

PUNJAB AND HARYANA HIGH COURT

Raj Kishan Jain

Vs

Tulsi Dass

(A Bhandari, C.J. Bishan Narain, J.)

23.12.1958

JUDGMENT

Bishan Narain, J.

1. Raj Krishan Jain is the owner of a double storey building bearing Municipal Numbers 4231 and 4236. This building stands on plot No.11 which is part of Kothi No. 1, Ansari Road, Darya Ganj, Delhi. Each portion consists of four flats and each flat has been given on rent to a different tenant. Thus eight, tenants occupy this building. On the application of some of the tenants for fixation of standard rent under section 7A read with Schedule IV of the Delhi and Aimer Merwara Rent Control Act, 1947, the Controller fixed the rent at Rs. 453/- for the whole building and then apportioned it between the various tenants. Dissatisfied with this order the landlord appealed to the District Judge, Delhi who dismissed it. The landlord then applied under Articles .226 and 227 of the Constitution to this Court seelang to quash the order of the District Judge. Falshaw J. treated this petition as one under Article 227 of the Constitution and dismissed it. The landlord has filed this appeal under Clause 10 of the Letters Patent.

2. The learned counsel for the respondents has raised a preliminary objection to this appeal and that is that the order under appeal being one under Article 227 of the Constitution in exercise of power of superintendence was not appealable. The learned counsel for the appellant in reply has urged that a Letters Patent Appeal against the order under Article 227 is competent and in any case the judgment in question was made in substance under Article 226 of the Constitution and is appealable. The learned counsel for both sides have placed their reliance on the same statutory provisions and it will be convenient to describe them before dealing with the arguments.

3. The High Court of Judicature at Lahore was constituted by the Letters Patent dated 21st of March, 1919. Admittedly all the provisions of that Letters Patent apply to this Court also. Clause 10 of this Letters Patents allows an appeal from a decree or order made by a Single Judge. This right can be exercised only under certain conditions. The clause also enumerates certain exceptions to this right. We are only concerned in this cases with the exception under which no appeal lies if the Single Judge has made an order "in the exercise of revisional jurisdiction or in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act." This Section 107 reads:--

"Each of the High Courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,

- (a) call for returns;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of Courts:

Provided that such rules,. forms and tables shall not be inconsistent with the provisions of any Act for the time being in force, and shall require the previous approval, in the case of the High Court of Calcutta, of the Governor-General in Council, and in other cases of the local Government." This section was reproduced with certain changes in Section 224 of the Government of India Act, 1935. The provision contained in Section 107(b) relating to transfer of suits and appeals was deleted. Sub-section (2) was introduced. It read:

"Nothing in this section, shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision." Then the Parliament of England enacted the Indian Independence Act, 1947 and set up two independent Dominions (India and Pakistan). The Independence Act substituted various provisions for certain provisions of the 1935 Act and provided for other matters consequential on or connected with the setting up of the two Dominions. Neither this Act nor the Adaptation Order specifically dealt with Clause 10 of the Letters Patent. Subject to changes introduced by the Independence Act the Government of India Act 1935 continued in force.

Then on 26th of January, 1950, our present Constitution came into force. This Constitution re pealed the Independence Act and also the Government of India Act 1935 and substituted Article 227 of the Constitution in place of section 224 of the 1935 Act. The provisions contained in Section 224(2) do not find place in Article 227. Now power has been given to High Courts under Article 226 of the Constitution to issue directions, orders or writs to any person or authority. Articles 226 and 227 read:--

"226(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person Or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certioran, or any of them, for the enforcement of any of the rights conferred by Part XII and for any other purpose.

(2) The power conferred on a High Court by Clause (1) shall not be in derogation of the power conferred on the Supreme Court by Clause (2) of Article 32.

227. (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may:--(a) call for returns from such courts:

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

4. Now the ground is clear to deal with the preliminary objections raised in this case. The learned counsel for the appellant in reply to the preliminary objections has urged (1) that an appeal under Clause 10 of the Letters Patent is competent against an Order under Article 227 of the Constitution; (2) that the order made in the present case is judicial and therefore it must be deemed to have been made under article 226 of the Constitution inasmuch as Article 227 confers only administrative powers on High Courts; and (3) that in the present case the appellant had applied under Articles 226 and 227 of the Constitution and the order so far as it refused to issue a Writ of certiorari under Article 226 was appealable under Clause 10 of the Letters Patent.

5. Now-under Clause 10 of the Letters Patent an appeal lies from the judgment of one Judge provided that inter alia it is not an order made in the exercise of revisional jurisdiction or in the exercise of power of superintendence under the provisions of Section 107 of the Government of India Act. It is contended that this clause bars an appeal only if the order is passed under section 107 of the 1915 Act Or inconsonance with its provisions but if the High Court exercises power of superintendence in circumstances not covered by that provision then the right of appeal remains intact.

The contention is this. Section 107 gives a right of superintendence over courts and not over tribunals as distinct from courts. If the High Court deals with the court's order in exercise of this power of superintendence then the Letters Patent appeal is barred but not otherwise. In the present case this power has been exercised over a tribunal other than a Court and therefore the right of appeal is not barred although this power of superintendence has been exercised in accordance with the provisions of Article 227. This contention is based on the assumption that High Court under Section 107 and now under Article 227 exercises power of judicial supervision and superintendence. Now it is obvious that Article 227 for the first time confers on this Court the authority to exercise power of superintendence over tribunals other than regular courts and to that extent the scope of section 107 has been extended. This, to my mind, does not affect the matter. This Court got power of superintendence under Section 107 of the 1915 Act. It is not necessary in this case to decide whether this Court had inherent power of superintendence at that time over. Courts subject to its jurisdiction over and above the power given by Section 107 because it is clear that Section 107 describes this power and this power is circumscribed by the provisions of this section. That being so, the reference to section 107 in Clause 10 in this context is merely a descriptive reference and is not intended to suggest that an appeal would be competent if power of judicial superintendence has been exercised in circumstances not covered by Section 107 of the 1915 Act. In this view of the matter it is obvious that no Letters Patent appeal lies from an order made in the exercise of power of superintendence whether in

consonance with the provisions of Section 107; or in accordance with the provisions of Article 227 as it would be covered by the exception given in Clause 10 of the Letters Patent.

6. There is another way of looking at the matter. Section 107 of the 1915 Act gave power of superintendence to this Court. This power was modified by section 224 of the 1935 Act by taking away the power of transfer in the exercise of this power. This power was not modified in any way by the Independence Act. Our present Constitution deals with this power in Article 227. It is true that it extends the scope of the power by bringing in tribunals other than courts of law but the essential feature of this provision is that the right of superintendence is conferred on High Courts. Section 8(1) of the General Clauses Act which only reproduces Section 8(1) of the English Interpretation Act with suitable verbal changes reads :

"8. Construction Of References To Repealed Enactments : (1) where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted." There is no doubt that the provision contained in Sec. 107 of the 1915 Act was repealed by the 1935 Act and section 224 of 1935 Act has been repealed by Article 395 of the present Constitution and the provision has been re-enacted in Article 227 with modifications. It therefore follows that reference to Section 107 of the 1915 Act in Clause 10 of the Letters Patent must be construed as reference to Article 227 of the Constitution. It was, however, argued on behalf of the appellant that the word "modification" in Section 8 does not apply to extension of scope of the provisions and that this word connotes restriction and not extension.

The contention is that this rule of construction laid down in Section 8 of the General Clauses Act would apply to cases where power of superintendence however modified is exercised under Article 227 over courts but cannot apply to cases where this power is exercised over tribunals other than courts. I am unable to accept this contention. In my view in this context the word "modification" means variation and includes extension also although in ordinary parlance this word may signify restrictions; only. In any case in view of the decision of the Supreme Court it is not necessary to discuss the matter at length. The Supreme Court while discussing these provisions in *Waryam Singh v. Amar Nath*¹, has observed "Section 224 of the 1935 Act has been reproduced with certain modifications in Article 227 of the Constitution." These observations fully apply to the present case as the Supreme Court was in that case also considering an application under Arts. 226 and 227 of the Constitution which was directed against the order of the Appellate Authority under the Punjab Rent Control Act, while we are in the present case concerned with the Appellate Authority (District Judge) under the Delhi Rent Control Act. On this ground also the contention raised on behalf of the petitioner fails. It follows that no Letters Patent appeal under Clause 10 is competent against the judgment of a Single Judge of this Court when an order has been passed under. Article 227 of the Constitution. This conclusion is in consonance with the decisions given in *Ramayya v. State of Madras*², and in *Sukhendu Bikash v. Hare Krishna*³,

7. The learned Counsel then argued that Article 227 of the Constitution confers only administrative powers of superintendence on High Courts and does not confer any judicial power

and therefore the order under appeal must be held to have been passed under Article 226. The argument is this. Section 107 of the 1915 Act had given this power on administrative matters but also included power of transfer. Under this Act most of the High Courts had held that the power of judicial superintendence had been conferred on the High Court. The 1935 Act deleted the power of transfer and left only purely administrative powers and the rule of construction was introduced in Section 224(2) of the 1935 Act to nullify the decisions of various High Courts on this point. It was argued that this rule of construction was introduced so as to make the position absolutely clear that the High Court ' under Section 224 had no judicial power. Then came the present Constitution. The previous corresponding Section 224(2) became unnecessary in view of the conferment of supervisory judicial power under Article 226 of the Constitution. My attention was invited to the judgment of the Supreme Court in *Nagendra Nath v. Commr of Hills Division and Appeals, Assam*, AIR 1958 SC 398, wherein it has been laid down:

"The powers of judicial interference under Article 227 with orders of judicial or quasi-judicial nature are not greater than the powers under Article 226. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 the power of interference is limited to seeing that the tribunal functions within the limits of its authority." It follows that the power of judicial interference under Article 226 is wider than under Article 227. All the grounds of interference under the latter article are fully covered and contained in Article 226. On the strength of this authority the learned Counsel urged that in the present context the judicial powers conferred on the High Court under Article 226 of the Constitution make the conferment of such power under Article 227 wholly unnecessary and redundant.

It was urged that it will not be a sound rule of construction to ascribe to the Constitution makers the intention of repeating themselves. It is not necessary to discuss this matter as the Supreme Court has repeatedly held that Article 227 confers power of judicial superintendence: vide AIR 1954 SC 215; *Hari Vishnu Kamath v. Ahmad Ishaque*⁴, R This contention of the learned Counsel also fails.

8. Finally it was urged on behalf of the appellant that in the present case he had moved the High Court under Article 226 of the Constitution for quashing of the order of the appellate authority and had also prayed under Article 227 for fixation of standard rent at agreed rent or in the alternative he had prayed for remand of the case to enable the petitioner to produce his evidence before the Rent Controller or the District Judge. It is correct that the petition was made for these reliefs although the petitioner had not indicated in the petition the particular Article under which particular relief was claimed. That this distinction exists is clear from the following observations of the Supreme Court in (S) AIR 1955 SC 233 :

"We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution and that that superintendence is both judicial and administrative. That was held by this Court in AIR 1954 SC 215, where it was observed that in this respect Article 227 went further than Section 224 of the Government of India Act, 1935, under which the superintendence was purely administrative, and that if restored the position under Section 107 of the Government of India Act, 1915.

It may also be noted that while in a 'certiorari under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Art, 227, do that, and also issue further directions in the matter. We must accordingly hold that the application of the appellant for a writ of 'certiorari' and for other reliefs was maintainable under Articles 226 and 227 of the Constitution."

9. Their Lordships then at the end of the judgment passed the orders in these words :

"..... The proper order to pass is to quash the decision of the Tribunal and remove it out of the way by 'certiorari' under Article 226, and to set aside the election of the first respondent in exercise of the powers conferred by Article 227." These observations apply with full force to the present case. The Rent Controller and the District Judge appointed as an appeal court under the Delhi Rent Control Act are required to act judicially and, therefore, they are subject to supervisory jurisdiction of this court under Article 226 of the Constitution and a writ of certiorari can be issued quashing their orders if the orders have been made in disregard of the principles of natural justice etc. This principle is well established and all the High Courts under the various Rent Control Acts have so decided. It appears to me that when same facts allow an aggrieved person to move this Court under Articles 226 and 227 of the Constitution then in view of the wider scope of Article 226 it must be assumed: that the petitioner intended to move this Court primarily under Article 226 of the Constitution particularly when an order under this Article is open to Letters Patent Appeal. It would be unnatural to assume that the aggrieved person would invoke the powers of this Court under a provision which is less wide in scope than the one with wider scope.

It follows that in substance the appellant's application was both under Article 226 and Article 227 of the Constitution and that the judgment of the Single Judge amounted to dismissal of the petition under both the Articles. It is conceded before me and this is in fact well established, that if the petition was under Article 226 then an appeal under Clause 10 of the Letters Patent would be competent.

10. The learned Counsel for the respondents, however, urged that in precisely similar circumstances the Supreme Court had dealt with the case in AIR 1954 SC 215 under Article 227 of the Constitution. That may be so but in that case the present controversy did not arise. The case was argued on the basis of Article 227 and was so decided. Indeed in that case it was immaterial whether Article 226 or Article 227 applied as the question of appeal under Letters Patent was not before their Lordships of the Supreme Court, The Supreme Court nowhere held in the judgment that an application for quashing the order of the Rent Controller or that of the Appellate Authority is governed by Article 227 and not by Article 226 of the Constitution.

11. In view of my conclusion that the judgment of the Single Judge decides the appellant's application under Article 226 as well as Article 227 of the Constitution, I would hold that the present appeal is competent.

A.N. Bhandari, C.J.

12. I agree.

Cases Referred.

1AIR 1954 SC 215

2AIR 1952 Mad 300

3AIR 1953 Cal 636

41955 SC 233 and AIR 1958 SC 398