IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA No. 10504 of 2025

Pushpa Sharma

Versus

The State of West Bengal & Ors.

With

WPA No. 16316 of 2025

Shyam Sundar Sharma @ Bablu

Versus

The State of West Bengal & Ors.

Mr. Ranajit Chatterjee
Mr. Aniruddha Mitra

.....For the petitioner in WPA 10504 of 2025 and for the respondent no.3 in WPA 16316 of 2025.

Mr. Probal Mukherjee, Sr. Adv.
Mr. Prantik Gharai
Mr. Romendu Agarwal
Mr. Apoorva Choudhury

Ms. Sonia Das

..... For the petitioner in WPA 16316 of 2025 and for the respondent no. 6 in WPA 10504 of 2025.

Mr. Wasim Ahmed
Mr. Sk. Md. Masud

.....For the State.

Mr. Gajanand Sharma

..... Respondent no. 5 in-person.

Hearing Concluded On : 06.02.2026

Judgment on : 18.02.2026

Krishna Rao, J.:

1. Smt. Pushpa Sharma filed the present writ petition being WPA No. 10504 of 2025 praying for a direction upon the respondent nos. 5 and 6 i.e. Shri Shyam Sundar Sharma and Gajanand Sharma to hand over the possession of the immovable property belonging to her situated at Rangamati, District- Paschim Medinipur, comprising 2 cottahs of land, consisting of a three (3) storied building in terms of the orders passed by the Sub-Divisional Officer dated 6th September, 2024 and 6th December, 2024.

2. Shri Shyam Sundar Sharma @ Bablu filed another writ petition being WPA No. 16316 of 2025 for setting aside and quashing the part of the order passed by the Sub-Divisional Officer dated 6th September, 2024

wherein the Sub-Divisional Officer directed the petitioner to vacate the property.

3. The mother, Smt. Pushpa Sharma has filed the present writ application for implementation of the orders passed by the Sub-Divisional Officer on the allegation that the sons have not vacated the house and have not handed over the same to her in terms of the orders passed by the Sub-Divisional Officer.

4. The petitioner Smt. Pushpa Sharma is the mother of Shyam Sundar Sharma and Gajanand Sharma. Smt. Pushpa Sharma has initially filed an application under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the Sub-Divisional Officer, Medinipur Sadar, against her two sons, namely, Shyam Sundar Sharma and Gajanand Sharma praying for maintenance of Rs. 30,000/- per month and reimbursement of hospital expenses.

5. By an order dated 6th September, 2024, the Sub-Divisional Officer, Medinipur Sadar, directed Gajanand Sharma and Shyam Sundar Sharma to vacate the building within three (3) months from the date of the order and during this period, Shri Gajanand Sharma will pay Rs. 10,000/- per month and Shri Shyam Sundar Sharma will pay Rs. 15,000/- per month within 7th day of every month as maintenance to their mother.

6. Mr. Ranajit Chatterjee, Learned Advocate representing the mother submits that the husband of the petitioner died in the month of

September, 2018, leaving behind the petitioner as his widow, two sons and a married daughter. It is also the claim of the petitioner that she is the owner of the three storied building but the sons are in occupation of the said building. He further submits that neither of the sons of the petitioner, is providing any maintenance for her survival nor expenses for her medical treatment.

7. Mr. Chatterjee submits that the petitioner for her survival had to take shelter at her elder brother's house at Cuttack. He submits that it is impossible for the petitioner to reside in her dwelling house because of the threat to her safety from her sons.

8. Mr. Chatterjee submits that as the sons are not vacating the building, thus the maintenance amount awarded by the Sub-Divisional Officer be enhanced to Rs. 50,000/- per month.

9. Mr. Chatterjee relied upon the judgment in the case of ***Samtola Devi Vs. State of Uttar Pradesh and Ors.*** reported in ***2025 SCC OnLine SC 669*** and submits that there is no necessity for eviction of the respondents from the house but the respondents may be directed to pay monthly maintenance of Rs. 50,000/- and in case they fail to pay the maintenance amount, the respondents may be evicted from the house.

10. Mr. Probal Mukherjee, Learned Senior Advocate, representing the petitioner Shyam Sundar Sharma in W.P.A. No. 16316 of 2025 and the respondent no. 6 in WPA No. 10504 of 2025, submits that the writ

application filed by mother is not maintainable since there is statutory remedy is available in the Act itself for enforcement of order of maintenance under Section 11 of the Act of 2007.

11. Mr. Mukherjee submits that the petitioner, Shyam Sundar Sharma is ready and willing to look after his mother and the mother is always welcome to reside with the Shyam Sundar Sharma as she was residing with him prior to 2023. He submits that the respondent no.6 is regularly paying the amount in terms of the order passed by the Tribunal and also continuing to bear all medical expenses of his mother.

12. Mr. Mukherjee submits that Learned Tribunal has no jurisdiction to pass an order for evicting and vacating Shyam Sundar Sharma from the property on an application under Sections 4 and 5 of the Act of 2007. The Act only permits for grant of monthly maintenance and expenses of proceeding to the maximum of Rs. 10,000/- per month only. He submits that the direction to vacate the property is contrary to the provisions of the Act of 2007.

13. Mr. Mukherjee submits that Shyam Sundar Sharma belongs to Mitakshara School of Hindu Law and as per Mitakshara system once a child is born, he/she acquires right in the said property upon its birth. He submits that Shyam Sundar has right in the said property from birth and he cannot be evicted from the said property under the said Act.

14. Mr. Mukherjee relied upon an unreported judgment passed by the Coordinate Bench of this Court in the case of ***Joya Roy and Another Vs. The State of West Bengal & Others*** in ***WPA No. 651 of 2024*** dated ***30th July, 2024*** and submits that the Court has held that the appropriate remedy would be to file an eviction suit before the regular Civil Court and invocation of the Act of 2007 is a gross abuse of the process of the Court.

15. Mr. Mukherjee further relied upon the judgment in the case of ***Swati Das Vs. State of West Bengal and Others*** reported in ***2022 SCC OnLine Cal 4552*** wherein the Hon'ble Division Bench of this Court held that under the Act of 2007, there is no provision to evict any person from the property except in a case for violation of Section 23 of the Act.

16. The mother being the senior citizen has filed a complaint before the Sub-Divisional Officer for grant of maintenance of Rs. 30,000/- per month and reimbursement of medical expenses. There is no dispute that during his life time, the father, Late Rameshwar Dayal Sharma had constructed a three storied building at Medinipur Law College Street, Post Office- Vidyasagar University, District – Paschim Medinipur, Pin – 721102, and all the family members resided in the said house. Due to difference between the son Gajanand Sharma and the father, the respondent no.5 started residing with his family members in the first floor of the building and the father, mother and

the respondent no.6 started residing in the ground floor and second floor of the three storied building.

17. As per the case of the mother, both the sons after the death of their father, drove her out of the house and occupied the entire building and did not provide any proper treatment, though she is suffering from chronic diabetes and has a problem in her left kidney. The mother had to take shelter in the house of her elder brother at Cuttack.

18. The Sub-Divisional Officer has passed an order on 6th September, 2024, directing the respondent nos. 5 and 6 to vacate the building within three (3) months from the date of the order and during this period, the respondent no. 5, Gajanand Sharma shall pay Rs. 10,000/- per month within 7th day of every month and the respondent no. 6, Shyam Sundar Sharma shall pay Rs. 15,000/- per month within 7th day of every month as maintenance to their mother. On 6th December, 2024, the Sub-Divisional Officer directed the respondent nos. 5 and 6 to comply with the order dated 6th September, 2024 within 30 days from the date of receipt of this order.

19. Section 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, reads as follows:

> *"**9. Order for maintenance***
>
> ***1.** If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly*

> *allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.*
>
> ***2.*** *The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month."*

As per sub-section 2 of Section 9 of the Act of 2007, the maintenance allowance shall not be exceed Rs. 10,000/- per month. The Sub-Divisional Officer has passed an order for payment of maintenance allowance of Rs. 15,000/- by the respondent no. 6 i.e. Shyam Sundar Sharma for three (3) months or till the vacating the premises.

20. Though as per sub-section 2 of Section 9, the maintenance allowance shall not exceed Rs. 10,000/- per month but the Sub-Divisional Officer has passed an order for payment of maintenance amount of Rs. 15,000/-. The respondent no. 6 is not aggrieved with the order in respect of the said amount but the respondent no. 6 is only aggrieved with the direction passed by the Sub-Divisional Officer for vacating the premises.

21. The Statement of Objects and Reasons reveals that the Act of 2007 was promulgated to give more attention to the care and protection of the older persons. It clearly spells out that though parents can claim maintenance under the Code of Criminal Procedure, 1973, but the

same is time-consuming and expensive. Hence, in order to provide a simple, inexpensive, and speedy provision to claim maintenance for parents and senior citizens, the Act has been enacted.

22. In the backdrop of the Statement of Objects and Reasons and the principles, if the scheme of the Act of 2007, is to be deciphered, this Court strongly feels that the provisions including the provisions under Sections 4 and 5 of the Act of 2007 are meant to ensure that the senior citizens or parents be provided with sufficient means to live with dignity. The progenies or persons are liable to maintain their parents, can be directed by the Tribunal constituted under the Act of 2007 to pay a sum not exceeding Rs. 10,000/- per month to the parents.

23. Upon perusal of the Act of 2007 shows that Chapter II of the Act of 2007 deals with maintenance of parents and senior citizens. Section 4 of the Act of 2007 is the substantive provision like a charging Section of a statute. It confers right upon a senior citizen including parent to claim maintenance while simultaneously casting a duty of obligation upon the children to maintain their parents. Whereas Section 5 of the Act is the machinery provision which prescribes the manner and authority who shall pass an order of maintenance. A reading of Sections 4 and 5 of the Act of 2007, it is clear that Tribunal constituted under the Act can only pass an order of maintenance in favour of senior citizens or parents. Neither there is any direct or indirect reference of eviction nor do these provisions contemplate any such order to be passed by the Tribunal.

24. Section 4 of the Act of 2007, stipulates that a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under Section 5 of the said Act. The Act of 2007 provides for an adjudication of such an application by the Tribunal by holding summarily enquiry for determining the amount of the maintenance. Sections 4 and 5 cannot be used by the senior citizen to recover property from any person, whether it is a child or relative of such a senior citizen. So, therefore, the Tribunal cannot pass an order of eviction on an application filed by the senior citizen under Sections 4 and 5 of the Act of 2007. In view of the above, the impugned order passed by the Learned Tribunal dated 6th September, 2024 and 6th December, 2024, is modified by setting aside the portion of the order wherein the Tribunal has directed the respondent no. 6 to vacate the building within three (3) months from the date of the order.

25. The mother has filed the writ application for implementation of the orders passed by the Sub-Divisional Officer under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, dated 6th September, 2024 and 6th December, 2024. Section 11 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, reads as follows:

> ***"11. Enforcement of order of maintenance***
>
> ***1.*** *A copy of the order of maintenance and including the order regarding expenses of proceedings, as the case may be, shall be given without payment of any fee to the senior citizen or to parent, as the case may be, in whose favour it is made and such order may be enforced by any*

> *to parent, as the case may be, in whose favour it is made and such order may be enforced by any Tribunal in any place where the person against whom it is made, such Tribunal on being satisfied as to the identity of the parties and the non-payment of the allowance, or as the case may be, expenses, due.*
>
> ***2.*** *A maintenance order made under this Act shall have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be executed in the manner prescribed for the execution of such order by that Code."*

26. The respondent no. 6 is regularly paying the amount of Rs. 15,000/- per month to the mother in terms of the order passed by the Tribunal. The mother has not filed any application before the Tribunal under Section 11 of the Act of 2007. Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, reads as follows :

> ***"23. Transfer of property to be void in certain circumstances***
>
> ***1.*** *Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of the property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.*
>
> ***2.*** *Where any senior citizen has a right to receive maintenance out of an estate and such estate or part , thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the*

transferee for consideration and without notice of right.

3. *If any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5."*

27. Section 23 of the Act of 2007, can, therefore, be invoked only in three contingencies:

(i) *The transfer by way of gift or otherwise has been made after the commencement of this Act.*

(ii) *The transfer of property by way of gift or otherwise stipulates a condition that the transferee will provide basic amenities and physical needs of the transferor.*

(iii) *It is established that the transferee has refused or failed to provide such amenities and physical needs.*

28. In the present case none of the ingredients have been pleaded or are otherwise present. The applicability of Section 23 is out of question. Considering the above, this Court did not find any merit in the writ application filed by mother being WPA No. 10504 of 2025.

29. While deciding the present writ applications, two issues came for consideration:

(i) *Whether the children or relatives can maintain a writ petition against the order passed by the Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007?*

(ii) *If a writ petition filed by the children or relatives is maintainable, whether it will be under Article 226 or 227 of the Constitution of India?*

30. As regard to the maintainability of writ application against the order passed by the Tribunal under the Act of 2007, the Hon'ble Division Bench of this Court in the case of ***Smt. Mamata Sarki and Another Vs. The State of West Bengal & Ors.*** passed in ***MAT No. 61 of 2019*** dated ***19th March, 2020,*** held that:

> ***"15.*** *We are forfeited in taking the above view by the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019, which is pending for consideration before the Parliament. By the said Bill, certain provisions of the said Act are proposed to be amended. One of the amendments proposed is to make the right of appeal under Section 16 of the Act available to the children and relatives. This would indicate that the said Act, as its stands presently, does not confer such right of appeal on the children or relatives."*

31. In the view of the judgment passed by the Hon'ble Division Bench of this Court, there is no doubt that writ petition is maintainable if the children or relatives are aggrieved with the order passed by the Tribunal under the Act of 2007.

32. In the said judgment, the Hon'ble Division Bench have not expressed any opinion with regard to whether an application under Article 226 of the Constitution of India or an application under Article 227 of the Constitution of India, is maintainable by challenging the order passed

by the Tribunal under the Act of 2007 and the said issue is kept open for this Court to decide the same.

33. Similar matter came up before the Hon'ble Division Bench of the Delhi High Court in the case of ***Kirti vs. Renu Anand & Ors.*** reported in ***2024 SCC OnLine Del 2089*** and the Hon'ble Division Bench of the Delhi High Court has held that :

> *"**9.** The scope of jurisdiction of the High Court under Article 226 of the Constitution in dealing with the 'writ of certiorari' against the order of the Election Tribunal was the question, which arose for consideration before the Constitutional Bench of the Supreme Court in T.C. Basappa v. T. Nagappa. In the said decision, the Supreme Court held at paragraph 7 that judicial acts are amenable to the 'writ of certiorari', which reads as under:*
>
> > *"**7. One of the fundamental principles in regard to the issuing of a writ of certiorari, is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression "judicial acts" includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts**. Atkin, L.J. thus summed up the law on this point in R. v. Electricity Commissioners, exp London Electricity Joint Committee Co. (1920) Ltd. [R. v. Electricity Commissioners, exp London Electricity Joint Committee Co. (1920) Ltd., [1924] 1 K.B. 171 at p. 205 (CA)] : (KB p. 205)*
> >
> > *"... Whenever anybody or persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the*

controlling jurisdiction of the King's Bench Division exercised in these writs.""

9.1. *The Supreme Court in Radhey Shyam v. Chhabinath (decided on 26th February, 2015), while referring to the aforesaid judgment in T.C. Basappa (Supra) clarified that the expression 'judicial acts' at paragraph 7 in the aforesaid judgment is not meant to refer to judicial orders of Civil Courts. The Supreme Court held that judicial orders of the Civil Courts can be challenged by a party in a petition filed under Article 227 of the Constitution alone and not under Article 226 of the Constitution.*

9.2. *In view of the aforesaid judgments, with the exception of the judicial orders of the civil courts, it is well settled that the orders passed by tribunals as well as the judicial acts by administrative bodies or authorities or persons exercising quasi-judicial functions are all amenable to challenge under Article 226 of the Constitution. Therefore, the order dated 12th December, 2015 passed by the Maintenance Tribunal was certainly amenable to the jurisdiction of the Court under Article 226 of the Constitution.*

9.3. *The orders passed by tribunals are, however, separately also amenable to challenge under Article 227 of the Constitution.*

9.4. *As against the order of a tribunal such as the Maintenance Tribunal, the aggrieved party, therefore, has the option to either invoke Article 226 or Article 227 of the Constitution depending upon the nature of relief sought in the petition."*

34. In the case of ***Anirban Chakraborty vs. State of West Bengal & Ors.*** reported in ***2019 SCC OnLine Cal 733***, the Coordinate Bench of this Court held that :

"9. *I have heard the learned advocates appearing on behalf of the respective parties at length. With regard to the point of maintainability of the writ petition, I am of the view that the power of judicial review of the High Court is a basic feature of the constitution and cannot be taken away by creation of statutory Tribunals. Reference is made to the decision of the Hon'ble Supreme Court in State of Karnataka v. Vishwabarathi House Building Coop. Society, reported in (2003) 2 SCC 412. The relevant portions of the above decision is quoted below:—*

> *39. The District Forum, the State Commission and the National Commission are not manned by lay persons. The President would be a person having judicial background and other members are required to have the expertise in the subjects such as economics, law, commerce, accountancy, industry, public affairs, administration etc. It may be true that by reason of sub-section (2-A) of Section 14 of the Act, in a case of difference of opinion between two members, the matter has to be referred to a third member and, in rare cases, the majority opinion of the members may prevail over the President. But, such eventuality alone is insufficient for striking down the Act as unconstitutional, particularly, when provisions have been made therein for appeal there against to a higher forum.*
>
> *40. By reason of the provisions of the said Act, the power of judicial review of the High Court, which is a basic feature of the Constitution, has not been nor could be taken away.*
>
> *41. We may in this connection also notice that in Laxmi Engineering Works v. P.S.G. Industrial Institute, (1995) 3 SCC 583, this Court held:*
>
> *"A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not Courts though invested with some of*

the powers of a Civil Court. They are quasi-judicial Tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these Forums/Commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional Forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The Forum so created is uninhibited by the requirement of Court fee or the formal procedures of a Court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself; any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business-to-consumer" disputes and not for "business-to-business" disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal"

10. *The Maintenance Tribunal and the Appellate Tribunal being quasi-judicial bodies are inferior to the High Court and as such this Court will have the power of judicial review under Article 226 of the Constitution of India over the orders impugned. The High Court and the Supreme Court are the sole repositories of the power of judicial review. The Tribunals are also not civil courts and the orders impugned herein are not judicial orders. Moreover, no other efficacious, alternative statutory or legal remedy was available to the petitioner, inasmuch as, the petitioner was not a party to the proceeding before the Tribunal. Reference is also made to the unreported judgment of a Division Bench of this Court in Universal Consortium of*

Engineers (P) Ltd. v. State of West Bengal, decided on February 18, 2019 (In re : W.P. No. 23027 of 2017). The relevant portion of the above unreported decision is quoted below:—

> *"114. On a cumulative assessment of the decisions of the Supreme Court, we find it difficult to persuade ourselves to agree with the proposition of law that if in a writ petition under Article 226 of the Constitution the order of the National Commission is under challenge, the High Court must dismiss the petition irrespective of the ground(s) on which such order is challenged. Indeed, notwithstanding the availability of an appellate remedy before the Supreme Court, such remedy would be illusory for many and if such a reason were assigned to dismiss a writ petition, it is justice that could be the casualty. In a given case where a party attempts to bypass a statutory redressal mechanism without any of the exceptional situations being shown to exist, most certainly the dicta in Cicilly Kallarackal (supra) would apply but such decision may not be relied upon by a respondent at the admission stage of every case to have his opponent's case dismissed as if the High Courts have no jurisdiction to receive writ petitions against any order that the National Commission is empowered to pass under the CP Act."*

> ***11.*** *The Tribunals constituted under the said Act are an alternative dispute redressal mechanism but, adjudication by the Tribunal does not infringe the power of this Court to issue writs under the Constitution by way of judicial review. Arriving at the conclusion that the writ petition is maintainable, this Court now proceeds to deal with the other questions which have arisen in this writ petition."*

35. In the case of ***T.C. Basappa vs. T. Nagappa*** reported in ***AIR 1954 SC 440***, the question before the Hon'ble Court was as to the scope of jurisdiction under Article 226 is dealing with a writ of certiorari against

the order of the Election Tribunal? The Hon'ble Supreme Court considered the question in the background of the principles followed by the superior courts in England which generally formed the basis of the decisions of the Indian courts. The Hon'ble Supreme Court held that while broad and fundamental norms regulating exercise of writ jurisdiction had to be kept in mind, it was not necessary for Indian courts to look back to the early history or procedural technicalities of the writ jurisdiction in England in view of express constitutional provisions. Certiorari was meant to "judicial acts" which included quasi-judicial functions of administrative bodies. The Hon'ble Supreme Court issuing such writ quashed patently erroneous and without jurisdiction order but the Hon'ble Court did not review the evidence as an appellate court nor substituted its own finding for that of the inferior Tribunal. In the said case, the Hon'ble Supreme Court further held that:

> *"**5.** The principles upon which the superior courts in England interfere by issuing writs of 'certiorari' are fairly well known and they have generally formed the basis of decisions in our Indian courts. It is true that there is lack of uniformity even in the pronouncements of English Judges, with regard to the grounds upon which a writ, or, as it is now said, an order of 'certiorari', could issue, but such differences of opinion are unavoidable in Judge-made law which has developed through a long course of years.*
>
> *As is well known, the issue of the prerogative writs, within which 'certiorari' is included, had their origin in England in the King's prerogative power of superintendence over the due observance of law by his officials and tribunals. The writ of 'certiorari' is so named because in its original form*

it required that the King should be 'certified of' the proceedings to be investigated and the object was to secure by the authority of a superior court, that the jurisdiction of the inferior tribunal should be properly exercised, vide Ryots of Garabandho v. Zemindar of Parlakimedi. These principles were transplanted to other parts of the King's dominions.

In India, during the British days, the three chartered High Courts of Calcutta, Bombay and Madras were alone competent to issue writs and that too within specified limits and the power was not exercisable by the other High Courts at all. 'In that situation' as this Court observed in Election Commission v. Saka Venkata Subba Rao : (AIR p. 212, para 6)

> *'6. … the makers of the Constitution having decided to provide for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs, which the courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the States' sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc. 'for any other purpose' being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England.'*

6. *The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing 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 in the*

case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of 'certiorari' in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.

7. *One of the fundamental principles in regard to the issuing of a writ of 'certiorari', is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression 'judicial acts' includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin, L.J. thus summed up the law on this point in R. v. Electricity Commissioners : (KB p. 205)*

> *'... Whenever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.'*

The second essential feature of a writ of 'certiorari' is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of 'certiorari' the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It 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. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person, vide per Lord Cairns in Walsall

Overseers v. London and North Western Railway Co., AC at p. 39.

8. *The supervision of the superior court exercised through writs of 'certiorari' goes on two points, as has been expressed by Lord Summer in R. v. Nat Bell Liquors Ltd., AC at p. 156. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of 'certiorari' could be demanded. In fact there is little difficulty in the enunciation of the principles; the difficulty really arises in applying the principles to the facts of a particular case.*

9. *'Certiorari' may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances, vide Halsbury, 2 Edn., Vol IX, p. 880. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess, vide Bunbury v. Fuller; R. v. Income Tax Special Purposes Commissioners.*

10. *A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of 'certiorari' may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of 'certiorari' but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision.*

The essential features of the remedy by way of 'certiorari' have been stated with remarkable brevity and clearness by Morris, L.J. in the recent case of R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw. The Lord Justice says : (KB p. 357)

> *'It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction when shown.'*

11. *In dealing with the powers of the High Court under Article 226 of the Constitution, this Court has expressed itself in almost similar terms, vide G. Veerappa Pillai v. Raman & Raman Ltd. and said: (AIR pp. 195-96, para 20)*

> *'20. Such writs as are referred to in Article 226 are obviously 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. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.'*

These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of 'certiorari' under Article 226 of the Constitution."

36. In the case of ***Umaji Keshao Meshram vs. Radhika Bai & Anr.*** reported in ***1986 Supp SCC 401***, the Hon'ble Supreme Court held that proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution of India are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases of occasioning grave injustice or failure of justice such as when (i) the Court or Tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction. The Hon'ble Supreme Court further held that:

> *"**25.** Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the*

reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well."

37. In the case of ***Radhey Shyam & Anr. vs. Chhabi Nath & Ors.*** reported in ***(2015) 5 SCC 423***, the Hon'ble Supreme Court held that :

"27. *Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.*

> ***28.*** *We may also deal with the submission made on behalf of the respondent that the view in Surya Dev Rai stands approved by larger Benches in Shail, Mahendra Saree Emporium (2) and Salem Advocate Bar Assn. (2) and on that ground correctness of the said view cannot be gone into by this Bench. In Shail , though reference has been made to Surya Dev Rai, the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In Mahendra Saree Emporium (2), reference to Surya Dev Rai is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in Salem Advocate Bar Assn. (2) in para 40, reference to Surya Dev Rai is for the same purpose. We are, thus, unable to accept the submission of the learned counsel for the respondent.*
>
> ***29.*** *Accordingly, we answer the question referred as follows:*
>
> ***29.1.*** *Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.*
>
> ***29.2.*** *Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.*
>
> ***29.3.*** *Contrary view in Surya Dev Rai is overruled."*

38. In the present case, the petitioner in WPA No. 16316 of 2025, has challenged the order passed by the Sub-Divisional Officer, Medinipur Sadar, passed under Sections 4 and 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Tribunal and the Appellate Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 being the quasi-judicial bodies

are inferior to the High Court and as such the High Court will have the power of judicial review under Article 226 of the Constitution of India against the order passed by the Tribunal or the Appellate Tribunal. The Tribunal and the Appellate Tribunals are not civil courts and the orders cannot be treated as judicial orders.

39. In view of the above, this Court held that the order passed by the Tribunal is amenable to writ jurisdiction under Article 226 of the Constitution of the India.

40. In view of the above, **WPA No. 10504 of 2025** is **dismissed**. However, the dismissal of the writ petition will not prevent the petitioner to take appropriate steps before the Tribunal if the respondents failed to comply with the order passed by the Tribunal for payment of the maintenance amount as directed by the Tribunal.

41. **WPA No. 16316 of 2025** is thus **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)