so far as Director of the Company is concerned, he was not party to a suit. The Company known as M/s. Bellevue Hotel Company Pvt. Ltd. has been actually registered on 28.3.2005 before two months of the compromise decree. Therefore, it is clear that even on the date of filing revision, the Company was not in existence and as such, as it was not a party to the suit, therefore, the compromise itself was not in accordance with the provision of Civil Procedure Code. The memorandum of process issued by the Registrar of the Companies under the Companies Act, 1956 has been brought on record by petitioner. The defendant while filing counter-affidavit has placed reliance upon the orders passed by the court below on 11.10.2004 in Original Suit No. 8 of 2003 appointing the receiver and further placed reliance upon order dated 25.11.2004, passed in First Appeal From Order No. 3036 of 2004 modifying the. order appointing the Receiver.

6. In such situation, learned Counsel for petitioner submits that legal proposition has not been controverted by respondents. In the counter-affidavit only they have highlighted the terms and conditions of the compromise deed for payment of Rs. 10,00,000 and also rent to the tune of Rs. 5,000 per month. Petitioner has brought on bank accounts wherein he has established that Bank Draft of Rs. 10,00,000 has not been credited by respondents in the accounts of trust. A separate account has been opened by Receiver does not indicate about the amount mentioned above. The amount mentioned above, can never be credited in the account of trust because the draft relied upon by respondents was individual property of record. The respondents have not looked into the decision and resolution passed by Committee of the Trust on 10.5.1998 whereas eight trustees were present and signed in the aforesaid decision regarding the vacation of Bunglow No. 84, Cantt. Kanpur to enable the Trust to open a public charitable institution. Petitioner was authorised to institute a suit and to take legal proceeding against the tenant for vacation of said premises. The fact has not been denied by respondents.

7. As regards, income of the Trust raised before this Court, it is necessary to bring on record, the object behind the creation of public trust was not form for the purposes of income, rather contrary to it the object is to ensure the charity to poor peoples by opening the institution for imparting education, therefore, the argument raised to this effect has got no force. In respect to Order XXIII, Rule 3 of Civil Procedure Code, it is necessary to bring on record the judgments rendered, i.e., Byram Pestonji Gariwala Vs. Union Bank of India and others, and D.P. Chadha Vs. Triyugi Narain Mishra and Others, The relevant paragraphs 16 and 17 are quoted below:

16. Order XXIII, Rule 3 of the C.P.C. reads as under:

Compromise of suit.-Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.

17. Byram Pestonji Gariwala Vs. Union Bank of India and others, is an authority for the proposition that in spite of the 1976 Amendment in Order XXIII, Rule 3 of the C.P.C. which requires agreement or compromise between the parties to be in writing and signed by the parties, the implied authority of counsel engaged in the thick of the proceedings in Court, to compromise or agree on matters relating to the parties, was not taken away. Neither the decision in Byram Pestonji Gariwala nor any other authority cited on 8.4.1994 before the trial court dispenses with the need of the agreement or compromise being proved to the satisfaction of the Court. In order to be satisfied whether the compromise was genuine and voluntarily entered into by the defendant, the trial court had felt the need of parties appearing in person before the Court and verifying the compromise. In the facts and circumstances of the case the move of the counsel resisting compliance with the direction of the Court was nothing short of being sinister. The learned Additional District Judge who allowed the appeal preferred by Shri Rajesh Jain unwittingly fell into trap. It was expected of the learned Additional District Judge, who must have been a senior judicial officer, to have seen that he was allowing an appeal which was not even maintainable. But for his order the learned Judge of the trial court would not have taken on record the compromise and passed decree in terms thereof unless the parties had personally appeared before him. In our opinion the appellant Shri D. P. Chaddha was not right in resisting the order of the trial court requiring personal appearance of the defendant for verifying the compromise. This resistance speaks volumes of sinister design working in the minds of the guilty advocates. Even during the course of these proceedings and also during the course of hearing of the appeal before us there is not the slightest indication of any justification behind resistance offered by the counsel to the appearance of the defendant in the trial court. The correctness of the proceedings dated 8.4.1994 as recorded by the Court cannot be doubted. The order sheet of the trial court dated 8.4.1994 records as under:

8.4.1994

(Cutting), Plaintiff with counsel present. Defendant''s counsel Shri D. P. Chaddha present. Arguments heard. Judicial precedents Byram Pestonji Gariwala Vs. Union Bank of India and others, cited by Shri D. P. Chaddha perused. In the matter under consideration, compromise was filed on 20.11.1993 and the same day the counsel were directed to keep the parties present in Court but parties were not produced. On behalf of the

plaintiff-appellant, an appeal was also preferred against the order dated 20.11.1993 before the Hon"ble Distt. and Sessions Judge but the order of trial court being not appealable, appeal has been dismissed.

Para No. 40 of the decision Byram Pestonji Gariwala Vs. Union Bank of India and others, is as under:

Accordingly, we are of the view that the words "in writing and signed by the parties" inserted by the C.P.C. (Amendment) Act, 1976 must necessarily mean to borrow the language of Order III, Rule 1, C.P.C.

Any appearance...or by a pleader appearing applying or acting as the case may be on his behalf:

Provided that any such appearance shall if the Court so desires be made by the party in person.

Thus, in my view the Court can direct any party to be present in Court under Order III, Rule 1 in compliance with the said decision of Hon"ble Supreme Court. The counsel for the defendant has not produced the defendant in Court. Therefore, notice be issued to the defendant to appear personally in Court. For service of notice, the case be put up on 5.5.1994. Before (cutting) preparing the decree on the basis of compromise, I deem it proper in the interest of justice to direct the opposite party to personally appear in the Court.

Sd. Illegible
Seal of Addl. Civil Judge
and Addl.

Chief Judl. Magistrate No. 6,
Jaipur City.

8. Further reliance has been placed upon Girdhari Lal (Dead) by Lrs. Vs. Hukam Singh and Others, Relevant para 10 is being quoted below:

10. As regards the objection that the terms of the compromise operated as a transfer which required a registered deed for its enforcement, the High Court found that it was a sufficient answer to it that the terms were embodied in a compromise decree. The terms of the compromise did not provide for the execution of any deed of transfer. We were taken through the compromise decree by learned Counsel for the appellant. Even though the decree of a Court embodies an agreement between the parties, we do not think that the agreement between the parties placed before us, involving the recognition of a transfer, could require registration unless the terms of the compromise decree necessarily involved the execution of a deed of conveyance also. We, therefore, reject this ground of objection also pressed before us vehemently for acceptance by learned Counsel for the

appellant.

9. Further taking support of Order XLI, Rule 1(1) (d), petitioner has placed reliance upon a judgment in Girdhari Lal (Dead) by Lrs. Vs. Hukam Singh and Others, Relevant para 7 is quoted below:

7. As regards the objection that the terms of the compromise operated as a transfer which required a registered deed for its enforcement, the High Court found that it was a sufficient answer to it that the terms were embodied in a compromise decree. The terms of the compromise did not provide for the execution of any deed of transfer. We were taken through the compromise decree by learned Counsel for the appellant. Even though the decree of a Court embodies an agreement between the parties, we do not think that the agreement between the parties placed before us, involving the recognition of a transfer, could require registration unless the terms of the compromise decree necessarily involved the execution of a deed of conveyance also. We, therefore, reject this ground of objection also pressed before us vehemently for acceptance by learned Counsel for the appellant.

10. As regards the argument raised on behalf of respondents regarding locus standi to person, in the present writ petition petitioner has placed reliance upon a judgment in Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, and reliance has been placed upon para 17 of the judgment. The same is being quoted below:

17. In interpreting provisions of such beneficial legislation the Courts always lean in favour of that interpretation which will further that beneficial purpose of that legislation. Is this not an additional ground for thinking that in adopting Section 3, the provisions of Chapter V of the Transfer of Property Act, 1882, the Legislature had the intention of applying these provisions to all tenancies to which the Bombay Tenancy Act, itself apply irrespective of the fact whether these tenancies were created before 1.4.1930, or not? It was contended therefore that even insofar as the claim for possession was based on the ground of forfeiture under the terms of the lease it was necessary for the landlord to prove that he had given notice in writing to the lessee of his intention to determine the lease. The Bombay Revenue Tribunal took the view that the plaintiff-respondent must fail in his application for possession because he had failed to terminate the tenancy by notice before taking proceedings for ejectment. Is the conclusion wrong and if so, is such error apparent on the face of the record? If it is clear that the error if any is not apparent on the face of the record, it is not necessary for us to decide whether the conclusion of the Bombay High Court on the question of notice is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to. be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari

according to the rule governing the powers of the superior court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal, viz., that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari.

11. In the said judgment, the Apex Court has taken a view that when the order impugned is illegal, apparent on the face of record, power of superior court has to be exercised by issuing a writ. In Bhikoba Shankar Dhumal (Dead) by Lrs. and Others Vs. Mohan Lal Punchand Tathed and Others, in paragraph 11, the Apex Court has held that if any person is effected by an order passed by court below, the said person cannot be characterized to the said procedure. Rather the Apex Court has held that such a person has a full right to maintain the petition. In such situation, learned Counsel for petitioner submits that present writ petition is liable to be allowed and the orders passed by respondents is liable to be quashed.

12. On the other hand, the private respondents filed their counter-affidavit and the main question raised by respondents are regarding maintainability of writ petition and locus of petitioner to maintain the present writ petition. Respondent Nos. 2 and 4 have filed their separate counter-affidavits bringing out the fact that petitioner has no locus standi to file the present writ petition under Articles 226 and 227 of the Constitution of India. It has been submitted that Bellevue Hotel was in existence even in the year 1921. It was being managed by Mr. Nani Sorabji Karanjia even prior to 1940. He was a tenant of the Trust and was running the hotel. On 13.1.1940, a lease deed was further executed in favour of Mr. Karanjia to run the hotel and the same was being rendered by him. Earlier rent was being paid was lesser but from 13.1.1940, rent was enhanced to Rs. 250 per month. During the period of tenancy rent was always being paid by Bellevue Hotel. After death of N.S. Karanjia, deed was executed by his son and by his wife but the rent was always being paid from the account of the Hotel. Subsequently, after 25.8.2002, rent was being paid directly to Bank from the account of the hotel and this hotel is still being run. In the compromise, Rs. 10,00,000 was to be paid to the Trust and the registered deed to this effect was executed on 11.7.2005 and rent was also enhanced and the said amount has already been paid. Earlier an injunction suit was filed against the Trust which was dismissed on 1.2.2005 and the said judgment has become final. The suit before the Judge Small Causes Court was dismissed. Against that order a revision was filed by Trust and Receiver, was appointed, against whom a first appeal from order was filed and order appointing Receiver was upheld and respondent No. 3 was appointed as a trustee vested with all jurisdiction of the trustee. The Court was having every right to come into compromise and to decide the suit in terms of compromise. Once the Receiver of the Trust was appointed and a seal to that effect was put by the Court, the Receiver was acting on behalf of Trust and was having full jurisdiction to compromise. Therefore, petitioner cannot say that he is one of the trustee and is aggrieved by order passed by the trial court.

13. Respondent No. 3 has also filed a counter-affidavit and has submitted before this Court that regarding the locus of petitioner that petitioner alone is not a person aggrieved and cannot maintain the writ petition before this Court. The compromise of the terms was for the benefit of Trust and Court after application of mind permitted the compromise and decided the suit in the terms of compromise. The effect of compromise which is beneficial to the Trust as the rent has been enhanced from Rs. 250 to 5,000 and Rs. 10,00,000 has been deposited as security by tenant in the account of Trust and a lease deed to that effect has been executed. The main crux of learned Counsel Sri Ajit Kumar is regarding the locus standi of petitioner. Reliance has been placed upon the following judgments.

(1) Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others,

8. The first question is whether the appellant had locus standi to file a petition in the High Court under Article 226 of the Constitution. This Court in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, dealing with the question of locus standi of the appellant in that case to file a petition under Article 226 of the Constitution in the High Court observed:

Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the Court seeking a relief thereunder. The

Article in terms does not describe the classes of persons entitled to apply thereunder ; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.

Has the appellant a right to file the petition out of which the present appeal has arisen? The appellant is the President of the Panchayat Samithi of Dharmajigudem. The villagers of Dharmajigudem formed a Committee with the appellant as President for the purpose of collecting contributions from the villagers for setting up the Primary Health Centre. The said Committee collected Rs. 10,000 and deposited the same with the Block Development Officer. The appellant represented the village in all its dealings with the Block Development Committee and the Panchayat Samithi in the matter of the location of the Primary Health Centre at Dharmajigudem. His conduct, the acquiescence on the part of the other members of the Committee and the treatment meted out to him by the authorities concerned support the inference that he was authorised to act on behalf of the Committee. The appellant was, therefore, a representative of the Committee which was in law the trustees of the amounts collected by it from the villagers for a public purpose. We have, therefore, no hesitation to hold that the appellant had the right to maintain the application under Article 226 of the Constitution. This Court held in the decision cited

supra that "ordinarily" the petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest : it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Article 226 of the Constitution at his instance is, therefore, maintainable.

17. The result of the discussion may be stated thus : The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed : the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power u/s 72 of the Act to review an order made u/s 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order, it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.

(2) State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc.,

53. We may also mention, even at this stage, that so far as Shankar Trading Company is concerned, there is absolutely no doubt in our mind that it is not entitled to question the approvals granted to new units since there was no indication at any stage that the supplies which it was receiving in the previous years pursuant to the agreement with the Government were going to be affected. Its attempt to stop the new industries from coming up in the State, while enjoying an almost monopoly status in the matter of Khair wood supplies, is certainly a strong factor militating against its bona Jides in approaching the Court.

(3) B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees'' Association and Others,

53. This Court in A.N. Shashtri v. State of Punjab, held that the writ of quo warranto should be refused where it is an outcome of malice or ill will. The High Court failed to

appreciate that on 18.1.2003 the appellant filed a criminal complaint against the second respondent-Halakatte, that cognizance was taken by the Criminal Court in C. C. No. 4152 of 2003 by the Jurisdictional Magistrate on 24.2.2003, process was issued to the second respondent who was enlarged on bail on 12.6.2003 and the trial is in progress. That apart, the second respondent has made successive complaints to the Lokayukta against the appellant which were all held to be baseless and false. This factual background which was not disputed coupled with the fact that the second respondent Halakatte initiated the writ petition as President of the 1st respondent Union, which had ceased to be a registered trade union as early as on 2.11.1992 suppressing the material fact of its registration having been cancelled, making allegations against the appellant which were no more than the contents of the complaints filed by him before the authorities which had been found to be false after thorough investigation by the Karnataka Lokayukta, would unmistakably establish that the writ petition initiated by respondent Nos. 1 and 2 lacked in bona fides and it was the outcome of the malice and ill will the 2nd respondent nurses against the appellant. Having regard to this aspect of the matter, the High Court ought to have dismissed the writ petition on that ground alone and at any event should have refused to issue a quo warranto, which is purely discretionary. It is no doubt true that the strict rules of locus standi are relaxed to an extent in a quo warranto proceedings. Nonetheless an imposter coming before the Court invoking public law remedy at the hands of a constitutional court suppressing material facts has to be dealt with firmly.

84. In our opinion, the finding of legal mala fides is unsustainable being based on a misunderstanding of the law and facts. When a competent and experienced officer of an outstanding merit is appointed to a higher post on contract basis after his superannuation from service in the larger public interest, it does not suffer from legal malice at all. The decision of the then Chief Minister, Shri S.M. Krishna, recorded in the file is also extracted by the High Court at p. 69 of SLP paper-book. Vol. II. In the context of the note put up by the Secretary of the Department, it is again extracted at pp. 67 and 68 which clearly bring out the fact that the appointment was made in the interest of the Board and the State at a time when nobody else other than the appellant could have served the interests of the State better. The High Court failed to appreciate the element of urgency involved in making the appointment because of impending negotiations with World Bank Scheduled for 9.2.2004, the writ petition, in our opinion, was motivated as respondent 1 had lodged a false complaint to the Lokayukta against the appellant which was found to be baseless by the Lokayukta (Annexure-P9). A petition praying for a writ of quo warranto being in the nature of public interest litigation, it is not maintainable at the instance of a person who is not unbiased. The second respondent is the President of the first respondent Union. He has chosen this forum to settle personal scores against his erstwhile superior officer after his retirement. The proceeding, in our view, is not meant to settle personal scores by an employee of the department. The High Court, in our view, ought to have dismissed the writ petition filed by respondent 1 at the threshold.

(4) Management of Karnataka State Road Transport Corporation Vs. KSRTC Staff and Workers" Federation and Another,

18. But even that apart, the said notification is liable to be set aside also on a different ground. It has to be kept in view that the payroll check-off facility was made available to the respondent-Union by a binding settlement between the Corporation and the Union dated 28.7.1988. It is true that in para 7 of the said settlement, it was mentioned that the settlement was valid till the recognition accorded to the Federation existed or would continue to be in force until both the parties terminated the terms by mutual consent earlier. It is not in dispute between the parties that the settlement of 28.7.1988 remained in force as the recognition granted to the respondent-Union continued at least till 16.7.1966. It is also pertinent to note that there is no evidence that the Union lost such recognition subsequently by any further referendum. Be that as it may, the date on which the impugned notification dated 21.9.1993 was issued by the Corporation, the said settlement was fully operative and binding between the parties. In order to salvage the situation for the Corporation, Mr. Sanghi, learned senior counsel submitted in the alternative that as per para 7 of the said settlement, it had to continue until both the parties terminated the settlement by mutual consent earlier. Mr. Sanghi submitted that the impugned notification issued by the Corporation on 21.9.1993 itself resulted in termination of the said settlement as contemplated by the second part of para 7. The said submission is to be stated to be rejected. The contingency contemplated by the second part of para 7 of the settlement dated 28.7.1988 could apply only when both the parties, namely, the Corporation as well as the respondent-Union by mutual consent terminated the said settlement earlier, i.e., during the time the Union remained a recognized union. It obviously could not be submitted by Shri Sanghi for the Corporation that the unilateral notification dated 21.9.1993 issued by the Corporation brought about the termination of the settlement of 28.7.1988 by mutual consent of the Corporation and the respondent Union. Consequently, the second part of para 7 of the said settlement could never have applied to the facts of the present case. Having realised this difficulty, Mr. Sanghi, learned senior counsel for the Corporation submitted that in any case, the impugned order dated 21.9.1993 of the Corporation can be treated to be a notice u/s 19 (2) of the I. D. Act. In this connection, it is necessary to refer to Section 19, Sub-sections (1) and (2) of the I. D. Act. They read as under:

19. Period of operation of settlement and awards.-(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon for a period of six months (from the date on which the memorandum of settlement is signed by the parties to the dispute), and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the

settlement is given by one of the parties to the other party or parties to the settlement.

It cannot be disputed that the settlement in question came into force on 28.7.1988 when it was signed by both the parties. A question arises as to how far the binding effect of that settlement may continue between the parties. As seen earlier, Section 19 (2) clearly provides that such settlement shall be binding for such period as is agreed upon by the parties. Para 7 of the said settlement. as seen earlier, lays down the period for the currency of the settlement as it clearly provides that the settlement would be valid till the recognition accorded to the Federation existed. As we have seen earlier, the recognition to the respondent-Federation continued all throughout and as on date even it is not shown that its recognition has stood superseded by any recognition given to any rival and competing recognised union. In any case, by the time of the impugned notification dated 21.9.1993, that period had never ended. Similarly, there was no earlier termination of settlement by mutual consent. Till either of these eventualities occurred, there was no occasion for the Corporation to terminate the settlement u/s 19 (2) by any notice as it is clearly laid down therein that the settlement shall be binding between the parties for the agreed period and shall also continue to be binding even after the expiry of the period until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party. So, even assuming that the Corporation could have unilaterally terminated such settlement, it could not have done so during the time the settlement was operative on its own terms, meaning thereby, till the recognition accorded to the Union continued or till any earlier termination by mutual consent. As seen earlier, by 21.9.1993, none of these contingencies had occurred. Consequently, the so-called unilateral termination of the settlement by the notification of the Corporation dated 21.9.1993 must be held to be completely ultra vires the powers of the Corporation u/s 19(2) for terminating the said binding settlement, though such an occasion had still not arisen for the Corporation as the binding effect of the settlement during the period provided therein as per Clause 7 had not come to an end by then. Even on that ground, the notification dated 21.9.1993 fell foul on the touchstone of Section 19 (2) of the I. D. Act, having not complied with the said provision.

(5) R.K. Jain Vs. Union of India and Others,

74. Sri Harish Chander, admittedly was the Sr. Vice President at the relevant time. The contention of Sri Thakur of the need to evaluate the comparative merits of Mr. Harish Chander and Mr. Kalyansundaram a senior-most Member for appointment as President would not be gone into in a public interest litigation. Only in a proceeding initiated by an aggrieved person it may be open to be considered. This writ petition is also not a writ of quo warranto. In service jurisprudence it is settled law that it is for the aggrieved person, i.e.. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public spirited person.

(6) The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others,

5. The first question that falls to be considered is whether the appellant has focus standi to file the petition under Article 226 of the Constitution. The argument of learned Counsel for the respondents is that the appellant was only managing the industry and it had no proprietary right therein and, therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part-Ill or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder ; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In The State of Orissa Vs. Madan Gopal Rungta, this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. In Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, if has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. The question, therefore, is whether in the present case the petitioner has a legal right and whether it has been infringed by the contesting respondents. The petitioner entered into an agreement dated July 24, 1918, with respondent No, 5 in regard to the management of the Oriental Gas Company. Under the agreement, the appellant was appointed as Manager and the general management of the affairs of the Company was entrusted to it for a period of 20 years. The appellant would receive thereunder by way of remuneration for its services, (a) an office allowance of Rs. 3,000 per mensem, (b) a commission of 10 per cent, on the net yearly profit of the Company, subject to a minimum of Rs. 60,000 per year in the case of absence of or inadequacy of profits, and (c) a commission of Re. 1 per ton of all coal purchased and negotiated by the Manager. In its capacity as manager, the appellant-Company was put in charge of the entire business and its assets in India and it was given all the incidental powers necessary for the said management. Under the agreement, therefore, the appellant had the right to manage the Oriental Gas Company for a period of 20 years and to receive the aforesaid amounts towards its remuneration for its services. Section 4 of the impugned Act reads:

With effect from the appointed day and for a period of five years thereafter:

(a) the undertaking of the Company shall stand transferred to the State Government for the purpose of management and control ;

(b) the Company and its agents, including managing agents, if any, and servants shall cease to exercise management or control in relation to the undertaking of the Company:

(c) all contracts, excluding any contract or contracts in respect of agency or managing agency, subsisting immediately before the appointed day and affecting the undertaking of the Company shall cease to have effect or to be enforceable against the Company, its agents or any person who was a surety thereto or had guaranteed the performance thereof and shall be of as full force and effect, against or in favour of the State of West Bengal and shall be enforceable as fully and effectively as if instead of the Company the State of West Bengal had been named therein or had been a party thereto:

Under the said section, with effect from the appointed day and for a period of five years thereafter, the management of the Company shall stand transferred to the State Government, and the Company, its agents and servants shall cease to exercise management or control of the same. Under Clause (c) of the section, the contracts of agency or managing agency are not touched, but all the other contracts cease to have effect against the Company and are enforceable by or against the State. It is not necessary in this case to decide whether under the said agreement the appellant was constituted as agent or managing agent or a servant of the Oriental Gas Company. Whatever may be its character, by reason of Section 4 of the impugned Act, it was deprived of certain legal rights it possessed under the agreement. Under the agreement, the appellant had the right to manage the Oriental Gas Company for a period of 20 years and to receive remuneration for the same. But u/s 4 of the impugned Act, it was deprived of that right for a period of five years. There was certainly a legal right accruing to the appellant under the agreement and that was abridged, if not destroyed, by the impugned Act. It is, therefore, impossible to say that the legal right of the appellant was not infringed by the provisions of the impugned Act. In the circumstances, as the appellant''s personal right to manage the Company and to receive remuneration therefore had been infringed by the provisions of the statute, it had locus standi to file the petition under Article 226 of the Constitution.

(7) Banarsi and Others Vs. Ram Phal,

8. Sections 96 and 100 of the C.P.C. make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively ; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal. See Phoolchand and Another Vs. Gopal Lal, Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd., ; Smt. Ganga Bai Vs. Vijay Kumar and Others, No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the C.P.C. provide for an appeal against decree and not against judgment.

(8) Kalyan Singh v. State of Uttar Pradesh and Ors. AIR 1962 SC 1183 (paragraph 14):

14. It is necessary to bear certain facts and considerations in mind in dealing with the remaining contentions. By the scheme (Cl. 7) the permit of the appellant was cancelled. The scheme as approved was published in the U.P. Gazette on October 8, 1960 and was to come into operation on October 15, 1960 or thereafter. A notification was published on November 4, 1960 u/s 68F (2) of the Act cancelling the appellant''s permit with effect from November 27, 1960. The appellant therefore ceased to have any right to ply his vehicles on the route and he had no right to object to the vehicles of the State Transport Undertaking plying on that route. If the scheme was validly promulgated and became final within the meaning of Section 68D (3), it had the effect of extinguishing all rights of the appellant to ply his vehicles under his permit. After cancellation of his permit, he could not maintain a petition for a writ under Article 226 because a right to maintain such a petition postulates a subsisting personal right in the claim which the petitioner makes and in the protection of which he is personally interested. It is true that the appellant did at the date of the petition filed in the High Court hold a permit which was to enure till the 27th November, 1960. But if the permit was validly terminated from the date specified, he will not be entitled to relief even if he had on the date of the petition a subsisting right. Ground No. 2 must therefore fail.

14. Further relying upon a judgment of this Court in Shree Krishna Jotish Pathshala Kanya Inter College. Bisalpur, Pilibhit and Anr. 1988 UPLBEC 739, it has been submitted that it is a settled principle of law that if the effect of setting aside an illegal order would be to restore and equally illegal order, the jurisdiction of writ should not be exercised. Reliance has been placed upon paragraph 3 of the said judgment. The same is being reproduced below:

3. Shri L.N. Pandey, standing counsel has appeared before us for respondent No. 1. Respondent No. 2 has also put in appearance and Sri Ajit Kumar, advocate has filed his vakalatnama on his behalf. Having heard learned Counsel for the parties we are of opinion that even if it may be accepted that the order dated 20th December, 1985, passed by the respondent No. 1 is without jurisdiction, no case has been made out for interference with that order under Article 226 of the Constitution for it is a settled principle that if the effect of setting aside an illegal order would be restore an equally illegal order of jurisdiction under Article 226 of the Constitution is not to be exercised. As seen above, the President of the existing Committee of Management had himself invited application from those persons who intended to become members of the society. According to the advertisement, these applications were to be made by 30th November, 1985 and the membership fee was to be deposited with the treasurer of the College. Respondent Nos. 2 to 19 approached the respondent No. 1 on 30th November, 1985 namely, the last date by which the applications for enrolment as members were to be made, asserting that they approached the President of the Committee of Management with the request that they may be made members of the society after accepting their membership fee but he declined to accept their applications or the membership fee. It further appears that thereupon the D.I.O.S. on 30th November, 1985 itself sent those applications to the

President of the Committee of Management alongwith drafts of the membership fee. It is thus to be seen that the membership fee as well as the requisite applications reached the President on 30th November, 1985, i.e., within the time mentioned in the advertisement made in this behalf.

15. Taking support of aforesaid judgment, learned Counsel for petitioner submits that it cannot be said that compromise arrived between the parties was in any way against the interest of Trust. Rs. 10,00,000 was paid as lumpsum to the Trust as well as rent was enhanced from Rs. 250 to Rs. 5,000, therefore, it was in the interest of Trust, arrived between the respondent Nos. 2 and 4 and between the receiver. If petitioner is one of the trustee as alleged by him he cannot say before this Court that the receiver in any way has acted against the interest of Trust.

16. Learned Counsel for respondents has placed reliance upon a judgment in Rakesh Shukla Vs. District Magistrate/Sub-Divisional Magistrate and Another, and reliance has been placed upon para 2 of the said judgment. The same is being reproduced below:

2. In our opinion this is not a fit case for exercise of our discretion under Article 226. Writ is discretionary remedy and in a writ petition the petitioner must satisfy the Court that not only the law has been violated but equity is also in his favour. If the petitioner only shows that the law has been violated, but there is no equity in his favour, a writ will not be issued. In the present case, even assuming that the law has been violated because the recovery could not be made as arrears of land revenue yet there is no equity in favour of the petitioner. The petitioner has not disputed his liability to pay the amount in question. He really wants to delay payment. It is well known that civil suits take years and years to decide. Hence, this is not a fit case for exercising our writ jurisdiction under Article 226 of the Constitution of India.

17. Taking support of aforesaid judgment learned Counsel for respondents submits that if the petitioner only shows that the law has been violated but there is no equity in his favour, writ cannot be issued.

18. In the present case, petitioner claims himself to be one of the trustee, appeared before the trial court, due to the differences amongst the trustee, a receiver was appointed and this Court has put a seal upon the validity of appointment of receiver. The function of receiver is to Act according to the direction issued by this Court and in the interest of Trust. Admittedly, respondent Nos. 2 and 4 are the tenant of the Trust and suit was dismissed but the revisional court taking into consideration the fact that terms and conditions of compromise is beneficial to the Trust and receiver is acting in the interest of Trust by enhancing the rent and after payment of Rs. 10,00,000 then if the contention of petitioner is accepted that will be adverse to the interest of the Trust. The effect of setting aside the order of compromise will be that respondent No. 4 will pay only Rs. 250 as a rent then the question will be whether it will be in the interest of Trust or not. In such situation, learned Counsel for respondents submits that writ petition is liable to be

dismissed.

19. After hearing learned Counsel for parties and after perusal of record it is clear that one Pashupati Nath Mehrotra one of the trustee filed a suit for ejectment and dispossession of defendant from Bunglow No. 84, Cantonment Kanpur but the said suit was dismissed on the ground regarding maintainability. The receiver who was looking after the interest of the Trust has filed a revision and when he was of the opinion that if some compromise for enhancing of rent as well as payment of some handsome amount is given by respondent Nos. 2 and 4 that will be beneficial in the interest of Trust. Petitioner has failed to prove from record that receiver was not having any power according to the terms and conditions and according to Order XLI, Rule 1 (1) (d) and he has acted against the interest of Trust. Admittedly, another suit is still pending and it is always open to the Trust, in case the Trust does not want to keep respondent Nos. 2 and 4 as a tenant, they can file a suit for ejectment against respondent Nos. 2 and 4. As regards, argument made on behalf of petitioner that receiver has acted in contrary to the interest of Trust, cannot be accepted at this stage because admittedly, on the basis of compromise, Trust has been benefited and in case, the order passed by revisional court accepting the compromise is set aside, the effect will be that the Trust will receive only Rs. 250 as rent, enhanced in the compromise to the tune of Rs. 5,000. This Court in Sri Krishna Jotish Pathshala Inter College (supra) has held to that effect of setting aside an illegal order if it would be to restore an equally illegal order, this Court should not exercise the powers under Articles 226 and 227 of the Constitution of India.

20. It is also clear from record that petitioner during pendency of present writ petition filed a regular Suit No. 1705 of 2005 with a prayer of injunction against respondent Nos. 1 and 2 challenging the same order dated 21.5.2005, passed by Small Causes Court in Revision No. 37 of 2005, impugned in the present writ petition. He claimed permanent injunction and filed an application for temporary injunction with a prayer that respondent Nos. 1 and 2 their tenants, assignees, representatives, power of attorney holders be restrained to hold any commercial gathering and functions in the property in question. The trial court rejected the said application vide its order dated 10.1.2006. First Appeal From Order No. 379 of 2006 has been filed, which is pending for disposal. An application for injunction was also filed in the said appeal but no order has been passed by this Court. Therefore, if petitioner is pursuing two remedies one before this Court and another before the trial court, then in my opinion, it is not permissible. If contention of petitioner is correct, as stated, on the basis of relevant evidence and records the trial court where the suit is pending, can be decided according to law. In view of said situation, I find no merit in the argument raised by petitioner that order passed by court below is bad in law.

21. In view of aforesaid fact, I find that contention of petitioner cannot be accepted that any action has been taken against the interest of the Trust.

22. In view of the aforesaid fact, the present writ petition is devoid of merits and is hereby dismissed.

23. Interim order, if any, is vacated. No order as to costs.