

provided under Rule 7 of the Rules of 1997 in accordance with law. He is directed to conclude the proceedings expeditiously after giving due opportunity of hearing to the parties concerned. Let such an exercise be concluded within a period of two months from the date a certified copy of this order is placed before him.

16. Learned counsel for the petitioner submits that in pursuance of earlier direction of this Court the 1/3rd deficient amount of the stamp duty has already been deposited by him before Tahsildar, Fatehpur. It is, therefore, provided that the the said deposited amount shall be adjusted in the order to be passed by Additional District Magistrate (F & R), Fatehpur in pursuance of the directions of this Court.

17. The writ petition is **allowed**.

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**(2023) 5 ILRA 1504**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 09.05.2023**

**BEFORE**

**THE HON'BLE KSHITIJ SHAILENDRA, J.**

Writ-C No. 58632 of 2017

**Bharat Heavy Electricals Ltd. ...Petitioner**  
**Versus**  
**Deepak Kumar & Ors. ...Respondents**

**Counsel for the Petitioner:**  
 Sri Tarun Varma, Sri Ashish Mishra

**Counsel for the Respondents:**  
 Sri Rahul Jain

**Civil Laws – Constitution of India, 1950 - Article – 226, 227 – Public Premises Eviction of Unauthorized Occupants Act, 1971 - Sections 9 & 83(9) - Application to issue appropriate direction permitting the**

petitioner to get the premises vacated from the respondents who have attained age of superannuation and no longer associated with petitioner – by placing reliance upon a judgment of the Apex Court in case of '*LIC vs Nandini J. Shah*' respondents pleaded that writ petition under Article 226 is not maintainable – court finds that, either sitting in jurisdiction under Article 226 or under 227 court cannot ignore the fact that respondents are occupying official accommodations, which they claim to be associated with their services and therefore, admittedly, those who have attained the age of superannuation, cannot be allowed to remain in occupation in the accommodations, irrespective of the nature of their services or even on the ground that certain sums allegedly payable to them remain unpaid to them – held, the High court, in whatever jurisdiction it sits, always functions on the basic principles of equity, fairness and reasonableness, and therefore, the stand of the petitioner needs consideration and cannot be ignored merely on the ground that the writ petition finally has to be heard either under Article 226 or Article 227 – hence, writ petition allowed – directions issued to vacate the premises and hand over peacefully.(Para – 20, 21, 22)

**Writ Petition Dismissed.** (E-11)

**List of Cases cited:**

1. Life Insurance Corporation of India Vs Nandini J. Shah reported in (2018) 15 SCC 356,
2. Kiran Devi Vs Bihar St. Suni Wakf Board & ors. (2021 SCC Online SC 280,
3. M/s Hindustan Auto Agency Vs Steel Authority of India Ltd. (2021) 4 JBCJ 653,

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Sri Ashish Mishra, learned counsel for the petitioner, Sri Rahul Jain, learned counsel for the respondent nos.1 to 8 and learned Standing Counsel for the respondent no.9.

2. The instant application has been filed with a prayer to issue appropriate

direction permitting the petitioner to get the premises vacated from such private-respondents and other contract persons, who have attained age of superannuation and are no longer associated with the petitioner in any manner whatsoever.

3. Sri Rahul Jain, learned counsel for the respondents, has placed reliance upon the judgment of Apex Court in ***Life Insurance Corporation of India v. Nandini J. Shah reported in (2018) 15 SCC 356*** and submits that against the order passed by the appellate court exercising appellate jurisdiction under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the writ petition under Article 226 of the Constitution of India is not maintainable and the party aggrieved may avail the remedy of filing petition under Article 227 of the Constitution of India. He further contends that miscellaneous application filed in the writ petition under Article 226 of the Constitution of India is also not maintainable.

4. Sri Ashish Mishra, learned counsel for the petitioner submits that at this stage he is pressing only his application dated 24.12.2021 and insofar as the maintainability of the writ petition under Article 226 of the Constitution of India is concerned, the same is also maintainable as held by Hon'ble Supreme Court in the case of ***"Kiran Devi Vs. Bihar State Suni Wakf Board and others (2021 SCC Online SC 280)***.

5. Sri Rahul Jain, placing reliance upon the judgment of Apex Court in the case of *Life Insurance Corporation of India (supra)*, referred to paragraph nos.48, 49 & 50 of the same which are reproduced hereinbelow:-

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

*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 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 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 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 the reported decision, the Court adverted to its earlier decision observed thus:*

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

*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.*

*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.*

*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. 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. 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)”*

6. Sri Rahul Jain has further placed reliance upon the judgment of Jharkhand High Court in “*M/s Hindustan Auto Agency Vs. Steel Authority of India Ltd. (2021) 4 JBCJ 653*” in which the aforesaid decision of Life Insurance Corporation of India has been relied.

7. He, therefore, submits that the matter can only be heard under Article 227 of the Constitution of India, and therefore, the present writ petition is not maintainable as the same was filed under Article 226 of the Constitution of India.

8. Per contra, Sri Ashish Mishra, learned counsel for the petitioner, while placing reliance upon the judgment of the Apex Court in the case of Kiran Devi (supra), has referred to paragraph nos.20, 21 & 22 thereof, which are reproduced as under:-

*“20. Therefore, when a petition is filed against an order of the Wakf Tribunal before the High Court, the High Court exercises the jurisdiction under Article 227 of the Constitution of India. Therefore, it is wholly immaterial that the petition was titled as a writ petition. It may be noticed that in certain High Courts, petition under Article 227 is titled as writ petition, in certain other High Courts as revision petition and in certain others as a*

*miscellaneous petition. However, keeping in view the nature of the order passed, more particularly in the light of proviso to sub-section (9) of Section 83 of the Act, the High Court exercised jurisdiction only under the Act. The jurisdiction of the High Court is restricted to only examine the correctness, legality or propriety of the findings recorded by the Wakf Tribunal. The High Court in exercise of the jurisdiction conferred under proviso to sub-section (9) of Section 83 of the Act does not act as the appellate court.*

*21. We find merit in the argument raised by Mr. Sanyal that the nomenclature of the title of the petition filed before the High Court is immaterial. In Municipal Corporation of the City of Ahmedabad Vs. Ben Hiraben Manilal, this Court held that wrong reference to the power under which an action was taken by the Government would not per se vitiate the action, if the same could be justified under some other power whereby the Government could lawfully do that act. The Court held as under:*

*“5. ....It is well settled that the exercise of a power, if there is indeed a power, will be referable to a jurisdiction, when the validity of the exercise of that power is in issue, which confers validity upon it and not to a jurisdiction under which it would be nugatory, though the section was not referred, and a different or a wrong section of different provisions was mentioned. See in this connection the observations in Pitamber Vajirshet Vs. Dhondu Navlapa [ILR (1888) 12 Bom 486, 489]. See in this connection also the observations of this Court in the case of L. Hazari Mal Kuthiala Vs. ITO, Special Circle, Ambala Cantt [AIR 1961 SC 200 : (1961) 1 SCR 892 : (1961) 41 ITR 12, 16 :*

(1961) 1 SCJ 617] This point has again been reiterated by this Court in the case of *Hukumchand Mills Ltd. Vs. State of M.P.* [AIR 1964 SC 1329 : (1964) 6 SCR 857 : (1964) 52 ITR 583 : (1964) 1 SCJ 561] where it was observed that it was well settled that a wrong reference to the power under which action was taken by the Government would not per se vitiate that action if it could be justified under some other power under which Government could lawfully do that act. See also the observations of the Supreme Court in the case of *Nani Gopal Biswas Vs. Municipality of Howrah* [AIR 1958 SC 141 : 1958 SCR 774, 779 : 1958 SCJ 297 : 1958 Cri LJ 271].”

**22. Later, in *Pepsi Foods Ltd.*, this Court held that nomenclature under which the petition is filed is not quite relevant and it does not debar the Court from exercising its jurisdiction which otherwise it possesses. If the Court finds that the appellants could not 16 (1983) 2 SCC 422 invoke its jurisdiction under Article 226, the Court can certainly treat the petition as one under Article 227 or Section 482 of the Code. This Court held as under:**

“26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate

*relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.”*

9. Learned counsel for the petitioner, therefore, submits that nomenclature of a petition, which is either under Article 226 or under Article 227, is immaterial and it is the nature of order under challenge that would govern the proceedings and would not debar the Court exercising its jurisdiction, either under Article 226 or under Article 227 of the Constitution of India.

10. Sri Ashish Mishra further submits that irrespective of nomenclature of the petition, the contents of the application dated 24.12.2021 and the prayer made therein can very well be examined by this Court leaving the question of maintainability of the writ petition to be considered at any subsequent stage.

11. I have heard learned counsel for the parties and perused the record.

12. The present writ petition has been filed with the prayer to call for the records pertaining to the impugned order dated 24.08.2017 passed by the First Additional District Judge, Gautam Budh Nagar in Misc. Civil Appeal No.54 of 2016. Further prayer is to quash the impugned order dated 24.08.2017. The court of First Additional District Judge, Gautam Budh Nagar, vide impugned order dated 24.08.2017, while allowing the appeal filed by the private respondents (herein) remanded the matter to the Estate Officer for holding fresh proceedings.

13. This Court, at this stage, is examining the application dated 24.12.2021 and finds that the grievance of the petitioner is to the effect that irrespective of the services/engagements of the private respondents, those occupants who have attained age of superannuation i.e. 60 years, should be directed to vacate the official accommodations. It has been pleaded in paragraph 9 of the application that respondent no.3 (Akbar) and respondent no.6 (Ranvir Singh) have attained age of superannuation, and therefore, they may be directed to vacate the premises for the reason that dwelling units in the petitioner establishment are limited in numbers and several regular employees of the petitioner establishment are seeking accommodation in the premises, however, due to the continuous occupation of the premises by the respondents, the same are not being vacated, causing great and irreparable prejudice to other employees of the petitioner establishment.

14. Though, by order dated 14.3.2023, this Court granted time to the learned counsel for the respondents to file counter affidavit to the application dated 24.12.2021, no counter affidavit has been filed, and therefore, the facts mentioned in the affidavit supporting application no.14 of 2021 remain unrebutted, at least insofar as superannuation of certain persons is concerned.

15. The submission of Sri Rahul Jain to the effect that since the writ petition is not maintainable, the present application can also not be considered has been examined by this Court and I find that whether the order impugned in the writ petition which has been passed in exercise of powers under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 can

be interfered with in exercise of powers under Article 226 or 227 of the Constitution of India, is a matter to be examined by the Court while finally hearing the present writ petition on merits or on the question of maintainability as well.

16. Insofar as Application No.14 of 2021 is concerned, its adjudication is not dependent upon the nomenclature of the petition, that is to say that whether the present writ petition which has been filed under Article 226 of the Constitution of India needs to be converted into a petition under Article 227 or whether the Court hearing the present writ petition as it is, can exercise powers under Article 227, is not significant at this stage.

17. The Court is considering the fact as to whether the respondents, who claim to be employees of the petitioner establishment which fact has been seriously disputed by the petitioner in the light of the averments relating to nature of engagement of the respondents, have any right to remain in occupation of the official accommodations even after attaining age of superannuation.

18. Sri Rahul Jain does not dispute the fact that some of the respondents have attained age of superannuation. Further, he submits that reason for not vacating the official accommodations is that the petitioner establishment has not cleared off the financial dues admissible to the said respondents, which include their post retiral benefits.

19. Learned counsel for the petitioner, Sri Ashish Mishra submits that question of payment of any remuneration/ sums/ arrears/post retiral dues, if any, would

constitute a separate cause of action, but under no circumstances, it can be taken as a ground for not vacating the premises. He further submits that proceedings in relation to payment of alleged dues are pending in a different forum.

20. Having heard learned counsel for the parties, this Court is of the opinion that insofar as prayer made in the application is concerned, the relief can be granted or denied irrespective of final adjudication of the controversy. **This Court, either sitting in jurisdiction under Article 226 or under Article 227 of the Constitution of India, cannot ignore the fact that respondents are occupying official accommodations, which they claim to be associated with their services, and therefore, admittedly, those respondents who have attained the age of superannuation, cannot be allowed to remain in occupation in the accommodations, irrespective of the nature of their services or even on the ground that certain sums allegedly payable to them remain unpaid to them.**

21. **The High Court, in whatever jurisdiction it sits, always functions on the basic principles of equity, fairness and reasonableness, and therefore, the stand of the petitioner- Bharat Heavy Electricals Limited to the effect that scarcity of official accommodations is causing grave problems for the establishment as well as their regular employees on account of non vacation of the premises by the retired respondents, needs consideration and cannot be ignored merely on the ground that the writ petition finally has to be heard either under Article 226 or under Article 227 of the Constitution of India.**

22. In view of the above discussion, the application is **allowed**. The respondents who have attained age of superannuation, i.e. 60 years, shall vacate the premises under their occupation on or before 15.07.2023. In case, such respondents fail to vacate the premises under their occupation and hand over peaceful and vacant possession to the petitioner, it shall be open for the petitioner to seek assistance from the police and District Administration to use necessary force for their eviction.

23. This order shall not come in the way of respondents to claim appropriate reliefs before any other forum in relation to their grievance for non payment of any sum, which aspect is beyond the scope of present writ petition.

24. The application is, accordingly, **allowed** in above terms.

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**(2023) 5 ILRA 1510**  
**APPELLATE JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 21.03.2023**

**BEFORE**

**THE HON'BLE DR. KAUSHAL JAYENDRA THAKER, J.**

First Appeal From Order No. 719 of 1997

**Sri Hoti Lal & Ors. ...Appellants**  
**Versus**  
**Lakhpat Singh & Ors. ...Respondents**

**Counsel for the Appellants:**  
 Sri Madhav Jain

**Counsel for the Respondents:**  
 Sri Subhash Chandra Srivastava, Sri S.K. Mehrotra

**Motor accident claim - Accident occurred on 14.05.1985. Deceased was a 25-year-**