VENKATLAL G. PITTIE & ANR. A

*v.*

BRIGHT BROS. (PVT.) LTD.

JULY 21, 1987

[SABYASACHI MUKHARJI AND S. NATARAJAN, JJ.] B

*Constitution of India—Art. 227—Scope of interference by High Court with regard to findings of facts by lower courts and inferior tribunals.*

*Transfer of Property Act, 1882—Cl.(P) of s. 108—The question whether a structure put up by a tenant is a permanent one or not depends upon the facts of each case and no hard and fast rule can be laid down.* C

**The appellants, who had let out the premises in question to the respondent filed a suit for eviction *inter alia* on the ground that the tenant had erected unauthorised structures of a permanent nature in violation of the provisions of cl. (p) of s. 108 of the Transfer of Property Act, 1882 and s. 13(1)(b) of the Bombay Rents. Hotel and Lodging House Rates Control Act, 1974 and was using the premises for unauthorised purposes. The alleged permanent structures consisted of lofts and rooms which had been constructed by sinking pillars and stanchions into the flooring and the tenant admitted that these had been constructed after it had taken the premises from the landlord. After discussing the evidence tendered in detail, including the deposition of the architect who had prepared the plan of the constructions in question and who had deposed that the constructions consisted of permanent structures, the Judge of the Court of Small Causes held that the structures were of a permanent nature and ordered eviction of the tenant on the ground of permanent construction. The respondent's appeal was dismissed by the Appellate Bench of the Court of Small Causes which, on a detailed reappraisal of the evidence on record, not only confirmed the decree for eviction on the ground of permanent construction but granted eviction on the ground of change of user as well. The respondent went in appeal against the order of the appellate court. The High Court, dealing with the matter under Art. 227 of the Constitution, reversed the concurrent findings of the courts below and allowed the respondent's petition.** D E F G

**Allowing the appeal and restoring the order of the lower appellate court,** H

A HELD: 1. (a) Interference by the High Courts under Art. 227 of the Constitution must be within limits. This question has been considered by this Court from time to time and principles laid down. The power under Art. 227 is one of judicial superintendence and it cannot be exercised to upset the conclusions of facts, however erroneous these may be. It is possible that another Court may be able to take a different B view of the matter by appreciating the evidence in a different manner, if it determinedly chooses to do so. That will not be justice administered according to law to which courts are committed. [605D-E]

(b) In exercise of jurisdiction under Art. 227 of the Constitution, the High Court can go into questions of facts or look into the evidence if C justice so requires it. But the High Court should decline to exercise that jurisdiction to look into the facts in the absence of clear-cut reasons where the question depends upon the appreciation of evidence. The High Court should not interfere with a finding within the jurisdiction of the inferior tribunal or court except where the finding is perverse in law, in the sense that no reasonable person properly instructed in law D could have come to such a finding, or there is misdirection in law, or view of fact has been taken in the teeth of preponderance of evidence, or the finding is not based on any material evidence or it resulted in manifest injustice. Except to the extent indicated above the High Court has no jurisdiction. [606B-D]

E *Satyanarayan Laxminarayan Hegde & Ors.* v. *Mallikarjun Bhavanappa Tirumale,* [1960] 1 S.C.R. 890; *India Pipe Fitting Co.* v. *Fakruddin M.A. Baker & Anr.,* [1978] 1 S.C.R. 797; *Ganpat Ladha* v. *Shashikant Vishnu Shinde,* [1978] 3 S.C.R. 198; *Mrs. Labhkuwar Bhagwani Shah & Ors.* v. *Janardan Mahadeo Kalan & Anr.,* [1982] 3 S.C.C. 514 and *Chandavarkar Sita Ratna Rao* v. *Ashalata S. Guram,* F [1986] 4 S.C.C. 447; referred to.

2. No hard and fast rule can be laid down for determining the question whether a particular structure put up by the tenant is a permanent structure for the purpose of cl. (p) of s. 108 of the Transfer of Property Act. 1882 as it is dependent on the facts of each case. One must G look to the nature of the structure, the purpose for which it was intended and take a whole perspective as to how it affects the enjoyment, the durability of the building, etc. and other relevant factors and come to a conclusion. [601D-E; 602D-E]

*Surya Properties Private Ltd. & Ors.* v. *Bimalendu Nath Sarkar* H *& Ors.,* A.I.R. 1964 Calcutta 1 and *M/s Surya Properties Private Ltd.*

**v. *Bimalendu Nath Sarkar,* A.I.R. 1965 Calcutta 408, approved.** A

***Khureshi Ibrahim Ahmed* v. *Ahmed Haji Khanmahomad,* A.I.R. 1965 Gujarat 152 and *Ramji Virji & Ors.* v. *Kadarbhai Esufali,* A.I.R. 1973 Gujarat 110, referred to.**

**In this case, on an analysis of the evidence the trial court as well as the appellate court had held that the structures were permanent. All the relevant factors had been borne in mind by the learned trial Judge as well as the Appellate Bench of the Court of Small Causes. The view taken by them was a possible view. A different view might have been taken but that is no ground which would justify the High Court to interfere with the findings. [600F]** B C

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1955-56 of 1980.

From the Judgment and Order dated 3/4th July, 1979 of the Bombay High Court in Spl. C.A. Nos. 2052 of 1973 and 132 of 1974. D

F.S. Nariman, Anil B. Diwan, P.H. Parekh, Ms. Lata Krishnamurthy and S. Dutt with for the Appellants.

V.M. Tarkunde and H.G. Advani, Hira Advani Kailash Vasudev, Joel Peres and D.N. Misra for the Respondents. E

The Judgment of the Court was delivered by

**SABYASACHI MUKHARJI, J.** These appeals, by special leave, by the landlords are directed against the judgment and order of the High Court of Bombay dated 3/4th July, 1979. F

Two questions arise for consideration in these appeals—(i) whether the structure constructed by the tenant in the premises in question amounted to permanent structure leading to the forfeiture of the tenancy of the tenant; (ii) what is the scope and extent of the jurisdiction of the High Court under Article 227 of the Constitution on G questions of facts found by the appellate bench of Small Causes Court.

In order to appreciate these questions, it is necessary to reiterate the relevant facts. The second appellant being plaintiff no. 2 in the Original Suit leased out the premises involved herein being a godown measuring 11,500 sq. ft. at 156 A, Tardeo, Bombay-7. The said pre- H

A mises was given by the landlord to the tenant, the respondent herein—M/s Bright Brothers (Pvt.) Ltd. on lease vide the registered lease dated 14th April, 1947 for a period of ten years commencing from 1st September, 1946. By 1953, the respondent company began to fall into arrears in payment of rent. The respondent-tenant filed an application before the appropriate Rent Court for fixing the standard rent.

B

On 14th June, 1958, the advocate of the second appellant sent a notice to the respondent-tenant calling upon them to pay up the arrears for the period from September, 1956 to May, 1958 (both months inclusive), as well as for earlier arrears of rent of Rs.20,850. On 1st December, 1958 a second notice was issued on behalf of the original plaintiff no. 1 calling upon the respondent to quit and vacate C the premises in question on the grounds, *inter alia*, (a) unauthorised construction of permanent nature; (b) obstructing roadways; and (c) the damage to walls and floor, and further called upon them to remove the unauthorised construction and restore the suit premises to its original condition. Inasmuch as the main factual controversy in those appeD als relate to the nature of the construction alleged to have been made by the tenant, it is relevant to set out what was stated in that letter. It was, *inter alia,* stated that the tenant had unauthorisedly committed several breaches of the terms and conditions of the lease inasmuch as the tenant had erected unauthorised construction of a permanent nature and carried out additions to the demised premises without the E consent of the lessor or the receiver. It was further alleged that in breach of the terms and conditions of the agreement of tenancy and without the consent of the lessor or the receiver, the tenant had occupied portion of the land not let out to him by obstructing the lessor and the person entitled to use the same and had made construction on the roadway by obstructing and restricting the passage. It was F further alleged that the tenant had unauthorisedly and without permission dug up and mutilated the floors of the premises let out to the tenant and had constructed contrary to the provisions of section 108(o) of the Transfer of Property Act, 1882. The tenant was called upon to remove the said unauthorised structures and restore the property, and it was further notified that failing which the landlord would be compelG led to take proceedings.

A reply to the said notice issued by the Court Receiver was sent on 8th December, 1958 from the respondent company's advocate saying that the construction complained of had taken place with the consent and full knowledge of the appellant and the respondent company H. had spent thousands of rupees towards the improvement of the suit

premises. Further in reply to the allegation of damage to the property, the respondent company had alleged that it had in fact improved the property of the appellant. On or about 20th December, 1958, the advocate for the appellant replied to the above letter once again calling upon the respondent company to vacate the demised premises. A

In 1959, the standard rent application being R.A. No. 2214 of 1954 mentioned hereinbefore was dismissed. Thereupon, the respondent-tenant filed a civil revision application. The appellant filed a suit being suit no. 1450/8318 of 1959 on or about 31st July, 1959. On or about 8th December, 1965, the appellant made an application for amendment of the plaint to include change of user as an additional ground of eviction. The respondent also made an application for amendment to the effect that permanent structure had been made with the knowledge and consent of the appellant. The said admendments were allowed in December, 1965. B C

On or about 31st March, 1967, the trial court in suit no. 1450/8318 of 1959, ordered eviction of the tenant on the ground of permanent construction. Mesne profit from the date of the decree was also ordered. There was an appeal to the appellate bench before the Court of Small Causes and cross appeal being appeal nos. 323 and 629 of 1967. By the judgment delivered on 14th June, 1973, the division bench of the Court of Small Causes confirmed the decree for eviction on the ground of permanent construction and granted eviction on change of user as well in the cross objection filed by the appellant. It also ordered mesne profit from the date of the suit and the monetary claims to the extent of arrears. D E

The High Court on or about 3/4th July, 1979, by judgment and order of the High Court in SCA 2052 and 174 of 1974 under Articles 226 and 227 of the Constitution reversed the concurrent findings of the courts below and allowed the respondent company's application. Being aggrieved therefrom, the appellants, the landlords have come up in appeal to this Court. F

It is, first necessary therefore to consider the nature of the structures made and whether these were permanent or not. As stated hereinbefore that permanent structures were constructed was held by the two courts concurrently, namely the Judge of the Court of Small Causes as well as the Appellate Bench of the Small Causes Court; whether by such construction there has been change of user is another question. On the nature of the construction, it is necessary to refer to the decision of the trial court. G H

A The main question, however, in these appeals is the jurisdiction of the High Court to interfere with the findings of this nature under Article 227 of the Constitution. The principles are well-settled. Their application, however, in particular cases sometimes present difficulties. But the quest for certain amount of certitude must continue in this field of uncertain minds and imperfect language.

B

To the facts, therefore, we must now refer to appreciate the application of law involved in this case. The premises in question was let out for use exclusively for business of manufacture of plastic articles, wood work and paints only and not for any other purpose. it is alleged that it is no longer used for that purpose but used as an office and storage.

C

The trial court in this case was the Court of Small Causes, Bombay. One of the grounds of ejectment was the erection of permanent structure and it was the case of the appellant no. 2 that such erection was against the provisions of section 13(1)(b) of the Bombay D Rents, Hotel and Lodging House Rates Control Act, 1974 (hereinafter called the 'Rent Act').

Under clause (p) of section 108 of the Transfer of Property Act, 1882, a lessee may not without the lessor's consent erect on the property and permanent structure except for agricultural purposes. If he E does, then this becomes a ground for ejectment.

In this case the permanent structures alleged were constructions of lofts, construction of several rooms and construction of and laying of a new and permanent flooring as appears from the plaint filed in the proceedings. It further appears that the tenant had sunk in pillars and F stanchions into the flooring. it was stated in the deposition that these pillars and stanchions mentioned in the plaint were only those which were the posts supporting the cabins and lofts complained of and none else. These pillars and stanchions went along with the construction of lofts and construction of several rooms, that is cabins. The learned trial court discussed the details and found those cabins marked A, B, G C, D, E, F, G, H, I, J, K, L etc. There were lofts marked cabins A, B, C, D, E, F, J, K, other lofts marked as F, G, H and I. The third loft over the cabin at L and the lofts over the portions M & N. These were, according to the engineer, an architect, Shri Divecha, who was examined on behalf of the plaintiff, permanent structures. The learned judge examined the plan prepared by the said architect and his depo- H sition. The learned judge was of the view that it was clear from the

architect's evidence that lofts A, B, C, D, E, J, K. as well as the lofts over F, G, H and I were meant to carry weight of over 100 Ibs. per sq. ft. and this statement according to the learned judge was not challenged in the cross-examination. The structures over A, B, C, D, E, J. and F.C.H.I cannot therefore be called only roofs or tops of cabins. They were nothing but lofts. The structures A, B, C, D, E, K, J. so also F, G, H, I, L & M were admitted to have been constructed by the tenant after it had taken the premises from the landlord. The learned judge in his judgment has also noted these various facts as to their length and dimensions. He referred extensively to the evidence in the plan which was marked Ex. MI and the deposition of Shri Divecha. The learned Judge taking these factors into consideration came to the conclusion that the cabin lofts and posts supporting the same were attached to the flooring as well as the walls and columns of the main structures. Under these circumstances, the learned judge of the Court of Small Causes was of the opinion that the structures were permanent in nature. The learned judge, however, held that the landlord had failed to prove that the tenant had put up any permanent flooring at some part of the suit premises as alleged. The next allegation was that the tenants had demolished a portion of the wall in between the two rooms and prepared a door at that opening. After discussing the facts and the evidence, the learned judge was of the view that there was no question of any waste of the plaintiff's property on account of any demolition. He, however, had held that so ar as cabins, lofts and posts supporting the same by pillars, these were nothing but permanent structures. So far as the digging of the flooring was concerned, after discussing the evidence the learned judge held that the plaintiffs had failed to prove digging which led to waste of the property of the landlord. So far as the creation of the permanent structure is concerned, the same breached the terms of tenancy. The learned judge noted that on 1st January, 1948 the defendant no. 1 wrote to the plaintiff that the height of the wooden partition they were erecting, was specified within the plan sent along with the aforesaid letter which had already been lying ready for erection. It was contended by the defendants in their written statements that they had obtained consent in respect of the wooden cabins and partitions in the year 1948. So far as section 13(1)(b) of the Bombay Rent Act is concerned, there cannot be any waiver operating against the plaintiffs. It was the case that some of the permanent structures were there before 1947. On examination of the evidence, the learned judge observed that Mr. D'silva had stated that the tenant had requested Mahindra & Mahindra for a design of a slotted angle cabin with a loft, that the same was supplied and Mr. D'silva was the designer who did the work. Analysing all these evidence, the

A B C D E F G H

A learned trial judge came to the conclusion that permanent structures were carried out without the consent in writing of the landlords or either of them. Such permanent structure was outside the tenancy and the landlord had not given any consent.

The matter on this issue went up before the appellate court and
B the appellate court dealt with this again and discussed these allegations. It was pointed out by the appellate court that the allegations were that the appellants had (a) made an opening by demolishing a part of the wall dividing the two portions of the demised premises; (b) constructed lofts in the suit-premises, (c) dug upon the flooring of the premises at various places, (d) sunk in pillars and stanchions into the
C flooring, (e) constructed several rooms, and laid new and permanent floorings in parts of the demised premises at different levels. So far constructing lofts, it was held that these lofts had been constructed after 1st September, 1946. And in this context the construction of cabins and putting up of pillars were considered and the evidence in this respect was taken into consideration. It was contended that the
D demised premises in the lease was described as godown but it was taken in the nature of several office premises and the change in the improvement done to the same was merely for the better enjoyment of demised premises. In the first place the cabins were made of wooden poles and planks fixed in the floor, and side walls of the building with nails, screws, nuts and bolts. The appellate court came to the conclu-
E sion that applying the proper test, the cabins were substantial structures and substantial improvement to the premises. These were durable for long and intended to be used permanently.

The appellate court also took the question of digging and other relevant allegations. As a result of analysis of these evidence and
F materials, the appellate court confirmed the findings of the trial court that the tenant had erected permanent structure on the demised premises without the landlord's consent and that was a breach of the terms of tenancy. They also confirmed the finding of the trial court that the respondents did not waive their rights arising out of these acts. They also upheld the finding that there was no renewal of the lease of the
G landlords and the tenants were not statutory tenants whose contractual tenancy had come to an end by efflux of time by the end of the period of ten years from 1st September, 1946. They upheld the decree for possession passed by the trial court.

The High Court dealing with this matter under Article 227 of the
H Constitution had occasion to refer to this aspect. The High Court

referred to the different authorities on this point. We may briefly take note of some of these. A

In this connection reference may be made to a decision of the Special Bench of the Calcutta High Court in the case of *Surya Properties Private Ltd. and others* v. *Bimalendu Nath Sarkar and others*. A.I.R. 1964 Calcutta p. 1 which dealt with clause (p) of section 108 of B the Transfer of Property Act, 1882 and held that this question was dependent on the facts of each case and no hard and fast rule can be laid down with regard to this matter. In the absence of any relevant materials, therefore, the Full Bench found that no answer could be given. in a slightly different context, before Calcutta High Court in the case of *M/s Suraya Properties Private Ltd.* v. *Bimalendu Nath Sarkar*. C A.I.R. 1965 Calcutta page 408, Chatterjee, J., one of the judges of the Division Bench observed that the phrase 'permanent structure' for purposes of clause (p) of section 108 of the Transfer of Property Act meant a structure which was capable of lasting till the term of the lease and which was constructed in the view of being built up as was a building. In that context the learned judge observed that a reservoir D was not, however, a permanent structure for purposes of clause (p) of section 108 of the Transfer of Property Act. Sen, J. of the same Bench was of the view that no hard and fast tests could be laid down for determining the question whether a particular structure by the tenant was a permanent structure for the purpose of clause (p) of section 108 of the Transfer of Property Act. The answer to the question depended E on the facts of each case. Chatterjee, J., however, took the view that where the tenant created a permanent structure in the premises leased to him, as the lease continued in spite of the disputed structure and the landlord continued to receive rent till the determining of the lease by notice to quit or thereafter till the passing of the decree for eviction and the fact that he accepted rent with full knowledge of the disputed F structure did not disentitle him to a decree for eviction.

In *Khureshi Ibrahim Ahmed* v. *Ahmed Haji Khanmahomad*, A.I.R. 1965 Gujarat, 152, in connection with section 13(1)(b) of the Rent Act, Gujarat High Court held that the permanent structure must be one which was a lasting structure and that would depend upon the G nature of structure. The permanent or temporary character of the structure would have to be determined having regard to the nature of the structure and the nature of the materials used in the making of the structure and the manner in which the structure was erected and not on the basis of how long the tenant intended to make use of the structure. As a matter of fact, the Court observed, the nature of the structure H

A itself would reflect whether the tenant intended that it should exist and be available for use for a temporary period or for an indefinite period of time. The test provided by the Legislature was thus an objective test and not a subjective one and once it was shown that the structure erected by the tenant was of such a nature as to be lasting in duration—lasting of course according to ordinary notions of mankind—the tenant B cannot come forward and say that it was erected for temporary purpose.

The question was again considered in the case of *Ramji Virji and others* v. *Kadarbhai Esufali*, A.I.R. 1973 Gujarat 110. It was observed that whether the structure was a permanent structure was a mixed C question of law and fact. It was held in that case that alterations made by a tenant like constructing loft, wooden bathroom, frame and putting up a new drain being minor alterations which were easily removable without causing any serious damage to the premises would not amount to permanent structure leading to the forfeiture.

D There are numerous authorities dealing with the question how the structure is a permanent structure or not should be judged. It is not necessary to deal with all these. One must look to the nature of the structure, the purpose for which it was intended and take a whole perspective as to how it affects the enjoyment, the durability of the building etc. and other relevant factors and come to a conclusion.

E

Judged in the aforesaid light on an analysis of the evidence the trial court as well as the appellate court had held that the structures were permanent. The High Court observed that in judging whether the structures were permanent or not, the following factors should be taken into consideration referring to an unreported decision of F Malvankar J. in special civil application No. 121 of 1968. These were (1) intention of the party who put up the structure; (2) this intention was to be gathered from the mode and degree of annexation; (3) if the structure cannot be removed without doing irrepairable damage to the demised premises then that would be certainly one of the circumstances to be considered while deciding the question of intention. G Likewise, dimensions of the structure and (4) its removability had to be taken into consideration. But these were not the sole tests. (5) the purpose of erecting the structure is another relevant factor. (6) the nature of the materials used for the structure and (7) lastly the durability of the structure. These were the broad tests. The High Court applied these tests. So had the Trial Court as well as the appellate H bench of Court of Small causes.

All the relevant factors had been borne in mind by the learned trial judge as well as appellate bench of the Court of Small Causes. Therefore, simply because another view is possible and on that view a different view is taken, will be interfering under jurisdiction under Article 227 of the Constitution which is unwarranted. The High Court was impressed by the fact that having regard to the facts and circumstances of the case and further more for efficient and complete enjoyment of the demised premises and for carrying out the business of manufacturing plastic goods, these structures had been constructed by the tenant temporarily. According to the High Court, the nature of the materials used and the intention of the tenant were relevant and according to the High Court, these structures could be removed without doing appreciable damage to the demised premises and these indicated that these were intended to be part and parcel of the normal part of the building. The High Court proceeded on the basis that the trial court as well as the appellate bench of the Small Causes Court had relied wholly on the basis of evidence of the admission of one Mr. Pittie who had admitted that the landlord had knowledge of these factors. The other evidence, according to the High Court, of the Divecha, D'Silva, Kirtikar and Bhansali were not at all given proper and due weight. According to the High Court, the High Court had in such circumstances jurisdiction to deal with this matter and in exercise of the jurisdiction, as the High Court felt that relevant and material facts had been ignored, the High Court set aside the order of the court of Small Causes, and set aside the landlord's decree and restored the tenant in possession.

A B C D E

As mentioned hereinbefore it is not necessary for our present purpose to decide whether plaintiffs' witnesses were properly appreciated. We find all the relevant evidence had been examined by the trial judge as well as by the appellate bench of the court of Small causes. We find relevant reference to the evidence of Divecha, and others. We find reference to the relevant evidence in the deposition at pages 56, 69, 71, 83, 93, to 95 by the trial court as well as in pages 133-36, 152, 167, we find reference to the deposition at p. 56 of the trial court and pages 62 to 63, as well as 65 to 71 and the Appellate Court at pages 134 and 147. Similarly the evidence of D'silva who was an employee of Mahindra and Mahindra as also of Shri Kirtikar, were discussed. It is not necessary to refer in detail to these evidence.

F G

So far as to what extent the factors are structures have been exhaustively referred to in *Surya Properties Private Ltd. and others* v. *Bimalendu Nath Barkar and others* (supra) and M/*s Surya Properties* H

A *Private Ltd.* v. *Bimalendu Nath Sarkar* (supra) and in our opinion these lay down correct position in law. As a matter of fact the tenant is no longer carrying on any business there but one Messrs Quality Plastics is carrying on the business. Therefore the original purpose is gone. In this connection reference may be made to Annexure IV appearing at page 428 of the Paper Book which is a letter dated 10th July, 1964 B written by the Concord of India Insurance Company Limited to the Secretary. The Insurance Association of India where it was stated clearly that Bright Brothers Pvt. had shifted to Bhandup as from 29th April, 1963 and at the relevant time, they had only their Administrative Officer there and they were stocking finished goods in the premises in question. Further, they have recently installed their Associate C Company's factory in the said block working under the name of M/s. Quality Plastics in the premises in question.

Therefore, in view of the fact that large sum had been spent and considering the standard and the nature of the construction and lack of easy removability and the degree of an annexation to the enjoyment D for the original purpose, we are of the opinion that the learned judge as well as appellate bench of the court of Small Causes had applied the correct principles and came to a plausible conclusion. About the removability of the structure, the High Court was bound by the finding of the appellate authority which appears at page 341 to 344 of the Paper Book. In a case of this nature, the High Court found that they E had to enter into this question to find the real position whether the proper principles had been correctly borne in mind. It is indisputable that the finding that has to be arrived at by the court in this case is a mixed question of law and fact. Therefore, if the basic factors, for example, there was not proper appreciation of the evidence, if the assumption that lofts *per se* were not permanent structures then the F courts below might be said to have committed error apparent on record and no court instructed in law could take such a view. But if all the relevant factors have been borne in mind and correct legal principles applied then, right or wrong, if a view has been taken by the appellate court, in our opinion, interference under Article 227 of the Constitution was unwarranted.

G

Interference by the High Court under Article 227 of the Constitution must be within limits. This question has been considered by this Court from time to time and principles laid down. This Court in *Ganpat Ladha* v. *Sashikant Vishnu Shinde*, [1978] 3 SCR 198 expressed the view that the High Court commits a gross error in interfering H with what was a just and proper exercise of discretion by the Court of

Small Causes, in exercise of its power under Article 227 of the Constitution. This was unwarranted. The High Court under Article 227 has a limited jurisdiction. It was held in that case that a finding as to whether circumstances justified the exercise of discretion or not, unless clearly perverse and patently unreasonale, was, after all a finding of fact and it could not be interfered with either under Article 226 or 227 of the Constitution. If a proper court has come to the conclusion on the examination of the nature of the structure, the nature of the duration of structure, the annexation and other relevant factors that the structures were permanent in nature which were violative of section 13(1)(b) of the Rent Act as well as section 108 clause (p) of Transfer of Property Act and such a finding, is possible, it cannot be considered to be perverse. In such a situation, the High Court could not have and should not have interfered.

In *India Pipe Fitting Co.* v. *Fakruddin M.A. Bakar and Anr.*, [1978] 1 SCR 797, this Court reiterated that the limitation of the Court while exercising power under Article 227 of the Constitution is well settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset the conclusions of facts, however, erroneous these may be. It is possible that another Court may be able to take a different view of the matter by appreciating the evidence in a different manner, if it determinedly chooses to do so. That will not be justice administered according to law to which Courts are committed notwithstanding dissertation in season and out of season, about philosophies. In that case, the Court found that the High Court had arrogated to itself the powers of the appellate court.

As early in 1959, in *Satyanarayan Laxminarayan Hegde and Others* v. *Millikarjun Bhavanappa Tirumale*, [1960] 1 SCR 890, this Court found that in that case on the materials available before it that the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal was one apparent on the face of the record so as to be capable of being corrected by a writ of certiorari and an error which had to be established by a long drawn process of reasoning on points where there may conveivably be two opinions cannot be said to be an error apparent on the face of the record. There might have been error in the judgment of the appellate bench of the Court of Small Causes but it is not an error palpable and apparent, right or wrong they had come to that conclusion. That was possible or plausible conclusion.

In *Mrs. Labhkuwar Bhagwani Shah and Others* v. *Janardhan*

A *Mahadeo Kalan and Another*, [1982] 3 SCC 514, this Court reiterated that concurrent finding of facts whether relating to jurisdictional issue or otherwise were not open to interference by the High Court under Article 227 of the Constitution.

B This Court in *Chandavarkar Sita Ratna Rao* v. *Ashalata S. Guram*, [1986] 4 SCC p. 447 held that in exercise of jurisdiction under Article 227 of the Constitution, the High Court can go into the questions of facts or look into the evidence if justice so requires it. But the High Court should decline to exercise its jurisdiction under Article 226 and 227 of the Constitution to look into the facts in the absence of clear cut-down reaons where the question depends upon the appreciaC tion of evidence. The High Court should not interfere with a finding within the jurisdiction of the inferior tribunal or court except where the finding is perverse in law in the sense that no reasonable person properly instructed in law could have come to such a finding or there is misdirection in law or view of fact has been taken in the teeth of preponderance of evidence or the finding is not based on any mateD rial evidence or it resulted in manifest injustice. Except to the limited extent indicated above, the High Court has no jurisdiction.

In this instant case the tests laid down have not been transgressed by the court of Small Causes both trial court as well as the appellate bench. The view it took was a possible view. A different view might E have been taken out that is no ground which would justify the High Court to interfere with the findings.

In that view of the matter, we allow the appeals, set aside the judgment and order of the High Court and restore the order of the appellate bench of Court of Small Causes dated 4th June, 1973. There F will be an order for possession and mesne profits as directed by the Court of Small Causes.

The respondents will pay the cost of these appeals.

G H.L.C. Appeals allowed.