

LIFE INSURANCE CORPORATION OF INDIA A

v.

NANDINI J. SHAH & ORS.

(Civil Appeal No. 15536 of 2017)

FEBRUARY 20, 2018 B

[DIPAK MISRA, CJI, AMITAVA ROY AND

A. M. KHANWILKAR, JJ.]

Letters Patent Appeal:

*Letters Patent Appeal (LPA) against order passed in Writ C
petition u/Art. 226/227 – Maintainability of – Held: The Writ petition
against order of Appellate Officer (District Judge) under Public
Premises Act, was a petition against order of a civil judge – Such
order is amenable to scrutiny of High Court only in exercise of
jurisdiction u/Art. 227 and not u/Art. 226 – Therefore, LPA against D
order in Writ Petition u/Art. 227 was not maintainable – Public
Premises (Eviction of Unauthorised Occupants) Act, 1971 – s. 9 –
Constitution of India – Arts. 226 and 227.*

*Public Premises (Eviction of Unauthorised Occupants) Act,
1971:*

*s.9 – Order of District Judge – In exercise of power u/s. 9 as E
an Appellate Officer – Whether such order is passed in capacity of
a Civil Court or persona designata – Held: Power exercised by
Appellate Officer u/s. 9 is a judicial power and not executive
power – District Judge of the City Civil Court and other judicial F
officers of these courts constitute a class and cannot be considered
as persona designata – Legislative intent behind providing an appeal
u/s. 9 before Appellate Officer to be District Judge is indicative of
the fact that the power to be exercised by the Appellate Officer is
not in his capacity as a persona designate, but a judicial Officer – G
Therefore, the Appellate Officer while exercising power u/s. 9 does
not act as a persona designata, but in his capacity as a pre-existing
judicial authority in the district i.e. District Judge.*

Allowing the appeal, the Court

**HELD: 1.1 Sub-section (1) of Section 9 of Public Premises H
(Eviction of Unatuhorised Occupants) Act, 1971 postulates that**

A an appeal shall lie from every order of the estate Officer, passed under the Act, to an Appellate Officer. As to who shall be the Appellate Officer, has also been specified in the same provision. It predicates the District Judge of the district in which the public premises are situated or such other judicial officer in that district of not less than 10 years standing as the District Judge to be designated for that purpose. The first part of the provision does suggest that the appeal shall lie to an Appellate Officer, however, it does not follow therefrom that the Appellate Officer is *persona designata*. Something more is required to hold so. Had it been a case of designating a person by name as an Appellate Officer, the concomitant would be entirely different. However, when the Appellate Officer is either the District Judge of the district or any another judicial officer in that district possessing necessary qualification who could be designated by the District Judge, the question of such investiture of power of an appellate authority in the District Judge or Designated Judge would by no standards acquire the colour or for that matter trappings of *persona designata*. [Para 30] [317-A-D]

1.2 The power to be exercised by the Appellate Officer in terms of Section 9 is a judicial power of the State which is quite distinct from the executive power of the State. The District Judge or designated judicial officer exercises judicial authority within his jurisdiction. As the Act predicates the Appellate Officer is to be a District Judge or judicial officer, it is indicative of the fact of a pre existing authority exercising judicial power of the State. District Judge is the creature of Section 5 of the Maharashtra Civil Courts Act, 1869, who presides over a District Court invariably consisting of more than one Judge in the concerned district. [Para 30] [317-D-F]

1.3 On the similar lines, the Bombay City Civil Court has been constituted under Section 3 of the Bombay City Civil Court Act, 1948, with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature arising within the Greater Bombay except a suit or proceedings which are cognizable by the High Court referred to therein and by Small Causes Court. [Para 30] [318-B-C]

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1.4 The District Judge or Principal Judge exercises judicial power of the State and is an authority having its own hierarchy of superior and inferior Courts, the law of procedure according to which it would dispose of matters coming before it depending on its nature and jurisdiction exercised by it, acting in judicial manner. The District Judge or Principal Judge of the City Civil Court is the officer presiding over the Court and derives his description from the nomenclature of the Court. Even if the District Judge/Principal Judge of the City Civil Court might retire or get transferred, his successor-in-office can pick up the thread of the proceedings under Section 9 of the 1971 Act from the stage where it was left by his predecessor and can function as an appellate authority. The District Judge/Principal Judge of the City Civil Court and other judicial officers of these Courts possessing necessary qualifications constitute a class and cannot be considered as *persona designata*. The Appellate Officer, therefore, has to function as a Court and his decision is final in terms of Section 10 of 1971 Act. [Para 30] [318-D-G]

1.5 The legislative intent behind providing an appeal under Section 9 before the Appellate Officer to be the District Judge of the concerned District Court in which the public premises are situated or such other judicial officer in that district possessing necessary qualification to be designated by the District Judge for that purpose, is indicative of the fact that the power to be exercised by the Appellate Officer is not in his capacity as *persona designata* but as a judicial officer of the pre existing Court. The historical background of the 1971 Act would make no difference to the aforementioned analysis. [Para 30] [318-G-H; 319-A]

1.6 The expression used in Section 9 is “Appellate Officer” and not “Appellate Authority” however, would neither make any difference nor undermine the status of the District Judge or the designated judicial officer so as to reckon their appointment as *persona designata*. The thrust of Section 9(1) is to provide for remedy of an appeal against the order of the Estate Officer before the District Judge who, undeniably, is a pre-existing authority and head of the judiciary within the district, discharging judicial power of the State including power to condone the delay in filing of the appeal and to grant interim relief during the pendency of

A the appeal. Though described as an Appellate Officer, the District Judge, for deciding an appeal under Section 9, can and is expected to exercise the powers of the civil court. [Para 31] [319-B-D]

1.7 The expression “appellate officer” has not been defined in the 1971 Act, unlike the definition of “estate officer” contained in Section 2(1)(b) of that Act. The appellate officer cannot be considered as a statutory authority, as defined in the dictionary clause in Section 2(1)(fa) of the 1971 Act. Even in respect of the appeal under Section 9 of the 1971 Act, the Principal Judge of the City Civil Court or District Judge is competent to hear the appeal himself or designate some other judicial officer within his jurisdiction possessing requisite qualification. It is implicit in Section 9 read with the provisions of the Acts constituting the District Judiciary that the head of the district judiciary is the District Judge or Principal Judge of the City Civil Court and Section 9 of the 1971 Act makes it explicit, by investing authority in the District Judge or Principal Judge of the City Civil Court, to designate any other judicial officer within his jurisdiction possessing essential qualifications, to hear such appeals. This is a clear departure from the appointment of a District Judge as a *persona designata*. The Additional District Judge or judicial officer possessing essential qualification, therefore, is not an inferior appellate officer within the meaning of Section 9 of the 1971 Act. There is enough indication in Section 9 of the 1971 Act to spell out the legislative intent that the remedy of appeal before the appellate officer is not before a *persona designata* but a pre-existing judicial authority in the district concerned. [Para 39] [323-B-F]

1.8 The fact that there is no express indication in the 1971 Act about the procedure to be adopted or followed by the appellate officer, it would not follow therefrom that the District Judge or designated judicial officer who hears the appeals under Section 9, does so not as a Court but as a *persona designata*. In that case, the procedure for hearing of the appeals will be governed by the provisions under the 1971 Act and Rules framed thereunder and including the enactment under which the judicial authority has been created, such as Maharashtra Civil Courts Act and City Civil Courts Act. Such a pre-existing judicial

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authority, by implication, would be bound to follow the procedure underlying the said enactments and also observe the doctrine of fairness in affording opportunity. [Para 41] [324-C-F] A

1.9 Thus, 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. [Para 49] [328-C-D] B C

Thakur Das (Dead) by LRs v. State of M.P. & Anr. (1978) 1 SCC 27 : [1978] 1 SCR 732; Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker (1995) 5 SCC 5 : [1995] 2 Suppl. SCR 1; Central Talkies Ltd. v. Dwarka Prasad [1961] 3 SCR 495; Maharashtra State Financial Corporation v. Jaycee Drugs & Pharmaceuticals (P) Ltd. (1991) 2 SCC 637 : [1991] 1 SCR 480; Asnew Drums (P) Ltd. v. Maharashtra State Finance Corporation (1971) 3 SCC 602 : [1972] 1 SCR 351; Ram Chander Aggarwal & Anr. v. State of Uttar Pradesh & Anr. [1966] Suppl. SCR 393; Balakrishna Udayar v. Vasudeva Aiyar 44 IA 261; Shyam Sunder Agarwal and Co. v. Union of India (1996) 2 SCC 132 – relied on. D E

Jinda Ram v. UOI (1999) 2 MP LJ 221; M. Papa Naik v. Commissioner City Municipal Council (1996) 3 Kant LJ 86 – approved. F

Nusli Neville Wadia v. New India Assurance Co. Ltd. 2010 (2) Mh. L.J. 978; N.P. Berry v. Delhi Transport Corporation 15 (1979) DLT 108; State of Mysore v. P. Shankaranarayana Rao (1975) 2 Kar. LJ 280; Ganga Ram Dohrey v. State of U.P. AIR 2002 Allahabad 238; M/s. Pitman's Shorthand Academy v. M/s. B. Lila Ram & Sons AIR (37) 1950 East Punjab 181 – not approved. G

Thakur Jugal Kishore Sinha v. Sitamarhi Central Co- H

- A *op Bank Ltd.* [1967] 3 SCR 163; *Brajnandan Sinha v. Jyoti Narain* [1955] 2 SCR 955; *Virender Kumar Satyawadi v. State of Punjab* [1955] 2 SCR 1013; *Prakash Securities Pvt. Ltd. v. Life Insurance Corpn. of India & Anr.* 2012 (4) Bom. C.R.1.; *Sizerali Mohamedali Lodhia v. Gujarat State Road Transport Corp.* 2001 (2) Guj. L.R. 1120; *M. Abdul Wahid Sahib v. Dewanjee Abdul Khader Sahib* AIR 1947 Madras 400; *C.S. Balarama Iyer & Anr. v. Krishnan Kunchandi* AIR 1968 Kerala 240; *Y. Mahabaleswarappa v. M. Gopaldasami Mudaliar* AIR 1935 Madras 673;
- B *Keshav Ramchandra v. Municipal Borough, Jalgaon & Ors.* AIR 1946 Bombay 64; *Jagmohan Surajmal Marwadi v. Venkatesh Gopal Ranade* AIR 1933 Bombay 105; *Municipality of Sholapur v. Tuljaram Krishnasa Chavan* AIR 1931 Bombay 582; *Thavasikani Nadar v. The Election Commissioner* (1974) II Madras LJR 44; *Bathula Krishna Brahman & Ors. v. Daram Chenchi Reddy & Ors.* AIR 1959 AP 129; *Surindra Mohan v. Dharam Chand Abrol* AIR 1971 J & K 76; *Kiron Chandra Bose v. Kalidas Chatterji* AIR 1943 Calcutta 247; *P. Venkata Somaraji & Ors. v. Principal Munsif & Ors.* AIR 1968 AP 22; *S. Srinivas Rao v. High Court of A. P.* AIR 1989 AP 258; *Collector, Varanasi v. Gauri Shanker Misra & Ors.* AIR 1968 SC 384; *Hanskumar Kishanchand v. Union of India* AIR 1958 SC 947; *Naresh Shridhar Mirajkar v. State of Maharashtra* AIR 1967 SC; *Gangadhar Bapurao Gadre v. Hubli Municipality* 1925 B.L.R. 519; *Abid Ali v. District Judge, Baharaich* (1987 Allahabad Law Journal 179); *Parthasaradhi Naidu v. Koteswara Rao* ILR (1924) 47 Mad 369 – referred to.

G 2.1 An order passed by a Civil Court is amenable to scrutiny of the High Court only in exercise of jurisdiction under Article 227 of the Constitution of India, which is different from Article 226 of the Constitution. No writ can be issued against the order passed by the Civil Court and, therefore, no letters patent appeal would be maintainable. [Para 53] [332-H; 333-A]

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2.2 In the present case, the respondents had resorted to remedy of writ petition under Article 226 and 227 of the Constitution of India. In view of the conclusion that the order passed by the District Judge as an Appellate Officer is an order of the Subordinate Court, the challenge thereto must ordinarily proceed only under Article 227 of the Constitution of India and not under Article 226. Moreover, on a close scrutiny of the decision of the Single Judge of the High Court, the true nature and substance of the order of the Single Judge was to exercise power under Article 227 of the Constitution of India; and there is no indication of Court having exercised powers under Article 226 of the Constitution of India as such. [Para 50] [328-D-G]

2.3 The Division Bench apart from relying on *Nusli Neville Wadia* case and *Prakash Securities* case, did not make any other analysis, to entertain the Letters Patent Appeal, as to in what manner the judgment of the Single Judge would come within the purview of exercise of powers under Article 226 of the Constitution of India. Absent that analysis, the Division Bench could not have assumed jurisdiction to entertain the Letters Patent Appeal merely by referring to the earlier decisions. [Para 54] [333-B-C]

2.4 The Division Bench of the High Court ought to have dismissed the Letters Patent Appeal filed by the respondents as not maintainable. In that event, it was not open to the Division Bench to undertake analysis on the merits of the case. That was impermissible and of no avail, being without jurisdiction. That will leave the respondents with an adverse decision of the Single Judge dismissing their writ petition, whereby the eviction order passed by the Estate Officer and confirmed by the City Civil Court has been upheld. However, to subserve the ends of justice, the respondents are given liberty to challenge the decision of the learned Single Judge by way of appropriate remedy. [Paras 55, 56] [333-D-E, G]

Radhey Shyam & Another v. Chabbi Nath & Ors. (2015) 5 SCC 423 : [2015] 3 SCR 197; *Ram Kishan Fauji v. State of Haryana* (2017) 5 SCC 533; *Jogendrasinghi*

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- A *Vijaysinghji v. State of Gujarat* (2015) 9 SCC 1 : [2015]
6 SCR 504 – relied on.

Case Law Reference

	[1978] 1 SCR 732	relied on	Para 15
B	[1995] 2 Suppl. SCR 1	relied on	Para 15
	[1967] 3 SCR 163	referred to	Para 15
	[1961] 3 SCR 495	relied on	Para 15
	[1955] 2 SCR 955	referred to	Para 15
	[1955] 2 SCR 1013	referred to	Para 15
C	[1991] 1 SCR 480	relied on	Para 15
	[1972] 1 SCR 351	relied on	Para 15
	[2015] 3 SCR 197	relied on	Para 15
	[2015] 1 SCC 1	relied on	Para 15
D	[1966] Suppl. SCR 393	relied on	Para 15
	(2017) 5 SCC 533	relied on	Para 15
	[2015] 6 SCR 504	relied on	Para 15
	2010 (2) Mh. L.J. 978	not approved	Para 16
	2012 (4) Bom. C.R.1.	referred to	Para 16
E	15 (1979) DLT 108	not approved	Para 16
	(1975) 2 Kar. LJ 280	not approved	Para 16
	AIR 2002 Allahabad 238	not approved	Para 16
	2001 (2) Guj. L.R. 1120	referred to	Para 16
	AIR (37) 1950 East Punjab 181	not approved	Para 17
F	AIR 1947 Madras 400	referred to	Para 17
	AIR 1968 Kerala 240	referred to	Para 17
	AIR 1935 Madras 673	referred to	Para 17
	AIR 1946 Bombay 64	referred to	Para 17
G	AIR 1933 Bombay 105	referred to	Para 17
	AIR 1931 Bombay 582	referred to	Para 17
	(1974) II Madras LJR 44	referred to	Para 17
	AIR 1959 AP 129	referred to	Para 17
	(1999) 2 MP LJ 221	approved	Para 18
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(1996) 3 Kant LJ 86	approved	Para 18	A
AIR 1971 J&K 76	referred to	Para 18	
AIR 1943 Calcutta 247	referred to	Para 18	
AIR 1968 AP 22	referred to	Para 18	
AIR 1989 AP 258	referred to	Para 18	B
AIR 1968 SC 384	referred to	Para 18	
AIR 1958 SC 947	referred to	Para 18	
AIR 1967 SC 1	referred to	Para 18	
44 IA 261	relied on	Para 27	
1925 B.L.R. 519	referred to	Para 32	C
AIR 1931 Bombay 582	referred to	Para 32	
AIR 1956 SC 153	referred to	Para 40	
(1987 Allahabad Law Journal 179)	referred to	Para 45	
(1996) 2 SCC 132	relied on	Para 46	D
ILR (1924) 47 Mad 369	relied on	Para 47	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 15536 of 2017.

From the Judgment and Order dated 12.10.2012 by the Division Bench of the Hon'ble High Court of Judicature at Bombay in Letters Patent Appeal No. 181 of 2012. E

Ranjit Kumar, SG, Mrs. Indra Sawhney, Aditya Shandilya, Shashank Mishra, Advs. for the Appellant.

Ms. Sonal, Anupam Mishra, Harikumar V., Ms. Pooja Singh, V. J. Francis, Advs. for the Respondents. F

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. The seminal question posed in this appeal, by special leave, is whether the order passed by the City Civil Court in exercise of power under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as an Appellate Officer, is in the capacity of a Civil Court or *persona designata*? G

2. When this special leave petition was listed for admission on 12.09.2017, the Court passed the following order:

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A *“Heard Mr. Ranjit Kumar, learned Solicitor General appearing on behalf of the petitioner and Ms. Sonal, learned counsel appearing on behalf of the respondents.*

As the issue was to be debated with regard to the maintainability of the Letters Patent Appeal, learned Solicitor General has placed reliance on Radhey Shyam & Anr. vs. Chhabi Nath & Ors., (2015) 5 SCC 423 and Ram Kishan Fauji vs. State of Haryana & Ors., (2017) 5 SCC 533.

B *Ms. Sonal, learned counsel representing the respondents, would contend that there is no quarrel about the proposition that when a challenge is made to the order passed by the Civil Court in a writ proceeding, it has to be treated as a proceeding under Article 227 of the Constitution of India and, therefore, no Letters Patent Appeal would lie. But in a case under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the Estate Officer cannot be considered as a Court and further the appellate forum would decide the appeal under Section 9 of the Act as the appellate officer and as per the decision rendered by the Division Bench of the Bombay High Court in Nusli Neville Wadia vs. New India Assurance Co. Ltd., 2010 (2) Mh.L.J.978, which has placed reliance on a judgment of the Delhi High Court in N.P.Berry vs. Delhi Transport Corporation and Anr. 15(1979) DLT 108 (para 19), it is not a Civil Court and therefore, the order passed by the said appellate forum can be challenged under Sections 226 and 227 of the Constitution of India and in that event, an intra-court appeal would be maintainable.*

List for further hearing on 21.09.2017.”

The hearing on admission of the special leave petition continued on 21.09.2017 when the Court passed the following order :

G *“Leave granted.*

Heard Mr.Ranjit Kumar, learned senior counsel for the appellant and Ms.Sonal for the respondents.

H *In the course of hearing Mr.Ranjit Kumar, learned senior counsel appearing for the appellant submitted that Letters*

Patent Appeal at the instance of the respondents before the High Court of Judicature at Bombay was not maintainable. A

Ms.Sonal, learned counsel appearing for the respondents has, per contra, argued that the appeal was maintainable. As we have heard the matter at length with regard to maintainability of the Letters Patent Appeal before the Division Bench of the High Court, it is appropriate to render a judgment. B

In view of the aforesaid, judgment is reserved.

Learned counsel for the parties shall submit written submissions by 3rd October, 2017.” C

3. By this judgment, we shall answer the preliminary issue as to whether the Letters Patent Appeal filed by the contesting respondents before the High Court of Judicature at Bombay against the decision of the learned Single Judge rendered in a writ petition (purportedly filed under Articles 226 and 227 of the Constitution of India), questioning the correctness and validity of the decision of the City Civil Court, Mumbai in Miscellaneous Civil Appeal No.121 of 2011 dated 03.04.2012, which was affirmed by the learned Single Judge, was maintainable. D

4. We may now advert to the brief factual background giving rise to this appeal: On or around 2nd May 2005, the appellant initiated eviction Case No. 21 and 21A of 2015 against the respondents before the Estate Officer under Sections 5 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short “the Act”) for eviction of the respondents from the licenced premises on 3rd floor, 49-55, Bombay Samachar Marg, Fort, Mumbai 400023 admeasuring about 258 sq. ft. including a balcony of 38 sq. ft., recovery of damages and recovery of arrears towards repairs and maintenance charges amounting to Rs. 1364/-. The eviction was sought on two grounds: (a) respondent No.1 had illegally and unauthorisedly sublet, assigned or transferred the licenced premises or part thereof to a partnership firm (respondent No.2) and three companies (respondent Nos. 3 to 5); and (b) respondent No. 1 was in arrears of repair and maintenance charges amounting to Rs. 1364/-. E F G

5. Respondent Nos.1 and 2 filed their Reply, stating *inter alia* that respondent No.1’s grandfather Shri P.T. Shah was the original tenant of the premises since before 1937. At that time, the building in which H

A the premises are situated was owned by the predecessor-in-title of the appellant. Respondent Nos.1 and 2 traced the devolution of rights in the premises and pointed out that respondent No.2 was a partnership firm of the daughter-in-law of the original tenant, her daughter (present respondent No.1), Shri R.C. Vakharia and Shri K.C. Vakharia. It was also pointed out that respondent No.3 was never incorporated and it never came into existence. It was further pointed out that respondent Nos.4 and 5 were private limited companies wholly owned by the family members of the original tenant, in which the 100% shareholding and all the directors were the daughter-in-law of the original tenant and her immediate family members viz., the daughter-in-law of the original tenant, her daughter, her son-in-law and her grandson. Sub-letting, assignment or transfer of the premises or any part thereof to respondent Nos.2 to 5 was denied. Respondent No.1 asserted that she was in occupation, control and possession of the premises and regularly paid rent of Rs. 895/- per month to the appellant. It was also pointed out that respondent No.1 was not in any arrears. The calculation of damages was seriously disputed. Respondent Nos.3 to 5 did not appear before the Estate Officer. Evidence was led before the Estate Officer by the appellant and respondent Nos. 1 and 2.

E 6. By its Order dated 5th February 2011, the Estate Officer held that respondent No.1 was not in arrears of repairs and maintenance charges as alleged by the appellant. However, it held that respondent No.1 had unauthorisedly sub-let the premises to respondent Nos.2 to 5. The Estate Officer also held that the appellant was entitled to damages from the respondents at the rate of Rs.48,142/- per month from 1st December, 2004 till restoration of possession with simple interest at the rate of 9% per annum.

G 7. Respondent Nos.1 and 2 challenged the aforesaid order of the Estate Officer before the Appellate Officer under Section 9 of the Act, being the designate of the Principal Judge of the City Civil Court at Mumbai. The appellant did not challenge the finding of the Estate Officer insofar as he had held that respondent No.1 was not in arrears of repairs and maintenance charges. The said finding has become final.

H 8. By its order dated 3rd April, 2012, the Appellate Officer held that (a) there was no subletting to the partnership firm (respondent No.2), as it was established that it was the firm of the original occupant and (b)

there was nothing to show that respondent Nos.3 to 5 also belonged to the original occupant as no document was produced showing their constitution and hence, it amounted to subletting. The Appellate Officer upheld the order of eviction passed by the Estate Officer and the order for damages along with interest.

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9. Respondent Nos.1 and 2 challenged the aforesaid orders of the Estate Officer and the Appellate Officer before the learned Single Judge of the Bombay High Court by way of Writ Petition No.4337 of 2012. Respondent Nos.1 and 2 prayed for issuance of a Writ of Certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Articles 226 and 227 of the Constitution of India and to set aside the Judgment and Orders of the Appellate Officer and the Estate Officer. The appellant did not challenge the finding of the Appellate Officer insofar as it had held that there was no subletting by respondent No.1 to the partnership firm (respondent No.2). The said finding has become final.

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10. By its order dated 14th August 2012, the learned Single Judge of the Bombay High Court dismissed the aforesaid Writ Petition filed by respondent Nos.1 and 2 by holding that respondent Nos.3 to 5 are separate legal entities; the authorities below had concurrently held that the appellant had established its case in that behalf and that no material was produced before it for taking a different view in the matter.

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11. Respondent Nos.1 and 2 challenged the aforesaid order of the learned Single Judge before the Division Bench of the Bombay High Court vide Letters Patent Appeal No.181 of 2012.

12. The Division Bench of the Bombay High Court by its Order dated 12th October, 2012, rejected the preliminary objection of the appellant that the Letters Patent Appeal was not maintainable against the order of the learned Single Judge and also allowed the appeal on merits holding that documents showing that 100% shareholding of respondent Nos.4 and 5 belonged to the occupant and her immediate family members and that all the directors of respondent Nos.4 and 5 were the occupants and immediate family members, were on record, which fact has not been taken into consideration by the Appellate Officer. The Division Bench held that by lifting the corporate veil, it can be seen that the companies are alter egos of the occupant and that there is no subletting to the Companies.

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A 13. On the question of maintainability of the Letters Patent Appeal, the Division Bench of the High Court answered the same in the following words:

B *“13. Firstly we will deal with the contention regarding maintainability of this Letters Patent Appeal. Learned counsel for the Respondents urged that earlier writ petitions challenging the orders passed in proceedings under the Public Premises Act were being entertained by the Division Bench and after the decision of the Full Bench of this Court in the case of M/s. Prakash Securities Private Limited V/s. LIC of India [2012 (4) Bom. C.R.1] dated 26 April 2012, they are now being placed before the Single Judge. He contended that if the appeal is entertained from the orders passed by the learned Single Judge in such petitions, then the object of amending rules for hearing of such petitions by the Single Judge for expeditious disposal will be lost. Learned counsel for appellants on the other hand has drawn our attention to the memo of the petition and the impugned order of the learned Single Judge wherein it is mentioned that the petition is filed and was entertained under Articles 226 & 227 of the Constitution of India, and contended that therefore the appeal is maintainable.*

E *14. It is true that the petitions arising out of the order passed under the Public Premises Act were being heard by the Division Bench. This was being done due to observation of the Division Bench of this Court in the case of Nusli Neville Wadia V/s. New India Assurance Co. Ltd. & Another [2010 (4) Bom. C.R. 807]. However by an order dated 15 November 2011, another Division Bench of this Court expressed doubt about the correctness of the observation made in the case of Nusli Neville Wadia (supra) and referred the issue as to whether the petitions arising out of the orders passed under the Public Premises Act should be heard by the Division Bench or Single Judge, to the Full Bench for consideration. The Full Bench in the case of Prakash Securities [2012 (4) Bom. C.R. 1] (supra) found that clause 3 of the Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules 1960 was wide enough to include orders passed by any*

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quasijudicial authority under any enactment, even if such explanation is not covered by clause 1, 2, 4 to 43 of Rule 18. The Full Bench found that the order passed by quasijudicial authority under the Public Premises Act is also covered by Rule 18 (3) so as to indicate that the petitions under Articles 226 & 227 of the Constitution of India challenging such orders are to be heard and decided by the Single Judge. Reference was accordingly disposed of by the Full Bench by its judgment dated 26 April 2012. The Full Bench held that the Appellate Side Rules as they stand, provide that the petitions challenging the orders passed under the Public Premises Act are required to be heard by the learned Single Judge and therefore the observations made in the case of Nusli Neville Wadia (supra), were not correct. The petitions relating to orders passed under Public Premises Act were being entertained by the Division Bench when the rules provided that they should be entertained by the Single Judge. Therefore there was no conscious decision to remove the petitions arising from orders passed under the Public Premises, from Division Bench and to place them before Single Judge. In fact Full Bench found that these petitions were being wrongly entertained by the Division Bench.

15. In the judgment of the Full Bench there is no indication that Letters Patent Appeal arising out of the orders passed by the Single Judge in proceedings under the Public Premises Act will not be maintainable. If Letters Patent Appeals are otherwise maintainable, judgment of the Full Bench does not take away that right in respect of petitions challenging the orders passed under Public Premises Act. Therefore the argument advanced by the learned counsel on maintainability of the appeal on this ground cannot be accepted. Maintainability was not contested on any other ground. In the present case, the petitioner has invoked both Articles 226 and 227 of the Constitution of India. The learned Judge also has referred to the said Articles in the impugned order. Furthermore, the Respondent Corporation is itself amenable to writ jurisdiction of this Court, being a public corporation. There is therefore no substance in the preliminary objection

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A *raised by the learned counsel for the Respondent that the appeal is not maintainable and that it should be dismissed at the threshold without looking at the merits of the matter.”*

14. This appeal by the appellant assails the opinion expressed by the Division Bench not only on maintainability of the Letters Patent Appeal but also on merits, whereby the Division Bench reversed the finding of fact recorded by the Estate Officer and affirmed by both, the City Civil Court, being the Appellate Officer and the learned Single Judge, whilst rejecting the writ petition filed by the respondents. However, the argument presently is confined to the preliminary issue about the maintainability of the Letters Patent Appeal and if that contention of the appellant was to be accepted, it would not be necessary for us to examine the other matter raised in the appeal about the merits of the finding and conclusion recorded by the Division Bench, being without jurisdiction. Instead, the contesting respondents will have to be relegated to question the judgment of the learned Single Judge in that behalf and if such appropriate remedy is resorted to by the contesting respondents, only then it would become necessary to analyse the same in those proceedings.

15. According to the appellant, the interplay of Section 9 of the 1971 Act read with the other provisions in the same Act, such as Sections 3, 8 and 10, makes it amply clear that the jurisdiction exercised by the Appellate Officer, namely the City Civil Court Judge, in an appeal under Section 9 of the Act, is in his capacity as a Civil Court and not *persona designata*. If so, the remedy under Article 227 of the Constitution of India alone could be availed in the fact situation of the present case and not under Article 226, for issuance of a Writ of Certiorari. In the present case, although the writ petition filed by the contesting respondents was labelled as one under Articles 226 and 227 of the Constitution of India, considering the nature and substance of the challenge, reasoning and nature of the order passed by the learned Single Judge it could be pursued only under Article 227 of the Constitution of India and not under Article 226 or for that matter under Article 226 read with Article 227 of the Constitution of India. Resultantly, the Division Bench committed manifest error in entertaining the Letters Patent Appeal against the decision of the learned Single Judge of the same High Court. To buttress the contention that the District Judge/Judicial Officer, referred to in Section 9 of the 1971 Act, does not exercise powers as *persona designata*, reliance has been placed on the exposition of this Court in ***Thakur Das***

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(Dead) by LRs Vs. State of M.P. & Anr.¹ and in the cases of *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*², *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Coop Bank Ltd.*³, *Central Talkies Ltd. Vs. Dwarka Prasad*⁴, *Brajnandan Sinha Vs. Jyoti Narain*⁵, *Virender Kumar Satyawadi Vs. State of Punjab*⁶, *Maharashtra State Financial Corporation Vs. Jaycee Drugs & Pharmaceuticals (P) Ltd.*⁷ and *Asnew Drums (P) Ltd. Vs. Maharashtra State Finance Corporation*⁸. In support of the contention that the order of the District Judge/Appellate Officer would be amenable only to jurisdiction under Article 227 of the Constitution of India, reliance has been placed on the decision of *Radhey Shyam & Another Vs. Chabbi Nath & Ors.*⁹ and *Ram Chander Aggarwal & Anr. Vs. State of Uttar Pradesh & Anr.*¹⁰ This contention is further elaborated on the basis of the exposition in the case of *Ram Kishan Fauji Vs. State of Haryana*¹¹ and *Jogendrasinghji Vijaysinghji vs State of Gujarat*¹², wherein the Court observed that the maintainability of Letters Patent Appeal would depend on the pleadings in the writ petition, nature and character of the order passed by the learned Single Judge and the type of directions issued, regard being had to the jurisdictional perspective in the constitutional context. The appellant invited our attention to the judgment of the learned Single Judge wherein the submissions made on behalf of the writ petitioners (contesting respondents) have been noted in paragraphs 9 to 11 and 15 and that of the appellant in paragraphs 12 and 16, as also the findings recorded by the learned Single Judge in paragraphs 19 to 24. It was urged that the jurisdiction exercised by the learned Single Judge was plainly ascribable to exercise of power of superintendence under Article 227 and not of exercise of power to issue a writ or in the nature of certiorari under Article 226 of the Constitution of India. It was contended that the Letters Patent Appeal filed by the

¹ 1978 (1) SCC 27

² 1995 (5) SCC 5

³ 1967 (3) SCR 163

⁴ 1961 (3) SCR 495

⁵ 1955 (2) SCR 955

⁶ 1955 (2) SCR 1013

⁷ 1991 (2) SCC 637

⁸ 1971 (3) SCC 602

⁹ 2015 (5) SCC 423

¹⁰ 1966 Supp. SCR 393

¹¹ 2017(5) SCC 533

¹² 2015 (9) SCC 1

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A contesting respondents before the Division Bench, therefore, was not maintainable.

16. *Per contra*, the respondents would urge that the District Judge/ Appellate Officer exercises power under Section 9 of the 1971 Act as *persona designata* and not as a Civil Court. Alluding to the decisions to which we will advert to a little later, the respondents contend that when a special statute creates an Appellate Officer and where it refers to the Presiding Judge and not to the Court to be such Appellate Officer, then it can be said that the reference has been made to the Judge as *persona designata*. It is also well known that where the authority is the creation of a statute and is indicated or identified by a official designation or as one of a class, the provisions of statute would have to be looked into to determine whether the intention was to single him out as *persona designata*, his official designation being merely a further description of him. The legislative scheme concerning the Act under consideration does not indicate, in any manner, much less by necessary implication, that he can exercise powers of the Court for adjudication of the appeal. However, the powers and jurisdiction to be exercised have been circumscribed by the special law for which reason also he would be a *persona designata*. Furthermore, the Act gives finality to the order passed by the appellate officer in terms of Section 10, which is indicative of the fact that the appellate officer acts as a *persona designata* and not as a Court. The provisions of the 1971 Act are a self-contained code delineating the powers, jurisdiction and procedure different from general laws such as Civil Procedure Code or Criminal Procedure Code. At the same time, the jurisdiction of the ordinary courts has been barred in respect of the matters to be dealt with under the statute. It is submitted that keeping in mind the historical background of the 1971 Act, it is not permissible to consider the appellate officer referred to in Section 9 of the Act as discharging powers and jurisdiction of a Court. The appellate officer referred to in Section 9 of the Act merely acts as a *persona designata*. To buttress this contention, reliance has been placed on the decisions of the High Courts dealing with this question, interpreting Section 9 of the 1971 Act and analogous provisions in the concerned State Public Premises Act, namely; *Nusli Neville Wadia Vs. New India Assurance Co. Ltd.*¹³; *Prakash Securities Pvt. Ltd. Vs. Life Insurance Corp. of India & Anr.*¹⁴; *N.P. Berry Vs. Delhi Transport Corporation*¹⁵; *State of*

¹³ 2010 (2) Mh. L.J. 978

¹⁴ 2012 (4) Bom. C.R.1

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Mysore Vs. P. Shankaranarayana Rao¹⁶; ***Ganga Ram Dohrey Vs. State of U.P.***¹⁷; and ***Sizerali Mohamedali Lodhia Vs. Gujarat State Road Transport Corp.***¹⁸. A

17. Reliance has been placed also on the other decisions of the High Courts dealing with the question as to when the appointment of an appellate authority albeit a judicial officer has been treated as *persona designata* under laws other than Public Premises Act, namely, ***M/s. Pitman's Shorthand Academy Vs. M/s. B. Lila Ram & Sons***¹⁹; ***M. Abdul Wahid Sahib Vs. Dewanjee Abdul Khader Sahib***²⁰; ***C.S. Balarama Iyer & Anr. Vs. Krishnan Kunchandi***²¹; ***Y. Mahabaleswarappa Vs. M. Gopaldasami Mudaliar***²²; ***Keshav Ramchandra Vs. Municipal Borough, Jalgaon & Ors.***²³; ***Jagmohan Surajmal Marwadi Vs. Venkatesh Gopal Ranade***²⁴; ***Municipality of Sholapur Vs. Tuljaram Krishnasa Chavan***²⁵; ***Thavasikani Nadar Vs. The Election Commissioner***²⁶; ***Bathula Krishna Brahman & Ors. Vs. Daram Chenchi Reddy & Ors.***²⁷ B C

18. Our attention has also been invited to other decisions taking the view that the appellate authority cannot be treated as *persona designata* but as a Court while dealing with the provisions of Public Premises Act and other laws, namely, ***Jinda Ram Vs. UOI***²⁸; ***M. Papa Naik Vs. Commissioner City Municipal Council***²⁹; ***Surindra Mohan Vs. Dharam Chand Abrol***³⁰; ***Kiron Chandra Bose Vs. Kalidas Chatterji***³¹; ***P. Venkata Somaraji & Ors. Vs. Principal Munsif & Ors.***³² and ***S. Srinivas Rao Vs. High Court of A.P.***³³ Our attention is D E

¹⁶ (1975) 2 Kar. LJ 280

¹⁷ AIR 2002 Allahabad 238

¹⁸ 2001 (2) Guj. L.R. 1120

¹⁹ AIR (37) 1950 East Punjab 181

²⁰ AIR 1947 Madras 400

²¹ AIR 19 68 Kerala 240

²² AIR 19 35 Madras 673

²³ AIR 1946 Bombay 64

²⁴ AIR 1933 Bombay 105

²⁵ AIR 1931 Bombay 582

²⁶ (1974) II Madras LJR 44

²⁷ AIR 1959 AP 129

²⁸ (1999) 2 MP LJ 221

²⁹ (1996) 3 Kant LJ 86

³⁰ AIR 1971 J&K 76

³¹ AIR 1943 Calcutta 247

³² AIR 1968 AP 22

³³ AIR 1989 AP 258

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A also invited to the decisions of this Court in the case of *Central Talkies* (supra); *Ram Chander Aggarwal* (supra); *Collector, Varanasi Vs. Gauri Shanker Misra & Ors.*³⁴; *Thakur Das* (supra); *Hanskumar Kishanchand Vs. Union of India*³⁵ and *Naresh Shridhar Mirajkar Vs. State of Maharashtra*³⁶.

B 19. The respondents have also relied on the definition of the expression *persona designata* given in Osborn's Concise Law Dictionary, 2005 Edition and P. Ramanatha Aiyar's Advance Law Lexicon, 5th Edition. According to the respondents, therefore, the remedy against the decision of the appellate officer available to the respondents was only by way of writ petition under Articles 226 and 227 of the Constitution and the respondents, in fact, invoked the same by filing a writ petition which was initially decided by the learned Single Judge whose decision could be challenged by way of an intra-court letters patent appeal before the Division Bench of the same High Court.

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D 20. We have heard Mr. Ranjit Kumar, learned Solicitor General appearing for the appellant and Ms. Sonal, learned counsel appearing for the respondents.

E 21. Indubitably, in the context of provisions of the 1971 Act, the question raised in the present appeal has not received the attention of this Court thus far. The decisions of this Court pressed into service by both sides, which has had occasion to examine the purport of expression *persona designate*, are in reference to the provisions of other Central and State enactments. However, the exposition in those cases will have bearing on the matter in issue before us. In that, the principle underlying the exposition in those cases can be applied for answering the question under consideration in reference to the provisions of the 1971 Act and Section 9 in particular. We, therefore, deem it apposite to advert to the decisions of this Court before we proceed to analyse the legislative scheme of the 1971 Act.

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G 22. In the case of *Thakur Das* (supra) rendered by a three-Judge Bench, this Court examined two contentions in reference to the purport of Section 6C of the Essential Commodities Act, 1955. The first question was whether the judicial authority constituted by the State

³⁴ AIR 1968 SC 384

³⁵ AIR 1958 SC 947

³⁶ AIR 1967 SC 1

Government under the said provision, to hear appeals against the order of confiscation that may be made by the licensing authority under Section 6A of the said Act, is not an inferior criminal court subordinate to the High Court and amenable to the revisional jurisdiction of the High Court under Section 435 read with Section 439 of the Code of Criminal Procedure? The said contention required this Court to consider whether the judicial authority appointed under Section 6C of the said Act would be *persona designata*, despite the fortuitous circumstance that it happens to be the Sessions Judge. In paragraphs 7 and 8 of the reported decision, this Court noted thus:

“7. If the Sessions Judge presiding over the Sessions Court is the judicial authority, the question is: would it be an inferior criminal court subordinate to the High Court for the purposes of Sections 435 and 439 of the Criminal Procedure Code? At the one end of the spectrum the submission is that the judicial authority appointed under Section 6-C would be persona designata and that if by a fortuitous circumstance the appointed judicial authority happens to be the Sessions Judge, while entertaining and hearing an appeal under Section 6-C it would not be an inferior criminal court subordinate to the High Court and, therefore, no revision application can be entertained against his order by the High Court. While conferring power on the State Government to appoint appellate forum, the Parliament clearly manifested its intention as to who should be such Appellate Authority. The expression “judicial” qualifying the “authority” clearly indicates that that authority alone can be appointed to entertain and hear appeals under Section 6-C on which was conferred the judicial power of the State. The expression “judicial power of the State” has to be understood in contradistinction to executive power. The framers of the Constitution clearly envisaged courts to be the repository of the judicial power of the State. The Appellate Authority under Section 6-C must be a judicial authority. By using the expression “judicial authority” it was clearly indicated that the Appellate Authority must be one such pre-existing authority which was exercising judicial power of the State. If any other authority as persona designata was to be constituted there was no purpose in qualifying the word

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A *“authority” by the specific adjective “judicial”. A judicial*
authority exercising judicial power of the State is an authority
having its own hierarchy of superior and inferior court, the
law of procedure according to which it would dispose of
matters coming before it depending upon the nature of
B *jurisdiction exercised by it acting in judicial manner. In using*
the compact expression “judicial authority” the legislative
intention is clearly manifested that from amongst several
pre-existing authorities exercising judicial powers of the State
and discharging judicial functions, one such may be
appointed as would be competent to discharge the appellate
C *functions as envisaged by Section 6-C. There is one in-built*
suggestion indicating who could be appointed. In the concept
of appeal inheres hierarchy and the Appellate Authority
broadly speaking would be higher than the authority against
whose order the appeal can be entertained. Here the
Appellate Authority would entertain appeal against the order
D *of Collector, the highest revenue officer in a district. Sessions*
Judge is the highest judicial officer in the district and this
situation would provide material for determining Appellate
Authority. In this connection the legislative history may throw
some light on what the legislature intended by using the
E *expression “judicial authority”. The Defence of India Rules,*
1962, conferred power on certain authorities to seize
essential commodities under certain circumstances. Against
the seizure an appeal was provided to the State Government
whose order was made final. By the Amending Act 25 of
F *1966 Sections 6-A to 6-D were introduced in the Act. This*
introduced a basic change in one respect, namely, that an
order of confiscation being penal in character, the person
on whom penalty is imposed is given an opportunity of
approaching a judicial authority. Earlier appeal from
executive officer would lie to another executive forum. The
G *change is appeal to judicial authority. Therefore, the*
expression clearly envisages a pre-existing judicial authority
has to be appointed Appellate Authority under Section 6-C.
When the provision contained in Section 6-C is examined in
the background of another provision made in the order itself
H *it would become further distinctly clear that pre-existing*

judicial authority was to be designated as Appellate Authority under Section 6-C. A seizure of essential commodity on the allegation that the relevant licensing order is violated, would incur three penalties: (1) cancellation of licence; (2) forfeiture of security deposit; and (3) confiscation of seized essential commodity, apart from any prosecution that may be launched under Section 7. In respect of the first two penalties an appeal lies to the State Government but in respect of the third though prior to the introduction of Section 6-C an appeal would lie to the State Government, a distinct departure is made in providing an appellate forum which must qualify for the description and satisfy the test of judicial authority. Therefore, when the Sessions Judge was appointed a judicial authority it could not be said that he was *persona designata* and was not functioning as a court.”

“8. Sections 7 and 9 of the Code of Criminal Procedure, 1898, envisage division of the State into various Sessions Divisions and setting up of Sessions Court for each such division, and further provides for appointment of a Judge to preside over that Court. The Sessions Judge gets his designation as Sessions Judge as he presides over the Sessions Court and thereby enjoys the powers and discharges the functions conferred by the Code. **Therefore, even if the judicial authority appointed under Section 6C is the Sessions Judge it would only mean the Judge presiding over the Sessions Court and discharging the functions of that Court. If by the Sessions Judge is meant the Judge presiding over the Sessions Court and that is the appointed appellate authority, the conclusion is inescapable that he was not *persona designata* which expression is understood to mean a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character (vide *Central Talkies Ltd. v. Dwarka Prasad and Ram Chandra v. State of U.P.*).**”

(emphasis supplied)

The Court also considered the cleavage of opinion amongst the High Courts on the construction of the expression “judicial authority” used in Section 6C of the Essential Commodities Act. In paragraphs 9 to 11, this Court answered the same in the following words:

A “9. Our attention was drawn to a cleavage of opinion amongst
High Courts on the construction of the expression “judicial
authority” used in Section 6-C. In *State of Mysore v.*
Pandurang P. Naik, the Mysore High Court was of the
opinion that though a District and Sessions Judge was
appointed as a judicial authority by the State Government
in exercise of the powers conferred by Section 6-C of the
Act in that capacity it would not be an inferior criminal court
within the meaning of Section 435. Same view was taken by
the Gujarat High Court in *State of Gujarat v. C.M. Shah.*
The exact specification of the Appellate Authority constituted
by the notification could not be gathered from the judgment
but it appears that the appeal was heard by the Additional
Sessions Judge which would indicate that even if a District
and Sessions Judge was appointed as “judicial authority”
that expression would comprehend the Additional Sessions
Judge also or the Sessions Judge could transfer such appeal
pending before him to Additional Sessions Judge which was
a pointer that he was not a *persona designata*. After
referring to certain sections of the Code of Criminal
Procedure it has been held that the Additional Sessions Judge
hearing an appeal under Section 6-C is not an inferior
criminal court within the meaning of Section 435(1). Our
attention was also drawn to *State of Madhya Pradesh v.*
Vasant Kumar. Only a short note on this judgment appears
in 1972 *Jabalpur Law Journal* 80 but it clearly transpires
that the point under discussion has not been dealt with by
the Court.

F 10. As against this, this very question was examined by a
Full Bench of the Andhra Pradesh High Court in *Public*
Prosecutor (A.P.) v. L. Ramayya. Two questions were referred
to the Full Bench. The first was: whether the District and
Sessions Judge who is appointed judicial authority for
hearing appeals under Section 6C is a *persona designata*
or an inferior Criminal Court, and the second was: whether
even if it is an inferior Criminal Court, a revision application
against the order of the appellate authority would lie to the
High Court? The Full Bench answered the first question in

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the affirmative. While summing up its conclusions, the Court held that when a judicial authority like an officer who presides over a court is appointed to perform the functions, to judge and decide in accordance with law and as nothing has been mentioned about the finality or otherwise of the decisions made by that authority, it is an indication that the authority is to act as a court in which case it is not necessary to mention whether they are final or not as all the incidents of exercising jurisdiction as a court would necessarily follow. We are in broad agreement with this conclusion.

*11. We are accordingly of the opinion that even though the State Government is authorised to appoint an Appellate Authority under Section 6C, the Legislature clearly indicated that such appellate authority must of necessity be a judicial authority. **Since under the Constitution the courts being the repository of the judicial power and the officer presiding over the court derives his designation from the nomenclature of the Court, even if the appointment is made by the designation of the judicial officer the Appellate Authority indicated is the Court over which he presides discharging functions under the relevant Code and placed in the hierarchy of courts for the purposes of appeal and revision.** Viewed from this angle, the Sessions Judge, though appointed and appellate authority by the notification, what the State Government did was to constitute an appellate authority in the Sessions Court over which the Sessions Judge presides. The Sessions Court is constituted under the Code of Criminal Procedure and indisputably it is an inferior criminal court in relation to High Court. Therefore, against the order made in exercise of powers conferred by Section 6-C a revision application would lie to the High Court and the High Court would be entitled to entertain a revision application under Sections 435 and 439 of the Code of Criminal Procedure, 1898 which was in force at the relevant time and such revision application would be competent.”*

(emphasis supplied)

A 23. In paragraph 8 of the same judgment, this Court unambiguously
concluded that as the nomenclature ‘Sessions Judge’ means the Judge
presiding over the Sessions Court and that being the appointed appellate
authority, the conclusion is inescapable that he was not *persona*
B *designata*, which expression is understood to mean a person pointed
out or described as an individual, as opposed to a person ascertained as
a member of a class or as filling a particular character. These observations
are founded on the decision in the cases of *Central Talkies Ltd.* (supra)
and *Ram Chander Aggarwal* (supra).

24. Another instructive exposition is in *Mukri Gopalan* (supra)
C (two Judges). In this case, the Court was called upon to consider the
sweep of Section 18 of the Kerala Buildings (Lease and Rent Control)
Act, 1965. The same envisages that the power of the appellate authority
can be conferred by the Government on such officers and such authorities
not below the rank of Subordinate Judge. In paragraph 7, this Court
D restated the well settled position that an authority can be styled to be
persona designata if powers are conferred on a named person or
authority and such powers cannot be exercised by anyone else. The
relevant extract of paragraph 7 of the reported decision reads thus:

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

‘... A persona designata is ‘a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character’. In the words of Schwabe, C.J. in Parthasaradhi Naidu v. Koteswara Rao, personae designatae are ‘persons selected to act in their private capacity and not in their capacity as Judges’. The same consideration applies also to a well-known officer like the District Magistrate named by virtue of his office, and whose powers the Additional District Magistrate can also exercise and who can create other officers equal to himself for the purposes of the Eviction Act. The decision of Sapru, J. in the Allahabad case, with respect, was erroneous.’

Applying the said test to the facts of the present case it becomes obvious that appellate authorities as constituted under Section 18 of the Rent Act being the District Judges

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A *they constituted a class and cannot be considered to be*
B *persona designata. It is true that in this connection, the*
C *majority decision of the High Court in Jokkim Fernandez v.*
D *Amina Kunhi Umma also took a contrary view. But the said*
E *view also does not stand scrutiny in the light of the statutory*
F *scheme regarding constitution of appellate authority under*
G *the Act and the powers conferred on and the decisions*
H *rendered by it.”*

(emphasis supplied)

It may be useful to advert to the exposition in paragraphs 8 and 13 of this
C decision, which reads thus:

D *“8. Once it is held that the appellate authority functioning*
E *under Section 18 of the Rent Act is not a persona designata,*
F *it becomes obvious that it functions as a court. In the present*
G *case all the District Judges having jurisdiction over the areas*
H *within which the provisions of the Rent Act have been*
extended are constituted as appellate authorities under
Section 18 by the Govt. 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 v. Sitamarhi Central Coop. Bank Ltd.
In that case this court was concerned with the question
whether the Assistant Registrar of Cooperative Societies
functioning under Section 48 of the Bihar and Orissa
Cooperative Societies Act, 1935 was a court subordinate to
the High Court for the purpose of Contempt of Courts Act,
1952. While answering the question in the affirmative, a
division bench of this court speaking through Mitter, J placed
reliance amongst others on the observations found in the
case of Brajnandan Sinha v. Jyoti Narain 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.'

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Reliance was also placed on another decision of this court in the case of *Virindar Kumar Satyawadi v. The State of Punjab*. Following observations found at page 1018 therein were pressed in service.

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

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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 :**

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A *'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
B 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.'*

C *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.*

D *(i) There must be a provision for period of limitation under
any special or local law in connection with any suit, appeal
or application.*

E *(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 supplied)

F *"13. As per this sub-section, the provisions contained in
certain sections of the Limitation Act were applied
automatically to determine the periods under the special laws,
and the provisions contained in other sections were stated to
apply only if they were not expressly excluded by the special
law. The provision (Section 5) relating to the power of the
court to condone delay in preferring appeals and making
applications came under the latter category. So if the power
to condone delay contained in Section 5 had to be exercised
G by the appellate body it had to be conferred by the special
law. That is why we find in a number of special laws a
provision to the effect that the provision contained in Section
5 of the Limitation Act shall apply to the proceeding under
the special law. The jurisdiction to entertain proceedings
H under the special laws is sometimes given to the ordinary*

courts, and sometimes given to separate tribunals constituted under the special law. When the special law provides that the provision contained in Section 5 shall apply to the proceedings under it, it is really a conferment of the power of the court under Section 5 to the Tribunals under the special law - whether these tribunals are courts or not. If these tribunals under the special law should be courts in the ordinary sense an express extension of the provision contained in Section 5 of the Limitation Act will become otiose in cases where the special law has created separate tribunals to adjudicate the rights of parties arising under the special law. That is not the intension of the legislature.”

(emphasis supplied)

25. Again in the case of *Asnew Drums Pvt. Ltd.* (supra), decided by a three-Judge Bench, this Court considered the question whether an appeal under Section 32(9) of the State Financial Corporation Act, 1951, was maintainable before the High Court. Section 31(1) of the said Act required the Board to apply to the District Judge within the limits of an industrial concern which was carrying out the whole or a substantial part of its business or for one or more of the reliefs specified. Such application could be made inter alia for an order for the sale of the property pledged, mortgaged or as security for the loan or advance or for an ad-interim for transfer or removing its machinery or plant or equipment from the premises of the industrial concern with the permission of the Board, where such removal is apprehended. The question considered by this Court was whether by using the words “in the manner provided in the CPC” in Section 32(8) of the concerned Act, the legislature intended to include the provisions in the Code dealing with appeals. The Court after analyzing the provisions of the Act answered the same in the following words:

“10. The question which really arises is whether by using the words “in the manner provided in the CPC” in Section 32(8) the Legislature intended to include the provisions in the Code dealing with appeals. There is no doubt that under the CPC an order setting aside or refusing to set aside a sale in execution of a decree is appealable under Order XLIII Rule 1 (j). It is difficult to understand why the scope of the language should be cut down by not including appeals

A *provided under the CPC within the ambit of the words “in*
the manner provided in the CPC”. “Manner” means method
of procedure and to provide for an appeal is to provide for a
mode of procedure. The State Financial Corporation lends
huge amounts and we cannot for a moment imagine that it
B *was the intention of the Legislature to make the order of*
sale of property, passed by the District Judge, final and only
subject to an appeal to the Supreme Court under Article 136,
of the Constitution.

C *11. The learned Counsel for the respondents contended that,*
wherever the Legislature wanted to provide for an appeal to
the High Court, it did so specifically. In this connection he
pointed out that Sub-section (9) of Section 32 provided that
“any party aggrieved by an order under Sub-section (5) or
Sub-section (7) may, within thirty days from the date of the
order, appeal to the High Court and upon such appeal the
D *High Court may, after hearing the parties, pass such orders*
thereon as it thinks proper.” It is true that an appeal has
been expressly provided in this case but the reason for this
is that if there had been no specific provision in Sub-section
(9), no appeal would lie otherwise because it is not provided
in Sub-section (5) or Sub-section (7) that the District Judge
E *should proceed in the manner provided in the CPC.*

F *12. We are not impressed by the argument that the Act confers*
jurisdiction on the District Judge as persona designata
because Sub-section (11) of Section 32 provides that “the
functions of a district judge under this section shall be
exercisable (a) in a presidency town, where there is a city
civil court having jurisdiction, by a judge of that court and
in the absence of such court, by the High Court; and (b)
elsewhere, also by an additional district Judge.” These
provisions clearly show that the District Judge is not a
G *persona designata.*

H *13. It was contended that the whole idea of the Act was to*
have expeditious execution as otherwise large funds of the
State Financial Corporation would be locked up during
execution proceedings. If this was the intention of the
Legislature, it would have expressly provided that no appeal

would lie against an order made under Sub-section (8) of Section 32.” A

(emphasis supplied)

The Court opined that the legislative intent was amply clear that the District Judge was not a *persona designata*.

26. Once again, in the case of *Maharashtra State Financial Corporation* (supra), decided by a three-Judge Bench of this Court, while considering the provisions of State Financial Corporation, 1951, following the decision of this Court in *Central Talkies Ltd.* (supra), restated that the District Judge exercising jurisdiction under Sections 31 & 32 of the Act was not a *persona designata* but was a court of ordinary civil jurisdiction. This can be discerned from the dictum in paragraph 26 of the judgment which reads thus: B C

“26. We may now state our reasons for holding that even if Section 46B of the Act was not there the provisions of the Code for the execution of a decree against a surety who had given only personal guarantee would, in the absence of any provision to the contrary in the Act, be applicable. In view of the decision of this Court in *The Central Talkies Ltd., Kanpur v. Dwarka Prasad*, where it was held that a *persona designata* is a person selected as an individual in his private character or office, since the term used in Section 31(1) of the Act is “District Judge” it cannot be doubted that the District Judge is not a *persona designata* but a court of ordinary civil jurisdiction while exercising jurisdiction under Sections 31 and 32 of the Act. In *National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd.* while repelling the objection that an appeal under the Letters Patent against the judgment of a Single Judge passed in an appeal against the decision of the Registrar under Section 76(1) of the Trade Marks Act, 1940 was not maintainable it was held at pages 1033-34 of the Report: (SCR pp.1033-34) D E F G

“Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted H

A *and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very*
B *succinctly stated by Viscount Haldane L.C. in National Telephone Co., Ltd. v. Postmaster-General, in these terms:-*
C *‘When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches.’*

The same view was expressed by their Lordships of the Privy Council in Adaikappa Chettiar v. R. Chandrasekhara Thevar, wherein it was said:

D *‘Where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of*
E *appeal.’*

Again in Secretary of State for India v. Chellikani Rama Rao, when dealing with the case under the Madras Forest Act their Lordships observed as follows:

F *‘It was contended on behalf of the appellant that all further proceedings in Courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In their Lordships’ opinion this objection is not well-founded. Their view is that when proceedings of this character reach the District Court, that Court is appealed to*
G *as one of the ordinary Courts of the country, with regard to whose procedure, orders, and decrees the ordinary rules of the Civil Procedure Code apply.’*

Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the

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principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 of the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act.”

(emphasis supplied)

27. The question regarding the purport of expression *persona designata* also arose for consideration in other cases decided by this Court to which our attention has been invited. In the case of **Ramchandra Aggarwal** (supra), this Court was called upon to consider whether the District Judge has jurisdiction under Section 24 of the Code of Civil Procedure to transfer a reference made by a Magistrate to a particular Civil Court under Section 146 of the Code of Criminal Procedure to another Civil Court, in relation to proceedings under Section 145 of the Code of Criminal Procedure initiated before the Magistrate on the basis of a report of the police. The Court relied on its earlier decision in the case of **Balakrishna Udayar Vs. Vasudeva Aiyar**,³⁷ and observed in paragraph 3 of the reported decision as follows:

“3. In *Balakrishan Udayar v. Vasudeva Aiyar* 44 I.A. 261, Lord Atkinson has pointed out the difference between a *persona designata* and a legal tribunal. The difference is this that the ‘determination of a *persona designata* are not to be treated as judgments of a legal tribunal’. In the *Central Talkies Ltd. v. Dwarka Prasad*, this Court has accepted the meaning given to the expression *persona designata* in *Osborn’s Concise Law Dictionary*, 4th edn. p. 263 as ‘a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character.’ Section 146(1) Cr.P.C.

³⁷ 44 IA 261

A empowers a Magistrate to refer the question as to whether
any, and if so, which of the parties was in possession of the
subject-matter of dispute at the relevant point of time to a
civil court of competent jurisdiction. **The power is not to refer**
the matter to the presiding Judge of a particular civil court
B **but to a court. When a special or local law provides for an**
adjudication to be made by a constituted court - that is, by a
court not created by a special or local law but to an existing
court - it in fact enlarges the ordinary jurisdiction of such a
C **court. Thus where a special or local statute refers to a**
constituted court as a court and does not refer to the
presiding officer of that court the reference cannot be said
to be a persona designata. This question is well settled. It is,
therefore, unnecessary to say anything more on this part of
the case except that cases dealing with the point have been
well summarised in the recent decision in Chatur Mohan v.
D **Ram Behari Dixit.”**

(emphasis supplied)

28. Before we dilate on the matter in issue any further, it is apposite
to take note of the relevant provisions of the 1971 Act, as were in force
prior to 22nd June, 2015, applicable to the present case. The same read
E thus:

“2. Definitions.- In this Act, unless the context otherwise
requires,-

[***]

F (b) ‘estate officer’ means an officer appointed as such by
the Central Government under section 3;

xxx xxx xxx xxx xxx

(fa) ‘statutory authority’, in relation to the public premises
referred to in clause (e) of this section, means,-

G (i) in respect of the public premises placed under the control
of the Secretariat of either House of Parliament, the
Secretariat of the concerned House of Parliament,

(ii) in respect of the public premises referred to in item (i) of
sub-clause (2) and in item (iv) of sub-clause (3) of that clause,

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the company or the subsidiary company, as the case may be, referred to therein, A

(iii) in respect of the public premises referred to in item (ii) of sub-clause (2) of that clause, the corporation referred to therein,

(iv) in respect of the public premises referred to, respectively, in items (iii), (iv), (vi) and (vii) of sub-clause (2) of that clause, the University, Institute or Board, as the case may be referred to therein, and B

(v) in respect of the public premises referred to in sub-clause (3) of that clause, the Council, Corporation or Corporations, Committee or Authority, as the case may be, referred to in that sub-clause;” C

“3. Appointment of estate officers.- *The Central Government may, by notification in the Official Gazette,-*

(a) Appoint such persons, being gazetted officers of Government or of the Government of any Union Territory or officers of equivalent rank of the statutory authority, as it thinks fit, to be estate officers for the purposes of this Act: D

Provided that no officer or the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with Speaker of the Lok Sabha: E

Provided further that an officer of a statutory authority shall only be appointed as an estate officer in respect of the public premises controlled by that authority; and F

(b) define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under this Act.” G

“8. Power of estate officers.- *An estate officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:-* H

- A (a) *summoning and enforcing the attendance of any person and examining him on oath;*
(b) *requiring the discovery and production of documents;*
(c) *any other matter which may be prescribed.”*
- B **“9. Appeals.—(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under section 5 or section 5B or section 5C or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years standing as the district judge may designate in this behalf.**
- C (2) *An appeal under sub-section (1) shall be preferred,—*
(a) *in the case of an appeal from an order under section 5. [within twelve days] from the date of publication of the order under sub-section (1) of that section;*
(b) *in the case of an appeal from an order [under section 5B or section 7, within twelve days] from the date on which the order is communicated to the appellant; [and]*
(c) *in the case of an appeal from an order under section 5C, within twelve days from the date of such order:*
- E ***Provided that the appellate officer may entertain the appeal after the expiry of the said period, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.***
- F (3) ***Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit:***
- G *Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 5B for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in*
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the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal; A

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

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

(6) For the purposes of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge of the city civil court therein shall be deemed to be the district judge of the district.” C

(emphasis supplied)

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

“15. Bar of jurisdiction.- No court shall have jurisdiction to entertain any suit or proceeding in respect of- E

(a) *the eviction of any person who is in unauthorised occupation of any public premises, or*

(b) *the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or* F

(c) *the demolition of any building or other structure made, or ordered to be made, under section 5B, or*

(cc) the sealing of any erection or work or of any public premises under section 5C, or G

(d) *the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or* H

- A (e) *the recovery of –*
- (i) *costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or*
- (ii) *expenses of demolition under section 5B, or*
- B (iii) *costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or*
- (iv) *any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.”*

C We may now advert to the provisions in the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971.

- “9. Procedure in appeals.-** (1) *An appeal preferred under section 9 of the Act shall be in writing, shall set forth concisely the grounds of objection to the order appealed against, and shall be accompanied by a copy of such order.*
- D (2) *On receipt of the appeal and after calling for and perusing the record of the proceedings before the estate officer, the appellate officer shall appoint a time and place for the hearing of the appeal and shall give notice thereof*
- E *to the estate officer against whose order the appeal is preferred, to the appellant and to the head of the department or authority in administrative control of the premises.”*

F 29. The avowed purpose for enacting the 1971 Act was to provide for a speedy remedy for taking possession of the public premises which were in unauthorized occupation. For achieving the said goal, an Estate Officer is appointed under Section 3 of the Act who has been given powers to issue notice of show cause and initiate proceedings for eviction and recovery of outstanding rental dues and damages in respect of public premises. Section 8 empowers the Estate Officer to exercise the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.

G We are not called upon to consider the question as to whether the Estate Officer, while exercising powers invested in him, acts as a court or has the trappings of a court. The only question that we have attempted to answer is whether the appointment of the appellate officer referred to in Section 9 of the Act before whom an appeal shall lie, is in the capacity of *persona designata* or as a court.

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30. Sub-section (1) of Section 9 is the core provision to be kept in mind for answering the point in issue. It postulates that an appeal shall lie from every order of the estate Officer, passed under the Act, to an Appellate Officer. As to who shall be the Appellate Officer, has also been specified in the same provision. It predicates the District Judge of the district in which the public premises are situated or such other judicial officer in that district of not less than 10 years standing as the District Judge to be designated for that purpose. The first part of the provision does suggest that the appeal shall lie to an Appellate Officer, however, it does not follow therefrom that the Appellate Officer is *persona designata*. Something more is required to hold so. Had it been a case of designating a person by name as an Appellate Officer, the concomitant would be entirely different. However, when the Appellate Officer is either the District Judge of the district or any another judicial officer in that district possessing necessary qualification who could be designated by the District Judge, the question of such investiture of power of an appellate authority in the District Judge or Designated Judge would by no standards acquire the colour or for that matter trappings of *persona designata*. In the first place, the power to be exercised by the Appellate Officer in terms of Section 9 is a judicial power of the State which is quite distinct from the executive power of the State. Secondly, the District Judge or designated judicial officer exercises judicial authority within his jurisdiction. Thirdly, as the Act predicates the Appellate Officer is to be a District Judge or judicial officer, it is indicative of the fact of a pre existing authority exercising judicial power of the State. Fourthly, District Judge is the creature of Section 5 of the Maharashtra Civil Courts Act, 1869, who presides over a District Court invariably consisting of more than one Judge in the concerned district. The District Court exercises original and appellate jurisdiction by virtue of Sections 7 and 8 respectively, of the 1869 Act and is the principal Court of original civil jurisdiction in the district within the meaning of C.P.C., as per Section 7 of that Act. As per Section 8 of the Act of 1869, the District Court is the Court of appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force. As per Section 16 of that Act, the District Judge can refer to any Additional District Judges subordinate to him, any original suits and proceedings of a civil nature, applications or references under Special Acts and miscellaneous applications. The Additional District Judges have jurisdiction to try such suits and to dispose of such applications or references. Section 17 of

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- A that Act envisages that an Additional District Judge shall have jurisdiction to try the appeals as may be referred to him by the District Judge. Section 19 of that Act, is a provision to invest power on the Additional District Judges, with powers of District Judge. The hierarchy of judicial officers of the District Court can be culled out from the 1869 Act. On the similar
- B lines, the Bombay City Civil Court has been constituted under Section 3 of the Bombay City Civil Court Act, 1948, with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature arising within the Greater Bombay except a suit or proceedings which are cognizable by the High Court referred to therein and by Small Causes Court. Section 7 of this Act envisages that when the City Civil Court
- C consists of more than one Judge, each of the Judges may exercise all or any of the powers conferred on the Court by the said Act or any other law for the time being in force. Clause (b) of Section 7 stipulates that the State Government may appoint any one of the Judges to be the Principal Judge and any two other Judges to be called the Additional Principal
- D Judges. The Principal Judge has been given authority to make such arrangements as he may think fit for the distribution of the business of the Court among the various Judges thereof. In other words, the District Judge or Principal Judge exercises judicial power of the State and is an authority having its own hierarchy of superior and inferior Courts, the law of procedure according to which it would dispose of matters coming
- E before it depending on its nature and jurisdiction exercised by it, acting in judicial manner. The District Judge or Principal Judge of the City Civil Court is the officer presiding over the Court and derives his description from the nomenclature of the Court. Even if the District Judge/Principal Judge of the City Civil Court might retire or get transferred, his successor-
- F in-office can pick up the thread of the proceedings under Section 9 of the 1971 Act from the stage where it was left by his predecessor and can function as an appellate authority. The District Judge/Principal Judge of the City Civil Court and other judicial officers of these Courts possessing necessary qualifications constitute a class and cannot be considered as *persona designata*. The Appellate Officer, therefore,
- G has to function as a Court and his decision is final in terms of Section 10 of 1971 Act. The legislative intent behind providing an appeal under Section 9 before the Appellate Officer to be the District Judge of the concerned District Court in which the public premises are situated or such other judicial officer in that district possessing necessary qualification
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to be designated by the District Judge for that purpose, is indicative of the fact that the power to be exercised by the Appellate Officer is not in his capacity as *persona designata* but as a judicial officer of the pre existing Court. The historical background of the 1971 Act would make no difference to the aforementioned analysis.

31. Indeed, the expression used in Section 9 is “Appellate Officer” and not “Appellate Authority” as has been used in Section 6C of the Essential Commodities Act, 1955, considered by the Supreme Court in the case of **Thakur Das** (supra). That, however, would neither make any difference nor undermine the status of the District Judge or the designated judicial officer so as to reckon their appointment as *persona designata*. The thrust of Section 9(1) is to provide for remedy of an appeal against the order of the Estate Officer before the District Judge who, undeniably, is a pre existing authority and head of the judiciary within the district, discharging judicial power of the State including power to condone the delay in filing of the appeal and to grant interim relief during the pendency of the appeal. Though described as an Appellate Officer, the District Judge, for deciding an appeal under Section 9, can and is expected to exercise the powers of the civil court.

32. In the case of **Nusli Neville Wadia** (supra) the Division Bench was essentially called upon to answer the contention raised before it that, considering Chapter XVII Rule 18 of the Bombay Appellate Side Rules, 1960, the petition in terms of Rule 18 must be heard by a learned Single Judge of that Court or by the Division Bench and whether the Division Bench has no jurisdiction to hear and decide the appeal against the decision of the City Civil Court/District Court in proceedings arising from the 1971 Act. The analysis by the Division Bench therefore, was with reference to the said plea. Indeed, the Division Bench also adverted to the aspect as to whether the Principal Judge, City Civil Court was acting as a Court or *persona designata*. It merely followed the decisions in the case of **N.P. Berry** (supra) and **Shri Mahesh N. Kothari and Others Vs. Life Insurance Corporation of India and another** in Writ Petition No.6846 of 2005, decided on 05.10.2006, wherein it has been held that the legislature did not confer power on the District Judge or a Principal Judge of the City Civil Court to hear the appeals as such but has chosen to designate the authority as an Appellate Officer making it clear, that the power was conferred in his capacity as *persona designata*.

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- A The Division Bench has also adverted to the decisions in **Gangadhar Bapurao Gadre Vs. Hubli Municipality**³⁸ dealing with Section 22 of the Bombay District Municipality Act; **Municipality of Sholapur Vs. Tuljaram Krishnasa Chavan**³⁹ dealing with provisions of Bombay City Municipalities Act; **Keshav Ramchandra** (supra), dealing with Section 15 of the provisions of Bombay Municipal Act and **Jagmohan Surajmal Marwadi** (supra), and held that the District Judge exercised his power as a *persona designata*.

33. We will therefore traverse through the decisions adverted to in **Nusli Neville Wadia's** case (supra). Before we examine those decisions, it is apposite to take note of the Full Bench judgment of the Bombay High Court in the case of **Prakash Securities Pvt. Ltd.** (supra). The question referred to the Full Bench, reads thus:

- D “Whether a writ petition arising out of order passed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 should be placed before a learned Single Judge of this Court in Accordance with Rule 18 (3) of the Chapter XVII of the Bombay High Court Appellate Side Rules, 1960 or should be placed before a Division Bench?”

- E The Full Bench analysed the scheme of the Bombay High Court Appellate Side Rules, 1960 and opined that the order passed by the quasi judicial authority under the Act of 1971 is also covered by Rule 18 (3) and writ petition under Article 226 or 227 of the Constitution of India against such a decision must be heard and decided by the learned Single Judge of the High Court. In paragraph 8, finally, the Full Bench observed thus:

- F “8. Since the Public Premises Act, 1971 is not an enactment made by Parliament in exercise of powers under Article 323-B, the question of applying the above direction of the Supreme Court in *L. Chandra Kumar* case cannot arise. We are, therefore, unable to agree with the view taken by the Division Bench in *Nusli Neville Wadia* case (supra). It is clear that under the provisions of Rule 18(3) of Bombay High Court Appellate Side Rules, 1960, a petition under Articles 226 and/or 227 of the Constitution challenging the order of the Appellate Authority under the Public Premises Act, 1971

³⁸ 1925 B.L.R. 519

H ³⁹ AIR 1931 Bombay 582

will be required to be heard and decided by a learned Single Judge of this Court. The decision in Nusli Neville Wadia case is, therefore, overruled in so far as the Division Bench in Nusli Neville Wadia case has taken a view that when the order is passed by a Tribunal under a legislation relating to any subject referable to Article 323-B(2) of the Constitution, the petitions challenging such orders will have to be necessarily heard by the Division Bench. It is clarified that the directions given by the Supreme Court in L. Chandra Kumar case will apply only when the Tribunal is established under a law which is specifically made by the appropriate legislature in exercise of powers conferred by Articles 323-A or 323-B. Merely because a legislation, existing in future, deals with a subject referable to any sub-clause in Clause (2) of Article 323-B of the Constitution, such legislation does not by itself become a legislation under Article 323-B of the Constitution.”

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34. Indubitably, the Full Bench was “not” called upon to examine the issue as to whether the remedy of an appeal under Section 9 of the Act, 1971 before the Appellate Officer, is before an authority exercising powers in his capacity as a *persona designata* or as a Civil Court.

35. We may now turn to the decision of the Delhi High Court in *N.P. Berry* (supra), on which reliance has been placed by the Bombay High Court in *Nusli Neville Wadia’s* case (supra). The main point considered by the Delhi High Court was about the distinction between a “Judge” acting as a *persona designata* and that as a “Court”, in the context of an order passed by an additional district judge of Delhi acting as an Appellate Officer under Section 9 of 1971 Act.

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36. We may reiterate that, in the present case, we are not concerned with the question as to whether the Estate Officer functions as a Court whilst exercising powers under the 1971 Act, an issue which was also considered by the Delhi High Court. It also dealt with the question as to whether the Appellate Officer defined in Section 9 of the 1971 Act, acts as a *persona designata* and not as a Court. The Delhi High Court opined that the mere fact that the Appellate Officer is a District Judge is not conclusive to hold that he has to act as a Court. It went on to observe that if that had been the intention of the legislature, Section 9 would have empowered either the Court of a District Judge or

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A at any rate, the District Judge as such to hear the appeals. This view expressed by the Delhi High Court, in our opinion, is untenable, keeping in mind the exposition in the case of *Thakur Das* (supra) and *Mukri Gopalan* (supra) in particular.

B 37. Indeed, the Delhi High Court could not have noticed the
C aforementioned decisions of this Court, wherein it has been observed
D that a *persona designata* is a person who is pointed out or described as
E an individual as opposed to a person ascertained as a member of a class, or as filling a particular character. We are conscious of the fact that the decision in *Thakur Das* (supra) was in relation to the purport of Section 6C of the Essential Commodities Act and the decision in *Mukri Gopalan* (supra) was in respect of Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1955. As noted earlier, Section 6C of the Essential Commodities Act refers to the “judicial authority” appointed by the State Government concerned and Section 18 of the Kerala Buildings (Lease and Rent Control) Act refers to such officers and authorities not below the rank of Subordinate Judge to exercise the powers of the appellate authority. However, the principle underlying these enunciations will apply on all fours to the dispensation stipulated in the 1971 Act. For, it predicates that the Appellate Officer shall be the District Judge of the district in which the premises are situated or such other judicial officer designated by the District Judge.

F 38. The Bombay High Court in *Nusli Neville Wadia’s* case largely
G relied upon the decision of the Delhi High Court in *N.P. Berry’s case*. We are bound by the dictum in the case of *Thakur Das* (supra) decided by a three-Judge Bench of this Court wherein it is observed that the expression “judicial” qualifying the “authority” clearly indicates that that authority alone can be appointed to intervene and hear the appeals on which was conferred the judicial powers of the State. By a reference to judicial authority, it is indicative of the fact that the appellate authority must be one such pre-existing authority which was exercising judicial powers of the State and if any authority as *persona designata* was to be constituted, there was no purpose in qualifying the word “authority” by the specific adjective “judicial”. The thrust of the exposition is that the “judicial authority” which is a pre-existing authority exercising judicial power of the State, is a strong indication of legislative intent to depart from the dispensation of *persona designata* when a person is pointed out or described as an individual, as opposed to a person ascertained as

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a member of a class, or as filling a particular character. That view has been reiterated even in *Mukri Gopalan* (supra). A

39. Notably, the expression “appellate officer” has not been defined in the 1971 Act, unlike the definition of “estate officer” contained in Section 2(1)(b) of that Act. The appellate officer cannot be considered as a statutory authority, as defined in the dictionary clause in Section 2(1)(fa) of the 1971 Act. In the case of *Thakur Das* (supra), in paragraph 9, while analyzing the cleavage of opinion of the High Courts, it is noticed that the expression “judicial authority” would comprehend the Additional Sessions Judge or the Sessions Judge could transfer such appeal pending before him to Additional Sessions Judge which was a pointer to the fact that he was not a *persona designata*. Even in respect of the appeal under Section 9 of the 1971 Act, the Principal Judge of the City Civil Court or District Judge is competent to hear the appeal himself or designate some other judicial officer within his jurisdiction possessing requisite qualification. It will be useful to advert to Section 7 of the City Civil Courts Act and Sections 3, 5 & 7 of the Maharashtra Civil Courts Act. It is implicit in Section 9 read with the provisions of the Acts constituting the District Judiciary that the head of the district judiciary is the District Judge or Principal Judge of the City Civil Court and Section 9 of the 1971 Act makes it explicit, by investing authority in the District Judge or Principal Judge of the City Civil Court, to designate any other judicial officer within his jurisdiction possessing essential qualifications, to hear such appeals. This is a clear departure from the appointment of a District Judge as a *persona designata*. The Additional District Judge or judicial officer possessing essential qualification, therefore, is not an inferior appellate officer within the meaning of Section 9 of the 1971 Act. In our opinion, there is enough indication in Section 9 of the 1971 Act to spell out the legislative intent that the remedy of appeal before the appellate officer is not before a *persona designata* but a pre-existing judicial authority in the district concerned. B
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40. The Delhi High Court also considered the question as to whether the power exercised by the appellate officer is in his capacity of a Court or otherwise. Relying on Mulla’s Code of Civil Procedure, 13th Edition Volume I, Page 500, it has been observed that where the word used in the enactment giving the special jurisdiction is not “Court” but “judge”, the entire enactment is to be looked into to find out whether the matter is to be decided by him as a Court or in his personal capacity. G
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- A It went on to observe that no authority is forthcoming to show that when the word “Court” is not used at all, the District Judge or a Subordinate Judge functioning under a statute is held to be a Court even when the statute itself shows that he is to function as an appellate officer or with some designation other than that of a Court, and further when CPC has not been applied as a procedure to be followed by the judge and when
- B there is no indication that the judge is to function as a Court. It then observed that the Court is a creation of a statute either under CPC or Punjab Courts Act. In the final analysis, the Delhi High Court concluded that the appellate officer cannot be regarded as a Court and must, therefore, be regarded as a *persona designata*.
- C 41. The fact that there is no express indication in the 1971 Act about the procedure to be adopted or followed by the appellate officer, it would not follow therefrom that the District Judge or designated judicial officer who hears the appeals under Section 9, does so not as a Court but as a *persona designata*. For the reasons already alluded to we
- D have no hesitation in holding that the remedy of appeal under Section 9 before the Appellate Officer is not as a *persona designata* but to a pre-existing judicial authority. In that case, the procedure for hearing of the appeals will be governed by the provisions under the 1971 Act and Rules framed thereunder and including the enactment under which the
- E judicial authority has been created, such as Maharashtra Civil Courts Act and City Civil Courts Act. [See para 26 of *Maharashtra State Financial Corporation* (supra), reproduced in earlier part of this judgment in para 26]. Such a pre-existing judicial authority, by implication, would be bound to follow the procedure underlying the said enactments and also observe the doctrine of fairness in affording opportunity. Since
- F the edifice on which the conclusions reached by the Delhi High Court, that an appellate officer is *persona designata* and not a Court, cannot be countenanced in law, the Bombay High Court decisions in *Nusli Neville Wadia’s* case (supra) and also *Prakash Securities Pvt. Ltd.* (supra), cannot hold the field to that extent for the same logic.
- G 42. Our attention was invited to yet another decision in the case of *State of Mysore Vs. P. Shankaranarayana Rao* (supra). The learned Single Judge of the Karnataka High Court examined the question under consideration as to whether the District Judge who is constituted as an appellate officer under Section 10 of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1961, acts as a Court or as a
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persona designata? The decision in ***Virindar Kumar Satyawadi Vs. State of Punjab***⁴⁰ was referred to, wherein it was observed that what distinguishes a Court from a quasi-judicial authority is that it is charged with a duty to decide disputes in a judicial manner and declare 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 support of it. Further, 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. The distinction between the Court and quasi-judicial tribunal has to be decided having regard to the provisions of the Act and if it possesses all the attributes of a Court. Referring to Section 10 of the Karnataka Act, which provides that an appeal shall lie from every order of the competent officer made in respect of any public premises, to an appellate officer who shall be “only” the District Judge having jurisdiction over the area, the Court eventually concluded that the intention of enacting the term “appellate officer” in Section 10 is indicative of the fact that the District Judge must act as appellate officer with limited jurisdiction to dispose of the appeal in the manner set out by the provisions of Section 10 itself, which means that he cannot exercise the general powers of the District Court. It went on to observe that a finality is attached to the order of the District Judge in terms of Section 11 of the Karnataka Act is a further indication that a judge must act only as a *persona designata* and not as a Court. In the 1971 Act, however, the appeal under Section 9 can be heard and decided not only by the District Judge himself but by any other judicial officer of the District Court possessing requisite qualifications designated for that purpose.

43. In the case of ***Sizerali Mohamedali Lodhia*** (supra), the provisions of Section 9 of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972, came up for scrutiny. The Gujarat High Court was essentially concerned with the question as to whether the remedy of revision against the order passed by the appellate officer in an appeal preferred under Section 9 of the Gujarat Public Premises Act (which is analogous to Section 9 of the 1971 Act), was maintainable before the High Court. The argument before the Gujarat High Court was that even if it is taken that the appellate officer is not *persona designata* but a Court, the question arises as to whether the order passed by the appellate officer under Section 9 of the Gujarat Public Premises

⁴⁰ AIR 1956 SC 153

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A Act is such against which remedy under Section 115 of the CPC lies. After analyzing the decisions noted in paragraph 11 of the judgment, including the cases of *Thakur Das* and *Mukri Gopalan* (supra), the Court went on to observe that since the order of the appellate officer has been made final in terms of Section 10 of the State Act, it cannot be assailed under Section 115 of the CPC before the High Court in its revisional jurisdiction. It finally concluded in paragraph 15 that assuming for the sake of argument that the remedy of revision lies, it would not be an efficacious alternative remedy so as to throw out the petition under Article 226 and/or Article 227 of the Constitution of India. The High Court, therefore, examined the issue on merits.

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C 44. The next case commended to us is the decision of Full Bench of East Punjab High Court in *M/s. Pitman's Shorthand Academy* (supra), rendered in Civil Revision Application filed under Section 115 of CPC, against the decision of the Subordinate Court in rent proceedings arising from Punjab Urban Rent Restriction Act, 1947. The Court analysed the provisions of the State Rent Act and opined that the functions of the Controllers and Appellate Authorities under the Act did not indicate any attribute of a Court of law. In other words, the legislative intent behind appointing the Controllers and Appellate Authorities was to appoint them as *persona designata* and not as Court. This decision need not detain us for the reasons already alluded to in the earlier part of the judgment which are founded on the principles underlying the exposition of this Court in *Thakur Das* and *Mukri Gopalan*, in particular.

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F 45. In case of *Ganga Ram Dohrey* (supra), the question considered was whether there is a specific provision given in the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972, to transfer the appeal and since there is no provision in the Act by which Section 24 of CPC has been made applicable whether the application under Section 24 of CPC for transfer of case was maintainable? The Court relying on the decision in the case of *Abid Ali Vs. District Judge, Baharaich*,⁴¹ concluded that application under Section 24 of CPC was not maintainable, for, the proceedings before the District Judge under Section 9 of the U.P. Public Premises Act were not other proceedings under the Code of Civil Procedure as envisaged by Section 24 of CPC.

G 46. In the Case of *Jinda Ram* (supra), the Division Bench of the Madhya Pradesh High Court was called upon to consider the

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maintainability of revision application under Section 115 of Civil Procedure Code against an order passed by the District Judge as an Appellate Officer under Section 9 of the 1971 Act. After considering the conflicting decisions of the same High Court on the point, the Division Bench held that an order passed by the Appellate Officer under Section 9 is amenable to revisional jurisdiction of the High Court under Section 115 of Civil Procedure Code. The Court relied upon the exposition of this Court in the case of *Mukri Gopalan* (supra) wherein it has been observed that the appellate authorities constituted under the enactment constitute a class and cannot be considered as a *persona designata*. Further, the appellate authority functions as a Court. The Court also referred to another decision of this Court in *Shyam Sunder Agarwal and Co. Vs. Union of India*⁴² wherein it has been held that appellate order having been passed by a Civil Court, constituted under a special statute subordinate to the High Court though made final under the Act, it is amenable to revisional jurisdiction of the High Court under Section 115 of the Code of Civil Procedure. The Court relied upon other decisions of this Court to buttress the conclusion that the remedy of revision under Section 115 of C.P.C. was available against an order passed by the District Judge on an appeal under Section 9 of the Act. Be that as it may, we are certain that remedy under Article 227 of the Constitution of India is availed against the decision of the Appellate Officer.

47. In the case of *M. Papa Naik* (supra) the Court was called upon to examine the purport of Section 9 of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974. Even in this case the question was whether a remedy of revision or writ petition would lie against the order passed by the District Judge on an appeal preferred under Section 10 of the State Act. The Court concluded that the order passed by the District Judge as an appellate authority under Section 9 of the State Act does not cease to be a Court subordinate to the High Court and any order passed by him is amenable to the jurisdiction of the High Court under Section 115 C.P.C.. In support of this conclusion, the learned Single Judge relied upon the exposition in the case of *Central Talkies Ltd.* (supra) and *Parthasaradhi Naidu Vs. Koteswara Rao*.⁴³

48. Even though the respondents have invited our attention to other decisions of High Courts and also of Supreme Court which have

⁴² (1996) 2 SCC 132

⁴³ ILR (1924) 47 Mad 369

A analysed the provisions of other legislations, it is unnecessary to dilate
on those decisions as we intend to apply the principles underlying the
decisions of three-Judge Bench of this Court in *Thakur Das* (supra),
Asnew Drums Pvt. Ltd. (supra), *Maharashtra State Financial*
Corporation (supra), *Ram Chander Aggarwal* (supra) and *Mukri*
B *Gopalan* (supra), in particular, to conclude that the Appellate Officer
referred to in Section 9 of the 1971 Act, is not a *persona designata* but
acts as a civil court.

49. In other words, the Appellate Officer while exercising power
under Section 9 of the 1971 Act, does not act as a *persona designata*
C 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
D Constitution of India can be availed on the matters delineated for exercise
of such jurisdiction.

50. Reverting to the facts of the present case, the respondents
had resorted to remedy of writ petition under Article 226 and 227 of the
Constitution of India. In view of our conclusion that the order passed by
the District Judge (in this case, Judge, Bombay City Civil Court at
E Mumbai) as an Appellate Officer is an order of the Subordinate Court,
the challenge thereto must ordinarily proceed only under Article 227 of
the Constitution of India and not under Article 226. Moreover, on a close
scrutiny of the decision of the learned Single Judge of the Bombay High
Court dated 14.08.2012 we have no hesitation in taking the view that the
true nature and substance of the order of the learned Single Judge was
F to exercise power under Article 227 of the Constitution of India; and
there is no indication of Court having exercised powers under Article
226 of the Constitution of India as such. Indeed, the learned Single Judge
has opened the judgment by fairly noting the fact that the writ petition
G filed by the respondents was under Articles 226 and 227 of the Constitution
of India. However, keeping in mind the exposition of this Court in the
case of *Ram Kishan Fauji* (supra) wherein it has been explicated that
in determining whether an order of learned Single Judge is in exercise of
powers under Article 226 or 227 the vital factor is the nature of jurisdiction
invoked by a party and the true nature and character of the order passed
and the directions issued by the learned Single Judge. In paragraph 40 of
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the reported decision, the Court advertng to its earlier decision observed thus: A

“40. xxx xxx xxx Whether the learned Single Judge has exercised the jurisdiction Under Article 226 or Under Article 227 or both, would depend upon various aspects. 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 imbricate. It was reiterated that 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 or 227 of the Constitution or both. The two-Judge Bench further clarified that 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. The delineation with regard to necessary party not being relevant in the present case, the said aspect need not be adverted to.” B C D

Again in paragraphs 41 and 42, which may be useful for answering the matter in issue, the Court observed thus: E

“41. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of civil court can only be challenged Under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in other cases, it will depend upon the other factors as have been enumerated therein. F

42. At this stage, it is extremely necessary to cull out the conclusions which are deducible from the aforesaid pronouncements. They are:

42.1 An appeal shall lie from the judgment of a Single Judge to a Division Bench of the High Court if it is so permitted within the ambit and sweep of the Letters Patent. G

42.2 The power conferred on the High Court by the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation. H

A *42.3 A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be a challenge Under Article 227 of the Constitution and determination by the High Court under the said Article and, hence, no intra-court appeal is entertainable.*

B *42.4 The tenability of intra-court appeal will depend upon the Bench adjudicating the lis as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be a straitjacket formula for the same.”*

(emphasis supplied)

C 51. In the case of *Radhey Shyam* (supra) decided by a three-Judge Bench, this Court after analyzing all the earlier decisions on the point, restated the legal position that in cases where judicial order violated the fundamental right, 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. The dictum in paragraphs 25, 27 and 29 of this decision is instructive. The same read thus:

D *“25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King’s Court in India and of all other courts having limited jurisdiction subject to supervision of King’s Court. Courts are set up under the Constitution or the laws. All 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 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 subordinate courts. Control of working of 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 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*

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by statutes, power of superintendence Under Article 227 is constitutional. The expression “inferior court” is not referable to judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above.

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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 is different from Article 226.

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29. Accordingly, we answer the question referred as follows:

29.1 Judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution;

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29.2 Jurisdiction Under Article 227 is distinct from jurisdiction Under Article 226.

29.3 Contrary view in *Surya Dev Rai* is overruled.”

(emphasis supplied)

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52. Similar view has been expressed in ***Jogendrasinghi*** (supra). In this decision, it has been held that the order passed by the Civil Court is amenable to scrutiny only in exercise of jurisdiction under Article 227 of the Constitution of India and no intra court appeal is maintainable from the decision of a Single Judge. In paragraph 30 of the reported decision, the Court observed thus:

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“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 regard 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* (supra) that a writ petition can lie only Under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes

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A *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 aforesaid authorities of this Court.
B *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
imbricate. 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
C *appeal to discern and decide whether the order has been*
passed by the learned Single Judge in exercise of jurisdiction
Under Article 226 or 227 of the Constitution or both. The
Division Bench would also be required to scrutinize whether
the facts of the case justify the assertions made in the petition
to invoke the jurisdiction under both the articles and the
D *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.”

E In the concluding part of the reported judgment in paragraph 44, the
Court observed thus:

“44. We have stated in the beginning that three issues arise despite
the High Court framing number of issues and answering it at various
levels. It is to be borne in mind how the jurisdiction under the letters
F patent appeal is to be exercised cannot exhaustively be stated. It
will depend upon the Bench adjudicating the lis how it understands
and appreciates the order passed by the learned Single Judge. There
cannot be a straight-jacket formula for the same. Needless to say,
the High Court while exercising jurisdiction Under Article 227 of
G 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 (supra).”

H 53. In paragraph 45.2 of the same judgment, the Court
authoritatively concluded that an order passed by a Civil Court is amenable
to scrutiny of the High Court only in exercise of jurisdiction under Article

227 of the Constitution of India, which is different from Article 226 of the Constitution and as per the pronouncement in *Radhey Shyam* (supra), no writ can be issued against the order passed by the Civil Court and, therefore, no letters patent appeal would be maintainable. A

54. In the impugned judgment, the Division Bench merely went by the decisions of the Delhi High Court and its own Court in *Nusli Neville Wadia* (supra) and *Prakash Securities Pvt. Ltd.* (supra). We do not find any other analysis made by the Division Bench to entertain the Letters Patent Appeal, as to in what manner the judgment of the learned Single Judge would come within the purview of exercise of powers under Article 226 of the Constitution of India. Absent that analysis, the Division Bench could not have assumed jurisdiction to entertain the Letters Patent Appeal merely by referring to the earlier decisions of the same High Court in *Nusli Neville Wadia* and *Prakash Securities Pvt. Ltd.* B C

55. In other words, the Division Bench of the Bombay High Court ought to have dismissed the Letters Patent Appeal filed by the respondents as not maintainable. In that event, it was not open to the Division Bench to undertake analysis on the merits of the case as has been done in the impugned judgment. That was impermissible and of no avail, being without jurisdiction. Indeed, that will leave the respondents with an adverse decision of the learned Single Judge dismissing their writ petition No.4337 of 2012 vide judgment dated 14.08.2012, whereby the eviction order passed by the Estate Officer dated 05.12.2011 and confirmed by the City Civil Court on 03.04.2012 has been upheld. D E

56. As we have held that the Division Bench, in the facts of the present case, could not have entertained the Letters Patent Appeal against the judgment of the learned Single Judge, it is not necessary for us to examine the merits of the eviction order passed against the respondents by the Estate Officer and confirmed by the City Civil Court and the Single Judge of the High Court. In any case, that cannot be done in the appeal filed by the owner of the public premises, namely, the appellant. We may, however, to subserve the ends of justice, give liberty to the respondents to challenge the decision of the learned Single Judge by way of appropriate remedy, if so advised. That shall be done within six weeks from today failing which the appellant will be free to proceed in the matter in furtherance of the eviction order passed by the Estate Officer and confirmed right until the High Court, in accordance with law. F G H

A 57. We once again clarify that we are not expressing any opinion either way on the merits of the eviction order passed by the Estate Officer and the order of the City Civil Court and of the learned Single Judge of the High Court confirming the same. As the preliminary issue regarding the maintainability of the Letters Patent Appeal has been answered in favour of the appellant, this appeal must succeed.

B 58. Accordingly, the appeal is allowed in the aforementioned terms. As a consequence, the judgment and order passed by the Division Bench of the High Court of Judicature at Bombay dated 12.10.2012 in Letters Patent Appeal No.181/2012 in C.W.P. No.4337/2012 is set aside and the said Letters Patent Appeal stands dismissed as not maintainable. No order as to costs.

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Kalpana K. Tripathy

Appeal allowed.