

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
DIVISION BENCH
BEFORE: SHEEL NAGU

AND

RAJEEV KUMAR SHRIVASTAVA, JJ.

Writ Petition No. 561/2008

Mahesh Kumar Jha

Versus

Union of India and Others

Shri B.B. Shukla, Advocate for the petitioner.
Shri Vinod Bharadwaj, Senior Advocate with Shri Kartik Sharma,
Advocate for the respondents.

Writ Petition No. 18607/2019

Mahesh Kumar Jha

Versus

Union of India and Others

Shri B.B. Shukla, Advocate for the petitioner.
Shri Sunil Kumar Gupta, Advocate, Advocate for the respondents.

Whether approved for Reporting : Yes

Reserved on: 29.11.2019

Whether approved for reporting : Yes

<i>Law laid down</i>	<i>Relevant paras</i>
<i>(1) Article 226 confers power on High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are not to be confined only to statutory</i>	<i>Paras, 7</i>

<p><i>authorities and instrumentalities of the State. They may cover any person or body performing public duty. The form of the body concerned is not very much relevant. The relevant is the nature of the duty imposed on the body. Such duty must be judged in the light of positive obligation owed by the person or authority to the affected party. If a positive obligation exists, mandamus cannot be denied. The words 'any other purpose' makes the jurisdiction of the High Court to issue writ, more than well established provisions of law. In short, words 'any other purpose' means enforcement of legal right and the performance of any legal duty.</i></p>	
<p><i>The power vested under Article 227 is obviously the power of superintendence as stated in the Article in so many words. But, on the other hand, while acting under Article 227, the Court is not so much concerned with the enforcement of the legal rights of the parties as with the discharged of its own obligation irrespective of the rights of the parties.</i></p> <p><i>Supervisory jurisdiction under Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in</i></p>	<p><i>Paras 11, 12 13</i></p>

*relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the Armed Forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by sub-Articles (2) and (3) of Article 227. It is well-settled that the power of superintendence conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is **paving the path of justice and removing any obstacles therein**. The power under Article 227 is wider than the one conferred on the High Court under Article 226. That means the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.*

*The difference between Articles 226 and 227 of the Constitution was well brought out in **Umaji Keshao Meshram and Ors. Vs. Smt. Radhikabai and Anr., [(1986) Supp. SCC 401]**. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of*

Para 14

<p><i>superintendence has been extended by this Article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.</i></p>	
<p><i>It is also well settled that an encroacher cannot claim any title over the land so encroached.</i></p>	<p>Para 21</p>

ORDER
(03/12/2019)

Per Rajeev Kumar Shrivastava, J.:

This order shall govern the disposal of Writ Petitions No.561/2008 and 18607/2019, as the issue involved in both the petition is common in nature.

2. Both the writ petitions have been preferred under Article 226/227 of the Constitution of India. Writ Petition No. 561/2008 has been filed praying therein for issuance of a writ in the nature

of mandamus or any other writ command and/or direction for compelling the respondents to return the possession of 4500 sq. ft. land to the petitioner. In Writ Petition No. 18607/2019 it was prayed that the order dated 27.7.2019 passed by Twelfth Additional District Judge, Gwalior, affirming the order dated 4.7.2016 passed by Estate Officer, North Central Rail, Jhansi be set aside.

3. Briefly stated facts of the case are that the respondents served a notice under sub-section (3) of Section 7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('the Act' for brevity) for handing over the possession of 56.4 sq.mtr. land alleging that the petitioner has unauthorisedly occupied the railway land. A notice was also served on the appellant for recovery of unauthorised use of the railway land. The petitioner submitted objections before the Estate Officer by submitting lease deed and allotment letter concerned. The Estate Officer rejected the plea, against which an appeal was preferred before the District Judge, Gwalior. The District Judge concerned again disallowed the plea of the petitioner. Hence, the petitioner has approached this Court.

4. Learned counsel for the petitioner submitted that the petitioner is having possessory right over the land in dispute which is situated near the railway track. The lease was granted in favour of the petitioner, therefore it cannot be said that the petitioner is encroacher over the disputed land. The respondents being public officers are not competent to take law in their own hands. The impugned order is contrary to law as well as the law established by the Apex Court. No court of competent jurisdiction has passed the order for dispossessing the petitioner from the land

in dispute. Without any order, without adopting any procedure as prescribed in the Act, the respondents are not entitled to take possession of the land in dispute. Since the petitioner is having lawful possession over the disputed land as the land was allotted by the State Industries Department to him, hence prayed to allow these petitions preferred under Article 226/227 of the Constitution of India.

5. Heard learned counsel for the parties and perused the available record.

6. Power of High Court to issue writ begins with a non-obstante clause. The power and jurisdiction of the High Court are plenary. This jurisdiction extends to enforcement against infringement of fundamental rights as incorporated in Part-III of Constitution of India, against 'State' and also against 'any person or authority' and 'for any other purpose'. The term 'authority' used in Article 226, in the context, must receive a liberal meaning unlike the term 'authority' in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article. Article 226 confers power on High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State. They may cover any person or body performing public duty. The form of the body concerned is not very much relevant. The relevant is the nature of the duty imposed on the body. Such duty must be judged in the light of positive obligation owed by the person or authority to the affected party. If a positive obligation exists, mandamus cannot be denied. The words 'any other purpose' makes the jurisdiction of the High Court

to issue writ, more than well established provisions of law. In short, words 'any other purpose' means enforcement of legal right and the performance of any legal duty.

7. Thus, it is clear that vast powers are vested with the Judiciary to control administrative action when it infringes fundamental rights of the citizens or when it transgresses the limits set by the Constitution, the Grundnorm of our country. It ensures the Rule of Law and proper check and balances between the three organs of our democratic set up. Therefore, the philosophy of writs is well synchronized in the Constitutional provisions to ensure that rights of citizens be not suppressed by an arbitrary administrative or Judicial action. Article 226 empowers the High Court to issue directions, orders or writs as mentioned above for the enforcement of fundamental rights and for 'any other purpose' as discussed above as well as for non fundamental rights.

8. At this juncture, it would be appropriate to discuss the writ jurisdiction of High Court under Article 226 and 227 of the Constitution of India, as the present matter is filed under Article 226 as well as Article 227 of the Constitution.

9. In **Halsbury's Laws of England**, however, the word 'supervisory' is used. While dealing with the proceedings on the Crown side of the Queen's Bench Division it is said in Vol. 11 of Lord Simond's edition at page 23 that:

"The proceedings described in this Part of this title are those by means of which the Queen's Bench Division exercises its ancient jurisdiction of supervising inferior courts, commanding magistrates and others to do what their duty requires in every case where there is no specific remedy and protecting the liberty of the subject by speedy and summary interposition."

10. The nature of the power of superintendence as exercised under Article 226 against Courts and Tribunals is the same as exercised under Article 227. The nature of the jurisdiction under Article 226 was explained by the Supreme Court in *Veerappa v. Raman and Raman Ltd.* [AIR 1953 S.C. 193 (E)], wherein it was observed that :

"Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

This power of superintendence conferred by Article 227 is ...to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors"

11. The power vested under Article 227 is obviously the power of superintendence as stated in the Article in so many words. But, on the other hand, while acting under Article 227, the Court is not so much concerned with the enforcement of the legal rights of the parties as with the discharge of its own obligation irrespective of the rights of the parties.

12. Supervisory jurisdiction under Article 227 of the

Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the Armed Forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by sub-Articles (2) and (3) of Article 227. It is well-settled that the power of superintendence conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is **paving the path of justice and removing any obstacles therein**. The power under Article 227 is wider than the one conferred on the High Court under Article 226. That means the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.

13. The history of supervisory jurisdiction exercised by the High Court, and how the jurisdiction has culminated into its present shape under Article 227 of the Constitution, was traced in **Waryam Singh & Anr. Vs. Amarnath & Anr. (1954) SCR 565**. The jurisdiction can be traced back to Section 15 of High Courts Act 1861 which gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. Section 107 of the Government of India Act 1915 and then Section 224 of the Government of India Act 1935, were similarly worded and reproduced the predecessor provision. However, sub-section (2) was added in Section 224 which confined the jurisdiction of

the High Court to such judgments of the inferior courts which were not otherwise subject to appeal or revision. That restriction has not been carried forward in Article 227 of the Constitution. In that sense Article 227 of the Constitution has width and vigour unprecedented.

14. The difference between Articles 226 and 227 of the Constitution was well brought out in **Umaji Keshao Meshram and Ors. Vs. Smt. Radhikabai and Anr., [(1986) Supp. SCC 401]**. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this Article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

15. Upon a review of decided cases and a survey of the occasions wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory

jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labeling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate revisional or corrective jurisdiction.

16. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party

aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

17. It is important to mention here that in exercise of supervisory jurisdiction under Article 227 of the Constitution, the Courts have devised self-imposed rules of discipline on their power. **Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. It would also be sound exercise of discretion on the part of the High Court to refuse to exercise power of superintendence during the pendency of the proceedings.** However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded. Moreover, the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal procedure. It is well settled that the power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their jurisdiction and not for correcting mere errors. It is true that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution. It is also established that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as the Court of Appeal. Such power should only be used when the act shows gross failure of justice or grave injustice. Care, caution and circumspection need to be exercised, when any of the

aforesaid two jurisdictions is sought to be invoked during the pendency of suit or proceedings in the subordinate court.

18. In the light of above, the present case has to be considered.

19. The petitioner has come to Court only on the basis of alleged lease granted in his favour. It is very well settled that lease holder is not having right over the property as vested in the owner. The opportunity of hearing was granted to the petitioner during the proceedings conducted under the Act and the Court below has properly adjudicated that no procedural fault was found during the proceedings under the Act.

20. Moreover, If we go through the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, section 2(c) defines the word “premises” and section 2(e) defines “public premises” as under:-

“2(c)- "premises" means any land or any building or part of a building and includes,--

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building, and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

2(e)- "public premises" means--

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980) under the control of the Secretariat of either House of Parliament for providing residential

accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,--

(i) any company as defined in section 3 of the Companies Act, 2013 (18 of 2013)], in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;

(ii) any corporation (not being a company as defined in section 3 of the Companies Act, 2013 (18 of 2013)], or a local authority established by or under a Central Act and owned or controlled by the Central Government;

(iii) any company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent. of the paid up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first-mentioned company and which carries on the business of public transport including metro railway.

Explanation.--For the purposes of this item, "metro railway" shall have the same meaning as assigned to it in clause (i) of sub-section (1) of section 2 of the Metro Railway (Operation and Maintenance) Act, 2002 (60 of 2002);

- (iiia) any University established or incorporated by any Central Act,;
- (iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);
- (v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);
- (vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act,
- (vii) any State Government or the Government of any Union territory situated in the National Capital Territory of Delhi or in any other Union territory,
- (viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and

(3) in relation to the National Capital Territory of Delhi,--

- (i) any premises belonging to the Council as defined in clause (9) of section 2 of the New Delhi Municipal Council Act, 1994 (44 of 1994) or Corporation or Corporations notified under sub-section (1) of section 3 of the Delhi Municipal Corporation Act, 1957 (66 of 1957),] of Delhi, or any Municipal Committee or notified area committee,
- (ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority; and,
- (iii) any premises belonging to, or taken on lease or requisitioned by, or

on behalf of any any State Government or the Government of any Union Territory,

(iv) any premises belonging to, or taken on lease by, or on behalf of any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

Explanation.--For the purposes of this clause, the expression "State Government" occurring in clause (45) of the said section shall mean the Government of the National Capital Territory of Delhi.

(4) any premises of the enemy property as defined in clause (c) of section 2 of the Enemy Property Act, 1968 (34 of 1968).”

21. Hence, it is clear from above that the Court below has rightly rejected the plea on account of non-availability of the fact that the principles of natural justice were violated and reasonable opportunity of hearing was not granted to the petitioner during the proceedings. The order passed by the Court below is a reasoned and speaking order, whereby it has been observed that the petitioner is an encroacher over the disputed land. It is also well settled that an encroacher cannot claim any title over the land so encroached. Hence, both the petitions being sans substance are hereby dismissed being devoid of merits. No costs.

(Sheel Nagu)
Judge

(Rajeev Kumar Shrivastava)
Judge