HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Reference (Larger Bench) No. 1/2020

In

D.B.Special Appeal (Writ) No. 853/2019

Mahendra Kumar Jain Son of Shri Suresh Chand Khinvsara, Aged About 42 Years, Resident of A.M.C No. 7/10, Sardar Patel Marg, Ajmer.

Versus

1. Appellate Rent Tribunal, Ajmer.
2. Rent Tribunal, Ajmer.
3. Smt Shail Bhargava Wife of Shri Amarnath Bhargava, Aged About 70 Years, Resident of 1A/10, Sardar Patel Marg, Ajmer.
4. Smt. Priti Malik Wife of Shri Narendra Malik and daughter of Late Shri Amar Nath Bargava, Aged About 46 Years, Resident of 1A/10, Sardar Patel Marg, Ajmer.
5. Puneet Bhargava Son of Late Shri Amar Nath Bargava, Aged About 41 Years, Resident of 1A/10, Sardar Patel Marg, Ajmer Mentally Retarded through his Natural Guardian (Mother) Smt. Shail Bhargava Wife of Shri Amarnath Bhargava, Resident of 1A/10, Sardar Patel Marg, Ajmer.
6. Smt. Pritam Bhargava daughter of Late Shri Amar Nath Bhargava, Aged About 39 Years, Resident of 1A/10, Sardar Patel Marg, Ajmer.

For Appellant (s) : Mr. Ajeet Kumar Bhandari with
Mr. Jitendra Mishra and Priyansh Jain
Mr. N.K.Maloo, Senior Advocate with
Mr. Abhimanyu Singh
Mr. Manish Sharma with Mr. Lakshay Pareek
Ms. Shalini Sheoran
Mr. Rajendra Soni with Mr. Vishal Soni
Mr. Hemant Gupta
Mr. Shailesh Prakash Sharma
Mr. Bipin Gupta

Mr. Rahul Kamwar

For Respondent(s) : Mr. Puru Malik
Ms.Priti Malik
Mr. Narendra Malik
Mr. Abhinav Sharma
Mr. Shehban Naqvi
Mr. Rajesh Mehrishi

HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE INDERJEET SINGH
HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

Order

Per Hon'ble Mr.Sangeet Lodha,J.

27th July, 2021

Reportable

1. The legal questions that fall for our determination in this reference made by the Division Bench of this Court read as under:

> "I) Whether the appeal against the judgement of the Single Bench, reversing/upholding the judgement of the Appellate Rent Tribunal and/or the Rent Tribunal, would be maintainable before the Division Bench of this court under Rule 134 of the Rajasthan High Court Rules of 1952?
>
> II) Whether the writ petition filed against the judgement of the Appellate Rent Tribunal and the Rent Tribunal by very nature of the dispute, would be considered to have been filed under Article 227 of the Constitution of India, irrespective of invocation of Article 226 of the Constitution of India in the pleadings?"

2. The Background facts giving rise to the legal issues may be summarized thus: The appellant-Mahendra Kumar Jain is a tenant since 10.10.2001 in commercial premises i.e. two shops situated at Sardar Patel Marg, Ajmer, owned by the landlord-Smt. Shail Bhargava and others, the respondent nos. 3 to 6 herein. The respondent-landlord filed a petition under Section 9 of the Rajasthan Rent Control Act, 2001 ("the Act of 2001") before the

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Rent Tribunal, Ajmer, seeking eviction of the appellant-tenant from the rented premises, on the ground of default in payment of rent for the period from 1.7.2005 to 31.10.2005. The appellant-tenant contested the petition by filing a reply thereto, taking the stand that the respondent-landlord did not disclose her bank account number in the notice served and thus, the mandatory condition precedent for maintaining the petition seeking eviction on the ground of default, was not satisfied. Besides, it was averred that pursuant to the notice served, the arrears of rent due was deposited and therefore, there is no default in payment of rent in terms of Section 9 (a) of the Act of 2001. After due consideration of the evidence on record, the Rent Tribunal arrived at the finding that the appellant-tenant has committed default in payment of rent and accordingly, he was directed to be evicted from the premises in question vide judgment dated 21.4.2007. Aggrieved thereby, the appellant preferred an appeal under Section 19(6) of the Act of 2001, before the Appellate Rent Tribunal, Ajmer, which stood dismissed vide judgment dated 21.12.2009. Assailing the legality of the judgments of the Rent Tribunal and the Appellate Rent Tribunal, the appellant preferred a writ petition purportedly under Article 226 & 227 of the Constitution of India before this Court. The writ petition stood dismissed by the learned Single Judge vide judgment dated 10.5.2019. The appellant challenged the legality of the judgment passed by the learned Single Judge of this Court by way of intra-Court appeal under Rule 134 of the Rules of High Court of Rajasthan, 1952 ("the Rules of 1952").

3. During the course of the hearing of the intra-Court appeal, learned counsel appearing for the respondents raised a

preliminary objection regarding maintainability of intra-Court appeal before the Division Bench. The respondents contended that where the High Court renders judgment or final order in exercise of its power of superintendence, an appeal to the Division Bench of High Court from the judgment of the learned Single Judge is not maintainable. Drawing the attention of the Court to para 16 of the judgment of the learned Single Judge, learned counsel appearing for the respondents while relying upon the decision of the Apex Court in *Shalini Shyam Shetty Vs. Rajendra Shankar Patil:* (2010) 8 SCC 329, contended that the order impugned is passed by the learned Single Judge while exercising jurisdiction under Article 227 of the Constitution of India, and therefore, the same is not appealable. The Division Bench noticed that while rendering the decision in *Hindustan Petroleum Corporation Ltd. Vs. M/s Shyam Narain Mehra Brothers*: 2015 (3) RLW 2691 (Raj.) holding that in cases of challenge to the orders of the Rent Tribunal and Appellant Rent Tribunal in landlord-tenant disputes, the exercise of the power would be under Article 227 and not under Article 226 of the Constitution of India and therefore, the appeal would not be maintainable, the Bench did not notice the earlier Bench decision in *Ramswaroop Vs. Charanjeet Singh and Ors.*: 2008 (1) WLC 47, laying down that the appeal would be maintainable. The Court also observed that the correctness of the decision in *Hindustan Petroleum Corporation Ltd*.'s case has been doubted by the subsequent Division Benches and accordingly, opined that it has become necessary to obtain an authoritative pronouncement from the Larger Bench on the question; whether the appeal against the judgment of the learned Single Judge,

upholding or reversing the judgment of the Appellate Rent Tribunal and/or Rent Tribunal would be maintainable. Hence, this reference.

4. Mr. Ajeet Kumar Bhandari, learned Senior Counsel appearing for the appellant-tenant contended that the power conferred upon High Courts under Article 226 of the Constitution of India to issue prerogative writs for enforcement of fundamental rights or for any other purpose to any person or authority within their territorial jurisdiction is absolute and unqualified. If the High Courts are to recognize or admit any limitation on this power, that must be founded on some provision of the Constitution itself and the Constitution does not place any fetter on exercise of this discretionary and equitable extra ordinary jurisdiction. Learned counsel submitted that all the inferior courts or judicial and quasi-judicial tribunal conferred with the power to determine the questions affecting the rights of the subject are amenable to the *certiorari* jurisdiction of the High Court. It is submitted that the writ of *certiorari* can be issued when the subordinate court or tribunal is found to have acted without jurisdiction or in excess of its jurisdiction or in flagrant disregard of the law or the rules of procedure or in violation of the principles of natural justice and therefore, there is no reason as to why the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked by the person aggrieved to assail the legality of the decision of the Rent Tribunal and Appellate Rent Tribunal, which while adjudicating the dispute between the landlord and tenant are statutorily bound to follow the principles of natural justice and act judicially. In support of the contention, learned counsel relied

upon a Constitution Bench decision of the Supreme Court in *Hari Vishnu Kamath vs. Ahmad Ishaque & Ors.*: AIR 1955 SC 233. Learned counsel submitted that all the Courts and the tribunals are also subject to superintendence of the High Court under Article 227 of the Constitution of India and therefore, if any Court or the tribunal fails to remain within the bounds of its authority, the person aggrieved is entitled to invoke the said jurisdiction as well. Learned counsel submitted that ofcourse, the proceeding under Article 227 is not original proceeding and intra-Court appeal is not maintainable against the order passed by the High Court in such proceedings but then, when a decision of the inferior Court or tribunal is assailed before the High Court and the facts justify a party in filing a petition either under Article 226 or 227 of the Constitution and the party chooses to file the petition both under under Articles 226 and 227, the Court must treat the petition as made under Article 226 and a party aggrieved cannot be deprived of the right of intra-court appeal. The reliance in this regard is placed upon the decisions of the Supreme Court in *Umaji Keshao Meshram & Ors. vs. Smt. Radhikabai & Anr.*: AIR 1986 SC 1272, *Ratnagiri District Central Co-operative Bank Ltd. vs. Dinkar Kashinath Watve & Ors.*: 1993 Suppl(1) SCC 9, *Sushilabai Laxminarayan Mudliyar & Ors. vs. Nihalchand Waghajibhai Shaha & Ors.*: 1993 Supp (1) SCC 11, *Mangalbhai & Ors. vs. Dr.Radhyshyam*: AIR 1993 SC 806, *M/s. Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad* : AIR 1999 SC 2423, *Kishorilal vs. Sales Officer, District Land Development Bank & Ors.*: (2006) 7 SCC 496 and *Shahu Shikshan Prasarak Mandal & Anr. vs. Lata P.Kore & Ors.*: AIR 2009 SC 366. Relying upon a decision of the Supreme

Court in *State of Madhya Pradesh & Ors. vs. Visan Kumar Shiv Charan Lal* : AIR 2009 SC 1999*,* learned counsel submitted that where in a petition filed, prayer is made to quash the order of the inferior Court or tribunal, the order passed by the Writ Court has to be treated to be passed in proceeding under Article 226 of the Constitution of India and therefore, against such order, a letters patent appeal or intra-court appeal would be maintainable. In alternative, the learned counsel contended that where the petition is filed both under Articles 226 and 227, the Division Bench has to consider true nature of principal order of the learned Single Judge to find out whether it was in substance passed in exercise of jurisdiction under Article 226 even if Article 227 is also mentioned by the learned Single Judge and the letters patent appeal would be maintainable if the order is found to have been passed in exercise of the jurisdiction under Article 226. In support of the contention, learned counsel relied upon decisions of the Supreme Court in *State of Madhya Pradesh & Ors. v. Visan Kumar Shiv Charan Lal* : AIR 2009 SC 1999, *Ashok K.Jha & Ors. vs. Garden Silk Mills Limited & Anr.*: (2009) 10 SCC 584*, Ramesh Chandra Sankla & Ors. vs. Vikram Cement & Ors.*: (2008) 14 SCC 58*, Jogendrasinghji Vijaysinghji vs. State of Gujarat & Ors.*: (2015) 9 SCC 1 and *Ram Kishan Fauji vs. State of Haryana*: (2017) 5 SCC 533*.* Learned counsel submitted that in *Shalini Shyam Shetty,* the Supreme Court laid down that in cases of property rights and in disputes between private individual, writ Court should not interfere, unless there is an infraction of statute or it can be shown that a private individual is acting in collusion with the statutory authority, which has been followed in *Jacky Vs. Tiny*

Alias Antony & Ors.: (2014) 6 SCC 508, and further approved by a Larger Bench in *Radhey Shyam & Ors. Vs. Chhabi Nath & Ors.*: AIR 2015 SC 3269, wherein it has been categorically held that the judicial orders of the civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India, but the ratio of the said decision cannot be applied to the orders passed by the Rent Tribunal and Appellate Rent Tribunal constituted under the Act of 2001 inasmuch as they do not have all the trappings of the civil Court. Reliance is placed by the learned counsel on a decision of the Supreme Court in *Ganesan vs. Tamilnadu Hindu Religious & Charitable* : (2019) 7 SCC 108. Learned counsel submitted that the Labour Court and Industrial Tribunal constituted under the Industrial Disputes Act, 1947 to adjudicate the disputes between the workman and employer are specifically held to be not 'Courts' by the Supreme Court in *Town Municipal Council, Athani vs. Presiding Officer, Labour Court, Hubli & Ors.*: AIR 1969 SC 1335 and *Nityanand, M.Joshi & Ors. vs. Life Insurance Corporation of India & Ors:* (1969) 2 SCC 199. Similarly, in *Commissioner of Sales Tax, U.P., Lucknow vs. Parson Tools and Plants, Kanpur*: AIR 1975 SC 1039, the proceedings before the authorities under the U.P. Sales Tax Act, 1948 irrespective of whether they exercise original appellate or revisional jurisdiction, were held to be not 'Courts' but Administrative Tribunal. Learned counsel would submit that for parity of reasons, the Rent Tribunal and Appellate Rent Tribunal constituted under the special enactment i.e. the Act of 2001 cannot be held to be 'Court'. Drawing the attention of the Court to the provisions of Section 15 of the Act of 2001, learned counsel

submitted that during the course of the hearing while holding summary inquiry as it deems necessary, the Rent Tribunal is not bound by the procedure laid down under Civil Procedure Code, 1908 ("CPC") for trial of the suit, rather, the applicability of the provisions of CPC, barring a few, stands specifically excluded by virtue of sub-section (3) of Section 21 of the Act of 2001. Further, the Rent Tribunal and the Appellate Rent Tribunal, which are mandated to be guided by the principles of natural justice, are even vested with the power to regulate their own procedure. The Rent Tribunal or the Appellate Rent Tribunal is deemed to be civil Court for the limited purposes as specified under sub-section (5) of Section 21 of the Act of 2001. Learned counsel submitted that earlier the disputes between the landlord and tenant were regulated by the provisions of the Act of 1950, which stands repealed by Section 32 of the Act of 2001 and the jurisdiction of the civil Court to hear and decide the petitions relating to landlord and tenant and the matters connected therewith and ancillary thereto, stands ousted altogether and therefore, the question of treating the Rent Tribunal and Appellate Rent Tribunal constituted under Section 13 and Section 19 of the Act of 2001 respectively akin to civil Court, does not arise. Learned counsel submitted that this cannot be the intention of the Legislature to take away the jurisdiction of the civil Court while creating the Rent Tribunal and the Appellate Rent Tribunal and again confer the power of the civil Court upon them. Learned counsel further submitted that the Rent Tribunal and the Appellate Rent Tribunal constituted under Sections 13 & 19 of the Act of 2001 respectively, are mandated to be presided over by the designated officers of the rank of Civil

Judge (Senior Division) and District Judge Cadre respectively and thus, they being persona designata, the tribunals constituted by no stretch of imagination could be construed to be Civil Courts. Learned counsel distinguishing the decision of the Supreme Court in *Life Insurance Corporation of India Vs. Nandini J. Shah and Others* : (2018) 15 SCC 356, submitted that in the instant case the Rent Tribunal and the Appellate Rent Tribunal have been created under the statute and the Presiding Officers of the tribunals have been designated and it is not the case where the jurisdiction have been conferred upon a pre-existing Court and thus, the law laid down by the Supreme Court in Life Insurance Corporation's case (supra) that the orders of Appellate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, presided over by the judicial officer of the District not less than 10 years standing as District Judge could be challenged before the High Court under Article 227 and not under Article 226 of the Constitution of India and the letters patent appeal against the order passed by the High Court in such proceedings would not be maintainable, is not applicable in respect of the orders passed by the Rent Tribunal and the Appellate Tribunal constituted under the Act of 2001. Drawing the attention of the Court to Rule 134 of the Rules of 1952, learned counsel submitted that even the orders passed by the learned Single Judge in exercise of the supervisory jurisdiction under Article 227 are amenable to intra-court appeals. In support of the contention, learned counsel relied upon a Full Bench decision of this Court in *Ramesh Chandra Tiwari vs. Board of Revenue*: AIR 2005 Rajasthan 208. Learned counsel submitted that the intra-Court appeals against the order passed by the

Single Judge in petition against the order passed by the Rent Tribunal or Appellate Rent Tribunal are being consistently entertained by this Court. Reliance in this regard is placed by the learned counsel on Bench decisions of this Court in *Ramswaroop's* case (supra), *Ramesh Kumar Malpani & Ors. vs. Ummed Singh Sushila Devi Memorial Trust & Ors.*: 2013(4) CDR 1714(Raj), *Formica Traders vs. Tripti Kumar Kothari*: 2018 (1) CDR 184 (Raj) and *Karwa Trading Company & Ors. vs. Bank of Baroda* (D.B.Special Appeal Writ No.349/17, decided on 20.9.17).

5. Mr. N.K. Maloo, learned Senior Advocate, contended that a writ of *certiorari* lies against judicial action and thus, undoubtedly, orders passed by Court, tribunal and quasi-judicial authority can be challenged by invoking extra ordinary jurisdiction of the High Court under Article 226 of the Constitution. In this regard, learned counsel relied upon the decision of the Hon'ble Supreme Court in *T.C.Basappa vs. T. Nagappa & Anr.*: AIR 1954 SC 440. Learned counsel submitted that the Rent Tribunals and Appellate Rent Tribunals have been constituted under the Act of 2001 and not under CPC. It is submitted that the hierarchy of the tribunals constituted under the Act of 2001 is different than the hierarchy of the Courts established under CPC, which makes no provision for further appeal to the High Court. Even the Presiding Officers of the Rent Tribunal and Appellate Rent Tribunal are appointed by way of a notification issued by the State Government published in Official Gazette. Drawing the attention of the Court to the provisions of Section 13 (2) of the Act of 2001, learned counsel submitted that the distribution of business to the tribunal is also regulated by the State Government unlike ordinary civil Court where this power is

vested with the High Court. Under CPC, a Civil Judge is competent to entertain a suit for eviction, whereas under the Act of 2001, the Presiding Officer of the Rent Tribunal cannot be below the rank of Senior Civil Judge. Similarly, under CPC, first appeal against the judgment and decree passed by the Civil Judge could be heard by a newly appointed District Judge, whereas, an appeal from the order of the Rent Tribunal can only be heard by the Appellate Rent Tribunal presided over by an officer of the District Judge cadre having atleast three years experience. Learned counsel submitted that by virtue of Section 18 of the Act of 2001, in respect of the disputes covered under the Act of 2001 adjudication whereof is within the domain of Rent Tribunal, the jurisdiction of the Civil Court has been taken away. Reiterating the contention raised by the counsel for the appellant-tenant, learned counsel Mr. Maloo submitted that sub-section (3) of Section 21 specifically mandates that the Rent Tribunal and Appellate Rent Tribunal shall not be bound by the procedure laid down by the CPC, but shall be guided by the principles of natural justice subject to the other provisions of the Act and the Rules and the Rent Tribunal and Appellate Rent Tribunal are empowered to regulate their own procedure, which all are the attributes of tribunal and not of Court. Relying on provisions of sub-section (6) of Section 15, learned counsel submitted that while adjudicating the dispute between landlord and tenant, the Rent Tribunal is required to hold only such summary inquiry as it deemed necessary and further while adjudicating the dispute, the Rent Tribunal is not required to prepare the decree, rather, if the petition is allowed, the certificate for recovery of possession is issued under sub-section (7) of

Section 15, which is executable by the Rent Tribunal and not by the Executing Court under CPC. Precisely, the contention of the learned counsel is that the Rent Tribunal and Appellate Rent Tribunal constituted under the Act of 2001 are though judicial tribunals but, they do not have all the trappings of a civil Court and thus, their functions being different, they cannot be treated akin to the civil Court and a person aggrieved by the judgments of the Rent Tribunal and Appellate Rent Tribunal is entitled to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India. In support of the contention, learned counsel has relied upon the decisions of the Supreme Court in *Hari Nagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Ors.*: AIR 1961 SC 1669, *Associated Cement Companies Ltd. Vs. P.N. Sharma and Ors.*: AIR 1965 SC 1595, *Keshab Narayan Banerjee and Ors. Vs. State of Bihar* : 2000 (1) SCC 607 and *Union of India Vs. R.Gandhi, President Madras Bar Association:* (2010) 11 SCC 1. Learned counsel submitted that Rule 134 of the Rules of 1952, does not make any distinction between special appeal against the order passed in writ petition under Article 226 or 227 of the Constitution of India and thus, in absence of any provision specifically excluding the maintainability of the special appeal against the order passed by the learned Single Judge deciding a writ petition preferred under Article 227 of the Constitution of India, the special appeal would be maintainable. In support of the contention, learned counsel has relied upon decisions of the Supreme Court in *Commissioner of Customs and Central Excise Vs. Hongo India*: (2009) 5 SCC 791 *and Umaji Vs. Radhikabai*: AIR 1986 SC 1272 and Bench decisions of this Court

in *Ram Prakash vs. Shashi Bala Bajitpuria & Ors.:* 2015 (4) DNJ Raj. 1489, *Ramesh Kumar Malpani's* case and *Ramswaroop's* case (supra).

6. Ms. Shalini Sheoran, learned counsel contended that this Court can always exercise the jurisdiction under Article 226 of the Constitution of India where the Subordinate Court or tribunal acts without jurisdiction or in excess of it or fails to exercise jurisdiction or acts illegally or improperly such as in breach of principles of natural justice. Learned counsel submitted that even if a petition is filed under Article 227 of the Constitution of India and a decision is rendered in favour of the petitioner, it is open for the respondent to demonstrate before the Division Bench in appeal that the nature of the controversy, the averments contained in the petition, the reliefs sought and principal character of the order of the learned Single Judge, would support the maintainability of the appeal on the ground that the facts justified the invocation of both Articles 226 & 227 of the Constitution of India. In support of the contention, learned counsel has relied upon a Full Bench decision of Bombay High Court in *M/s. Advani Oerlikon Ltd. Vs. Machindra Govind Makasare and Ors.*: AIR 2011 Bombay 84. Relying upon a decision of Supreme Court in *Jai Singh & Ors. vs. Municipal Corporation of Delhi & Anr*.: (2010) 9 SCC 385, learned counsel submitted that the powers of superintendence and judicial revision of the High Court under Article 227 is wider than the power under Article 226 of Constitution. Learned counsel relied upon various decisions of the Supreme Court, which have already been noticed by us. Learned counsel has also relied upon various Bench decisions of this Court

where the intra-Court appeals were entertained by the Division Bench of this Court against the order of the learned Single Judge passed in writ petitions preferred against the order passed by the various tribunals including Rent Tribunal and Appellate Rent Tribunal.

7. Learned counsel Mr. Hemant Gupta, while drawing distinction between extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India and supervisory jurisdiction under Article 227 of the Constitution of India, contended that Rule 134 of the Rules of 1952, does not make any distinction between the orders passed by the learned Single Judge under appellate, revisional or criminal jurisdiction and extra-ordinary jurisdiction and therefore, the appeal would be maintainable against the order passed by the Rent Tribunal or the Appellate Rent Tribunal constituted under the Act of 2001. Learned counsel submitted that as a matter of fact, Rule 134 of the Rules of 1952, needs to be suitably amended to clarify the ambiguity prevalent.

8. Mr. Bipin Gupta, learned counsel cited a Full Bench decision of the Bombay High Court in *Ramchandra Dagoji Rangari through Lrs. & Ors. v. Vishwanath Champat Naik & Anr.*: (2011) 6 BomCR 635*,* wherein while relying upon the decision of the Supreme Court in *M/s. MMTC Ltd. Vs. Commissioner of Commercial Taxes & Ors.*: (2009)1 SCC 8*,* the Court held that the decision of the Division Bench holding that in any dispute between landlord and tenant under the Rent Act, the writ petition under Article 226 is not maintainable and the challenge to the High Court has to be only under Article 227 of the Constitution of India, is not in consonance with the ratio of the judgment of Apex Court *Shalini*

Shetty. The Court opined that the decision in *Shalini Shetty,* nowhere lays down that in no case a writ of *certiorari* can be issued by the High Court to a Court or tribunal subordinate to it.

9. Mr. Shailesh Prakash Sharma, learned counsel assisting the Court contended that the Rent Tribunal and the Appellate Rent Tribunal, constituted under the Act of 2001 for adjudication of the disputes between the landlord and the tenant, have trappings of the Court, but inspite of those trappings, the same are not Courts in strict sense of exercising judicial power and thus, in case, the said tribunal acts in excess of the jurisdiction or assumes a jurisdiction which it does not possess, the High Court can always issue a writ of *certiorari* to annul such orders. In support of the contention, learned counsel relied upon a decision of the Supreme Court in *The Bharat Bank Ltd., Delhi Vs. The Employees of the Bharat Bank*: 1950 Supp. SCR, 317.

10. Mr. Rajendra Soni, learned counsel while raising the issue regarding the constitution of the Rent Tribunal and Appellate Rent Tribunal being referable to the Article 323B of the Constitution, submitted that when the order passed by the various tribunals constituted under the different enactments, are subject to judicial review under Article 226 of the Constitution of India, then there is no reason as to why the orders passed by the Rent Tribunal and the Appellate Rent Tribunal should be differently treated, while presuming that the said tribunals are akin to the civil Court.

11. On the other hand, Mr. Puru Malik, learned counsel appearing for the respondent-landlord submitted that Rule 134 (1) of the Rules of 1952 without any doubt or ambiguity, clearly provides that where the High Court renders a judgment or final order in

exercise of its power of superintendence, the intra-court appeal shall not be maintainable. Learned counsel submitted that when a question 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. Relying upon the decisions of the Supreme Court in *Bharat Bank Ltd.'s case (supra), Shri Virindar Kumar Satyawadi Vs. State of Punjab*: AIR 1956 SC 153 and *Brijnandan Sinha vs. Jyoti Narayan*: (1955) 2 SCR 955 : AIR 1956 SC 66, learned counsel submitted that broadly what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in judicial manner and declare the rights of the parties in a definitive judgment and to decide in 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. Further, it also imports an obligation on the part of authority to decide the matter on consideration of evidence adduced and in accordance with law. Learned counsel submitted that the Act of 1950 governing the matters relating to letting out of the residential and commercial premises, the rent and eviction, has been repealed and substituted by the Act of 2001 wherein, under Chapter V, the provisions for constitution of Tribunal, procedure for revision of rent and eviction, appeal and execution are incorporated. As per Section 18 of the Act of 2001, the jurisdiction to hear all the disputes between landlord and tenant and matters connected therewith and ancillary thereto has been conferred upon the Rent Tribunal in the areas to which the Act of 2001 is made applicable. Drawing the attention of the Court to the

various provisions of the Act of 2001, learned counsel submitted that the procedure prescribed for conducting the proceedings before the Rent Tribunal under the Act of 2001 pursuant to a petition filed involving a dispute between the landlord and tenant is not different than the procedure followed in trial of a regular civil suit. The party aggrieved is required to file a petition before the Rent Tribunal in model form prescribed under Section 22 of the Act of 2001 that is not different than the model form of the plaint prescribed under CPC. As in the regular suit, the written statement is filed by the defendant, in the proceedings before the Rent Tribunal, the opposite party is required to file a reply to the petition. There is a provision incorporated for filing a rejoinder as well. The parties are expected to file the affidavit and the documentary evidence in support of their case. Though, the Act of 2001 does not provide for cross examination of the deponents as a matter of right but as laid down by this Court in catena of decisions that where a decision depends upon oral testimony and affidavits filed by the parties form oath against oath and the facts deposed in the affidavits are not verifiable from other material on record, ordinarily, in such case, cross examination ought to be permitted in the interest of giving fair trial to the litigants and therefore, the permission to cross examine is generally not denied by the Rent Tribunal. Learned counsel submitted that the dispute between the landlord and tenant involves question of fact, the ascertainment whereof is made by means of evidence adduced by the parties. The parties are extended opportunity to advance their arguments and finally the matter is decided after appreciation of the evidence on record applying the law applicable. Learned

counsel submitted that though, the Rent Tribunal is not issuing the decree but in petition for eviction where the matter is decided in favour of the landlord, the certificate for recovery of possession is issued which is executable by the Rent Tribunal. Learned counsel submitted that merely because while deciding the dispute between the landlord and the tenant, summary inquiry is conducted, the Rent Tribunal which is judicial tribunal akin to the civil Court cannot be treated to be quasi judicial tribunal. Precisely, the contention of the respondent is that the Rent Tribunal and the Appellate Rent Tribunal constituted under the Act of 2001 are discharging judicial function and have all the trappings of a civil Court. Learned counsel submitted that in *Shalini Shyam Shetty*, the Supreme Court has categorically laid down that in the disputes inter alia relating to landlord and tenant and in various other cases wherein disputed questions of property are involved, the writ petition under Article 226 should not be entertained. The Court observed that the petition filed under Article 227 cannot even be treated as writ petition. The Court further observed that in cases of property rights and disputes between the private individuals, writ Court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority. Relying upon the decision in *Radhey Shyam*, learned counsel urged that in view of the law categorically laid down by the Supreme Court, the question of entertaining any writ petition against the judicial orders passed by the Court or tribunal does not arise and therefore, the order impugned in the appeal passed by the learned Single Judge being an order passed in exercise of the power

conferred under Article 227 of the Constitution of India, the letters patent appeal or intra court appeal is not maintainable. In this regard, the learned counsel also relied upon the decisions of the Supreme Court in *Jogendrasinghji Vijaysinghji ,Ram Kishan Fauji, Life Insurance Corporation of India v. Nandini J. Shah & Ors.*: (2018) 15 SCC 356 and a Bench decision of this Court in *Sukh Dev vs. Prakash Chandra*: AIR 2010 Raj.153. Learned counsel submitted that the Rent Tribunal and the Appellate Rent Tribunal are presided over by the officers of the cadre of Civil Judge (Senior Division) and District Judge respectively, the pre-existing authorities exercising judicial power of the State and therefore, the same would by no standard acquire colour or the trappings of "persona designata" rather it is indicative of the fact that the power to be exercised by the Rent Tribunal and the Appellate Rent Tribunal shall be in the capacity of judicial officers of pre-existing Courts and therefore, the order passed by the officers of the rank of Civil Judge (Senior Division) and the District Judge presiding over by the Rent Tribunal and the Appellate Rent Tribunal can be challenged before the High Court invoking its supervisory jurisdiction under Article 227 not under Article 226 of the Constitution of India and therefore, the order passed by the learned Single Judge in the proceedings under Article 227 of the Constitution of India, the letters patent appeal shall not be maintainable. In this regard, learned counsel has relied upon decisions of the Supreme Court in *Central Talkies Ltd., Kanpur Vs. Dwarka Prasad* : AIR 1961 SC 606 and Life Insurance Corporation*'s case (supra).*

12. Mr. Abhinav Sharma, learned counsel assisting the Court while reiterating the contention raised on behalf of the respondents, submitted that the Presiding Officer of Rent Tribunal and Appellate Rent Tribunal function under administrative and disciplinary control of the High Court and by virtue of provisions of sub-section (4) of Section 26, the ministerial employees of Rent Tribunal and Appellate Rent Tribunal shall be governed by the Rajasthan Subordinate Courts Ministerial Establishment Rules, 1986 and for the purpose of the said rules, the Appellate Rent Tribunals are deemed to be Courts of District & Sessions Judges and the Rent Tribunals are deemed to be the Courts of Civil Judges. That apart, by virtue of provisions of Section 28, the Court fee payable on petitions, applications and appeals filed before the Rent Tribunal and Appellate Rent Tribunal would be the same as payable if suit applications or appeals were filed for the similar relief before civil Court.

13. Mr. S. Naqvi, learned counsel while relying upon the decisions of the Supreme Court in *Jaswant Sugar Mills Ltd. Vs. Lakshmi Chand and Ors.*: AIR 1963 SC 677 and *P.Sarathy Vs. State Bank of India*: AIR 2000 SC 2023*,* contended that the tribunals in order to constitute a Court in strict sense of term, an essential condition is that they should have, apart from having some of trappings of a Court, such as power to give a decision or a definite judgment, which has finality and authoritativeness which are essential test of a judicial pronouncement. Learned counsel submitted that any tribunal or authority deciding the rights of the parties will be treated to be a 'Court'. Learned counsel submitted that relying upon the decisions of Supreme

Court in *Shalini Shyam Shetty*, *Jacky, Ram Kishan Fauji* and *Jogendrasinghji Vijaysinghji*, the Division Bench of this Court in *Hindustan Petroleum Corporation Limited* (supra), *Mohan Lal vs. Manohar Lal & Ors.*: 2016 (3) CDR 1176 (Raj.) and *Leela Devi Vs. Kamla* (D.B. Spl. Appl. Writ No. 1297/2019, decided on 15.10.19), categorically laid down that against the decision of the learned Single Judge in the petition filed challenging the order passed by the Rent Tribunal and/or Appellate Rent Tribunal, intra-Court appeal is not maintainable. In *Leela Devi*, the Court further opined that the view taken by yet another Division Bench in *Arun Kumar vs. Ganga Shanker Solanki* : 2009 (2) DNJ (Raj.) 1041, which does not deal with the issue of maintainability of intra-court appeal shall be considered as impliedly overruled. Learned counsel submitted that as a matter of fact, if the extension of the remedy of intra-Court appeal in the dispute relating to the landlord and tenant adjudicated by the Rent Tribunal or Appellate Rent Tribunal is permitted, it will frustrate the very object sought to be achieved by enacting the Act of 2001.

14. Mr. Rajesh Mahrishi relying upon a decision of High Court of Bombay (Panaji-Goa Bench) in *Yogesh Mallick vs. Adelaide Afonso*: 1989 (9) BOMLR 341, submitted that the Rent Tribunal and Appellate Rent Tribunal constituted under the Act of 2001, possess all the attributes of a Court and therefore, keeping in view the Supreme Court decision in *Radhey Shyam*, the intra-Court appeal would not be maintainable against the order passed by the learned Single Judge in the petition filed assailing the order passed by the Rent Tribunal and/or Appellate Rent Tribunal.

15. We have considered the rival submissions and gone through the decisions cited by counsel for the parties and other learned members of the bar.

16. Article 226 of the Constitution of India confers extra ordinary jurisdiction on the High Court to issue directions, orders or writs including the writs in the nature of *habeas corpus, mandamus, prohibition quo warranto* and *certiorari* or any of them, to any person or authority including in appropriate cases, any Government within the territory in relation to which it exercises the jurisdiction, for the enforcement of any of the rights conferred under Part III of the Constitution and for any other purpose.

17. As laid down by the Hon'ble Supreme Court in *Hari Vishnu Kamat*, Article 226 confers power on High Court in terms absolute and unqualified inasmuch as, the constitution does not place any fetter on exercise of extra ordinary jurisdiction, which is discretionary and equitable.

18. In *T.C.Basapp*a, the Hon'ble Supreme Court while tracing the origin of the issue of prerogative writs including '*certiorari*' dealt with the scope of the power of supervision of Supreme Court and High Court under Article 32 and 226 of the Constitution, the Court while considering the essential features of a writ of *certiorari* and the supervisory jurisdiction of superior courts, observed:

> "(6). The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition, and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution, we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel

oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of 'certiorari' in all appropriate cases and in appropriate manner, as long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.

(7) One of the fundamental principles in regard to the issue of a writ of 'certiorari' is that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression "judicial acts" includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin L.J. thus summed up the law on the point in- 'Res. v. Electricity Commissioner', 1924-1 KB 171 at p.206 (C):

> "Whenever any body or persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in express of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

The second essential feature of a writ of 'certiorari' is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of 'certiorari' the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person, vide per Lord Cairns in -'Walisal's Overseers v. L. & N.W. Rly. On', 1879) 4 AC 30 at p.39 (D).

(8) The supervision of the superior court exercised through writs of 'certiorari' goes on two points, as has been expressed by Lord Summer in -King v. Nat Bell Liquors Ltd.', (1922) 2 AC 128 at p. 156(E). One is the areas of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of 'certiorari' could be demanded. In fact there is little difficulty in the enunciation of the principles: the difficulty really arises in applying the principles to the facts of a particular case.

(9) "Certiorari" may and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances, vide 'Halbury 2nd edition, Vol. IX, page 880. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction, which it would not otherwise posses. Vide -'Bunbury v. Fuller', (1854) 9 Ex. 111 (F):- R. v. Income Tax Special Purposes Commissioners', (1889) 21 QBD 313 (G).

(10) A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of 'certiorari' may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of 'certiorari' but it must be a manifest error apparent on the face of the proceedings e.g. when it is based on clear ignorance of disregard of the provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision.

The essential features of the remedy by way of 'certiorari' have been stated with remarkable brevity and clearness by Morris L.J. in the recent case of - 'Res. v. Northumberland Compensation Appellate Tribunal', 1952-1 KB 338 at p. 357(H). The Lord justice says:

> "It is plain that 'certiorari' will not issue as the cloak of an appeal is disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown."

(11) In dealing with the powers of the High Court under Article 226 of the Constitution the court has expressed itself in almost similar terms. Vide- 'Verrappa Pillai v. Raman and Raman Ltd.', AIR 1952 SC 152 at pp.195-196 (I) and said:

> "Such writs as are referred to in Article 226 are obviously intended to enable the Hjigh Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the

face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.

…….These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of 'certiorari' under Article 226 of the Constitution." (emphasis added)

19. There cannot be any quarrel with the proposition either that all the inferior Courts or judicial and quasi judicial tribunals conferred with the power to determine the questions affecting the rights of the subject are amenable to *certiorari* jurisdiction of the High Court and further that the writ of *certiorari* can be issued by the High Court when the inferior Courts or judicial and quasi judicial tribunals are found to have acted without jurisdiction or in excess of its jurisdiction or in violation of the principles of natural justice.

20. It is also well settled that the power of superintendence conferred on High Court under Article 227 of the Constitution is not confined to administrative superintendence rather, it includes judicial superintendence and in appropriate cases the power can be exercised by the High Court to keep the inferior Courts, judicial and quasi judicial tribunals within the bounds of their authority.

21. Precisely, the contention of the counsel for the appellant is that where the facts justify a party in filing petition under Article 226 or/and 227 and the party chooses to file the petition both under Article 226 & 227, the Court must treat the petition under Article 226 and a party cannot be deprived of the right of intra-Court appeal.

22. In *Umaji Kesho Meshram*, relied upon by the learned counsel, the Hon'ble Supreme Court while dealing with the issue of intra-Court appeal under Clause 15 of Letters Patent of Bombay High Court, referred to the Letters Patent of Calcutta and Madras High Courts, the provisions of Government of India Act, 1915 & 1935, the Indian Independence Act, 1947 and the debates of Constituent Assembly and held that where facts justify a party in filing an application either under Article 226 or 227 of Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of a valuable right to appeal, the Court ought to treat the application as being made under Article 226, and if in deciding the matter in the final order, the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of Letters Patent where substantial part of the order sought to be appealed against is under Article 226.

23. In *Mangalbhai*, the Hon'ble Supreme Court while referring to the decision in *Umaji Kesho Meshram*, having arrived at the conclusion that the order passed by the learned Single Judge of the Bombay High Court against the orders of the Rent Controller and Resident Deputy Collector, in the totality of the facts and circumstances of the case and the pleadings of the parties in the writ petition, was an order under Article 226 of the Constitution, held that Letters Patent Appeal was maintainable before the High Court.

24. In *Lokmat Newspapers Private Limited*, a case arising out of an order passed by the Labour Court in a complaint filed under

Section 28 of Maharashtra (Recognition of Trade Unions and Prevention of Unfair Labour Practices) Act, 1971 ('Maharashtra Act'), the Hon'ble Supreme Court having arrived at the conclusion that the Labour Court had lost sight of object and purpose of the provisions of the Industrial Disputes Act and the Maharashtra Act, committed serious error of law apparent on the face of record resulting in serious miscarriage of justice, observed that it was a case of invocation of jurisdiction of the High Court under Article 226 of the Constitution. The Court further opined that it was open for the writ petitioner to invoke the jurisdiction of the High Court both under Articles 226 & 227 of the Constitution and once such jurisdiction was invoked and the writ petition was dismissed on merits, it cannot be said that the learned Single Judge had exercised his jurisdiction only under Article 226 (sic 227) of the Constitution.

25. The decision in *Umaji Kesho Meshram*, was followed by the Hon'ble Supreme Court in *Sushila Bai Laxminarayan Mudliyar*. In *Kishorilal*, the Hon'ble Supreme Court followed the ratio of the decision in *Sushilabai Laxinarayan Mudliyar* and observed that the intra-Court appeal would be maintainable if the writ petition was filed under Articles 226 & 227 of the Constitution.

26. In *Visan Kumar Shiv Charan Lal*, the Hon'ble Supreme Court relying upon various earlier decisions including in *Umaji Keshao Meshram* and *Sushilabai Laxminarayan Mudliyar* observed that where in the cause title of an application both Article 226 & Article 227 of the Constitution have been mentioned, the learned Single Judge is at liberty to decide according to the facts of each particular case whether the said application ought to be dealt with

only under Article 226 of the Constitution. For determining the question of maintainability of the appeal, the relevant factor is real nature of principal order passed by the learned Single Judge, which is appealed against and neither the mentioning in the cause title of the application of both the articles nor the granting of ancillary orders thereupon made by the learned Single Judge would be relevant thus, in each case the Division Bench may consider the substance of the judgment under appeal to ascertain whether the Single Judge has mainly or principally exercised in the matter his jurisdiction under Article 226 or under Article 227.

27. In *Ramesh Chandra Sankla & Ors.,* the Hon'ble Supreme Court was seized of an issue arising out of the reference made to the Labour Court on behalf of the workmen who were said to have accepted voluntary retirement scheme framed by the employer. The employer sought framing of a preliminary issue in respect of jurisdiction of the Labour Court which was declined. The employer approached the High Court by filing a writ petition, which was dismissed for the reason that an order passed by the Labour Court and confirmed by the Industrial Court was interlocutory order and does not call for interference in exercise of supervisory jurisdiction under Article 227 of the Constitution. The intra Court appeal filed by the employer was not found to be maintainable as the learned Single Judge was found to be exercising supervisory jurisdiction. The said order which challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court, after due consideration opined:

> "32. **In our judgment, the learned counsel for the appellant is right in submitting that nomenclature of the proceeding or reference to a particular Article of**

the Constitution is not final or conclusive. He is also right in submitting that an observation by a Single Judge as to how he had dealt with the matter is also not decisive. If it were so, a petition strictly falling under Article 226 simpliciter can be disposed of by a Single Judge observing that he is exercising power of superintendence under Article 227 of the Constitution. Can such statement by a Single Judge take away from the party aggrieved a right of appeal against the judgment if otherwise the petition is under Article 226 of the Constitution and subject to an intra-court/Letters Patent Appeal ? The reply unquestionably is in the negative [see Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors., (1998) 5 SCC 749].

33. In our considered opinion, however, on the facts and in the circumstances of the present case, the petitions instituted by the Company and decided by a Single Judge of the High Court could not be said to be original proceeding under Article 226 of the Constitution. We are clearly of the view that the learned Single Judge had decided the petitions in exercise of power of superintendence under Article 227 of the Constitution."

28. In *Shahu Shikshan Prasarak Mandal & Anr.*, the Hon'ble Supreme Court *inter alia* relying upon the decision in *Umaji Keshao Meshram* having arrived at the conclusion that the contentions raised and facts stated in the writ petition justify the respondent therein to file an application both under Article 226 and 227 of the Constitution of India, without expressing an opinion on merits as regards the maintainability, remitted the matter to the High Court to consider the issues, the applicable provisions and decisions afresh.

29. *In Ashok K. Jha & Ors.*, the workmen challenged the transfer order before the First Labour Court by making an application under Section 77 & 78 of the Bombay Industrial Relations Act, 1946 ('BIR Act'), on the ground that the transfer has resulted in total change in the type of their work. The First Labour Court arrived at the conclusion that the workmen have failed in establishing that the employer has made illegal change. Aggrieved

thereby, the workmen approached the Industrial Court, Surat, by way of an appeal under Section 84 of the BIR Act. The Industrial Court set aside the order of First Labour Court and directed the employer to withdraw the orders of transfer and to entrust to the employees, work of original post. Aggrieved by the order of the Industrial Tribunal, the employer preferred a petition under Articles 226 & 227 of the Constitution before the High Court of Gujarat. The learned Single Judge dismissed the petition. Aggrieved thereby, the employer preferred letters patent appeal under Clause 15 of Letters Patent before the Division Bench. The Division Bench allowed the appeal and set aside the judgment of the learned Single Judge and restored the judgment and order passed by the First Labour Court, Surat. The Hon'ble Supreme Court while considering the issue regarding maintainability of the letters patent appeal relying upon various earlier decisions including *Umaji Keshao Meshram* and *Sushilabai Laxminarayan Mudliyar,* laid down :

> "36. If the judgment under appeal falls squarely within four corners of Article 227, it goes without saying that intra-Court appeal from such judgment would not be maintainable. On the other hand, if petitioner has invoked the jurisdiction of the High Court for issuance of certain writ under Article 226, although Article 227 is also mentioned, and principally the judgment appealed against falls under Article 226, the appeal would be maintainable. What is important to be ascertained is the true nature of order passed by the Single Judge and not what provision he mentions while exercising such powers.
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> 37. We agree with the view of this Court in *Ramesh Chandra Sankla* that a statement by a learned Single Judge that he has exercised power under Article 227, cannot take away right of appeal against such judgment if power is otherwise found to have been exercised under Article 226. The vital factor for determination of maintainability of the intra-court appeal is the nature of jurisdiction invoked by the party and the true nature of principal order passed by the Single Judge."

30. In *Surya Dev Rai Vs. Ram Chandra Rai* : (2003) 6 SCC 675, where the question was that in the matters where the remedy of filing revision petition under Section 115 CPC was earlier available, after the amendment introduced, whether an aggrieved person is deprived of the remedy of judicial review, if he has lost at the hands of original court and appellate court, though a case of gross failure of justice having been occasioned can be made out. The Hon'ble Supreme Court while discussing the nature of jurisdiction under Article 226 and 227 of the Constitution of India after due consideration of various earlier decisions held :

> "19. Thus, there is no manner of doubt that the orders and proceedings of a judicial court subordinate to the High Court are amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.
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> xxxxxxxx xxxxxxxx
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> 24. The difference between Articles 226 and 227 of the Constitution was well brought out in *Umaji Keshao Meshram v. Radhikabai*. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution ar not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.
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> 25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise

supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Article 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior court or tribunal as to manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised

only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded."

31. In *MMTC Limited*, the Hon'ble Supreme Court while relying upon the decisions in *Umaji Keshao Meshram, Sushilabai Laxminarayan Mudliyar* and *Lokmat Newspapers (P) Limited*, held that where it was open to the respondent therein to invoke the jurisdiction under Articles 226 and 227 of the Constitution of India on the facts of the case and the writ petition was dismissed on merits, it cannot be said that the learned Single Judge exercised the jurisdiction only under Article 226 (sic.227) of the Constitution.

32. In view of the discussion above, the settled position of law may be summarised thus: Article 226 of the Constitution confers extra ordinary jurisdiction on High Court to issue prerogative writs, directions or orders to any person or authority including in appropriate cases any Government within the territory in respect to which it exercises the jurisdiction for enforcement of fundamental rights conferred under Part III of the Constitution and for any other purpose. The power conferred upon High Court under Article 226 is absolute and unqualified as the Constitution does not place any fetter on exercise of extra ordinary jurisdiction which is discretionary and equitable. All the inferior Courts or judicial and quasi judicial tribunals conferred with the power to determine the question affecting the rights of the subject are amenable to certiorari jurisdiction of the High Court. The High

Court is empowered to exercise power of superintendence to keep the inferior Courts, judicial and quasi judicial tribunals within the bounds of their authority. The jurisdiction exercised by the High Court under Article 226 is original proceedings before the High Court whereas the proceedings under Article 227 of Constitution is not original proceedings and thus, the order passed by the High Court under proceedings under Article 227 of the Constitution is not amenable to intra-Court appeal jurisdiction. But where the facts justify filing of the petitions both under Articles 226 and 227 and the petition so filed is dismissed by the learned Single Judge on merits, a letters patent appeal would be maintainable before the Division Bench. In such situation, nomenclature of the proceedings or reference to particular article of the Constitution is not final or conclusive and thus, when the order of the learned Single Judge is appealed against, in each case, the substance of the judgment under appeal shall be considered by the Division Bench to ascertain whether the Single Judge has mainly or principally exercised jurisdiction in the matter under Article 226 or under Article 227.

33. But then, in *Shalini Shyam Shetty*, the Hon'ble Supreme Court opined that a proceeding under Article 226 is not appropriate forum for adjudication of property disputes or disputes relating to title or disputes between the landlord and tenant. A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of the power by the High Court under these two Articles is also different. The jurisdiction under Article 227 is neither original nor appellate. Against an order passed by a Single Judge under Article 226, a

letters patent appeal or an intra-Court appeal is maintainable but no such appeal is maintainable from an order passed by Single Judge of the High Court in exercise of a power conferred under Article 227. The Court observed :

> "64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputes questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.
>
> 65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.
>
> 66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev* and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law." (emphasis added)

34. In *Jai Singh*, where the judgment of Delhi High Court in a writ petition under Article 227 of Constitution against the order passed by the Additional Rent Control Tribunal (ARCT) upholding the order passed by the Additional Rent Controller was under challenge, noticing the well recognized principles governing the exercise of jurisdiction under Article 227 of the Constitution, the Hon'ble Supreme Court held :

"15. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It can not be exercised like a `bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

16. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it can not substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice."

35. In *Jacky vs Tiny*, AIR 2014 SC 1615, the Hon'ble Supreme Court laid down that a petition under Article 226 or Article 227 of Constitution of India can neither be entertained to decide the landlord-tenant dispute nor it is maintainable against a private individual to determine an inter se dispute including the question whether one party is harassing the other party.

36. In *Radhey Shyam*, Bench of two Hon'ble Judges of Supreme Court disagreeing with the law laid down in *Surya Dev Rai* that an

order of the civil Court was amenable to writ jurisdiction under Article 226 of the Constitution referred the matter to Larger Bench. The Larger Bench after due consideration of various earlier decisions including decision in *Shalini Shyam Shetty*, categorically held that judicial orders of civil Courts are not amenable to a writ of certiorari under Article 226. The Court observed :

> 25….xxxxx… 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, as rightly observed in the referring in para 26 and 27 quoted above.
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> ….xxxx……
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> 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 of different from Article 226." (emphasis added)

Accordingly, the contrary view in *Surya Dev Rai* was overruled.

37. In *Jogendrasinghji Vijaysinghji*, the Hon'ble Supreme Court relying upon the decision in *Radhey Shyam* observed:

> "18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid

down by this Court in series of decisions which have been referred to by a three-Judge Bench in *Radhey Shyam,* which is a binding precedent. Needless to emphasise that once it is exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable." (emphasis added)

Adverting to the question as to under what situation, a letters patent appeal is maintainable before the Division Bench, the Court while relying upon the various earlier decisions of the Supreme Court including decisions in *Umaji Keshao Meshram, Sushilabi Laxminarayan Mudliyar, Lokmat Newspapers Private Limited, Kishorilal, Ashok K.Jha, Ramesh Chandra Sankhla,* held :

"30. From the aforesaid pronouncements, it is graphically clear that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regarding being had to the jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in *Radhey Shyam* that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, needless to emphasise, would depend upon various aspects that have been emphasised in the aforestated authorities of this Court. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and inbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 and 227 of the Constitution or both. The Division Bench would also be required to scrutinise whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. Be it stated, one of the conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court fees. We do not intend to comment on the same as that would depend upon the rules framed by the High Court.

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44. We have stated in the beginning that three issues arise despite the High Court framing number of issues and answering in at various levels. It is to be borne in mind how the jurisdiction under the letters patent appeal is to be exercised cannot exhaustively be stated. It will depend upon the Bench adjudicating the lis how understands and appreciates the order passed by the learned Single Judge. There cannot be a straitjacket formula for the same. Needless to say, the High Court while exercising jurisdiction under Article 227 of the Constitution has to be guided by the parameters laid down by this Court and some of the judgments that have been referred to in *Radhey Shyam.*" (emphasis added)

38. In *Ram Kishan Fauji*, the writ petition was filed under Article 226 of the Constitution for quashing of the recommendation of Lokayukta. The said recommendation would have led to launching of criminal prosecution and as the factual matrix reveals, FIR was registered and criminal investigation was initiated. The learned Single Judge analysed the report and the ultimate recommendation of the statutory authority and quashed the FIR and subsequent investigation. The Court opined that the order was passed by the learned Single Judge in exercise of criminal jurisdiction and thus, intra-Court appeal was not maintainable.

39. In *Life Insurance Corporation of India*, a preliminary issue came for consideration of the Supreme Court as to whether the letters patent appeal filed by the contesting respondents before the Bombay High Court against the decision of the learned Single Judge rendered in a writ petition (purportedly filed under Articles 226 and 227 of the Constitution), questioning the correctness and validity of the decision of the City Civil Court, Mumbai, which was affirmed by the learned Single Judge, was maintainable. The Court opined that order passed by the District Judge as an appellate officer under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is an order of subordinate Court, the challenge thereto

must ordinarily proceed only under Article 227 of the Constitution and not under Article 226 and thus, against the order passed by the learned Single Judge, letters patent appeal was not maintainable. The Court observed :

> "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." (emphasis added)

40. The upshot of the discussion above is that the decision of the Supreme Court in *Radhey Shyam* holds the field as on the date and as per the law laid down therein, judicial orders of the civil Courts are not amenable to a writ of *certiorari* under Article 226 of the Constitution and the same can only be challenged under Article 227 of the Constitution and therefore, no intra-Court appeal would be maintainable against the order passed by the learned Single Jude of the High Court in the proceedings challenging the judicial orders passed by the civil Court.

41. This takes us to consideration of the issue whether the Rent Tribunal and Appellate Rent Tribunal constituted under the provisions of Act of 2001, have all the trappings of civil Court and their functions being akin to the functions of civil Court, the judicial orders passed by them are not amenable to writ jurisdiction of the High Court under Article 226 of the Constitution and the same can be challenged only by invoking the power of superintendence of the High Court under Article 227 of the Constitution.

42. The issue as to what are the essential characteristics of a Court or judicial tribunal as distinguished from a tribunal exercising quasi judicial functions, came up for consideration before the Apex Court several times.

43. In *Bharat Bank Limited,* the question which came up for consideration before the Apex Court was whether the Industrial Tribunal cannot be said to perform a judicial or quasi judicial function since it is not required to be guided by the recognized substantive law in deciding disputes which come before it and further that whether the adjudication of the tribunal do not have all the attributes of a judicial decision because adjudication by it cannot bind the parties unless it is declared to be binding by the Government under Section 15 of the Industrial Disputes Act, 1947. The Court observed that the 'Tribunal' as used in Article 136 does not mean the same thing as 'Court' but includes within its ambit, all adjudicating bodies provided they are constituted by the State and are invested with the judicial as distinguished from purely administrative or executive functions. After due consideration, the Court opined that the Government cannot alter or cancel or add to the award passed by the Industrial Tribunal but the award must be declared to be binding as it is and therefore, the adjudication of the Tribunal amounts to a final determination of the dispute which binds the parties as well as the Government.

Hon'ble Mahajan, J. who delivered the judgment in majority view observed that for bringing a tribunal within the ambit of Article 136, the condition precedent is that it should be construed by the State and the tribunal would be outside the ambit of Article 136 if it is not invested with any part of the judicial functions of

the State but discharges purely administrative or executive duties. The Court further observed that the tribunals which are found invested with certain functions of a Court of justice and have some of its trappings would also fall within the ambit of Article 136.

44. In *Virindar Kumar Satyawadi*, while examining the issue whether the District Magistrate who functions as Returning Officer was discharging duties of the Court, the Hon'ble Supreme Court while referring to various decisions including the decision in *Bharat Bank Ltd*. observed:

> "7. There has been considerable discussion in the Courts in England and Australia as to what are the essential characteristics of a Court as distinguished from a tribunal exercising quasi-judicial functions. Vide Shell Company of Australia v. Federal Commissioner of Taxation, K.V. London County Council, Copper v. Wilson, Huddart Parker and Co. v. Moorehead and Rola Co. v. Commonwealth. In this Court, the question was considered in some fullness in Bharat Bank Ltd. v. Employees of Bharat Bank Ltd. It is unnecessary to traverse the same ground once again. 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 declare 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."

45. In *Brajnandan Sinha*, the Supreme Court while dealing with the issue as to what constitutes a Court and the tests need to be applied for determining what is a Court observed that the pronouncement of a definitive judgment is considered the essential '*sine qua non'* of a Court and unless and until a binding and authoritative judgment can be pronounced by a person or

body of persons, it cannot be predicated that he or they constitute a Court. While referring to various decisions of Privy Council and earlier decisions of the Supreme Court including decisions in *Bharat Bank Limited* and *Maqbool Hussain vs. State of Bombay*: AIR 1953 SC 325, the Hon'ble Supreme Court concluded :

> "18. 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."

46. In *Hari Nagar Sugar Mills Ltd*., the question for consideration was whether the Central Government exercising appellate powers under Section 111 of the Companies Act, 1956 before its amendment by the Act No.65 of 1960 is a tribunal exercising judicial function and is subject to appellate jurisdiction of the Supreme Court under Article 136 of the Constitution. The contention before the Court was that the appeals are incompetent because the Central Government, which heard them, is not a tribunal much-less a court and the action of the Central Government is purely administrative. The Hon'ble Supreme Court discussed the issue exhaustively and observed:

> "30. The orders which the Central Government passes, certainly fall within the words "determination" and "order". The proceeding before the Central Government also falls within the wide words "any cause or matter". The only question is whether the Central Government, when it hears and decides an appeal, can be said to be acting as a Court or tribunal. That the Central Government is not a Court was assumed at the hearing. But to ascertain what falls within the expression "Court or tribunal", one has to begin with "Courts". The word "Court" is not defined in the Companies Act, 1956. It is not defined in the Civil Procedure Code. The definition in the Indian Evidence Act is not exhaustive, and is for the

purposes of that Act. In the New English Dictionary (Vol. II, pp. 1090, 1091), the meaning given is:

> "an assembly of judges or other persons legally appointed and acting as a tribunal to hear and determine any cause, civil, ecclesiastical, military or naval."

All tribunals are not Courts, though all Courts are tribunals. The word "Courts" is used to designate those tribunals which are set up in an organised State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the Courts are there to restore the vinculum juris, which is disturbed. Judicial power, according to Griffith, C. J. in Huddart, Parker & Co. Proprietary Ltd. v. Moorehead (1908) 8 C.L.R. 330 means:-

> "the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."

31. When rights are infringed or invaded, the aggrieved party can go and commence a querela before the ordinary Civil Courts. These Courts which are instrumentalities of Government, are invested with the judicial power of the State, and their authority is derived from the Constitution or some Act of legislature constituting them. Their number is ordinarily fixed and they are ordinarily permanent, and can try any suit or cause within their jurisdiction. Their numbers may be increased or decreased, but they are almost always permanent and go under the compendious name of "Courts of Civil Judicature". There can thus be no doubt that the Central Government does not come within this class.

32. With the growth of civilisation and the problems of modern life, a large number of administrative tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary Courts of Civil Judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to Courts, but are not Courts. When the

Constitution speaks of 'Courts' in Art. 136, 227 or 228 or in Art. 233 to 237 or in the Lists, it contemplates Courts of Civil Judicature but not tribunals other than such Courts. This is the reason for using both the expressions in Arts. 136 and 227.

By "Courts" is meant Courts of Civil Judicature and by "tribunals", those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary Courts of Civil Judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that Courts have "an air of detachment". But this is more a matter of age and tradition and is not of the essence. Many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient. Lord Sankey, L.C. in Shell Company of Australia v. Federal Commissioner of Taxation (1) observed:

> "The authorities are clear to show that there are tribunals with many of the trappings of a Court, which, nevertheless, are not Courts in the strict sense of exercising judicial power.... In that connection it may be useful to enumerate some negative propositions on this subject: 1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it,, has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body. See Rex v. Electricity Commrs. (1924) 1 K.B. 171.

33. In my opinion, a Court in 'the strict sense is a tribunal which is a part of the ordinary hierarchy of Courts of Civil Judicature maintained by the State under its constitution to exercise the judicial power of the State. These Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word "judicial", be it noted, is itself capable of two meanings. They were admirably stated by Lopes, L.J. in Royal Aquarium and Summer and Winter Garden Society v. Parkinson, (1892) 1 Q.B. 431, in these words:

> "The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind- that is, a mind to determine what is fair and just in respect of the matters under consideration."

That an officer is required to decide matters before him "judicially" in the second sense does not make him a Court or even a tribunal, because that only establishes that he is following a standard of conduct, and is free from bias or interest." (emphasis added)

47. In *Jaswant Sagar Sugar Mills Limited*, a Constitution Bench of the Hon'ble Supreme Court relying upon decision in *Bharat Bank Limited* while dealing with inter alia the question whether an appeal may be entertained in exercise of the power under Article 136 of the Constitution against a direction of Conciliation Officer issued in disposing of an application under Clause 29 of the order promulgated by the Governor of Uttar Pradesh under Industrial Disputes Act, 1947, observed:

> "11. Question whether a decision is judicial or is purely administrative, often arises when jurisdiction of the superior courts to issue writs of certiorari is invoked. Often the line of distinction between decisions judicial and administrative is thin : but the principles for ascertaining the true character of the decisions are well-settled. A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact : it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine questions affecting the rights of citizens, does not make the determination judicial : it is the duty to act judicially which

invests it with that character. What distinguishes an act judicial from administrative is therefore the duty imposed upon the authority to act judicially. Mukherjea, J., in The Province of Bombay v. K. S. Advani: [1950] 1 SCR 621 observed at p. 670 "there cannot indeed be a judicial act which does not create or imposes obligations; but an act, x x x x x is not necessarily judicial because it affects the rights of subjects. Every judicial act presupposes the application of judicial process. There is well marked distinction between forming a personal or private opinion about a matter, and determining it judicially. In the performance of an executive act, the authority has certainly to apply his mind to the materials before him; but the opinion he forms is a purely subjective matter which depends entirely upon his state of mind. It is of course necessary that he must act in good faith, and if it is established that he was not influenced by any extraneous consideration, there is nothing further to be said about it. In a judicial proceeding, on the other hand, the process or method of application is different. "The judicial process involves the application of a body of rules or principles by the technique of a particular psychological method", vide Robson's Justice and Administrative Law, p. 33. It involves a proposal and an opposition, and arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice, vide R. v. London County Council [1931] 2 K.B. 215. It is not necessary that the strict rules of evidence should be followed : the procedure for investigation of facts or for reception of evidence may vary according to the requirements of a particular case. There need not be any hard and fast rule on such matters, but the decision which the authority arrives at, must not be his 'subjective', 'personal' or 'private' opinion. It must be something which conforms to an objective standard or criterion laid down or recognised by law, and the soundness or otherwise of the determination must be capable of being tested by the same external standard. This is the essence of a judicial function which differentiates it from an administrative function; and whether an authority is required to exercise one kind of function or the other depends entirely upon the provisions of the particular enactment. x x x x x x Generally speaking where the language of a statute indicates with sufficient clearness that the personal satisfaction of the authority on certain matters about which he has to form an opinion finds his jurisdiction to do certain acts or make certain orders, the function should be regarded as an executive function.

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13. To make a decision or an act judicial, the following criteria must be satisfied :

(1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rule;

(2) it declares rights or imposes upon parties obligations affecting their civil rights; and

(3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

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20. The duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State. Even administrative or executive authorities are often by virtue of their constitution, required to act judicially in dealing with question affecting the rights of citizens. Boards of Revenue, Customs Authorities, Motor Vehicles Authorities, Income-tax and Sales-tax Officers are illustrations prima facie of such administrative authorities, who though under a duty to act judicially, either by the express provisions of the statutes constituting them or by the rules framed thereunder or by the implication either of the statutes or the powers conferred upon them are still not delegates of the judicial power of the State. Their primary function is administrative and not judicial. In deciding whether an authority required to act judicially when dealing with matters affecting rights of citizens may be regarded as a tribunal, though not a court, the principle incident is the investiture of the "trappings of a court" - such as authority to determine matters in cases initiated by parties, sitting in public, power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence (though not the strict rules of the Evidence Act), provision for imposing sanctions by way of imprisonment, fine, damages or mandatory or prohibitory orders to enforce obedience to their commands. The list is illustrative; some, though not necessarily all such trappings will ordinarily make the authority which is under a duty to act judicially, a 'tribunal'." (emphasis added)

The Court held that undoubtedly the Conciliation Officer has to act judicially in dealing with an application under Clause 29 but is not invested with the judicial power of the State; he cannot

therefore be regarded as 'tribunal' within the meaning of Article 136 of the Constitution. The question as to whether the proceedings for writ may lie under Article 226 of the Constitution before a competent High Court against the order of Conciliation Officer did not come for consideration of the Court and the same was accordingly not dealt with.

48. In *Associated Cement Companies Limited*, the point of law arisen for consideration of the Supreme Court was whether the State of Punjab, exercising its appellate jurisdiction under Rule 6 (6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952, is a tribunal within the meaning of Article 136 (1) of the Constitution. The Court while dealing with the functions discharged by the Courts and the tribunal as adjudicating bodies, observed:

> "9. Tribunals which fall within the purview of Article 136 (1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the courts one common characteristic: both the courts and the tribunals are "constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions." (vide Durga Shankar Mehta v. Thakur Raghuraj Singh and Others). They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the courts is regularly prescribed and in discharging their functions and exercising their powers, the courts have to conform to that procedure. The procedure which the tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the courts established by

the Constitution; -but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.

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33. The question which we have to decide in the present appeal is whether the State Government is a tribunal when it exercises its authority under R. 6(5) or R. 6(6), No rules have been made prescribing the procedure which the State Government should follow in dealing with appeals under these two sub-rules, and there is no statutory provision conferring on the State Government any specific powers which are usually associated with the trial in courts and which are intended to help the court in reaching its decisions. The requirements of procedure which is followed in courts and the possession of subsidiary powers which are given to courts to try the cases before them, are described as trappings of the courts, and so, it may be conceded that these trappings are not shown to exist in the case of the State Government which hears appeals under R. 6(5) and R. 6(6). But as we already stated, the consideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not. The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under R. 6(5) and R. 6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory Rule and it can be exercised in respect, of disputes between the management and its Welfare Officers. There is, in that sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding. Besides, it is an order passed on appeal. Having regard to these distinctive features of the

power conferred on the State Government by R. 6(5) and R. 6(6), we feel no hesitation in holding that it is a Tribunal within the meaning of Art. 136 (1).

34. In this connection, we may usefully recall the observation made by Lord Haldane in Local Government Board v. Arlidge,(1951) A.C.120. Said Lord Haldane "My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same." Having regard to the nature of the power conferred on the State Government, it seems to us clear that for reaching a fair and objective decision in the dispute brought before it in its appellate jurisdiction, the State Government has the power to devise its own procedure and to exercise such other incidental and subsidiary powers as may be necessary to deal effectively with the dispute. We are, therefore, satisfied that the State Government which exercises its appellate jurisdiction under R. 6(5) and R. 6(6) of the Rules is a Tribunal within the meaning of Art. 136(1); and so, the present appeal brought before this Court against the impugned appellate order passed by

respondent No. 2, is competent. In the result, the preliminary objection raised by Mr. Goyal fails and must be rejected." (emphasis added)

49. In *Town Municipal Council, Athani*, the Supreme Court held that the Industrial Tribunal or Labour Court dealing with the application of references under the Industrial Disputes Act, 1947 are not courts and they are in no way governed by the Code of Civil Procedure or Code of Criminal Procedure. The said decision was further followed by the Hon'ble Supreme Court in *Nityananda.*

50. In *Parson Tools and Plant*, the proceedings before the authorities under U.P.Sales Tax Act, 1948, irrespective of whether they exercise original appellate or revisional jurisdiction, were held to be not 'Court' but administrative tribunal.

51. In the backdrop of position of law settled by various decisions of Hon'ble Supreme Court discussed above, before

entering into the core issue as to whether the Rent Tribunal and the Appellate Rent Tribunal constituted under the Act of 2001, have all the trappings of civil Court and the judicial functions discharged by them being akin to civil Court, the judicial orders passed by them can only be assailed invoking supervisory jurisdiction of this Court under Article 227 of the Constitution, it would be appropriate to have a glimpse at the history of 'Rent Control Legislation' in the State of Rajasthan.

52. Due to influx of refugees from Pakistan, rise in local urban population and a tendency of rural population to go to the cities and towns, gave rise to problem of housing accommodation, which tempted the owners of the residential and commercial buildings to charge exorbitant rents and with the purpose of getting higher rent to seek eviction of existing tenants. The Legislature had also in mind that several Acts were operating in the field of landlord and tenant's relations in different States. Therefore, a consolidated enactment, the Act of 1950, was brought into existence by the State Legislature for the purpose of regulating the relations between landlord and tenant in the matter of eviction from the premises, payment of rent, increase of rent, fixing of standard rent and the right of tenant to enjoy the amenities provided in the premises. [vide *Martin & Harris(P) Ltd. vs. Prem Chand* : (1974) RLW 115 and *Gauri Lal vs. Gujar Mal through His Legal Representatives*: 1992(1) WLC(Raj.) 437].

53. Under the Act of 1950, all the disputes between landlord and tenant including fixation of standard rent, restoration of the amenities enjoyed by tenant, the eviction of tenant from the premises on specified grounds, restoration of possession to the

evicted tenant, the payment, remittance and deposit of the rent by tenant, were being adjudicated by the lowest Civil Court of competent jurisdiction. Every decree or order passed by the Court under the Act of 1950 were subject to appeal, the Court to which appeal ordinarily lies from original decree and order passed by such former Court. By virtue of sub-section (2) of Section 22, second appeal from any such decree or order was forbidden, without affecting the powers of the High Court in revision.

54. *Inter alia,* with an object to make adequate provision for timely vacation of premises as also determination of fair rent, while retaining certain inbuilt safeguards for the tenant, the State Legislature replaced the Act of 1950 by the Act of 2001 wherein, the provisions regarding the payment and remittance of rent by tenant, revision of rent, limited period tenancy, eviction of the tenant from the premises, the right of landlord to recover immediate possession in certain cases, restoration of possession of illegally dispossessed tenant, the procedure for recovery of possession etc. were incorporated.

55. Chapter V of the Act of 2001 makes the provision for the constitution of the tribunals and procedure to be adopted by the tribunals while adjudicating the dispute between the landlord and tenant. Later, by way of Rajasthan Rent Control (Amendment) Act, 2017, Chapters V-A and V-B were inserted. Under Section 22A of the Act of 2001, the provision was made for creation of Rent Authority. By incorporating Section 22B, letting out and taking of any premises on rent except by way of an agreement in writing, has been prohibited and it is made compulsory that the particulars of such agreement shall be communicated to the Rent Authority

by the landlord and tenant jointly in the form specified in the Schedule B. By inserting Chapter V-B, the Rent Authority has been empowered to deal with the matters relating to revision of rent in certain circumstances, security deposit, deposit of the rent in certain circumstances etc.

56. Section 13 of the Act of 2001, makes the provision for constitution of the Rent Tribunal and Section 19 for Appellate Rent Tribunal. As per sub-section (3) of Section 13, the Rent Tribunal consists of one person only (referred as 'the Presiding Officer') to be appointed by the High Court. As per sub-section (4), no person is eligible to be appointed as Presiding Officer of the Rent Tribunal unless he is member of Rajasthan Judicial Service not below the rank of Civil Judge (Senior Division). Similarly, as per sub-section (3) of Section 19, an Appellate Rent Tribunal also consists of one person only (referred as 'Presiding Officer of Appellate Tribunal') to be appointed by the High Court, who as per provisions of sub-section (4) of Section 19 cannot be the person except a member of the District Judge cadre having not less than three years experience as such.

57. As per provisions of sub-section (6) of Section 19, every final order passed by the Rent Tribunal is made appealable to the Appellate Rent Tribunal within the local limits of whose jurisdiction the premises is situated. As per the mandate of sub-section (11) (ii)(c) of Section 19, the decision of the Appellate Rent Tribunal shall be final and no further appeal or revision shall lie against its order. Thus, for adjudication of the dispute between landlord and tenant setting up of two tiers of Tribunal was proposed. Accordingly, Rent Tribunals and Appellate Rent Tribunals have

been constituted in the State of Rajasthan for various local areas to which Act of 2001 has been made applicable.

58. Coming to the procedure to be adopted by the Rent Tribunal and Appellate Rent Tribunal, Section 14 of the Act of 2001 provides for procedure to be adopted in dealing with the petition presented before the Rent Tribunal by the landlord for revision of rent under Section 6 or Section 7 of the Act of 2001. The petition to be submitted by the landlord is required to be accompanied by affidavits and documents if any. On filing the petition, the Rent Tribunal is required to issue notice accompanied by copies of the petition, affidavits and documents to the opposite party, and the opposite party may file reply, affidavits and documents after serving the copies of the same on the petitioner within specified period. The notice on the respondent may be served through the Process Server of the Tribunal or Civil Court as well as by Registered Post, acknowledgment due. Notice duly served by any of the method is mandated to be treated as sufficient service. After filing of the reply, the petitioner (landlord) is entitled to file rejoinder to the reply filed on behalf of the respondent (tenant). Thereafter, the Rent Tribunal is required to fix the date of hearing which shall not be later than 90 days from the date of service of notice on the tenant. As per sub-section (5) of Section 14, during the course of hearing, the Rent Tribunal may hold a summary inquiry as it deems necessary and fix the rent as per the formula laid down under Section 6 or 7 and issue a recovery certificate indicating the date from which such rent shall be payable.

59. Section 15 of the Act of 2001 provides for procedure for eviction of tenant and Section 16 provides for procedure for

recovery of immediate possession, which is not different than the procedure prescribed under Section 14 for revision of rent referred hereinabove.

60. Section 18 of the Act of 2001 deals with jurisdiction of the Rent Tribunal. Sub-section (1) of Section 18 mandates that notwithstanding anything contained in any other law for time being in force in the areas to which the Act of 2001 extends, only the Rent Tribunal and no Civil Courts shall have jurisdiction to hear and decide the petitions relating to the dispute between landlord and tenant and the matters connected therewith and ancillary thereto. Proviso to Section 18 clarifies that in deciding such petitions to which the provisions contained in Chapter II & III of the Act of 2001 (which deal with revision of rent and tenancy including eviction of the tenant on specified grounds) do not apply, the Rent Tribunal shall have due regard to the provisions of Transfer of Properties Act, 1882 (Act No.4 of 1882), the Indian Contract Act, 1872 (Act No.9 of 1872), or any other substantive law applicable to such matter in the same manner in which such law would have been applied had the dispute been brought before a Civil Court by way of suit.

61. As per Section 20, the Rent Tribunal on an application of any party is empowered to execute a final order or any other order passed under the Act of 2001 in the manner prescribed by adopting any of one or more modes specified. Sub-section (4) of Section 20 mandates the execution proceedings in relation to a final order or any other order shall be conducted by the Rent Tribunal in summary manner.

62. Sub-section (1) of Section 21 mandates that in every case before the Rent Tribunal and the Appellate Rent Tribunal, the evidence of a witness shall be given by affidavit. However, the Rent Tribunal or the Appellate Rent Tribunal, where it appears to it that it is necessary in the interest of justice to call a witness for examination or cross-examination and such witness can be produced, may order attendance of examination or cross-examination of such a witness. Sub-section (3) of Section 21 provides that the Rent Tribunal and the Appellate Rent Tribunal shall not be bound by the procedural laid down by the Code of Civil Procedure, 1908 (Central Act No.5 of 1908), but shall be guided by the principle of natural justice and subject to other provisions of this Act or the Rules made thereunder and shall have powers to regulate their own procedure, and for the purpose of discharging their functions under this Act, they shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act No.5 of 1908) while trying a suit or an appeal in respect of following matter namely:-

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

(b) requiring the discovery and production of documents;

(c) reviewing its decision;

(d) issuing commissions for the examination of witnesses or documents;

(e) dismissing petition for default or deciding it *ex-parte*;

(f) setting aside any order or dismissal of any petition for default or any order passed by it ex-parte;

(g) bringing legal representatives on record; and

(h) any other matter as may be prescribed.

Sub-section (5) of Section 21 declares that the proceedings before the Rent Tribunal and Appellate Rent Tribunal shall be judicial proceedings within the meaning of sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code, 1860 (Central Act No.45 of 1860) and the Rent Tribunal or the Appellate Rent Tribunal shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Central Act No.2 of 1974).

63. Undoubtedly, the Act of 2001 confers exclusive jurisdiction on Rent Tribunal and Appellate Rent Tribunal to hear and decide all the disputes between the landlord and tenants and matters connected therewith and ancillary thereto and thus, the jurisdiction of the ordinary civil Court to deal with the dispute between the landlord and tenant in the areas to which the Act of 2001 is made applicable stands ousted. The proceedings before the tribunal commences with the filing of the petition accompanied by affidavits and documents, which in all respect is in the nature of the plaint. The procedure to be adopted for service of notice upon the opposite party is not different than provided under the Civil Procedure Code, 1908 ('CPC'). The opposite party on service of notice is entitled to file reply to the petition accompanied by affidavit and documents. Thereafter, the petitioner is entitled to file rejoinder, if any, as a matter of right.

64. The Rent Tribunal is empowered to enforce the attendance of the person and examine him on oath. Further, it may direct the discovery and production of documents, issue commission for examination of the witnesses or documents, dismiss the petition for default or decide it ex parte, set aside the order of dismissal of

any petition for default or any order passed by it ex parte, to bring the legal representatives of deceased party on record etc..

65. Though, the Act of 2001 does not specifically provides for cross examination of the deponent who has filed affidavit before the Tribunal in support of the petition or in defence but, as laid down by a Bench of this Court in *Aasandas vs. State of Rajasthan & Ors.*: RLW 2005 (2) Raj. 1281, while dealing with the application seeking permission for cross examination, the Rent Tribunal is under an obligation to consider pleadings, the facts to be proved by other party besides the affidavit, the other material which can help in assessing the requirement of leading evidence and then to decide whether in a given case, the permission to cross examination should be granted or not. The Court observed that the refusal may be in a rare cases, ordinarily, where the question of facts depends on oral testimony, the cross examination of the deponent has to be permitted when demanded.

66. It is true that as per mandate of provisions of Section 21(3) except for the matters specifically specified, the Rent Tribunal and Appellate Rent Tribunal are not bound by the procedure laid down under CPC but, shall be guided by the principle of natural justice and subject to other provisions of the Act or the rules made thereunder, shall have power to regulate their own procedure and for the purpose of discharging their function under the Act. In the considered opinion of this Court, while providing that the Rent Tribunal and Appellate Rent Tribunal shall not be bound by procedure laid down under CPC, the legislature has consciously and purposely incorporated that the proceedings before the Rent

Tribunal and Appellate Rent Tribunal shall be guided by principle of natural justice, obviously, for the reason that the observation thereof is considered to be assurance of justice and fairness. It goes without saying that while adjudicating the dispute between the landlord and tenant under the Act of 2001, the Rent Tribunal is under an obligation to hear claim and defence of the parties fairly.

67. The Rent Tribunal and Appellate Rent Tribunal are under an obligation to adjudicate the dispute between the parties on question of facts by means of evidence of the parties and with the assistance of arguments by the parties or on behalf of the parties. The question of law arising in the matter is also required to be determined taking into consideration the submissions of the legal arguments advanced by the parties. The adjudication of the dispute by the Rent Tribunal and Appellate Rent Tribunal has to be based on evidence legally adduced and the parties have right to be heard and being represented by the legal practitioner.

68. The final order passed by the Rent Tribunal is subject to appeal before the Appellate Rent Tribunal as provided under Section 19 of the Act of 2001 but, the decision of the Appellate Rent Tribunal by virtue of provisions of sub-section (11)(c) of Section 19, is final and no further appeal or revision lies against its order. However, the Rent Tribunal and Appellate Rent Tribunal are empowered to review their decision. The final order or any other order passed by the Rent Tribunal are executable in the manner provided under Section 20 of the Act of 2001. The one or more modes to be adopted for enforcement of the order by the

Rent Tribunal are also not different than the modes provided under CPC for execution of the decree and order.

69. It is true that as per provisions of the Act of 2001, during the course of hearing of the petition relating to disputes between the landlord and tenant, the Rent Tribunal is required to hold such summary inquiry as it deems necessary but then, merely because, the procedure to be adopted in the trial of the petition filed under the Act of 2001, is summary procedure, an adjudicatory body shall not lose its characteristic of civil Court if it otherwise possesses the same. Certainly, it cannot be accepted that a civil Court trying a summary suit under the provisions of CPC adopting the summary procedure, is not a civil Court in strict sense.

70. In view of the discussion above, we are firmly of the opinion that the Rent Tribunal and Appellate Rent Tribunal constituted under the Act of 2001 for adjudication of the disputes between landlord and tenant and the matters connected therewith and ancillary thereto, sharing the judicial power inherently vested in the State, have all the trappings/attributes of civil Court and the judicial functions discharged by them, are akin to the judicial functions discharged by civil Courts.

71. This takes us to consider the contention raised by the learned counsel that the Rent Tribunal and Appellate Rent Tribunal constituted under Sections 13 & 19 of the Act of 2001 respectively, are mandated to be presided over by designated officer of the rank of Civil Judge (Sr. Division) and District Judge Cadre respectively and thus, they being *persona designata,* not

conferred with the jurisdiction of any pre-existing Court, could not be construed to be civil Courts.

72. As noticed above, the Rent Tribunal and the Appellate Rent Tribunal to be constituted under the Act of 2001 to deal with the disputes between the landlord and tenant shall be consist of one person only. As per the mandate of Section 13, no person shall be eligible to be appointed as Presiding Officer of the Rent Tribunal unless he is a member of Rajasthan Judicial Service not below the rank of Civil Judge (Senior Division). Similarly, as per Section 19, the Appellate Rent Tribunal is required to be presided over by the member of District Judge Cadre having not less than three years experience as such. The power to appoint the Presiding Officer of the Rent Tribunal and the Appellate Rent Tribunal by virtue of sub-section (3) of Section 13 and sub-section (3) of Section 19 respectively, is vested in the High Court. Apparently, the Act of 2001 envisages that a pre-existing judicial authority has to be appointed as Presiding Officer of the Rent Tribunal and the Appellate Rent Tribunal. The appointment of an officer in terms of provisions of Sections 13 & 19 of the Act of 2001, cannot be described as an appointment of an individual, a *persona designata* inasmuch as any judicial officer in the State holding the eligibility as prescribed, can be appointed as Presiding Officer of Rent Tribunal or Appellate Rent Tribunal, as the case may be. Moreover, sub-section (5) of Section 13, the High Court may authorise the Presiding Officer of one Rent Tribunal to discharge the function of Presiding Officer of another Rent Tribunal. Similarly, by virtue of sub-section (5) of Section 19, the High Court is empowered to authorise the Presiding Officer of one

Appellate Rent Tribunal to discharge the function of Presiding Officer of another Appellate Rent Tribunal.

73. In *Central Talkies Ltd.,* the Hon'ble Supreme Court while referring to *Osborn's Concise Law Dictionary*, 4th Edn., according to which a *persona designata* means "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" and the words of *Schwabe,* C.J. in *Parthasaradhi Naidu v. Koteswara Rao* : (1923) ILR 47 Mad 369 (FB), that *persona designata* are "persons selected to act in their private capacity and not in their capacity as Judges" negated the contention that the District Magistrate by virtue of his office exercising the power under the United Provinces (Temporary) Control of Rent and Eviction Act, 1946, was a *persona designata.*

74. In *Thakur Das Vs. State of M.P.*: (1978) 1 SCC 27, the Hon'ble Supreme Court while dealing with the issue whether the judicial authority appointed under Section 6C of Essential Commodities Act, 1955, would be *persona designata* despite the fortuitous circumstance that it happens to be a Session Judge, the Court observed that 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 the matter coming before it acting in judicial manner, depending upon the nature of jurisdiction exercised by it. The Court held that the expression 'Judicial Authority' used in Section 6C of the Act, clearly envisages that a pre-existing judicial authority has to be appointed Appellate Authority and therefore, when a Session Judge was appointed a judicial authority, it could

not be said that he was *persona designata* and was not functioning as Court.

75. In *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker* : (1995) 5 SCC 5, where as per Section 18 of Kerala Buildings (Lease and Rent Control) Act, 1965, the power of appellate authority could be conferred by the Government on such officers and such authorities not below the rank of Subordinate Judge, the Hon'ble Supreme Court observed that an authority can be styled to be a *persona designata* if powers are conferred on a named person or authority and such powers cannot be exercised by anyone else. The Court held :

> "7….xxxxxx…..The scheme of the Act to which we have referred to 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 the lis between the 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. Xxxxx…….
>
> 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 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 Vs. Sitamarhi Central Co-operative Bank Ltd. & Anr. (1967(3) SCR 163). In that case this court was concerned with the question whether the Assistant Registrar of Co-operative 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 Vs. Jyoti Narain (1955 (2) SCR 955) 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 Vs. The State of Punjab (1955 (2) SCR 1013). Following observations found (at SCR p. 1018) therein were pressed in service:

> "It may be stated broadly that what distinguishes a court from a quasijudicial 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. In fact, Mr. Nariman learned counsel for respondent also fairly stated that these appellate authorities would be courts and would not be persona designata. But in his submission as they are not civil courts constituted and functioning under the Civil Procedure Code as such, they are outside the sweep of Section 29(2) of the Limitation Act. It is therefore, necessary for us to turn to the aforesaid provision of the Limitation Act. It reads as under:

> "29.(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision:

> (i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.
>
> (ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the schedule to the Limitation Act." (emphasis added)

76. In *Life Insurance Corporation*, where the issue was, whether the Appellate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, is a *persona designata* or a civil Court, while examining threadbare the law propounded on the issue by various decisions including Central Talkies Limited, Thakur Das, Mukari Gopalan etc., the Hon'ble Supreme Court held that the Appellate Officer while exercising the power under Section 9 of the Act does not act as *persona designata* but in his

capacity as pre-existing judicial authority in the district (being a District Judge or judicial officer designated by the District Judge, possessing essential qualification). The Court opined that being part of district judiciary the Appellate Officer, a judge acts as a court and the order passed by him will be an order of 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. Relying upon the decision in *Radhey Shyam* wherein the three-Judge Bench after analysing all the earlier decisions on the point restated that the legal position in the cases where the judicial order violated the fundamental rights, the challenge thereto would lie by way of an appeal or revision or under Article 227 and not by way of writ under Article 226 and Article 32 and therefore, no letters patent appeal would be maintainable.

77. Thus, keeping in view the settled position of law noticed abaove, the contention raised by the learned counsel that the Rent Tribunal and Appellate Rent Tribunal, presided over by designated officer of the rank of Civil Judge (Sr. Division) and District Judge Cadre respectively, being *persona designata,* could not be construed to be civil Courts, is also devoid of any merit.

78. Regarding the contention raised by the learned counsel that Rule 134 of the Rules of 1952, does not make any distinction between special appeal against the order passed by the learned Single Judge in writ petition under Articles 226 or 227 of the Constitution and thus, in absence of any provision specifically excluding the maintainability of the special appeal against the order passed by the learned Single Judge, deciding a writ petition

preferred under Article 227 of the Constitution, the special appeal would be maintainabale, suffice it to say that the argument advanced by the learned counsel runs contrary to Rule 134 (1) of the Rules of 1952 inasmuch as, Rule 134 specifically exclude the maintainabality of appeal against the order made by learned Single Judge of High Court in the exercise of power of superintendence.

79. Lastly, coming to the contention of learned Counsel that this Court has time and again entertained intra-Court appeal against the order of the learned Single Judge passed in writ proceedings assailing the order passed by the Rent Tribunal and the Appellate Rent Tribunal and thus, the Bench decision in *Hindustan Petroleum Corporation Limited,* not noticing the earlier decision, does not lay down the correct law, suffice it to say that in view of the decisions of the Hon'ble Supreme Court in *Shalini Shyam Shetty, Jogendrasinghji vijaysinghji, Radhey Shyam* and *Life Insurance Corporation* (supra), the correctness of the law laid down by this Court in *Hindustan Petroleum Corporation Limited,* relying upon the decisions in *Shalini Shyam Shetty* and *Jacky Vs. Tiny,* that intra-Court special appeal against the order of the learned Single Judge passed in proceedings under Article 227 of the Constitution of India is not maintainable, cannot be doubted. In this view of the matter, nothing turns on the question that the intra-Court appeals against the order of the learned Single Judge arising out of the proceedings from the Rent Tribunal or the Appellate Rent Tribunal, were entertained by this Court in the past.

80. In the result, we answer the questions referred in terms that the Rent Tribunal and the Appellate Rent Tribunal constituted under the Act of 2001, while adjudicating the disputes between landlord and tenant, exercising the judicial power of the State, discharge judicial functions, which are akin to judicial functions discharged by civil Courts and thus, keeping in view the law laid down by the Hon'ble Supreme Court in various decisions including in *Radhey Shyam* and *Life Insurance Corporation of India,* the judicial orders passed by the Rent Tribunal and the Appellate Rent Tribunal are not amenable to writ jurisdiction under Article 226 of the Constitution and the legality of said judicial orders can only be questioned by invoking power of superintendence of this Court under Article 227 of the Constitution and thus, no intra-Court appeal would be maintainable against the orders passed by the learned Single Judge of this Court in such proceedings.

(MAHENDAR KUMAR GOYAL),J. (INDERJEET SINGH),J (SANGEET LODHA),J

Aditya/