



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS.10693-10694 OF 2026

**SHRI PRAKASH NARAIN SHARMA
DEAD THROUGH LEGAL
REPRESENTATIVE**

APPELLANT

VERSUS

**M/S. BURMAH SHELL CO-OPERATIVE
HOUSING SOCIETY (REGD) THROUGH
MANAGING COMMITTEE MEMBER SH.
P. JINDAL AND OTHERS**

RESPONDENTS

J U D G M E N T

ATUL S. CHANDURKAR, J.

1. Interference caused by the High Court of Delhi¹ in the writ petition preferred by the first respondent under Articles 226 and 227 of the Constitution of India resulting in setting aside the order passed by the learned Arbitrator under Section 61 of the Delhi Co-operative Societies Act, 1972² as affirmed in appeal under Section 76 of the Act of 1972 by the Delhi Co-operative Tribunal³ has been questioned by the appellant in these civil appeals. While the

¹ For short, 'the High Court'

² For short, 'the Act of 1972'

³ For short, 'the Tribunal'

appellant contends that the High Court exceeded its writ jurisdiction while setting aside the concurrent orders, the first respondent justifies such interference as the said concurrent orders failed to consider various relevant aspects resulting in miscarriage of justice that was set right by the High Court.

2. The present proceedings have a chequered history. It is however not necessary to refer to the same in detail. Suffice it to mention that Mr. S.N. Sharma⁴ claimed to be a member of M/s Burmah Shell Co-operative Housing Society⁵, the first respondent herein and was, thus, entitled to allotment of a plot. Complaining of illegal deprivation in the matter of allotment of a plot, the claimant filed a dispute before the Joint Registrar, Co-operative Societies, Delhi, that was referred to an Arbitrator. The Society questioned the appointment of the Arbitrator by filing a civil suit. Despite a restraint order being passed in the civil suit, the Arbitrator proceeded with the arbitration proceedings and passed an *ex-parte* award. The Arbitrator upheld the claim of the claimant for allotment of a plot. The said proceedings ultimately reached this Court at the instance of the legal heir of the original claimant in **Prakash Narain Sharma vs. Burmah Shell Co-op. Housing**

⁴ For short, 'the original claimant'

⁵ For short, 'the Society'

Society Ltd⁶. This Court by its judgment dated 21.08.2002 set aside the *ex-parte* award and directed continuation of the arbitration proceedings from the stage the Society was set *ex-parte*. The original Arbitrator having expired in the meanwhile, he was replaced by another Arbitrator, the Registrar, Co-operative Societies, Delhi⁷, the second respondent.

3. After remand, the Registrar concluded the arbitration proceedings. He passed an award on 07.10.2003 holding that the original claimant was a member of the Society and that despite performing his duties and obligations towards the Society for getting the plot, he was deprived of the same. The legal heir of the original claimant, Mr. Prakash Narain Sharma was, thus, entitled to allotment of a plot. The arbitrator accordingly accepted the claim of the original claimant and directed the Managing Committee of the Society to give a plot to the legal heir of the original claimant on making full payment towards cost of the land. The said order of the Arbitrator was challenged by the Society by preferring an appeal under Section 76 of the Act of 1972. The Tribunal by a short order dated 18.03.2004 upheld the Registrar's order and dismissed the appeal.

⁶ 2002 INSC 345

⁷ For short, 'the Arbitrator'

4. The Society, being aggrieved by the said adjudication, preferred a writ petition under Articles 226 and 227 of the Constitution of India⁸ before the Delhi High Court. It was urged on behalf of the Society that relevant material indicating the fact that the original claimant had not been admitted as a member of the Society had been ignored. The original claimant had in fact given up his membership voluntarily. The High Court by its judgment dated 06.10.2010 found that neither the Registrar nor the learned Presiding Officer of the Tribunal had considered the relevant material on record, which if taken into account would have concluded the matter in favour of the Society. It was found that the claim of membership made by the original claimant was of the year 1952 but he was never granted any membership. He had in fact given up his membership in the year 1951 by resigning from the same. It was, thus, held that the original claimant was not entitled to allotment of any plot inasmuch he had not been admitted as a member of the Society. It was also found that there were four members, who had a prior claim than the original claimant for allotment of a plot. The allotment of a plot bypassing the claim of other senior members was also not equitable. On these

⁸ For short, 'the Constitution'

grounds, the orders passed by the Registrar and the learned Presiding Officer of the Tribunal were set aside. The writ petition preferred by the Society was, accordingly, allowed. The legal heir of the original claimant being aggrieved has, thus, come up in these appeals.

5. Mr. Jitendra Mohan Sharma, learned Senior Advocate for the appellant submitted that the High Court in exercise of jurisdiction under Articles 226 and 227 of the Constitution was not justified in interfering with the orders passed by the Registrar under Section 61 and the Tribunal in appeal under Section 72 of the Act of 1972. All relevant aspects including the fact that the original claimant was a member of the Society and was, thus, entitled to allotment of a plot had been considered by the Registrar in the arbitration proceedings. It was correctly held that the original claimant had performed all his duties and obligations towards the Society for being allotted a plot. He continued to be a member of the Society till his death and his name was always shown in the list of members. Referring to various documents on record that had been taken into consideration by the Arbitrator as well as the Tribunal, it was submitted that the direction to allot a plot to the son of the original claimant had been rightly issued. The availability of land

for such allotment was also not in issue in view of the findings recorded by the trial Court in its judgment dated 31.03.1965 that was subsequently affirmed by the High Court on 21.07.1972. Without considering these aspects in a proper perspective, the High Court erred in interfering with the said orders. The finding recorded by the High Court that the original claimant ceased to be a member of a Society was without appreciating the true content of the documents on record. Referring to the decision of this Court in **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil**⁹, it was submitted that the High Court committed an error in interfering with the order passed by the Registrar and the Tribunal. He also referred to various affidavits placed on record to substantiate his contention that vacant plots were in fact available for allotment. He, therefore, submitted that the impugned judgment of the High Court be set aside and the award passed by the Registrar in the dispute as filed, be restored.

6. On the other hand, Mr. Ashim Vachher, learned Senior Advocate for the Society supported the impugned judgment. He submitted that the Registrar as well as the Tribunal had failed to examine the relevant documents on record. It was clear that the

⁹ 2010 INSC 422

membership of the original claimant had ceased in the year 1951. Fresh membership was again sought by the original claimant in the year 1952. The same was, however, not granted to him. No share certificate was ever issued to the original claimant in 1952 or thereafter. Referring to various documents placed on record, it was submitted that the High Court rightly found that if the authorities under the Act of 1972 would have taken the same into consideration, a decision in favour of the Society would have been recorded. Since it was found by the High Court that relevant documentary material was ignored by the Registrar as well as by the Tribunal, it rightly interfered with the orders passed by the said authorities. Moreover, the assumption that by paying a sum of ₹15,000/- in the year 1952, the original claimant would be entitled to allotment of a plot was incorrect, especially when there were other members seeking allotment, whose claim was prior to the claim of the original claimant. To substantiate these contentions, the learned Senior Advocate placed reliance on the decisions in **Pasupuleti Venkateswarlu Vs. The Motor and General Traders**¹⁰, **Special Reference No.1 of 2002**¹¹, **Raj Kumar Dey**

¹⁰ 1975 INSC 75

¹¹ 2002 INSC 445

and others Vs. Tarapada Dey and others¹² to urge that the High Court rightly interfered in the matter. It was, thus, submitted that since the High Court on the basis of relevant documentary material available on record found that the original claimant had ceased to be a member of the Society, no case had been made out for the impugned judgment to be set aside. It was, thus, prayed that the civil appeals be dismissed.

7. We have heard the learned Senior Advocates for the parties at length and we have gone through their written submissions placed on record. We have also perused the relevant documentary material forming part of the record before the Arbitrator as well as the Tribunal. Having given our thoughtful consideration to the entire matter, we are of the considered opinion that no case has been made out for this Court to interfere with the impugned judgment of the High Court.

8. The core issue that requires consideration is with regard to membership of the original claimant of the Society. While the original claimant claims to have been inducted as a member of the Society in the year 1952 after which he discharged necessary obligations in that regard, the Society contends that the original

¹² 1987 INSC 248

claimant having resigned from his membership in the year 1951, he was never inducted as a member thereafter. The Arbitrator as well as the Tribunal have proceeded on the basis that having been inducted as a member of the Society, it had to be presumed that he continued to be a member of the Society during his lifetime, especially as his name was shown in the list of members. The High Court, in exercise of jurisdiction under Articles 226 and 227 of the Constitution, however, found that the documents on record indicated that the claim of membership as made by the original claimant since 1952 was without any basis, as such claim was never accepted by the Society but was in fact categorically rejected. The question that, thus, arises for consideration is whether the High Court, in exercise of certiorari jurisdiction, was justified in interfering with the orders passed by the Arbitrator and the Tribunal or whether it exceeded its jurisdiction in doing so?

9. For seeking an answer to the aforesaid question, it would be first necessary to refer to the orders passed by the Arbitrator and the Tribunal. As noted above, in the earlier round of litigation the proceedings were remanded to the Arbitrator under Section 61 of the Act of 1972 to decide the dispute as raised by the original claimant with regard to his membership and consequent

entitlement to allotment of a plot. According to the Arbitrator, the original claimant had been admitted as a member. His offer of an amount of ₹15,000/- for a larger plot of land was not accepted by the Society, thus, leading to filing of the dispute. It was held that the plea of resignation from membership as well as subsequent re-entry for settlement of accounts was not tenable as said contention was not supported by any reason nor by law. The Arbitrator, thus, proceeded to presume that the original claimant continued to be a member of the Society during his lifetime and his name was shown in the list of members. On that basis, the Society was directed to allot a plot to the legal heir of the original claimant on the condition that the legal heir would apply for transfer of membership and make full payment towards the cost of the land.

10. The Society challenged this order by preferring an appeal under Section 76 of the Act of 1972. The Tribunal in its short order held that though the original claimant had resigned from membership in 1951, the Managing Committee of the Society decided to admit him as a member as a special case for clearing the suspense items as the accounts had to be settled. It also referred to the fact that the name of the original claimant figured in the list provided by the Society to the Civil Court in 1965 as well

as in the High Court in 1972. The Tribunal, therefore, refused to interfere with the order of the Arbitrator.

11. In the writ petition preferred by the Society, the High Court noted that the decisions of the Arbitrator as well as of the Tribunal were cryptic and almost bereft of reasoning. It found that the claim of membership made by the original claimant was of the year 1952, which indicated that his resignation from membership in 1951 was not in issue. It found that the list of membership relied upon by the legal heir of the original claimant was of the year 1951. It, therefore, upheld the stand of the Society that since an amount of ₹25/- was lying in the suspense account of the Society, the name of the original claimant was shown as a non-plot holder member. There was no resolution granting membership to the original claimant pursuant to his application in 1952 nor could the original claimant produce any membership certificate. The amount of ₹15,000/- was not accepted by the Society from the original claimant as he was not a member. It, thus, noted that arguments raised by the Society had not been considered at all. It, therefore, held that the Arbitrator was not justified in proceeding on the presumption that the original claimant continued to be a member during his lifetime. It also examined the aspect of equities in favour

of the parties and held that merely on the basis of contributing ₹25/- in the year 1952, a claim for allotment of a plot was not justifiable, especially when there were prior claimants also seeking allotment of a plot. The conclusion recorded by the High Court while explaining the reason for its interference as contained in paragraph 13 of the impugned judgment reads as under:

“13. In view of the above, we accept the writ petition and set aside the orders of both the authorities below inasmuch as they are not only cryptic but they fail to discuss the relevant facts and the issues, and which if would have been done the same would have resulted in a decision in favour of the petitioner society. We, therefore, set aside the impugned order dated 18.3.2004 passed by the DCT and Award dated 7.10.2003 and dismiss the claim petition as filed by respondent No.1 and his father for grant of a plot in the petitioner society. The parties are left to bear their own costs.”

12. Before proceeding to examine whether the High Court, in exercise of certiorari jurisdiction, could have set aside the concurrent orders of the Arbitrator and the Tribunal, it would be advantageous to refer to a few decisions in this regard. In **General Manager, Electrical Rengali Hydro Electric Project, Orissa and others Vs. Sri Giridhari Sahu and others**¹³, this Court examined in detail the permissibility of exercise of certiorari jurisdiction. After referring to the decision of the Constitution Bench in **Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and others**¹⁴ as well

¹³ 2019 INSC 1020

¹⁴ 1954 INSC 122

as various other decisions, it has been held as under:

“29. On the conspectus of the decisions and material, we would hold as follows:

The jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of Certiorari will not don the cap of an Appellate Court. It will not reappreciate evidence. The Writ of Certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a Tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to Certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a Writ of Certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter ‘off bounds’ for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of Certiorari must also one which is apparent on the face of the record. As held by this Court in Hari Vishnu Kamath (supra), as to what constitutes an error apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amendable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down [See M/s. Perry and Co. Ltd (supra)].”

In Central Council for Research in Ayurvedic Sciences and another Vs. Bikartan Das and others¹⁵, this Court reiterated

¹⁵ 2023 INSC 733

that a finding of fact based on no evidence or purely on surmises or conjectures could be regarded as an error of law. In paragraphs 63 and 64, it was held as under:

“63. However, we may clarify that findings of fact based on ‘no evidence’ or purely on surmises and conjectures or which are perverse points could be challenged by way of a certiorari as such findings could be regarded as an error of law.

64. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.”

13. From the aforesaid decisions, it is evident that though the scope for interference in exercise of certiorari jurisdiction would be limited, an error of law evident from the record is open to correction by the High Court. If a finding is recorded without there being any evidence on record or a finding is recorded without any supporting document, whatsoever, a case for interference would be made out since such finding would amount to an error of law. In *Shalini Shyam Shetty and another (supra)*, the distinction between the jurisdiction under Article 226 and Article 227 was explained and it was held that the powers conferred operated in different fields. The ratio of the said decision is not applicable as the writ petition

before the High Court was under both the Articles.

14. When the material on record is examined in the aforesaid context, it becomes clear that the Registrar as well as the Tribunal glossed over relevant documentary material on record. The High Court in the impugned judgment has indicated the same which according to us is the correct position obtaining from the record of the case. These documents include the resignation of the original claimant and its acceptance as recorded in the Minutes of the Managing Committee Meeting held on 05.05.1951 followed by transfer of the share of the original claimant to another member on 18.08.1951, the rejection of the original claimant's application for membership as per the Minutes of the Managing Committee Meeting dated 05.11.1952 as well as the rejection of the request of the original claimant to permit him to pay the deposit for a plot of land as late as on 04.11.1979. The Arbitrator failed to consider these documents that were available on record, which if considered, would have resulted in only one finding, that the original claimant was not a member of the Society. Instead, it proceeded on the assumption that the original claimant continued to be a member during his lifetime. The perversity in the finding of the Registrar is evident from the following observations made in

his order dated 07.10.2003 which read as under:

“...The plea of resignation of Sh. S. N. Sharma and his subsequent re-entry to settle some accounts are not tenable as they are neither supported by any reason nor by the law. It has to be presumed that he continued to be a member of the society till the end of his life and his name continued to be shown in the list of members...”

15. The Tribunal in its cryptic order consisting of six paragraphs affirmed this finding. In our view, the High Court was fully justified in causing interference with these orders by observing that if the relevant documents had been taken into consideration, the same would have resulted in a decision in favour of the Society. We, therefore, hold that no fault can be found with the exercise of certiorari jurisdiction by the High Court.

16. The High Court also rightly, in our view, took into account equitable considerations while interfering in exercise of certiorari jurisdiction. In the light of the fact that there were four prior claimants seeking allotment of a plot, the claim of the original claimant was rightly disregarded. This is another reason not to interfere with the High Court's adjudication.

17. Since we have found that the original claimant was never admitted as a member of the Society and, thus, not entitled to seek allotment of a plot, it is not necessary to go into the issue as regards actual availability of a plot. Though learned Senior

Advocates for the parties addressed the Court on this aspect, it is not necessary to record any finding in that regard as the original claimant had not been admitted to the membership of the Society and, hence, the question of allotment of a plot would not arise at all.

18. For all the aforesaid reasons, we are not inclined to interfere with the impugned judgment of the High Court. Consequently, the Civil Appeals are dismissed with no orders as to cost. Pending Interlocutory Applications are also disposed of.

.....**J.**
[**UJJAL BHUYAN**]

.....**J.**
[**ATUL S. CHANDURKAR**]

NEW DELHI,
AUGUST 31, 2026.