

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 12663 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>NO</b>
2	To be referred to the Reporter or not ?	<b>NO</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>NO</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>NO</b>

=====

MUKESHBHAI JAYANTILAL JAYSWAL  
Versus  
ALARAKHBHAI YUSUFBHAI JUNEJA

=====

Appearance:

MR MB PARIKH(576) for the Petitioner(s) No. 1,2

MS NIDHIKA P ZAVERI(11278) for the Respondent(s) No. 1

=====

**CORAM:HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI****Date : 13/01/2022****ORAL JUDGMENT**1. **Rule.**

2. The substantive prayer which is made in this petition under Articles 226 and 227 of the Constitution of India, filed at the instance of the petitioner - original plaintiff, is as follows:

*“7(B) Your Lordships may be pleased to issue writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order at Annexure A, dated: 21/07/2020 passed by the Ld. Principal District Judge, Amreli in Civil Misc. Appeal No. 17/2018 confirming the judgment and order dated 17/12/2018 passed by the Ld. Principal Civil Judge, Lathi in application below Ex. 5 filed in Regular Civil Suit No. 36 of 2018 and further Your Lordships be pleased to allow the application below Ex. 5 as prayed for by the plaintiffs.”*

3. Heard, learned advocate Mr. M. B. Parikh for the petitioners - original plaintiff and learned advocate Ms. Nidhika Zaveri for the respondent.

3.1 The learned advocate for the petitioner submitted that both the learned Courts below have committed error in rejecting the injunction application Exh. 5 preferred by the petitioners - plaintiff. He submitted that the learned Courts below have committed an error in appreciating the factual position on record that an agreement to sell was executed between the plaintiffs and the defendant for the suit property on 20.03.1985 and part sale consideration of Rs.1,000/- was also paid, however due to death of the President of the Mandali, Sale Deed could not be executed. He submitted that all these facts as well as the documents though were very much available on record, the learned Courts below did not believe the same and eventually, passed the impugned orders which are against the facts and the settled legal position. It is further submitted that it is observed by the learned first Appellate Court that by a letter dated 20.10.1997 of Liquidation Officer, Co-operative Societies, Amreli to the Gujarat State Khadi Gram Udyog Board, Ahmedabad it was instruction to fix the date of auction of the said property and thereafter, the City Surveyor, Lathi was instructed by the Deputy Director (Recovery), Khadi Gram Udyog Board, Ahmedabad for

auction of the said property, however, the learned first Appellate Court has miserably failed to take into consideration the fact that plaintiffs - petitioners herein are the tenant and in lawful possession of the suit property for years.

3.2 The learned advocate for the petitioners submitted that the petitioners are in the possession of the suit property since long and accordingly, though all three ingredients for the interim injunction viz. *prima facie* case, balance of convenience and irreparable loss were satisfied, the learned Courts below has grossly erred in rejecting the said application and accordingly, it is urged that the impugned orders may be set aside and the interim injunction may be granted in favour of the plaintiffs - petitioners.

4. *Per contra*, learned advocate Ms. Nidhika Zaveri for the respondent, while opposing the present petition and supporting the impugned orders passed by the learned Courts below, submitted that there are concurrent findings of the two learned Courts below and accordingly, no interference is required at the hands of this Court. She submitted that the suit property is in possession of the defendant and by spending a huge amount, has developed the same. She further submitted that even the House Tax, Water Bill, Electricity Bill etc. and all such bills are being issued in the name of the defendant only and the defendant regularly pays such Bill. It is further submitted that some proceedings had been initiated by the City Inquiry Officer, Lathi, who had shown the suit property being Revenue Survey No. 508 belonged to the Government. Against the said proceedings, the defendant had approached the office of the Deputy Collector, Amreli by way of an Appeal being No. 3/85-86. In the said proceedings were party allowed by virtue of an order dated

01.04.1986 by the Deputy Collector, Amreli and the matter was remanded back. Remand Case No. 9/1986 was decided by the City Survey Superintendent, Lathi on 05.08.1986, wherein, it is held that the defendant is the owner of the property in question. Accordingly, it is submitted that the impugned orders being in accordance with law, merit no consideration and the petition is required to be dismissed.

5. Regard being had to the submissions made and considering the material available on record, it appears that the petitioners have filed a Regular Civil Suit No. 36 of 2018 before the Court of learned Principal Civil Judge, Lathi for declaration and permanent injunction in which, they had filed an application Exh. 5 for temporary injunction under O.39 Rs.1 and 2 of the Civil Procedure Code, 1908 (herein after referred to as "the Code"). The said application came to be dismissed by the learned trial Court *vide* order dated 17.12.2018 against which, the petitioners - plaintiffs filed an appeal being Misc. Civil Appeal No. 17 of 2018 before the learned Principal District Judge, Amreli, which also came to be dismissed *vide* order dated 21.07.2020. It is against these concurrent findings of two learned Courts below, present petition is filed by the petitioners with aforesaid prayer. It may be noted that in support of his case, the petitioners - plaintiffs have relied upon the Agreement to Sell dated 20.03.1985, a copy of which is produced at Annexure 'F' to the petition. However, if the observations made by the learned trial Judge in the impugned order are perused, the learned trial Judge has opined that for implementation of the said Agreement to Sell, the father of the petitioners have not taken any steps. Further, the plaintiffs have no evidence in support of their say to the effect that they are in possession of the suit property nor have they affirmed the said position on oath. Further, the plaintiffs have not produced any

rent receipts in support of their say that they are the tenant in the suit property more particularly, when the suit property belongs to a Mandali. Further, the interim relief prayed for by the plaintiffs - petitioners was in the nature of final relief and accordingly, it could not be granted. It is these findings of the learned trial Court, which have been affirmed by the learned first Appellate Court. It may be noted that the orders in question are passed on an application for interim injunction Exh. 5 and the suit is pending before the competent Civil Court at Lathi. At the stage of such interim injunction application, the Court has to consider three aspects only viz. *prima facie* case, balance of convenience and irreparable loss, which as per the learned Courts below, the petitioners - plaintiffs have failed to make out and in the facts and circumstances of the case, this Court also concur with the said findings of the learned Courts below.

5.1 At this juncture, it would not be out of place here to refer to the decision of the Apex Court in ***Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329***, wherein the Apex Court has considered in detail the Scope of interference by this Court that, Article 227 can be invoked by the High Court *Suo motu* as a custodian of justice. An improper and a frequent exercise of this power would be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. The observations of the Apex Court read as under:

*“Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. [See 1986 (suppl.) SCC 401 at page 469].”*

58. However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. [State of U.P . and others vs. Dr. Vijay Anand Mahara j - AIR 1963 SC 946, page 951].

59. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields.

60. Another distinction between these two jurisdictions is that under Article 226, High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. {See Surya Dev Rai (supra), para 25 page 690 and also the decision of the Constitution Bench of this Court in Hari Vishnu Kamath vs. Ahmad Ishaque and others - [AIR 1955 SC 233, para 20 page 243]}.

61. Jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. Jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex-debito justicia or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed 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 a Single Judge of a High Court in exercise of power under Article 227. In almost all High Courts, rules

have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh (supra)* and the principles in *Waryam Singh (supra)* have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh (supra)*, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of *L.Chandra Kumar vs. Union of India & others*, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such



*statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.*

*(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.*

*(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.*

*(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.*

*(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.*

*(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.”*

5.2 Thus, exercise of power under Article 227 of the Constitution of India should be with a view to keep the tribunals / Courts within the bounds of their authority, to ensure that law is followed by tribunals / Courts by exercising jurisdiction which is vested in them and/or when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. In exercise of its power of superintendence, High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

5.3 In view of the aforesaid *vis-a-vis* the concurrent findings of the two learned Courts below, this Court find no illegality, perversity and/or arbitrariness which requires interference at the hand of this Court. This petition, therefore fails and is dismissed accordingly, *in limine*. No order as to costs.

5.4 It is made clear that the learned trial Court shall proceed with the suit in accordance with law, without being influenced by order of this Court.

hiren

[ A. C. Joshi, J. ]