AFR

Court No. - 85

Case :- WRIT - C No. - 9518 of 2001

Petitioner :- Radha Kishan Yadav
Respondent :- State of U.P. and Others
Counsel for Petitioner :- Madhav Jain
Counsel for Respondent :- C.S.C.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Madhav Jain, learned counsel for the petitioner and Sri Amit Manohar, learned Additional Chief Standing Counsel appearing for the State respondents.

2. The present petition under Article 226 of the Constitution of India has been filed seeking a writ of certiorari for quashing the orders dated 21.12.2000 and 30.6.1995 passed in proceedings under the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972[1].

3. Pleadings in the petition indicate that proceedings under Section 4 of the UP PP Act were initiated against the petitioner and an order dated 30.6.1995 was passed by the prescribed authority for eviction and damages. Aggrieved against the aforesaid order, an appeal under Section 9 of the Act was filed before the District Judge, Firozabad which also came to be decided in terms of an order dated 21.12.2000 confirming the order of eviction whereas the order with regard to damages was set aside. It was at this stage, that the present writ petition was filed.

4. The issue which arises for determination is, therefore, as to whether an order passed in an appeal under the UP PP Act can be held to be a judicial order passed by a civil court and as to whether

1 UP PP Act

the same would be amenable to writ jurisdiction under Article 226.

5. Learned Additional Chief Standing Counsel has raised an objection with regard to the maintainability of the petition under Article 226 by pointing out that the order passed in appeal by the appellate officer under the UP PP Act is a judicial order passed by civil court and in view of the authoritative pronouncement made in the case of **Radhey Shyam vs. Chhabi Nath**[2], the same would not be amenable to the writ jurisdiction under Article 226.

6. In order to appreciate the aforesaid contention, the relevant provisions of the UP PP Act would be required to be adverted to.

7. The UP Public Premises (Eviction of Unauthorised Occupants) Act, 1972 [Act no. 22 of 1972 dated 28 April, 1972] is an Act to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters. The provisions of the aforesaid Act which would be relevant for the purposes of the controversy involved in the present case are extracted below:

> "**2.**(b) "premises" means any land (including any forest land or trees standing thereon or covered by water or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes—
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> (i) the garden, grounds, and out-houses, if any, appertaining to such building or part of a building, and
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> (ii) any fittings or fixtures affixed to or any furniture supplied with such building or part of a building for the more beneficial enjoyment thereof.
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> But does not include land which for the time being is held by a tenure-holder under any law relating to land tenure.
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> (d) "Prescribed Authority" means an officer appointed as Prescribed Authority by the State Government under Section 3.
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> (e) "public premises" means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and includes any premises belonging to or taken on lease by or on behalf of—

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2 (2015) 5 SCC 423

(i) any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty-one per cent of the paid-up share capital held by the State Government; or

(ii) any local authority; or

(iii) any Corporation (not being a company as defied in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government; or

(iv) any society registered under the Societies Registration Act, 1860, the governing body whereof consists, under the rules or regulations of the society, wholly of public officers or nominees of the State Government or both;

and also includes—

(i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds on lands belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures);

(ii) any premises acquired under the Land Acquisition Act, 1894 with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that Act providing for re-entry by the State Government in certain conditions.

4. Issue of notice to show-cause against order of eviction— (1) If the prescribed authority, either of its own motion or on an application or report received on behalf of the State Government or the corporate authority, is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the prescribed authority shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned that is to say, all persons who are, or may be, in occupation of, or claim interest in the public premises to show cause, if any, against the proposed order on or before such date as is specified in the notice being a date not earlier than ten days from the date of issue thereof.

(3) The prescribed authority shall cause the notice to be served either personally on all those persons concerned or by having it affixed on the outer door or some other conspicuous part of the public premises and in any other manner, provided in the Code of Civil Procedure, 1908.

(4) Where the prescribed authority knows or has reasons to believe that any persons are in occupation of the public premises, then, without prejudice to the provisions of sub-section (3), he shall

cause a copy of the notice to be served on every such person by registered post or by delivering or tendering it to that person or in such other manner as may be prescribed.

5. Eviction of unauthorized occupants—(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the prescribed authority is satisfied that the public premises are in unauthorised occupation, the prescribed authority may make an order of eviction, for reason to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all person who may be in occupation thereof, or any part thereof, and cause a copy of the order to be affixed to the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date for its publication under sub-section (1), the prescribed authority or any other officer duly authorised by the prescribed authority in this behalf may evict that person from, and take possession of, the public premises and may, for that purpose, use such force, as may be necessary.

6. Disposal of property left on public premises by unauthorised occupants—(1) Where any person have been evicted from any public premises under Section 5, the prescribed authority may, after giving not less than fourteen days' notice to the persons from whom possession of the public premises has been taken and after publishing the notice in at least one newspaper having circulation in the locality, remove or cause to be removed or dispose of by public auction any property remaining on such premises, including any material of a demolished building or ungathered crop or fruits of trees.

(2) Where any property is sold under sub-section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the State Government or the corporate authority, on account of arrears of rent or damages or costs, be paid to person or persons as may appear to the prescribed authority to be entitled to the same:

Provided that where the prescribed authority is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, it may refer such dispute to the Civil Court of competent jurisdiction and the decision of the Court thereon shall be final.

7. Power to require payment of rent or damages in respect of public premises—(1)Where any person is in arrears of rent for four months payable in respect of any public premises, the prescribed authority may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order, and on the failure of such person to pay the same or any instalment thereof, he shall be deemed to be in unauthorised occupation of the public premises.

(2) Where any person is, or at any time being, in unauthorised occupation of any public premises, the prescribed authority may, having regard to such principles of assessment of damages as may be

prescribed, assess the amount of damages on account of the use and occupation of such premises and may by order, require that person to pay the amount within such time and in such instalments as may be specified in the order.

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show-cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same have been considered by the prescribed authority.

8. Powers of prescribed authority—The prescribed authority and the appellate officer shall, for the purpose of holding any inquiry or hearing any appeal under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying suit in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) any other matter which may be prescribed.

9. Appeals—(1) An appeal shall lie from every order of the prescribed authority made in respect of any public premises under Section 5 or Section 7 to an appellate officer who shall be the District Judge of the District in which the public premises are situate or such other Judicial Officer not below the rank of Civil Judge as the District Judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred—

(a) in the case of an appeal from an order under Section 2, within fifteen days from the date of the publication of the order under sub-section (1) of that section; and

(b) in the case of an appeal from an order under Section 7, within fifteen days from the date on which the order is communicated to the appellant:

Provided that that the appellate officer may entertain the appeal after the expiry of the said period of fifteen days, if he is satisfied that appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the prescribed authority, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

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

(6) The District Judge may withdraw any appeal pending with any judicial officer referred to in sub-section (1) and either dispose of the same or transfer it to any other judicial officer referred to in that sub-section.

10. Finality of orders—Save as otherwise expressly provided in this Act, every order made by a prescribed authority or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

15. Bar of jurisdiction—No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) of that Section or the costs awarded to the State Government or the corporate authority under sub-section (5) of Section 9 or any portion of such rent, damages or costs."

8. It would also be relevant to take note of certain provisions under the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Rules, 1973[3]. Rules 9, 10, 11, and 12 of the aforesaid Rules, 1973 are being reproduced below:

"9. Procedure of appeals: Sections 9 and 18 (2) (f)—(1) An appeal under Section 9 may be preferred by any person aggrieved by an order under Section 5 or Section 7.

(2) The appeal shall be preferred in the form of a memorandum signed by the appellant or his representative and be presented either in person or through such representative to the District Judge or to the munsarim of his court.

(3) Every such memorandum shall be accompanied by a copy of the order appealed against and shall set forth concisely and under district heads the grounds of objection and such grounds shall be numbered consecutively.

(4) On receipt of the appeal and after calling for and perusing the record of the proceedings before the prescribed authority, the appellate officer shall fix a date for the hearing of the appeal and shall give notice thereof to the prescribed authority against whose orders the appeal is preferred, as well as to the appellant.

10. Power under the Code of Civil Procedure 1908: Section 8 (c)—The prescribed authority or the appellate officer shall, for the purpose of holding an inquiry or hearing any appeal under the Act, shall have the same powers as are vested in the civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely—

(a) the power to dismiss an application or appeal for default and to restore it for sufficient cause:

(b) the power to proceed *ex parte* and set aside, for sufficient cause an order passed *ex parte;*

3 Rules, 1973

(c) the power to order attachment before judgement;

(d) the power referrred to in Section 151 of the Code of Civil Procedure, 1908, to make any order for the ends of justice or to prevent the abuse of process of the authority concerned; and

(e) the power to accept affidavits in proceedings pending before him and to issue commissions in suitable cases.

11. Application for setting aside ex-parte orders and for restoration Section 18—The prescribed authority or the appellate officer, as the case may be, may for sufficient cause—

(a) set said an *ex parte* order made in proceedings under Section 5 or Section 7;

(b) restore an appeal arising out of the proceeding referred to in clause (a) where such appeal has been dismissed for default of appearance of the appellant or his counsel.

12. Limitation for application under Rule 10: Section 18—(1) An application under Rule 10 to set aside an order deciding an appeal or order or *ex parte* shall be made within thirty days from the date of such proceeding where the notice of such appeal or proceedings was not duly served, when the applicant or appellant, as the case may be, had knowledge of that order.

(2) An application under Rule 10 to restore and appeal or proceeding dismissed for default shall be made within thirty days from the date of such dismissal."

9. Section 8 of the UP PP Act which relates to powers of the prescribed authority provides that for the purpose of holding any enquiry or hearing in appeal under the Act, the prescribed authority and the appellate officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of certain specified matters.

10. Section 9 of the Act which relates to appeals mandates that an appeal shall lie from every order of the prescribed authority made in respect of any public premises under Section 5 and 7 to an appellate officer who shall be the district judge of a district in which the public premises are situate or such other judicial officer not below the rank of a civil judge as the district judge may designate in this behalf. Sub-section (2) of Section 9 prescribes a time period of 15 days for filing the appeal and the proviso to the sub-section empowers the appellate officer to entertain the appeal

after the expiry of the aforesaid period. In terms of sub-section (3), the appellate officer is empowered to grant stay of the enforcement of the order, subject to conditions as he may deem fit.

11. Section 10 provides for finality of orders and in terms thereof, every order made by a prescribed authority or appellate officer under the UP PP Act save as otherwise expressly provided for, shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power provided under the Act.

12. Section 15 creates a bar on jurisdiction and it provides that no court shall have jurisdiction to entertain any suit or proceedings in respect of eviction of any person who is in unauthorised occupation of any public premises or the recovery of arrears of rent or damages or costs awarded payable under the relevant provisions of the Act.

13. In terms of Rule 10 of the Rules 1973, the prescribed authority or the appellate officer shall for the purpose of holding an enquiry or hearing any appeal, are to have same powers as are vested in the civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of matters specified therein.

14. Having regard to the scheme of the Act, it would be necessary to determine as to whether the District Judge/Appellate Officer exercising powers under Section 9 acts as a *persona designata* or as a civil court. In this regard, it would be relevant to bear in mind that where the authority has been created by a statute and is identified by an official designation, the provisions of the statute would have to be looked into to determine whether the

legislative intent was to identify him as a *persona designata* with his official designation being a mere description.

15. The question as to whether the judicial authority constituted by the State Government under Section 6-C of the Essential Commodities Act, 1955, to hear appeals against orders of confiscation that may be passed by the licensing authority under Section 6-A, is not an inferior criminal court subordinate to the High Court and amenable to revisional jurisdiction under Section 435 read with Section 439 of the Code of Criminal Procedure, came up for consideration in the decision in **Thakur Das Vs. State of M.P.**[4] While examining the question the court was required to consider whether the judicial authority appointed under Section 6-C of the said Act would be a *persona designata*, despite the fact that the said authority happens to be the Sessions Judge. It was noticed that while conferring power on the State government to appoint the appellate forum, the Parliament clearly manifested its intention as to who should be such Appellate Authority and by using expression "judicial authority" it was clearly indicated that the appellate authority must be one such pre-existing authority who was exercising judicial authority of the State and accordingly it was held that since the Sessions Judge is a Judge presiding over the Sessions Court and that is the appointed appellate authority, the conclusion is inescapable that he was not *persona designata*. It was observed as follows :-

> **"7.** If the Sessions Judge presiding over the Sessions Court is the judicial authority, the question is: would it be an inferior criminal court subordinate to the High Court for the purposes of Sections 435 and 439 of the Criminal Procedure Code? At the one end of the spectrum the submission is that the judicial authority appointed under Section 6-C would be *persona designata* and that if by a fortuitous circumstance the appointed judicial authority happens to be the Sessions Judge, while entertaining and hearing an appeal under Section 6-C it would not be an inferior criminal court subordinate to the High Court

4 (1978) 1 SCC 27

and, therefore, no revision application can be entertained against his order by the High Court. While conferring power on the State Government to appoint appellate forum, the Parliament clearly manifested its intention as to who should be such Appellate Authority. The expression “judicial” qualifying the “authority” clearly indicates that that authority alone can be appointed to entertain and hear appeals under Section 6-C on which was conferred the judicial power of the State. The expression “judicial power of the State” has to be understood in contradistinction to executive power. The framers of the Constitution clearly envisaged courts to be the repository of the judicial power of the State. The Appellate Authority under Section 6-C must be a judicial authority. By using the expression “judicial authority” it was cleanly indicated that the Appellate Authority must be one such pre-existing authority which was exercising judicial power of the State. If any other authority as *persona designata* was to be constituted there was no purpose in qualifying the word “authority” by the specific adjective “judicial”. A judicial authority exercising judicial power of the State is an authority having its own hierarchy of superior and inferior court, the law of procedure according to which it would dispose of matters coming before it depending upon the nature of jurisdiction exercised by it acting in judicial manner. In using the compact expression “judicial authority” the legislative intention is clearly manifested that from amongst several pre-existing authorities exercising judicial powers of the State and discharging judicial functions, one such may be appointed as would be competent to discharge the appellate functions as envisaged by Section 6-C. There is one in-built suggestion indicating who could be appointed. In the concept of appeal inheres hierarchy and the Appellate Authority broadly speaking would be higher than the authority against whose order the appeal can be entertained. Here the Appellate Authority would entertain appeal against the order of Collector, the highest revenue officer in a district. Sessions Judge is the highest judicial officer in the district and this situation would provide material for determining Appellate Authority. In this connection the legislative history may throw some light on what the legislature intended by using the expression “judicial authority”. The Defence of India Rules, 1962, conferred power on certain authorities to seize essential commodities under certain circumstances. Against the seizure an appeal was provided to the State Government whose order was made final. By the Amending Act 25 of 1966 Sections 6-A to 6-D were introduced in the Act. This introduced a basic change in one respect, namely, that an order of confiscation being penal in character, the person on whom penalty is imposed is given an opportunity of approaching a judicial authority. Earlier appeal from executive officer would lie to another executive forum. The change is appeal to judicial authority. Therefore, the expression clearly envisages a pre-existing judicial authority has to be

> appointed Appellate Authority under Section 6-C. When the provision contained in Section 6-C is examined in the background of another provision made in the order itself it would become further distinctly clear that pre-existing judicial authority was to be designated as Appellate Authority under Section 6-C. A seizure of essential commodity on the allegation that the relevant licensing order is violated, would incur three penalties: (1) cancellation of licence; (2) forfeiture of security deposit; and (3) confiscation of seized essential commodity, apart from any prosecution that may be launched under Section 7. In respect of the first two penalties an appeal lies to the State Government but in respect of the third though prior to the introduction of Section 6-C an appeal would lie to the State Government, a distinct departure is made in providing an appellate forum which must qualify for the description and satisfy the test of judicial authority. Therefore, when the Sessions Judge was appointed a judicial authority it could not be said that he was *persona designata* and was not functioning as a court.
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> **8.** Sections 7 and 9 of the Code of Criminal Procedure, 1898, envisage division of the State into various Sessions Divisions and setting up of Sessions Court for each such division, and further provides for appointment of a Judge to preside over that court. The Sessions Judge gets his designation as Sessions Judge as he presides over the Sessions Court and thereby enjoys the powers and discharges the functions conferred by the Code. Therefore, even if the judicial authority appointed under Section 6-C is the Sessions Judge it would only mean the Judge presiding over the Sessions Court and discharging the functions of that court. If by the Sessions Judge is meant the Judge presiding over the Sessions Court and that is the appointed Appellate Authority, the conclusion is inescapable that he was not *persona designata* which expression is understood to mean a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character (vide *Central Talkies Ltd*. v. *Dwarka Prasad* [AIR 1961 SC 606 : (1961) 3 SCR 495 : (1961) 1 Cri LJ 740] and *Ram Chandra* v. *State of U.P*. [AIR 1966 SC 1888 : 1966 Supp SCR 393 : 1966 Cri LJ 1514]).”

16. Taking a similar view in the context of District Judges functioning as appellate authorities under the Kerala Rent Control Act, in **Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker**[5], a view was taken that where District Judges are appointed as appellate authorities under the provisions of a statute they constitute a class and cannot be regarded as *persona*

5 (1995) 5 SCC 5

designata. The decisions in the case of **Central Talkies Ltd. Vs. Dwarka Prasad**[6] and **Parthasaradhi Naidu v. Koteswara Rao**[7] were referred, and it was observed as follows :-

> **"7.** As noted earlier the appellate authority, namely the District Judge, Thallassery has taken the view that since he is a persona designata he cannot resort to Section 5 of the Limitation Act for condoning the delay in filing appeal before him. So far as this reasoning of the appellate authority is concerned Mr Nariman, learned counsel for respondent fairly stated that he does not support this reasoning and it is not his say that the appellate authority exercising powers under Section 18 of the Rent Act is a persona designata. In our view the said fair stand taken by learned counsel for respondent is fully justified. *It is now well settled that an authority can be styled to be persona designata if powers are conferred on a named person or authority and such powers cannot be exercised by anyone else. The scheme of the Act to which we have referred earlier contraindicates such appellate authority to be a persona designata. It is clear that the appellate authority constituted under Section 18(1) has to decide lis between parties in a judicial manner and subject to the revision of its order, the decision would remain final between the parties. Such an authority is constituted by designation as the District Judge of the district having jurisdiction over the area over which the said Act has been extended. It becomes obvious that even though the District Judge concerned might retire or get transferred or may otherwise cease to hold the office of the District Judge his successor-in-office can pick up the thread of the proceedings from the stage where it was left by his predecessor and can function as an appellate authority under Section 18. If the District Judge was constituted as an appellate authority being a persona designata or as a named person being the appellate authority as assumed in the present case, such a consequence, on the scheme of the Act would not follow.* In this connection, it is useful to refer to a decision of this Court in the case of *Central Talkies Ltd.* v. *Dwarka Prasad* [AIR 1961 SC 606 : (1961) 1 Cri LJ 740]. In that case Hidayatullah, J. speaking for the Court had to consider whether Additional District Magistrate empowered under Section 10(2) of Criminal Procedure Code to exercise powers of District Magistrate was a persona designata. Repelling the contention that he was a persona designata the learned Judge made the following pertinent observations:
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> > "9. A persona designata is 'a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character'. (See *Osborn's Concise Law Dictionary*, 4th Edn., p. 253). In the words of Schwabe, C.J. in *Parthasaradhi Naidu* v.

6 AIR 1961 SC 606
7 AIR 1924 Mad 561 (FB)

> *Koteswara Rao* [ILR (1924) 47 Mad 369 : AIR 1924 Mad 561 (FB)] , personae designatae are 'persons selected to act in their private capacity and not in their capacity as Judges'. The same consideration applies also to a well-known officer like the District Magistrate named by virtue of his office, and whose powers the Additional District Magistrate can also exercise and who can create other officers equal to himself for the purposes of the Eviction Act. The decision of Sapru, J. in the Allahabad case, with respect, was erroneous."
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> Applying the said test to the facts of the present case it becomes obvious that appellate authorities as constituted under Section 18 of the Rent Act being the District Judges they constituted a class and cannot be considered to be persona designata."
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> (emphasis supplied)

17. The exposition of law, made as a consequence, in **Mukri Gopalan** case, was that once it is held that the appellate authority is not a *persona designata*, it becomes obvious that it functions as a court. Referring to an earlier decision in **Brajnandan Sinha Vs. Jyoti Narain**[8], it was observed that the tests for determining whether an authority is functioning as a court, in the strict sense of the term, an essential condition is that the court should have, apart from trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness. Further, placing reliance upon the decision in **Virindar Kumar Satyawadi Vs. State of Punjab**[9], it was stated that what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. It was observed as follows : (**Mukri Gopalan** case, SCC pp. 14-15, para 8).

> "8. Once it is held that the appellate authority functioning under Section 18 of the Rent Act is not a persona designata, it becomes obvious that it functions as a court. In the present case all the District Judges having jurisdiction over the areas within which the provisions of the Rent Act have been extended are constituted as appellate authorities under Section 18 by the Government notification noted earlier. These District Judges

8 AIR 1956 SC 66
9 AIR 1956 SC 153

have been conferred the powers of the appellate authorities. It becomes therefore, obvious that while adjudicating upon the dispute between the landlord and tenant and while deciding the question whether the Rent Control Court's order is justified or not such appellate authorities would be functioning as courts. The test for determining whether the authority is functioning as a court or not has been laid down by a series of decisions of this Court. We may refer to one of them, in the case of *Thakur Jugal Kishore Sinha* v. *Sitamarhi Central Coop. Bank Ltd.* [(1967) 3 SCR 163 : AIR 1967 SC 1494] In that case this Court was concerned with the question whether the Assistant Registrar of Cooperative Societies functioning under Section 48 of the Bihar and Orissa Cooperative Societies Act, 1935 was a court subordinate to the High Court for the purpose of Contempt of Courts Act, 1952. While answering the question in the affirmative, a Division Bench of this Court speaking through Mitter, J. placed reliance amongst others on the observations found in the case of *Brajnandan Sinha* v. *Jyoti Narain* [(1955) 2 SCR 955 : AIR 1956 SC 66] wherein it was observed as under:

> "It is clear, therefore, that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

Reliance was also placed on another decision of this court in the case of *Virindar Kumar Satyawadi* v. *State of Punjab* [(1955) 2 SCR 1013 : AIR 1956 SC 153]. Following observations found (at SCR p. 1018) therein were pressed in service:

> "It may be stated broadly that what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declares the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a court."

When the aforesaid well settled tests for deciding whether an authority is a court or not are applied to the powers and functions of the appellate authority constituted under Section 18 of the Rent Act, it becomes obvious that all the aforesaid essential trappings to constitute such an authority as a court are found to be present..."

18. A similar question with regard to the position of District Judge exercising powers under Section 32 of the State Financial Corporation, 1951 and as to whether the Act confers jurisdiction on the District Judge as *persona designata* was subject matter of consideration in **Asnew Drums Pvt. Ltd. Vs. Maharashtra State Finance Corporation**[10], and it was opined that the legislative intent was clear that the District Judge was not a *persona designata*. It was stated thus :-

> **"9.** The question which really arises is whether by using the words "in the manner provided in the Code of Civil Procedure" in Section 32(8) the legislature intended to include the provisions in the Code dealing with appeals. There is no doubt that under the Code of Civil Procedure an order setting aside or refusing to set aside a sale in execution of a decree is appealable under Order LXIII, Rule 1(*j*). It is difficult to understand why the scope of the language should be cut down by not including appeals provided under the Code of Civil Procedure within the ambit of the words "in the manner provided in the Code of Civil Procedure". "Manner" means method of procedure and to provide for an appeal is to provide for a mode of procedure. The State Financial Corporation lends huge amounts and we cannot for a moment imagine that it was the intention of the legislature to make the order of sale of property, passed by the District Judge, final and only subject to an appeal to the Supreme Court under Article 136 of the Constitution.
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> **10.** The learned counsel for the respondents contended that, wherever the legislature wanted to provide for an appeal to the High Court, it did so specifically. In this connection he pointed out that sub-section (9) of Section 32 provided that "any party aggrieved by an order under sub-section (5) or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper". It is true that an appeal has been expressly provided in this case but the reason for this is that if there had been no specific provision in sub-section (9), no appeal would lie otherwise because it is not provided in sub-section (5) or sub-section (7) that the District Judge should proceed in the manner provided in the Code of Civil Procedure.
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> ***11.*** *We are not impressed by the argument that the Act confers jurisdiction on the District Judge as persona designata because sub-section (11) of Section 32 provides that "the functions of a district judge under this section shall be exercisable (a) in a presidency town, where there is a city civil court having*

10 (1971) 3 SCC 602

> *jurisdiction, by a judge of that Court and in the absence of such Court, by the High Court; and (b) elsewhere, also by an additional district judge". These provisions clearly show that the District Judge is not a persona designata."*
>
> (emphasis supplied)

19. The question as to whether the District Judge would be a *persona designata* in the context of the powers conferred under the State Financial Corporation Act, 1951, again came up for consideration in **Maharashtra State Financial Corporation Vs. Jaycee Drugs & Pharmaceuticals (P) Ltd.[11],** and it was reiterated that where special statute confers jurisdiction on District Judge, the District Judge was not a *persona designata* but was a court of ordinary civil jurisdiction to which rules of procedure under the Code would apply. Referring to earlier decisions in **Central Talkies Ltd. Kanpur Vs. Dwarka Prasad[6], National Sewing Thread Co. Ltd. Vs. James Chadwick & Bros. Ltd.[12]** and the observations made by **Viscount Haldane L.C.** in **National Telephone Co. Ltd. Vs. Postmaster-General[13]** and also the decisions in **Adaikappa Chettiar Vs. R. Chandrasekhara Thevar[14]** and **Secretary of State for India Vs. Chellikani Rama Rao[15]**, it was observed as follows :-

> **"26.** We may now state our reasons for holding that even if Section 46-B of the Act was not there the provisions of the Code for the execution of a decree against a surety who had given only personal guarantee would, in the absence of any provision to the contrary in the Act, be applicable. *In view of the decision of this Court in Central Talkies Ltd., Kanpur v. Dwarka Prasad [(1961) 3 SCR 495 : AIR 1961 SC 606] , where it was held that a persona designata is a person selected as an individual in his private capacity, and not in his capacity as filling a particular character or office, since the term used in Section 31(1) of the Act is "District Judge" it cannot be doubted that the District Judge is not a persona designata but a court of ordinary civil jurisdiction while exercising jurisdiction under Sections 31 and*

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11 (1991) 2 SCC 637
6 AIR 1961 SC 606
12 AIR 1953 SC 357
13 1913 AC 546
14 AIR 1948 PC 12
15 AIR 1916 PC 21

32 of the Act. In *National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. [1953 SCR 1028 : AIR 1953 SC 357]* while repelling the objection that an appeal under the Letters Patent against the judgment of a Single Judge passed in an appeal against the decision of the Registrar under Section 76(1) of the Trade Marks Act, 1940 was not maintainable it was held at pages 1033-34 of the Report: (SCR pp. 1033-34)

> "Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that court and in accordance with the provisions of the charter under which that court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a court already established, then that appeal must be regulated by the practice and procedure of that court. This rule was very succinctly stated by Viscount Haldane L.C. in *National Telephone Co. Ltd.* v. *Postmaster-General* [1913 AC 546 : 82 LJKB 1197] , in these terms:—
>
> > 'When a question is stated to be referred to an established court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that court are to attach, and also that any general right of appeal from its decision likewise attaches.'
>
> The same view was expressed by their Lordships of the Privy Council in *Adaikappa Chettiar* v. *R. Chandrasekhara Thevar* [(1947) 74 IA 264 : AIR 1948 PC 12] , wherein it was said:
>
> > 'Were a legal right is in dispute and the ordinary courts of the country are seized of such dispute the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of appeal.'
>
> Again in *Secretary of State for India* v. *Chellikani Rama Rao* [AIR 1916 PC 21 : ILR (1916) 39 Mad 617] , when dealing with the case under the Madras Forest Act their Lordships observed as follows:
>
> > 'It was contended on behalf of the appellant that all further proceedings in courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In their Lordships' opinion this objection is not well founded. *Their view is that when proceedings of this character reach the District Court, that court is appealed to as one of the ordinary courts of the country, with regard to whose procedure, orders, and decrees the ordinary rules of the Civil Procedure Code apply...*"
>
> (emphasis supplied)

20. The distinction between a *persona designata* and a legal tribunal was considered in earlier decision in **Ram Chandra Aggarwal and another Vs. State of Uttar Pradesh and another**[16], and referring to the observations made by **Lord Atkinson** and also the decision in **Central Talkies Ltd. Vs. Dwarika Prasad**[6] and **Chatur Mohan Vs. Ram Behari Dixit**[17], it was observed that where a special or local statute refers to a constituted court as a court and does not refer to the presiding officer of that court the reference cannot be said to be to a *persona designata*. The meaning given to the expression "*persona designata*" in **Osborn's Concise Law Dictionary**[18] as "a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character" was also referred to. The relevant observations made in the judgment in this regard are as follows :-

> **"3.** In *Balakrishna Udayar* v. *Vasudeva Aiyar* [44 IA 261] Lord Atkinson has, pointed out the difference between a persona designata and a legal tribunal. The difference is this that the "determination of a persona designata are not to be treated as judgments of a legal tribunal". In the *Central Talkies Ltd.* v. *Dwarka Prasad* [(1961) 3 SCR 495, at pp 500-501] this Court has accepted the meaning given to the expression persona designata in *Osborn's Concise Law Dictionary*, 4th Edn. p. 263 as "a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character". Section 146(1) CrPC empowers a Magistrate to refer the question as to whether any, and if so, which of the parties was in possession of the subject-matter of dispute as the relevant point of time to a civil court of competent jurisdiction. *The power is not to refer the matter to the presiding Judge of a particular civil court but to a court. When a special or local law provides for an adjudication to be made by a constituted court — that is, by a court not created by a special or local law but to an existing court — it in fact enlarges the ordinary jurisdiction of such a court. Thus where a special or local statute refers to a constituted court as a court and does not refer to the presiding officer of that court the reference cannot be said to be to a persona designata.* This question is well

16 AIR 1966 SC 1888
6 AIR 1961 SC 606
17 AIR 1964 All 562
18 Osborn's Concise Law Dictionary, 4th Edn., p. 263

> settled. It is, therefore, unnecessary to say anything more on this part of the case except that cases dealing with the point have been well summarised in the recent decision in *Chatur Mohan* v. *Ram Behari Dixit* [1964 All LJ 256]."
>
> (emphasis supplied)

21. A question as to whether the order passed by the City Civil Court exercising powers under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as an Appellate Officer, is in the capacity of a civil court or *persona designata* was subject matter of consideration in **Life Insurance Corporation of India Vs. Nandini J.Shah and others**[19], and upon an extensive consideration of a legal position, it was concluded that the Appellate Officer referred to in Section 9 of that Act, is not a *persona designata* but acts as a civil court, and against an order passed by the Appellate Officer the remedy under Article 227 of the Constitution of India can be availed. It was stated thus :-

> **"58.** In other words, the Appellate Officer while exercising power under Section 9 of the 1971 Act, does not act as a persona designata but in his capacity as a pre-existing judicial authority in the district (being a District Judge or judicial officer possessing essential qualification designated by the District Judge). Being part of the district judiciary, the judge acts as a court and the order passed by him will be an order of the subordinate court against which remedy under Article 227 of the Constitution of India can be availed on the matters delineated for exercise of such jurisdiction."

22. Reverting to the facts of the present case, under the scheme of the UP PP Act the powers to be exercised by the Appellate Officer, for the purpose of holding an enquiry or hearing any appeal under the Act, as per Section 8, has been stated to be the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of certain specified matters.

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19 (2018) 15 SCC 356

23. Section 9 of the UP PP Act provides that an appeal shall lie from every order of the prescribed authority made in respect of any public premises under Section 5 and 7, to an Appellate Officer, who shall be the District Judge of a district in which the public premises are situate or such other judicial officer not below the rank of a civil judge as the District Judge may designate in this behalf. Thus, as the Act predicates the Appellate Officer is to be a District Judge or such other judicial officer not below the rank of a civil judge as the District Judge may designate in this behalf, it is clearly indicative of the fact that only a pre-existing authority exercising judicial power of the State can be designated as an Appellate Officer.

24. The constitution of Civil Courts, in the State of Uttar Pradesh, is provided for under Chapter II of the Bengal, Agra and Assam Civil Courts Act, 1887, and Section 3 thereof, as applicable in the State of U.P., which provides for the classes of civil courts, reads as follows :-

> **"3. Classes of Courts.-** There shall be the following classes of Civil Courts under this Act, namely:
> (1) The Court of the District Judge;
> (2) The Court of the Additional Judge;
> (3) The Court of the Civil Judge; and
> (4) The Court of the Munsif"

25. For the purposes of the Civil Procedure Code, the subordination of Courts is provided under Section 3 of the Code and the same is as follows :-

> **"3. Subordination of Courts.—**For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court."

26. It would be worthwhile to take note that the judicial power of the State is exercised by establishment of hierarchy of courts, to decide disputes between its subjects and the subjects and state.

The powers, which these courts exercise, are judicial powers; the functions, which they discharge, are the judicial functions; and the decisions, which they reach and pronounce, are judicial decisions.

27. The District Judge having been constituted as a civil court, exercises judicial powers of the State and is an authority having its own hierarchy of superior and inferior courts, and the law of procedure according to which it is empowered to dispose of matters coming before it depending upon the nature of jurisdiction exercised by it, acting in judicial manner. The District Judge is the officer presiding over the court of the District Judge and derives his designation from the nomenclature of the Court. The District Judge or such other judicial officer not below the rank of a civil judge as the District Judge may designate in this behalf constitute a class and cannot be considered as *persona designata*.

28. The Appellate Officer is required to function as a court, and every order passed by the Appellate Officer has been accorded finality in terms of Section 10 of the UP PP Act. The legislative scheme of the Act and the intent behind providing a forum of appeal under Section 9 before the Appellate Officer, who is to be the District Judge of the District in which the public premises are situate or such other judicial officer not below the rank of civil judge, to be designated by the District Judge for that purpose, is clearly indicative of the legislative intent that the power to be exercised by the Appellate Officer is not as a *persona designata* but as a judicial officer of a pre-existing court. This leads to inference that the Appellate Officer, while deciding an appeal under Section 9, would exercise powers of a civil court.

29. The Appellate Officer, while exercising powers under Section 9 of the UP PP Act does not act as a *persona designata* but in his capacity as a pre-existing judicial authority in the district —

a District Judge or a judicial officer not below the rank of civil judge, as may be designated by the District Judge or the designated Civil Judge. Being part of the district judiciary, the judge acts as a court and the order which is to be passed, would be an order of the civil court.

30. The interplay of Section 9 of the UP PP Act in juxtaposition with the other provisions of the Act also makes it clear that the jurisdiction exercised by the Appellate Officer, namely the District Judge, or the judicial officer designated, as the case may be, is in his capacity as a civil court and not *persona designata*. The Appellate Officer is a creation of the statute and has been identified by an official designation as one of a class — a pre-existing authority exercising judicial power of the State. It is an authority having its own hierarchy of superior and inferior court, the law of procedure according to which it would dispose of matters coming before it depending upon the nature of jurisdiction exercised by it acting in a judicial manner.

31. The Appellate Officer having been specified to be a District Judge of the district in which the public premises are situate or such other designated judicial officer, the conclusion is inescapable that he is not *persona designata*, which expression is understood to mean a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character. An authority can be styled to be *persona designata* if powers are conferred on a named person or authority and such powers cannot be exercised by anyone else. *Personae designatae* are persons selected to act in their private capacity and not in their capacity as Judges.

32. In a situation where even though the authority constituted, retires or gets transferred or otherwise ceases to hold the office,

his successor-in-office can pick up the thread of the proceedings from the stage where it was left by his predecessor and can function, the designated authority cannot be held to be a *persona designata*. A *persona designata* would therefore be a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character.

33. The test for determining whether the authority is functioning as a court or not, as per the settled legal position, would be that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness, which are essentials of a judicial pronouncement. Broadly stated what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and to declare the rights of parties in a definitive judgment.

34. Applying the aforestated tests, in the context of the provisions of the UP PP Act, it follows that the Appellate Officers described under Section 9, being District Judges or such other designated judicial officers, constitute a class and cannot be considered to be *personae designatae*.

35. Section 9 provides for a forum of appeal against every order of the prescribed authority, before the District Judge or such other designated judicial officer, who is a pre-existing authority within the hierarchy of courts, discharging judicial power of the State, and have been expressly conferred power to condone the delay in filing of the appeal and also to grant interim relief during the pendency of the appeal. The designation though having been made as an Appellate Officer, the District Judge, for the purposes of

deciding of an appeal under Section 9, therefore is to be held to exercise powers of the civil court.

36. The question as to whether judicial orders of a civil court would be amenable to writ jurisdiction under Article 226 came up for consideration in the case of **Radhey Shyam vs. Chhabi Nath**[2]**,** upon a reference made by a two-Judge Bench of the Supreme Court in terms of an order dated April 15, 2009 in **Radhey Shyam and Another vs. Chhabi Nath and Others**[20]**.**

37. The two-Judge Bench in the case of **Radhey Shyam** (supra) took notice of an earlier Constitution Bench decision in the case of **Sohan Lal vs. Union of India**[21]**,** wherein it was held that a writ of mandamus or an order in the nature of mandamus is not to be made against a private individual and also a subsequent three-Judge Bench decision in **Mohd. Hanif vs. State of Assam**[22]**,** expressing the general principle that the jurisdiction of the High Court under Article 226 is extraordinary in nature and is not to be exercised for the purpose of declaring private rights of the parties. Reference was also made to the decision in **Hindustan Steel Ltd. vs. Kalyani Banerjee**[23]**,** wherein it was held that proceedings by way of writ were not appropriate in a case where the decision of the court would amount to a decree declaring a party's title and ordering restoration of possession.

38. The law laid down in the nine-Judge Constitution Bench in the case of **Naresh Shridhar Mirajkar vs. State of Maharashtra**[24]**,** was also referred, wherein after considering the history of writ of certiorari and various English and Indian decisions, a conclusion was drawn that *"certiorari does not lie to*

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2 (2015) 5 SCC 423
20 (2009) 5 SCC 616
21 AIR 1957 SC 529
22 (1969) 2 SCC 782
23 (1973) 1 SCC 273
24 AIR 1967 SC 1

quash the judgements of inferior courts of civil jurisdiction". The decision in the case of **Naresh Shridhar Mirajkar** was also seen to have drawn a distinction between judicial orders of inferior courts of civil jurisdiction and orders of inferior tribunals or courts which are not civil courts and which cannot pass judicial orders.

39. Expressing inability to agree with the legal proposition laid down by a two-Judge Bench in the earlier decision in the case of **Surya Dev Rai vs. Ram Chander Rai**[25]**,** to the effect that judicial orders passed by civil courts can be examined and then corrected/reversed by the writ court under Article 226 in exercise of its power under a writ of certiorari, the two-Judge Bench in the case of **Radhey Shyam** (supra) made a reference by observing as follows:

> **"26.** The two-Judge Bench in *Surya Dev Rai* did not, as obviously it could not overrule the ratio in *Mirajkar*, a Constitution Bench decision of a nine-Judge Bench. But the learned Judges justified their different view in *Surya Dev Rai*, inter alia on the ground that the law relating to certiorari changed both in England and in India. In support of that opinion, the learned Judges held that the statement of law in *Halsbury*, on which the ratio in *Mirajkar* is based, has been changed and in support of that quoted paras 103 and 109 from *Halsbury's Laws of England*, 4th Edn. (Reissue), Vol. 1(1). Those paras are set out below:
>
> > "103. *The prerogative remedies of certiorari, prohibition and mandamus: historical development*.—Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court into the King's Bench for review or to remove indictments for trial in that court; mandamus was directed to inferior courts and tribunals, and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs;
> > xxx
> > 109. *The nature of certiorari and prohibition*.—Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law.

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25 (2003) 6 SCC 675

> Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities."

The aforesaid paragraphs are based on general principles which are older than the time when *Mirajkar* was decided are still good. Those principles nowhere indicate that judgments of an inferior civil court of plenary jurisdiction are amenable to correction by a writ of certiorari. In any event, change of law in England cannot dilute the binding nature of the ratio in *Mirajkar* and which has not been overruled and is holding the field for decades.

27. It is clear from the law laid down in *Mirajkar* in para 63 that a distinction has been made between judicial orders of inferior courts of civil jurisdiction and orders of inferior tribunals or court which are not civil courts and which cannot pass judicial orders. Therefore, judicial orders passed by civil courts of plenary jurisdiction stand on a different footing in view of the law pronounced in para 63 in *Mirajkar*. The passage in the subsequent edition of *Halsbury* (4th Edn.) which has been quoted in *Surya Dev Rai* does not show at all that there has been any change in law on the points in issue pointed out above.

30. … this Court unfortunately is in disagreement with the view which has been expressed in *Surya Dev Rai* insofar as correction of or any interference with judicial orders of civil court by a writ of certiorari is concerned.

31. Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.

32. The essential distinctions in the exercise of power between Articles 226 and 227 are well known and pointed out in *Surya Dev Rai* and with that we have no disagreement. But we are unable to agree with the legal proposition laid down in *Surya Dev Rai* that judicial orders passed by a civil court can be examined and then corrected/reversed by the writ court under Article 226 in exercise of its power under a writ of certiorari. We are of the view that the aforesaid proposition laid down in *Surya Dev Rai*, is contrary to the ratio in *Mirajkar* and the ratio in *Mirajkar* has not been overruled in *Rupa Ashok Hurra v. Ashok Hurra*[26].

33. In view of our difference of opinion with the views expressed in *Surya Dev Rai*, matter may be placed before His Lordship the Hon'ble the Chief Justice of India for constituting a larger Bench, to consider the correctness or otherwise of the law laid down in *Surya Dev Rai* on the question discussed above."

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26 (2002) 4 SCC 388

40. Upon the reference having been made the question which was considered by the three-Judge Bench in the case of **Radhey Shyam vs. Chhabi Nath[2],** was stated as follows :-

> "**5.** Thus, the question to be decided is: whether the view taken in *Surya Dev Rai*, that a writ lies under Article 226 of the Constitution against the order of the civil court, which has been doubted in the reference order, is the correct view?"

41. The decision of the three-Judge Bench in the case of **Radhey Shyam** (supra) took notice of the nine-Judge Constitution Bench judgement in the case of **Naresh Shridhar Mirajkar,** wherein a judicial order of the High Court was challenged as being violative of fundamental rights and the court by majority held that a judicial order of a competent court could not violate a fundamental right, and even if, there was incidental violation it could not be held to be violative of the fundamental right. The following observations were made (***Mirajkar[24]*** *case*, AIR p. 11, para 38):

> "38. The argument that the impugned order affects the fundamental rights of the petitioners under Article 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Article 19(1)."

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2 (2015) 5 SCC 423
24 AIR 1967 SC 1

42. Referring to **Halsbury's Laws of England, 3rd Edition, Vol. 11**[27] and also the observations made in **Kemp vs. Balne**[28] and by Wrottesley, L.J. in **Rex vs. Chancellor of St. Edmundsbury and Ipswich Diocese, Ex Parte White**[29]**,** it was observed as follows (***Mirajkar*** *case*[24], AIR p.18-19, paras 63-64):

> "63. Whilst we are dealing with this aspect of the matter, we may incidentally refer to the relevant observations made by Halsbury on this point. "In the case of judgments of inferior courts of civil jurisdiction", says Halsbury in the footnote,
>
> "it has been suggested that certiorari might be granted to quash them for want of jurisdiction (Kemp v. Balne, Dow & L at p. 887), inasmuch as an error did not lie upon that ground. But there appears to be no reported case in which the judgment of an inferior Court of civil jurisdiction has been quashed on certiorari, either for want of jurisdiction or on any other ground".
>
> The ultimate proposition is set out in the terms: "Certiorari does not lie to quash the judgments of inferior courts of civil jurisdiction". These observations would indicate that in England the judicial orders passed by civil courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the jurisdiction to issue writs of certiorari.
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> 64. In Rex v. Chancellor of St. Edmundsbury and Ipswich Diocese, Ex parte White, the question which arose was whether certiorari would lie from the Court of King's Bench to an ecclesiastical court; and the answer rendered by the court was that certiorari would not lie against the decision of an ecclesiastical court. In dealing with this question, Wrottesley, L.J. has elaborately considered the history of the writ jurisdiction and has dealt with the question about the meaning of the word 'inferior' as applied to courts of law in England in discussing the problem as to the issue of the writ in regard to decisions of certain courts. "The more this matter was investigated", says Wrottesley, L.J.,
>
> "the clearer it became that the word "inferior" as applied to
>
> courts of law in England had been used with at least two very different meanings. If, as some assert, the question of inferiority is determined by ascertaining whether the court in question can be stopped from exceeding its jurisdiction by a writ of prohibition issuing from the King's Bench, then not only the ecclesiastical courts, but also palatine courts and admiralty courts are inferior courts. But there is another test, well recognised by lawyers, by which to distinguish a superior from an inferior court, namely, whether in its proceedings, and in particular in its judgments, it must appear that the court was acting within its jurisdiction. This is the characteristic of an inferior court, whereas in the proceedings of a superior court it will be presumed that it acted within its jurisdiction

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27 Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 129, 130
28 (1844) 1 Dow & L 885
29 (1948) 1 KB 195, pp. 205-06
24 AIR 1967 SC 1

> unless the contrary should appear either on the face of the proceedings or aliunde".
>
> Mr Sen relied upon this decision to show that even the High Court of Bombay can be said to be an inferior court for the purpose of exercising jurisdiction by this Court under Article 32(2) to issue a writ of certiorari in respect of the impugned order passed by it. We are unable to see how this decision can support Mr Sen's contentions."

43. The three-Judge Bench in the case of **Radhey Shyam** (supra), extensively referring to the legal position on the scope of writ of certiorari concluded that orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. It held that the expression "inferior court" is not referable to judicial courts and accordingly judicial orders of civil courts are not amenable to a writ of certiorari under Article 226 and a writ of mandamus does not lie against a private person not discharging any public duty. It was also held that the scope of Article 227 is different from Article 226. It was observed as follows:

> **"25.** … Courts are set up under the Constitution or the laws. All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to the judicial courts, ...
>
> **27.** Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.
>
> **29.** Accordingly, we answer the question referred as follows:

> **29.1.** Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.
>
> **29.2.** Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.
>
> **29.3.** Contrary view in *Surya Dev Rai*, is overruled."

44. Having regard to the foregoing discussion the legal position which thus emerges is that judicial orders of civil court would not be amenable to writ jurisdiction under Article 226 and that challenge thereagainst can be raised under Article 227.

45. The aforestated legal position has been discussed in the context of the provisions under the Arbitration and Conciliation Act, 1996 with regard to enforcement of an arbitral award, in a recent decision of this Court in **M/S. Magma Leasing Ltd. Vs. Badri Vishal and others.**[30]

46. Having regard to the aforestated legal principles, it can be held that the Appellate Officer, exercising powers under Section 9 of the UP PP Act, does not act as a *persona designata* but in his capacity as a pre-existing judicial authority in the district — being the District Judge of the district, or such other designated judicial officer. The judge, being part of the district judiciary, acts as a court and the order passed by him would be a judicial order passed by a civil court of plenary jurisdiction and therefore the same would not be amenable to a writ of certiorari under Article 226 of the Constitution of India. The remedy against such orders may be availed under Article 227 on the matters delineated for exercise of such jurisdiction.

47. Learned counsel appearing for the petitioner has not disputed the aforesaid legal position and seeks time to file an appropriate amendment application.

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30. Writ - C No. 16753 of 2010, decided on 18.11.2021

48. The matter shall stand over for a fortnight in order to enable the counsel for the petitioner to move an application seeking appropriate amendments.

Order Date :- 26.11.2021

Kirti/Pratima

(Dr. Y.K. Srivastava, J)