



GAHC010016492024



THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT PETITION (C) No. 558/2024

1. Abad Ali, aged about 67 years, S/o Late Altazuddin Sk.
2. Bonda Sk @ Aminur Islam, aged about 38 years, S/o Abad Ali.
3. Anisul Hoque @ Anisul Islam, aged about 27 years, S/o Abad Ali
4. Laden @ Asmabin Laden, aged about 23 years, S/o Abad Ali

All are residents of Village – Bazruk Manikpur, P.O. & P.S. – Krishnai, District – Goalpara, Assam

.....Petitioners

-Versus-

1. The State of Assam represented by Secretary to the Government of Assam, Revenue & Disaster Management, Dispur, Guwahati-6.
2. The Deputy Commissioner, Goalpara, P.O. & P.S. – Goalpara, District – Goalpara, Assam.



3. The Circle Officer, Matia Revenue Circle, P.O. & P.S. – Matia, District – Goalpara, Assam.
4. Md. Afaz Ali, S/o Late Altazuddin Sk, Village – Bazruk Manikpur, P.O. & P.S. – Krishnai, District – Goalpara, Assam.

.....*Respondents*

Advocates :

Petitioners : Mr. M. Dutta, Advocate
Respondent no. 1 : Mr. B. Goswami, Additional Advocate General
Ms. N. Goswami, Standing Counsel,
Revenue & Disaster Management Department.
Respondent nos. 2 & 3 : Mr. H. Sharma,
Additional Senior Government Advocate, Assam
Date of Hearing, Judgment & Order : 27.02.2024

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

Being aggrieved by and dissatisfied with a Judgment and Order dated 26.04.2022 passed by the learned Special Tribunal [Land Grabbing] at Goalpara in Land Grabbing Case no. 45/2016, the petitioners, 4 [four] in nos., who were respondents in the said case, have sought to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. In this writ petition filed under Article 226 of the Constitution of India, the petitioners have sought for issuance of a writ in the nature of Certiorari for setting aside and quashing of the Judgment and



Order dated 26.04.2022 passed by the Special Tribunal [Land Grabbing] at Goalpara in Land Grabbing Case no. 45/2016.

2. The events which have led the petitioners to institute the present writ proceeding can be narrated, in brief, at first.

3. One Md. Afaz Ali, who has been impleaded as the party-respondent no. 4 in the present writ petition, filed a complaint under Section 4 read with Section 5 of the Assam Land Grabbing [Prohibition] Act, 2010 before the Special Tribunal [Land Grabbing] at Goalpara for taking cognizance of land grabbing against the respondents impleaded therein, who are the petitioners herein, to punish them and to restore peaceful possession of the land alleged to be grabbed. As per the complaint, the plot of land allegedly grabbed is a plot of land measuring 3 Bighas 2 Kathas 5 Lessas, covered by Dag no. 154[Old]/70 [New] & Patta no. 368 [New] of Khatian no. 188, situate at Village – Hadi Gaon, Matia Revenue Circle, District – Goalpara [hereinafter referred to as 'the subject-land', for short]. On receipt of the complaint by the Special Tribunal [Land Grabbing] at Goalpara [hereinafter referred to as 'the Special Tribunal', for short], the same had been registered as Land Grabbing Case no. 45/2016. After registration of the land grabbing case, the respondents therein were put to notice and after receipt of notice, the respondents entered their appearances. After submission of pleadings, the learned Special Tribunal framed eight nos. of issues for discussion. During the course of trial, the complainant examined three nos. of witnesses as P.W.1, P.W.2 & P.W.3 and adduced documentary evidence in the form of five nos. of documents. The respondents did not adduce any evidence in defence. After closure of evidence from both the sides, the learned Special Tribunal had recorded the findings in favour of the complainant in respect of all the issues framed and reached an opinion that the complainant would be entitled to the reliefs prayed for. Accordingly, the learned Special Tribunal passed a Judgment and Order dated 26.04.2022 against the respondents. The operative parts of the Judgment and Order dated 26.04.2022 read as under :-



28. The respondents are found to be 'land grabbers' as defined under Section 2[d] of the Act & they are liable to be prosecuted for commission of an offence under Section 4 of the Act. Further, the Petitioner shall be put into possession of Schedule/suit land after expiry of the Appeal period. That apart, the Petitioner shall be compensated by the respondents for illegal possession of Schedule land since last 7 years which is quantified @ Rs. 1 lac. In the event of failure of the respondents to pay, it shall be recovered from them as arrears of land revenue. Prepare decree accordingly.
4. In the present proceedings, an issue has arisen as to whether a writ petition under Article 226 of the Constitution of India seeking issuance of a writ in the nature of Certiorari will be maintainable against a judgment and order of a Special Tribunal [Land Grabbing], constituted under the provisions of the Assam Land Grabbing [Prohibition] Act, 2010, deciding the civil liability.
5. In order to decide the issue, it appears necessary to have a look at the relevant provisions of the Assam Land Grabbing [Prohibition] Act, 2010 [hereinafter referred to as 'the Land Grabbing Act', for short].
- 5.1. The Assam Land Grabbing [Prohibition] Act, 2010 [Assam Act No. XXI of 2011] received the assent of the President on 28.10.2011 and the same was published in the Assam Gazette Extra Ordinary in its issue dated 18.11.2011. In the Preamble of the Land Grabbing Act, it is mentioned that the Land Grabbing Act has been enacted to arrest and curb unlawful activities of land grabbing in an immediate manner as there are organized attempts on the part of certain lawless persons operating individually and in groups to grab, either by force or by deceitful means or otherwise, lands whether belonging to the Government, a Public Sector Undertaking, a local authority, a religious or charitable institution or endowment, including a wakf or any other private persons or a site of historical monuments etc. The Preamble has stated that public order is affected by such unlawful activity of land grabbers. The Land Grabbing Act has been extended, by Section 1[2], to the



whole of Assam except the Autonomous districts of Karbi Anglong, Dima Hasao and the Bodoland Territorial Council Area.

5.2. The definitions of 'land grabber' and 'land grabbing' are provided in Section 2[d] and Section 2[e] respectively of the Land Grabbing Act. As per Section 2[d], 'land grabber' means a person or a group of person who occupy or attempt to occupy with or without the use of force, threat, intimidation and deceit, land over which he or they have no ownership, title or physical possession and includes any person who gives financial aid to any person or group of 'persons for taking up illegal possession of land over which he or they have no ownership or title and for construction of unauthorized structures thereon, or who abets the doing of any of the above mentioned acts, and also includes the successors-in-interests. 'Land grabbing', as defined in Section 2[e], means every activity of land grabber to occupy or attempting to occupy with or without the use of force, threat, intimidation and deceit, any land [whether belonging to the Government, a Public Sector undertaking, a local authority, a religions or charitable institution or endowment, including a wakf or any other private person] over which he or they have no ownership, title or physical possession, without any lawful entitlement and with a view to illegally taking possession of such land or creating illegal tenancies or lease or licence, agreements or by constructing unauthorised structures thereon for sale or hire or use or occupation of such unauthorized structures and the term 'grabbed land' shall be construed accordingly. Section 2[h] and Section 2[i] have provided for the definitions of 'Special Tribunal' and 'Special Court' respectively. As per Section 2[h], 'Special Tribunal' means a Court of the District & Sessions Judge, having jurisdiction over the area, and includes the Additional District & Sessions Judge. As per Section 2[i], 'Special Court' means a Special Court constituted under Section 14 of the Land Grabbing Act.

5.3. As the provisions of Section 3, Section 4, Section 5, Section 7, Section 8, Section 9, Section 10, Section 13, Section 14[1], Section 14[2], Section 14[3] and Section 16



are also of relevance and import, the same are quoted herein below for ready reference :-

3. Land Grabbing to be unlawful –

Land grabbing in any form is hereby declared unlawful and any act connected with or arising out of land grabbing shall be a cognizable offence under the Code of Criminal Procedure, 1973 and punishable under this Act.

4. Prohibition of land grabbing –

[1] No person shall commit or cause to be committed land grabbing.

[2] No person shall, on or after the commencement of this Act, continue to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, State Government Undertaking, local authority, religious or charitable institution or endowment including a wakf, or other private person.

[3] Whoever contravenes the provisions of sub-section [1] or sub-section [2] shall be guilty of an offence punishable under this Act and on conviction, be punished with imprisonment for a term not less than two years, which may extend to five years and with fine which may extend to twenty five thousand rupees.

5. Penalty for other offence in connection with land grabbing –

Whoever, with a view to grabbing land in contravention of the provisions of this Act or in connection with any such land grabbing,-

[a] sells or allots, or offers or advertises for sale or allotment, or has in his possession for the purpose of sale or allotment, any land grabbed;

[b] instigates or incites any person to commit land grabbing;

[c] uses any land grabbed or causes or permits knowingly to be used, for purpose connected with sale or allotment; or

[d] causes or procures or attempts to procure any person to do any of the above mentioned acts shall, on conviction be punished with imprisonment for a term not less than two years which may extend to five years and with fine which may extend to twenty five thousand rupees.



Provided that if in the opinion of the Special Tribunal, any application filed before it is *prima facie* frivolous or vexatious, it shall reject such application without any further enquiry.

- [5] The Special Tribunal shall, by notification to be affixed in the office premises of the Special Tribunal, office notice Boards of the Deputy Commissioner's office and the office of the concerned Circle office under whose jurisdiction the land alleged to have been grabbed is situated, specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Tribunal from any person including the custodian of evacuee property within the period specified therein will be considered by it :

Provided that where the custodian of the evacuee property objects to the Special Tribunal taking cognizance of the case, the Special Tribunal shall not proceed further with the case in regard to such property :

Provided also that the Special Tribunal shall cause a notice of taking cognizance of the case under this Act served on any person known or believed to be interested in the land, after a preliminary enquiry to satisfy itself about the person likely to be interested in the land. Any objection received by the Special Tribunal from any person within the period specified will be considered by it.

- [6] Notwithstanding anything contained in the Code of Criminal Procedure, 1973, it shall also be lawful for the Special Tribunal to frame charge and try all offences punishable under this Act, if in the opinion of the Special Tribunal it is so necessary ***after delivery of its decision and order in the civil liability*** where prima-facie it appears to the Special Tribunal that a particular person or a group of persons are responsible for commission of an offence of land grabbing punishable under this Act.
- [7] ***Every finding of the Special Tribunal in a trial under this section with regard to any alleged act of land grabbing, ownership and title to, or possession of the land grabbed shall be conclusive proof of the fact of land grabbing, and of the persons who committed such land grabbing, and every Judgement of the Special Tribunal with regard to the determination of title and ownership to or lawful possession of any***

grabbed land shall be binding on all persons having interest in such land.

[8] Every case under sub-section [1] shall be disposed of by the Special Tribunal as far as possible within a period of twelve months from the date of institution of the case before it and a proceeding under sub-section [6] shall be disposed of as far as possible within a period of six months from the date of framing of the charges against the person or persons responsible for alleged commission or abetment of the offence punishable under this Act.

[9] It shall be lawful for the Special Tribunal to pass such order as it may deem fit in the interest of justice. It may award compensation in terms of money for wrongful possession of the grabbed land which shall not be less than an amount of equivalent to the market value of the land so grabbed as on the date of the order and the profits accrued from the land, payable by the land grabber to the owner of the grabbed land and ***may direct redelivery of possession of such land to its rightful owner.*** The amount of compensation and profits, so awarded and cost of redelivery, if any, ***shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a Civil Court in any other cases.*** It may also impose such punishment to a land grabber for Commission of any offence punishable under this Act.

9. ***Special Tribunal to have the powers of the Civil Court and the Court of Session –***

Save as expressly provided in this Act, ***the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Tribunal mutatis mutandis and for the purpose of the provisions of the said enactment, Special Tribunal shall be deemed to be a Civil Court, or as the case may be, a Court of Session and shall have all the powers of a Civil Court and a Court of Session and the person conducting a prosecution before the Special Tribunal shall be deemed to be a Public Prosecutor.***

10. ***Procedure to be followed by Special Tribunal –***

- [1] ***Save as otherwise provided in this Act, a Special Tribunal shall, in the trial of case relating to any alleged act of land grabbing, or with respect to the ownership and title to, or lawful possession of the land grabbed, whether before or after the commencement of this Act, which involves civil liability, follow the procedure prescribed in the Code of Civil Procedure, 1908 and in the trial of cases relating to alleged offence of land grabbing involving punishment prescribed under this Act, follow the procedure of the Code of Criminal Procedure, 1973.***
- [2] ***After taking cognizance of a case under sub-section [2] of Section 8, the Special Tribunal shall try and dispose of the civil liability at first and decide and pass order as to the title, ownership and lawful possession of the grabbed land whether before or after the commencement of this Act as it deems fit. After completion of the civil proceeding, if the Special Tribunal decides and pass order that the land in question has been grabbed, the Special Tribunal may order that the possession of the land be restored to the person whose land has been grabbed after evicting the land grabber or any other person who may be in possession of the land, if necessary by use of such force as may be required for the purpose :***

Provided that ***execution of the order for restoration of the possession of the grabbed land*** shall not be made till expiration of the period of appeal provided under Section 13 of the Act. If within a reasonable time after the expiry of the appeal period no order of stay of execution has been received from the Special Court or produced before the Special Tribunal by any of the parties to the case, the ***Special Tribunal shall proceed for execution of its order*** and simultaneously frame charge against the land grabber to prosecute him for the alleged act of land grabbing :

Provided further that in the event of preferring an appeal from the order of the Special Tribunal before the Special Court where stay of execution of the order has been made by the Special Court, the Special Tribunal shall not further proceed in the proceeding to prosecute the land grabber till final disposal of the appeal by the Special Court :

Provided also that after hearing the appeal, if the Special Court decides the appeal against the alleged land grabber, in that event charge for prosecution



against the land grabber shall be framed by the Special Tribunal and proceed with the criminal proceeding for prosecution of the land grabber.

[3] The evidence admitted during the civil proceeding may be made use of while trying the criminal proceeding in addition to the additional evidence adduced by the parties in the criminal proceeding.

[4] Any person, accused of land grabbing or the abetment thereof before the Special Tribunal, shall be a competent witness for the defence and may give evidence on oath in disproof of the charge made against him, or any person charged together with him in the criminal proceeding :

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made a subject of any comment by any of the parties or the Special Tribunal or give rise to any presumption against himself or any person charged together with him at the same proceeding.

[5] ***The Special Tribunal shall, before passing an order under this Act give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard, and consider every such representation and evidence.***

13. ***Appeal –***

[1] ***Any person, aggrieved by the Judgement and order [not being an interlocutory order] of the Special Tribunal, may prefer an Appeal before the Special Court on any question of law or of fact.*** Notwithstanding anything to the contrary contained in the Limitation Act, 1963, an appeal under this section shall be preferred it within a period of sixty days from the date of passing of the Judgement and order by the Special Tribunal.

[2] ***Separate Appeal shall lie against the respective judgement and order of the Special Tribunal passed in respect of the civil proceeding as well as in criminal proceedings respectively under this Act*** and the period of sixty days shall be reckoned from the respective date of Judgement and order passed in each of the proceedings.

[3] The Special Court shall dispose of the appeal within a period of six months from the date of filing the appeal and forward a copy of the order to the



concerned Special Tribunal under whose jurisdiction the grabbed land is situated for their taking necessary action, if any.

14. Constitution of the Special Court –

- [1] The Government shall, for the purpose of entertaining and disposal of appeals arising out of any Judgement and order of the Special Tribunal, by notification published in the Official Gazette, constitute a Special Court for the whole of the State of Assam
- [2] A Special Court shall consist of a Chairman and two other members to be appointed by the Government.
- [3] The Chairman shall be a person who was or has been a Judge of the High Court and of the other two members, one shall be a person who was or has been a District & Sessions Judge [hereinafter referred to as Judicial Member] and other shall be a person who was or has been a member of the Indian Administrative Service holding or has held a post not below the rank of Secretary to the Government with Special Knowledge or experience in revenue matters [hereinafter referred to as a Revenue Member] :

Provided that the appointment of a person who was a Judge of the High Court as the Chairman or a District & Sessions Judge as a member respectively of the Special Court shall be made after consultation with the Chief Justice of the Gauhati High Court :

Provided further that where a sitting Judge of the High Court is to be appointed as a Chairman such appointment shall be made after nomination by the Chief Justice of the Gauhati High Court with the concurrence of the Chief Justice of India.

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- [4] * * * * *
- [5] * * * * *
- [6] * * * * *

16. **Special Court to have the powers of the Civil Court and the Criminal Court – Save as expressly provided in the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, in so far as they are not**



inconsistent with the provisions of this Act, shall apply to the proceeding before the Special Court mutatis mutandis and for the purposes of the provisions of this Act, the Special Court shall be deemed to be a Civil Court, or as the case may be, a Criminal Court and shall have all the powers of a Civil Court and a Criminal Court competent to hear and dispose of Appeal. The persons conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

[emphasis supplied in bold & italics]

6. From an analysis of the afore-stated provisions of Land Grabbing Act, it is demonstrated that the Special Tribunal is the Court of District & Sessions Judge having jurisdiction over the area and the Special Tribunal also includes the Additional District & Sessions Judge having jurisdiction over the area. The District & Sessions Judge and the Additional District & Sessions Judge are pre-existing judicial authorities for the purpose of deciding disputes in a judicial manner and to declare rights of parties in definitive judgments.
7. It is trite to say that all tribunals are not courts though all courts are tribunals. Ordinarily, by courts, the courts of civil judicature are meant and by tribunals, those bodies of men appointed to decide controversies arising under certain special laws are referred to. The Legislature can enact a law transferring the jurisdiction exercised by the ordinary courts in regard to any specified subject to any tribunal. It has been held in *Associated Cement Companies Limited vs. P.N. Sharma & another, [1965] 2 SCR 366*, to the effect that under the Constitution, the judicial functions and the powers of the State have been primarily conferred on the ordinary courts and they are normally entrusted to adjudicate all disputes between citizens and citizens as well as between the citizens and the State. The powers which the courts exercise are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions. The tribunals decide special matters entrusted to them for their decisions. The procedure which the tribunals have to follow may not always be strictly prescribed but the approach adopted by both the courts and the tribunals is substantially the



same; it is the State's judicial function which they discharge. It has been observed in *Virindar Kumar Satyawadi vs. State of Punjab*, reported in *AIR 1956 SC 153*, that the distinction of a court from a quasi-judicial tribunal is that a court is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. It 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 arises as to whether the 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.

8. As per Section 9 of the Land Grabbing Act, the Special Tribunal has been provided with the powers of the Civil Court and the Court of Sessions. It has been laid down to the effect that save as expressly provided in the Land Grabbing Act, the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of the Land Grabbing Act, shall apply to the proceedings before the Special Tribunal *mutatis mutandis* and for the purpose of the provisions of the said enactment, the Special Tribunal shall be deemed to be a Civil Court, or as the case may be, a Court of Session and shall have all the powers of a Civil Court and a Court of Session.
9. Section 10 of the Land Grabbing Act has mandated that save as otherwise provided in the Act, a Special Tribunal shall, in the trial of case relating to any alleged act of land grabbing, or with respect to the ownership and title to, or lawful possession of the land grabbed, which involves civil liability, follow the procedure prescribed in the Code of Civil Procedure, 1908 and in the trial of cases relating to alleged offence of land grabbing involving punishment prescribed under the Land Grabbing Act, follow the procedure of the Code of Criminal Procedure, 1973. Every finding of the Special Tribunal in a trial under Section 8 with regard to any alleged act of land



grabbing, ownership and title to, or possession of the land grabbed shall be conclusive proof of the fact of land grabbing, and of the persons who committed such land grabbing, and every Judgment of the Special Tribunal with regard to the determination of title and ownership to or lawful possession of any grabbed land shall be binding on all persons having interest in such land. The Special Tribunal can frame charges and try all offences punishable under the Land Grabbing Act, if in the opinion of the Special Tribunal it is so necessary after delivery of its decision and order in the civil liability where *prima facie* it appears to the Special Tribunal that a particular person or a group of persons are responsible for commission of an offence of land grabbing punishable under the Land Grabbing Act. As per sub-section [9] of Section 8 of the Land Grabbing Act, it shall be lawful for the Special Tribunal to pass such order as it may deem fit in the interest of justice. It may award compensation in terms of money for wrongful possession of the grabbed land which shall not be less than an amount equivalent to the market value of the land so grabbed as on the date of the order and the profits accrued from the land, payable by the land grabber to the owner of the grabbed land and may direct redelivery of possession of such land to its rightful owner. The amount of compensation and profits, so awarded and cost of redelivery, if any, shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a Civil Court in any other cases. It may also impose such punishment to a land grabber for commission of any offence punishable under the Land Grabbing Act. As per sub-section [5] of Section 10, Special Tribunal shall also have to give an opportunity to the alleged land grabber of making his representation or of adducing evidence, if any, in this regard and consider every such representation and evidence, before passing an order under the Land Grabbing Act to decide the civil liability in the civil proceeding as per the procedure prescribed in the Code of Civil Procedure, 1908 and also to decide the criminal liability in the criminal proceeding as per the procedure prescribed in the Code of Criminal Procedure, 1973.

10. Section 13 has provided for appeal. As per sub-section [1] of Section 13, any person, aggrieved by the Judgment and Order [not being an interlocutory order] of



the Special Tribunal, may prefer an Appeal before the Special Court on any question of law or of fact. Notwithstanding anything to the contrary contained in the Limitation Act, 1963, an appeal under this section is to be preferred within a period of sixty days from the date of passing of the Judgment and order by the Special Tribunal. As per the provisions of sub-section [2] of Section 13, there shall be separate appeal against the respective judgment and order of the Special Tribunal passed in respect of the civil proceeding and in respect of the criminal proceedings respectively under the Land Grabbing Act and a period of limitation of sixty days for preferring an appeal from the respective date of Judgment and Order from the civil proceeding and the criminal proceeding has been provided for.

11. From the above, it is evident that the Special Tribunal is the Court of District and Sessions Judge as well as the Additional District and Sessions Judge, which are pre-existing judicial authorities. The Special Tribunal in the civil proceeding, can decide the civil liability and in the criminal proceeding, can decide the criminal liability. The provisions of the Code of Civil Procedure, 1908 save as expressly provided in the Land Grabbing Act, are applicable *mutatis mutandis* and for all intents and purposes, the Special Tribunal is to be deemed to be a civil court. The phrase, '*mutatis mutandis*' implies applicability of any provision with necessary changes in points of detail. On the other hand, in a criminal proceeding, the provisions of the Code of Criminal Procedure, 1973 save as expressly provided in the Land Grabbing Act, are applicable and for intents and purposes, the Special Tribunal is deemed to be a Court of Sessions. While deciding the civil liability in the civil proceeding, the Special Tribunal has all the powers of the civil court and for deciding the criminal liability through the criminal proceeding, the Special Tribunal shall have all the powers of a Court of Sessions. While deciding the civil liability, the Special Tribunal can pass any order of compensation in terms of money for wrongful possession of the grabbed land and the amount of compensation etc. so awarded can be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a Civil Court in any other cases. Thus, by the deeming provision, the Special Tribunal while deciding the civil liability, is a civil court. The Legislature is



competent to create such legal fiction. The legal fiction incorporated in the Land Grabbing Act under the expression, 'for the purpose of the provisions of the said enactment' covers the entire Land Grabbing Act, save as expressly provided in the Land Grabbing Act. The adjudication as regards civil liability lies not in a particular presiding judge of a particular civil court but to the Court of the District and Sessions Judge which includes the Additional District and Sessions Judge. When a special law like the Land Grabbing Act has provided that an adjudication is to be made by a constituted court, that is, by a court not created by the special law, but by an existing court it enlarges the ordinary jurisdiction of such a court. When a special law refers to a constituted court as a court and does not refer to the presiding officer of that court the reference is not to a persona designata. A persona designata is a particular person selected for the specific purpose and is not in his capacity of holding a particular office. Thus, the Court of District and Sessions Judge which includes the Additional District and Sessions Judge, which as the Special Tribunal is entrusted to adjudicate the civil liability through civil proceeding as a civil court *qua* the allegation of land grabbing, is a court of ordinary civil jurisdiction while exercising such jurisdiction under the Land Grabbing Act.

12. When the aforesaid provisions of the Land Grabbing Act are considered in the context of the fact situation obtaining in the Land Grabbing Case no. 45/2016, it is evidently clear that the Judgment and Order dated 26.04.2022 has been rendered by the Special Tribunal deciding the civil liability in civil proceeding by following the provisions of the Code of Civil Procedure, 1908 as a civil court.
13. The issue which has, thus, fallen for consideration is whether in such obtaining fact situation, the Judgment and Order dated 26.04.2022 passed by the Special Tribunal can be challenged in a writ petition invoking the certiorari jurisdiction under Article 226 of the Constitution of India.
14. Article 226 of the Constitution of India is with regard to issuance of orders, writs or directions including writs in the nature of 'habeas corpus, mandamus, quo



warranto, prohibition and certiorari' as may be considered necessary for enforcement of the fundamental rights and for other purposes as well. In granting a writ of certiorari, the High Court does not exercise the powers of an appellate Court. It simply demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal or body or authority. Certiorari may lie and is generally granted when a tribunal or a body or an authority acts without or in excess of its jurisdiction. In ***T.C. Basappa vs. T. Nagappa***, reported in ***AIR 1954 SC 440***, the scope of certiorari jurisdiction under Article 226 against an order of a tribunal arose for consideration. It has been held that certiorari is meant to supervise 'judicial acts' which includes quasi-judicial functions of administrative bodies. The court issuing such writ in the nature of certiorari quashes patently erroneous and without jurisdiction order but the court in its certiorari jurisdiction does not review the evidence as an appellate court nor substitutes its own finding for that of the tribunal. The decision has referred to another decision in ***G. Veerappa Pillai vs. Raman & Raman Limited***, reported in ***AIR 1952 SC 192***, wherein it has been observed to the effect that the writs, referred to in Article 226, are intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. But in exercising such jurisdiction, the High Court does not convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made. No such challenge, as aforementioned, is made in the present writ petition.

15. The Hon'ble Supreme Court of India in a nine-Judges Bench decision in ***Naresh Shridhar Mirajkar vs. State of Maharashtra***, reported in ***AIR 1967 SC***, has held to the effect that certiorari does not lie to quash the judgments of inferior courts of civil jurisdiction. In ***Surya Dev Rai vs. Ram Chander Rai***, reported in ***[2003] 6***



SCC 675, it was observed that an order of the civil court was amenable to writ jurisdiction under Article 226 of the Constitution. In view of the nine-Judges Bench decision in *Naresh Shridhar Mirajkar* [supra], a two-Judges Bench in *Radhey Shyam vs. Chhabi Nath*, reported in [2009] 5 SCC 616, expressing disagreement with the said view given in *Surya Dev Rai* [supra], insofar as regards correction of or any interference with judicial orders of civil court by a writ of certiorari was concerned, had referred the issue to a larger bench by the reference order, reported in *Radhey Shyam vs. Chhabi Nath*, [2009] 5 SCC 616. The question which has therefore, fallen for consideration before a three-Judges Bench in *Radhey Shyam vs. Chhabi Nath*, reported in [2015] 5 SCC 423, is : Whether the view taken in *Surya Dev Rai* that a writ lies under Article 226 of the Constitution against the order of the civil court, which has been doubted in the reference order, is the correct view?

16. The three-Judges Bench in *Radhey Shyam vs. Chhabi Nath*, [2009] 5 SCC 616, has referred to the majority view given in the nine-Judges Bench decision in *Naresh Shridhar Mirajkar* [supra], wherein, it is held that a judicial order of a competent court could not violate a fundamental right and even if there is any incidental violation, it could not be held to be violative of the fundamental right. What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. After making reference also to other judgments, the three-Judges Bench has observed that a challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Article 226 or under Article 32. It has been further observed in *Radhey Shyam vs. Chhabi Nath*, [2009] 5 SCC 616, that Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. After analyzing the provisions of Article 226 and Article 227 of the Constitution and the ratio laid down in the nine-Judges Bench in *Naresh Shridhar*



Mirajkar [supra] and other decisions, the reference has been answered as follows :-

- 29.1. Judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution;
 - 29.2. Jurisdiction under Article 227 is distinct from jurisdiction from jurisdiction under Article 226.
 - 29.3. Contrary view in *Surya Dev Rai*, [2003] 6 SCC 675, is overruled.
17. In the three-Judges Bench decision in ***Life Insurance Corporation of India vs. Nandini J. Shah and others***, reported in [2018] 15 SCC 356, the question arose was whether an order passed by the Appellate Officer in exercise of power under Section 9 of the Public Premises [Eviction of Unauthorised Occupants] Act, 1971 [‘the 1971 Act’, for short], was in the capacity of a civil court or a persona designata. It has been held that the District Judge who is a pre-existing authority and head of the judiciary within the district, discharges judicial power of the State and 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, as it is a pre-existing judicial authority. Such a pre-existing judicial authority, by implication, would be bound to follow the procedure underlined the 1971 Act and the concerned Civil Courts Act and also observe the doctrine of fairness in affording opportunity. It has also taken note of the fact that under the 1971 Act, 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 the requisite qualifications designated for that purpose. It has been held that 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.



18. In another three-Judges Bench decision in **Ram Kishan Fauji vs. State of Haryana**, reported in [2017] 5 SCC 533, the following observations have been made :-

41. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of the civil court can only be challenged under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in the 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 :-

* * * * *

42.3. A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be 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.

* * * * *

19. The jurisdiction exercised under Article 226 and Article 227 have also come for discussion in **Shalini Shyam Shetty and another vs. Rajendra Shankar Patil**, reported in [2010] 8 SCC 329. While observing that Article 226 and Article 227 stand on substantially different footing, the Court in **Shalini Shyam Shetty** [supra], has observed as under :-

47. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields. Another distinction between these two jurisdictions is that under Article 226, the High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from



annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made.

48. The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court *suomotu* as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed *ex debito justitiae* or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra-court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

20. The present writ petition has been preferred by styling it as a writ petition under Article 226 of the Constitution of India on the premise that though there is a provision for appeal under Section 13 of the Land Grabbing Act, the Special Court which can entertain and dispose of an appeal arising out of any judgment of the Special Tribunal, deciding either the civil liability or the criminal liability, has not been constituted by the Government till date. It may be reiterated that as per sub-section [1] of Section 14 of the Land Grabbing Act, the Government is, for the purpose of entertaining and disposal of appeals arising out of any Judgment and order of the Special Tribunal, is required to constitute a Special Court for the whole of the State of Assam by a notification published in the Official Gazette.



21. It is in view of non-constitution of the Special Court under Section 14 of the Land Grabbing Act, the petitioners herein, who were respondents in Land Grabbing Case no. 45/2016 have contended that they have preferred the instant writ petition under Article 226 of the Constitution of India on the premise that the appellate remedy which ought to have been made available to them under Section 13 of the Land Grabbing Act, has not been made available to them.

22. The law is settled that right of appeal is a creature of statute and it is for the Legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. Right of appeal which is statutory right can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed. It cannot be said that such a law would be violative of Article 14 of the Constitution of India. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of a civil nature unless the suit is barred by statute, however, in regard to an appeal, position is quite opposite. The right to appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. When such a law authorises filing of appeal, it can impose conditions as well. [Ref : ***Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation of the City of Ahmedabad and others***, reported in **[1999] 4 SCC 468**]. The right of appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right of appeal can be circumscribed by the conditions in the grant.

23. The non-constitution of the Special Court as an appellate forum by the State Government by way of notification in the Official Gazette under Section 16 of the Land Grabbing Act, has created a situation for the purpose of the case in hand that there is no appellate forum till date for the petitioners herein to agitate against the Judgment and Order dated 26.04.2022 deciding the civil liability. Such a situation is akin to absence of a remedy of appeal. The Special Court which has been



empowered by Section 13 of the Act to entertain and dispose of appeals is also deemed to be a Civil Court or, as the case may be, a Criminal Court having all the powers of a Civil Court and a Criminal Court respectively by virtue of the deeming provision contained in Section 16 of the Land Grabbing Act.

24. From the discussion made above, this Court holds that the Judgment and Order passed by the Special Tribunal under the provisions of the Land Grabbing Act is a Judgment and Order of a civil court, in view of the deeming provisions contained in Section 9 of the Land Grabbing Act along with the provisions contained in Section 7, Section 8 and Section 10 thereof. This Court holds that a Judgment and Order of the Special Tribunal constituted under the Land Grabbing Act rendered by following the provisions of the Code of Civil Procedure, 1908 deciding the civil liability is a judicial order of a civil court and as such, a challenge to such an order is not maintainable in the writ jurisdiction under Article 226 of the Constitution by filing of a petition styled as a writ petition. In such view of the matter, the instant writ petition filed under Article 226 of the Constitution of India is found to be not maintainable in the present form.
25. In ***Shalini Shyam Shetty*** [supra], it has been observed that in any event, a petition under Article 227 cannot be called a writ petition. In ***Nandini J. Shah*** [supra], the respondents had resorted to remedy of writ petition under Articles 226 and 227 of the Constitution of India. In that context, it has been held in view of the finding that the order passed by the District Judge as an Appellate Officer under Section 9 of the 1971 Act is an order of the subordinate court, that the challenge thereto must ordinarily proceed only under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India.
26. Be that as it may. Rule 2 of Chapter IV-B [Rules for application] under Article 227[1] of the Constitution of India] of the Gauhati High Court Rules, as amended, has *inter alia* provided that an application under Article 227 is to be registered as Civil Revision Petition [CRP Art. 227].



27. At this stage, the learned counsel for the petitioner has beseeched that the present petition may be converted to a petition under Article 227 of the Constitution of India. As this Court has already held that a petition to challenge a judgment and order of the Special Tribunal constituted under the Land Grabbing Act deciding the civil liability, can only be maintainable in a petition under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India; and such a petition is to be registered as a Civil Revision Petition [CRP Art. 227], the prayer is found just and in the interest of justice. The Registry is therefore, to register this petition accordingly and to list the petition thereafter, before the appropriate bench.

JUDGE

Comparing Assistant