2025:AHC-LKO:79436-DB

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HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 8939 of 2025

M/S Sahu Land Developers Pvt. Ltd. Thru. Authorized Signatory Mr. Sanjay Srivastava

…..Petitioner(s)

Versus

State of U.P. Thru. Prin. Secy. Revenue Lko and 6 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Sanjai Srivastava,
Counsel for Respondent(s)	:	C.S.C., Piyush Mani Tripathi, Sameeksha Chadha

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Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE PRASHANT KUMAR, J.

HON'BLE SHEKHAR B. SARAF, J. : The present writ petition has been filed under Article 226 of the Constitution of India wherein the petitioner has prayed for the issuance of a writ of certiorari quashing the impugned judgement and order dated August 1, 2024 and January 9, 2024 passed by State Consumer Disputes Redressal Commission, Lucknow (hereinafter referred to as the ‘State Commission’) and District Consumer Disputes Redressal Commission, Lucknow (hereinafter referred to as the ‘District Commission’) respectively. The petitioner in furtherance prays for the issuance of a writ of prohibition, prohibiting

the respondent no. 5 to 7 as well as other complainants in respect of recovery of claims. Moreover, the petitioner further prays for writ of mandamus commanding the Commissioner, Lucknow (hereinafter referred to as 'respondent no.2') to specify the time frame to conclude the consolidation operation in the concerned area.

FACTS

2. The factual matrix of the present writ petition is delineated below:

a. The petitioner is a Private Limited Company incorporated in the year 2007, engaged in the business of real estate development in Lucknow has launched a residential plotting development scheme titled "Sahu City Phase-2" on August 29, 2012 at Village Shivpuri, Tehsil Bakshi Ka Talab, District Lucknow. The said land was located outside the municipal and planning area as per Section 2(zh) of the Real Estate (Regulation & Development) Act, 2016 at the time of launch.

b. Subsequent to launch of the scheme, the layout plan of the project was duly approved by the Zila Panchayat, Lucknow in two parts under the *Uttar Pradesh (Kshetra Panchayats and Zila Panchayats) Adhiniyam, 1961*, in two phases on April 28, 2018 and April 29, 2019.

c. Respondent nos. 5 to 7 and other consumers booked residential plots under valid booking agreements, and the petitioner proceeded with development work in accordance with the scheme wherein possession was to be delivered within the specified time, subject to completion of development.

d. However, after initiation of the project and acceptance of bookings, consolidation proceedings in the said village was initiated pursuant to a notification issued by the State of Uttar Pradesh under Section 4 of the *Uttar Pradesh Consolidation of Holdings Act, 1953*, vide publication dated

July 5, 2013. As a result, the petitioner's project has come to a halt and he was unable to deliver the possession to plot allottees.

e. Respondent nos. 5 to 7 lodged complaints before the District Commission seeking refund of the total amount deposited by them and petitioner filed its objection against the said complaint. Thereafter District Commission passed an order dated January 9, 2024 directing the petitioner to refund the amounts alongwith 9% interest. Respondent nos. 5 to 7 preferred cross appeal against the said order for the enhancement of rate of interest from 9% to 12% per annum and also for the payment of interest from date of deposit till the date of actual payment, which was allowed by modification of order dated January 9, 2024.

f. Petitioner filed appeal under Section 41 of the Consumer Protection Act, 2019 (hereinafter referred to as 'Act') before State Commission and the said appeal was decided vide order dated August 1, 2024 against the petitioner. Subsequently petitioner filed revision against the aforesaid order before National Consumer Disputes Redressal Commission (hereinafter referred to as 'National Commission') which was dismissed vide order dated April 1, 2025.

g. Respondent nos. 5 to 7 filed execution proceedings before respondent no. 4 pursuant to which a demand notice dated January 4, 2025 was issued by Tehsildar and attachment order dated February 18, 2025 was issued by Sub Divisional Magistrate thereby attaching the bank account of the petitioner pursuant to which the amount of Rs. 48,80,493 was realized and paid to the respondents 5 to 7 from the account of petitioner.

h. The present writ petition is therefore being filed seeking quashing of the impugned orders passed by the District Commission upheld by State Commission alongwith setting aside the recovery proceedings, and declaring that the continuation of such action is wholly without jurisdiction and in violation of statutory and constitutional safeguards.

ISSUE

3. A. Whether the order passed by National Commission in its Appellate or revisional jurisdiction can be challenged before the High Court in writ jurisdiction under Article 226 of the Constitution of India?

B. If yes, then under what circumstances should such writs be entertained and what is the scope of challenege before the writ court under Article 226?

CONTENTIONS OF PETITIONER

4. The learned counsel appearing on behalf of the petitioner has made the following submissions:

a. On the date of launch of the plotting scheme, the concerned land was not under any consolidation operations.

b. The petitioner sought information from respondent authorities regarding the initiation, stage and date of completion of the consolidation proceedings in the concerned village but a vague and unclear reply was given leading to complete uncertainty and confusion thereby rendering the petitioner incapable of completing the project.

c. The petitioner is in absolute possession and occupation of the land on which the residential plotting scheme has been launched and has clear title to the said land without any encumbrance.

d. Petitioner is willing to provide possession to customers once the development work is completed but due to an unforeseen event that is initiation of the consolidation proceedings which is beyond the control of the petitioner and is akin to force majeure event under Section 56 of the Indian Contract Act, 1872, petitioners work has come to halt.

e. As per the terms and conditions of the scheme, the customer is not entitled to any interest but only to the refund of actual amount when there is no deficiency on the part of the petitioner

f. Despite the supervening legal impediment and doctrine of frustration/impossibility of performance under Section 56 of the Indian Contract Act, 1872, due to initiation of consolidation proceedings, respondent nos. 5 to 7 initiated consumer complaints alleging deficiency of service and sought refund with interest and accordingly the impugned order dated January 9, 2024 was passed by District Commission directing refund alongwith interest which suffers from patent illegality, arbitrariness and complete non-consideration of the statutory bar under the U.P. Consolidation of Holdings Act, 1953, and against the settled proposition of law laid down by the Supreme Court.

g. To buttress his arguments, counsel has placed reliance on **Satyabrata Ghosh v. Mugneeram Bangur & Co.** reported in AIR 1954 SC 44); **Alopi Prasad & Sons v. Union of India** reported in AIR 1960 SC 588; **Delhi Airtech Services Pvt. Ltd. v. State of U.P.** reported in (2011) 9 SCC 354; **Pioneer Urban Land & Infrastructure Ltd. v. Union of India** reported in (2019) 8 SCC. 416 wherein the Supreme Court has held that supervening impossibility/illegality discharges contractual obligations

and court may intervene to grant interim protection from consumer redressal proceedings.

CONTENTIONS OF RESPONDENTS

5. The learned counsel appearing on behalf of the respondents has rebutted the arguments of petitioner and made following submissions:

a. The petitioner was unable to deliver the possession of the land within time, therefore he is liable to return the aforesaid amount alongwith interest to the respondents.

b. The order of the District Commission was passed after perusal of evidence and was upheld by the State Commission and thereafter the National Commission that held that the order does not suffer from any illegality.

b. The writ petition is not maintainable before this court as there is an alternative remedy to approach the Supreme Court under Section 67 of the Act.

ANALYSIS

6. I have given my thoughtful consideration to the submissions canvassed by the learned counsel for the parties and have also perused the materials placed on record.

7. The framework of the Consumer Protection Act was provided by a resolution dated April 9, 1985 of the General Assembly of the United Nations Organisation which is known as “Consumer Protection Resolution No. 39/248”. India is a signatory to the said Resolution. Ergo, the Act was enacted in pursuance of the said Resolution. It further seeks to provide for better protection of the interests of consumers and for the said purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith, as would appear from the Statement

of Objects and Reasons of the Act inter alia to promote and protect the rights of consumers.

8. In the present case writ petition under Article 226 of the Constitution of India is filed for interfering with the recovery proceedings initiated in pursuance of an order passed by District Commission which was affirmed by State Commission and National Commission.

9. The petitioner then preferred a revision under Section 58(1)(b) of the Act before National Commission wherein the commission has converted the said revision into second appeal under Section 51(2) of the Act which was dismissed too for the reason that no substantial question of law was involved in the matter. The order passed by National Commission is quoted hereinbelow:

> *"These are Revision Petitions filed against the order dated 01.08.2024 of the Uttar Pradesh State Consumer Disputes Redressal Commission wherein the appeals filed by the Petitioner were dismissed. The question before us is whether these three Revision Petitions are maintainable before this Commission under the Consumer Protection Act, 2019. In a recent order of this Commission in RP/1879/2024, Vivo Mobile India Pvt. Ltd. Vs. Mavuram Sujatha & Ors, decided on 20.01.2025, it has been held that revisional power of this Commission is not available for orders arising out of a complaint before the District Commission or out of an appellate order of the State Commission. Further it has been held that the orders pending a complaint before the District Commission or after a decision would only be revisable before the State Commission and not before this Commission under Section 58(1)(b) of the Consumer Protection Act, 2019. Learned Counsel for the Petitioner submitted that those revision petitions were filed before this order of the Commission and therefore the Revision Petitions may be converted into Second Appeal under Section 51(2). Accordingly these Revision Petitions are converted as Second Appeal.*
>
> *Heard the arguments of the learned Counsel for both the parties. The Section dealing with Second Appeal in the 2019 Act, which is Section 51(2), clearly states that there should be a substantial question of law involved for filing of Second Appeal. On hearing arguments and on perusal of record, we find there are no substantial questions of law involved in the Second Appeal as the State Commissioner, had reiterated the order of the District Commission which has been passed after taking into account the evidences and hearing the parties. In the grounds of Second Appeal, only issues relating to facts have been mentioned like allotment of plot, giving possession development work, etc. which have been adequately dealt with by this*

Commission. Accordingly, these three Revision Petitions converted as Second Appeal are dismissed as not maintainable.

These three Second Appeals arising out of the same matter and decided by Uttar Pradesh State Consumer Disputes Redressal Commission on the same date but by different orders, again we find that the Second Appeals have been filed without any question of any substantial law involved in the matter. Accordingly, these three Second Appeals are also dismissed as not maintainable."

10. The petitioner heavily relies on the order passed by National Commission Disputes Redressal Commission, New Delhi in **Vivo Mobile India Private Limited v. Smt. Mavuram Sujatha and others**; (Revision Petition no. 1879 of 2024, decided on January 20, 2025) to submit that the National Commission has itself stated in the said order to invoke writ jurisdiction before High Court against the order of the State Commission. The paragraphs of the order relied upon by the petitioner is quoted hereinbelow:

"71. Accordingly, we do not find that the power to revise a revisional order passed by the State Commission is available to us. The order of the State Commission in the present case cannot be stated to be an order in an original complaint of a consumer dispute pending before the State Commission. Admittedly, the dispute is pending before the District Commission and not before the State Commission. Consequently, we cannot assume the revisional jurisdiction on the arguments advanced by the learned Counsel for the parties.

72. We may also point out that the remedy by way of a Writ Petition has been held to be available in the judgments referred to above, and in the absence of any statutory specific remedy, it is open to the aggrieved party to approach the jurisdictional High Court for redressal of their grievances. The compilation, therefore, presented as a Revision Petition, being not maintainable under Section 58(1)(b) of the Consumer Protection Act, 2019, is hereby dismissed."

11. Per contra, the respondents vehemently rebuked the arguments of the petitioner and contend that the District Commission has rightly passed an order dated January 9, 2024 which was decided against petitioner wherein it was directed to deposit Rs. 8,64,000/-alongwith 9% annual interest to the complainant from the date of filing the complaint till the date of actual payment within 30 days from the date of order due to default of the petitioner.

12. In **Whirlpool Corporation v. Registrar of Trademarks, Mumbai** reported in (1998) 8 SCC 1 has held that alternative remedy will not act as a bar for writ court in the contingencies. The relevant paragraph of the judgment is quoted hereinbelow:

> *"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged……."*
>
> (Emphasis added)

13. In **Harbanslal Sahnia v Indian Oil Corpn. Ltd** reported in (2003) 2 SCC 107 has reiterated the view of Whirlpool Corporation (Supra) and held as follows:

> *"7…….In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged……."*
>
> (Emphasis added)

14. The Supreme Court in **Radha Krishan Industries v. State of H.P.** reported in (2021) 6 SCC 771 has discussed in detail about the maintainability of writ petition under Article 226 of the Constitution of India and also laid down principles of law that emanates from a plethora of precedents. The relevant paragraphs of the judgment are quoted hereinbelow:

> *"**C.1. Maintainability of the writ petition before the High Court***
>
> *24. The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this*

Court in CCT v. Glaxo Smith Kline Consumer Health Care Ltd. [CCT v. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 19 SCC 681 : 2020 SCC OnLine SC 440] , the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] , a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9-10, paras 14-15)

> *"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
>
> *15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

26. Following the dictum of this Court in Whirlpool [Whirlpool Corpn.

v. Registrar of Trade Marks, (1998) 8 SCC 1] , in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] , this Court noted that : (Harbanslal Sahnia case [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] , SCC p. 110, para 7)

> *"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn.v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."*

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

> *27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*
>
> *27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*
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> (Emphasis added)

15. The Supreme Court in **Ibrat Faizan v. Omaxe Buildhome (P) Ltd.** reported in (**2023) 11 SCC 594** after noting the dicta in **L. Chandra Kumar v. Union of India** reported in **(1997) 3 SCC 261** while dealing with the special leave petition against the order passed by National Commission in its appellate jurisdiction upholding the order of State Commission has categorically held that National commission is a 'tribunal' within the meaning of Article 136 of the Constitution and writ court has supervisory jurisdiction over the tribunal under Article 227 of the Constitution. Ergo, the writ petition under Article 227 before the High Court would be maintainable. The relevant paragraphs of the judgment are quoted hereinbelow:

> "*17. It is not in dispute that in the present case, the appeal before the National Commission was against the order passed by the State Commission under Section 47(1)(a) of the 2019 Act. Therefore, against the order passed by the State Commission passed in a complaint in exercise of its powers conferred under Section 47(1)(a) of the 2019 Act, an appeal to the National Commission was maintainable, as provided under Section 58(1)(a)(iii) of the 2019 Act. As per Section 67 of the 2019 Act, any person, aggrieved by an order made by the National Commission of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of Section 58, may prefer an appeal against such order to the Supreme Court. Therefore, an appeal against the order passed by the National Commission to this Court would be maintainable only in case the order is passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(i) or under Section 58(1)(a)(ii) of the 2019 Act. No further appeal to this Court is provided against the order passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)*

(iii) or under Section 58(1)(a)(iv) of the 2019 Act. In that view of the matter, the remedy which may be available to the aggrieved party against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) or Section 58(1)(a)(iv) would be to approach the High Court concerned having jurisdiction under Article 227 of the Constitution.

18. Whether the National Commission can be said to be a "tribunal" for the purpose of exercise of powers under Article 227 of the Constitution by the High Court is concerned, has been considered by a Constitution Bench of this Court in Associated Cement Companies [Associated Cement Companies Ltd. v. P.N. Sharma, 1964 SCC OnLine SC 62 : AIR 1965 SC 1595] , which is required to be referred to. In paras 44 and 45, it is observed and held as under : (SCC p. 1609)

> *"44. An authority other than a court may be vested by statute with judicial power in widely different circumstances, which it would be impossible and indeed inadvisable to attempt to define exhaustively. The proper thing is to examine each case as it arises, and to ascertain whether the powers vested in the authority can be truly described as judicial functions or judicial powers of the State. For the purpose of this case, it is sufficient to say that any outside authority empowered by the State to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial powers of the State and may be regarded as a tribunal within the meaning of Article 136. Such a power of adjudication implies that the authority must act judicially and must determine the dispute by ascertainment of the relevant facts on the materials before it and by application of the relevant law to those facts. This test of a tribunal is not meant to be exhaustive, and it may be that other bodies not satisfying this test are also tribunals. In order to be a tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties, such as a private arbitrator or a tribunal acting under Section 10-A of the Industrial Disputes Act, 1947, does not satisfy the test of a tribunal within Article 136. It matters little that such a body or authority is vested with the trappings of a court. The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a court, so also the Industrial Disputes Act, 1947 vests an authority acting under Section 10-A of the Act with many of such trappings, and yet, such bodies and authorities are not tribunals.*

> *45. The word "tribunal" finds place in Article 227 of the Constitution also, and I think that there also the word has the same meaning as in Article 136."*

Therefore, the National Commission can be said to be a "Tribunal" which is vested by statute with the powers to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them. Therefore, as observed hereinabove in the aforesaid decision, it satisfies the test of an authority vested with the judicial powers of the State and therefore may be regarded as a "Tribunal" within the meaning of Article 227 and/or 136 of the Constitution. Also, in a given case, this Court may not exercise its powers under Article 136 of the Constitution, in view of the remedy which may be available to the aggrieved party before the High Court concerned under Article 227 of the Constitution, as it is appropriate that aggrieved party approaches the High Court concerned by way of writ petition under Article 227 of the Constitution.

19. At this stage, another Constitution Bench decision of this Court in L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] is required to be referred to. While dealing with the jurisdiction of the High Courts under Articles 226/227 of the Constitution in respect of powers of judicial review, it is observed and held in para 90 as under : (SCC pp. 307-308)

> *"90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution*

> *before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter."*

That thereafter, it is observed and held that against the order passed by the Tribunal, the aggrieved party may approach the High Court concerned under Article 227 of the Constitution.

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23. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in Estralla Rubber v. Dass Estate (P) Ltd. [Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97] , which has been consistently followed by this Court (see the recent decision of this Court in Garment Craft v. Prakash Chand Goel [Garment Craft v. Prakash Chand Goel, (2022) 4 SCC 181 : (2022) 2 SCC (Civ) 424]). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution.

24. In view of the above discussion and for the reasons stated above and subject to the observations made hereinabove, it cannot be said that a writ petition under Article 227 of the Constitution before the High Court concerned against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) of the 2019 Act was not maintainable……"

(Emphasis added)

16. The Supreme Court in **Universal Sompo General Insurance Co. Ltd. v. Suresh Chand Jain** reported in (2024) 9 SCC 148 applying the precedent in **Ibrat Faizaan** (Supra) wherein the petitioner has directly approached the Apex Court under Article 136 of Constitution to

challenge the order passed by National Commission that had affirmed the order of State Commission, held that a party can always approach the High Court having supervisory jurisdiction under Article 227 of the Constitution. The relevant paragraphs of the judgment are quoted hereinbelow:

> *"25. The provisions of Article 136 of the Constitution as such are not circumscribed by any limitation. But when the party aggrieved has alternative remedy to go before the High Court, invoking its writ jurisdiction or supervisory jurisdiction as the case may be, this Court should not entertain petition seeking special leave thereby short-circuit the legal procedure prescribed. The limitations, whatever, they be are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in very exceptional situations. The power will only be used to advance the cause of justice and its exercise will be governed by well-established principles which govern the exercise of overriding constitutional powers.*
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> ***
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> *34. This Court considered the question for its decision as to whether against the order passed by Ncdrc in an appeal under Section 58(1)(a)(iii) of the 2019 Act, petition before the High Court under Article 227 of the Constitution of India would be maintainable.*
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> ***
>
> *39. In the aforesaid view of the matter, we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution."*

17. The Supreme Court in **Rikhab Chand Jain v. Union of India** reported in 2025 SCC OnLine SC 2510 wherein the Apex Court has disapproved the High Court entertaining a writ petition when there is an appropriate remedy before a different jurisdiction of the same High Court. The relevant paragraphs of the judgment are quoted hereinbelow:

"10. We may profitably refer, in this context, to the Constitution Bench decision in Thansingh Nathmal v. A. Mazid, Superintendent of Taxes. In Thansingh Nathmal (supra), this Court had the occasion to lay down a principle of law which is salutary and not to be found in any other previous decision rendered by it. The principle, plainly, is that, if a remedy is available to a party before the high court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226, for, that would allow the machinery set up by the concerned statute to be bye-passed. The relevant passage from the decision reads as follows:

> *"The jurisdiction of the High Court under article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under article 226, where the petitioner has an alternative remedy, which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."*

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12. That apart, the majority view in a previous Constitution Bench in A.V Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani reads thus:

> *"14. ... we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Article 226 of the Constitution. If a petitioner has*

> *disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the judgment of the learned C.J. in Mohammed Nooh case with its reference to the right to appeal being lost 'through no fault of his own' emphasizes this aspect of the Rule."*
>
> *In essence, this Court was of the opinion that once a petitioner has due to his own fault disabled himself from availing a statutory remedy, the discretionary remedy under Article 226 may not be available.*
>
> ***
>
> *15. In our considered opinion, the appellant having had a remedy before the High Court in a separate jurisdiction which was equally efficacious, he indulged in the (mis) adventure of invoking its writ jurisdiction which was rightly not entertained.*
>
> (Emphasis added)

18. Upon careful perusal of umpteen judgements of the Supreme Court and sifting through the ratios ordained in the precedents, the following principles emerges with regard to the maintainability of writ petition under Article 226 against the orders passed by District, State and National Commissions in its appellate jurisdiction:

A. Alternative remedy would not operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged;
B. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion;
C. An appeal against the order of National Commission to writ court in cases where there are disputed questions of fact or the grounds taken in the writ petition is not so cogent, where prima facie

patent illegality or perversity findings of Tribunal are not shown on the face of the record, the High Court has the discretion to decline jurisdiction in a writ petition; and

D. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up.

E. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

19. So far as the issue of maintainability of writ petition before the High Court is concerned, one may look into the judgment of Supreme Court in **Whirlpool Corporation** (Supra), **Haribanslal Sahnia** (Supra) and **Radha Krishan Industries** (Supra) wherein the court has clarified that writ petition against the order of National Commission is maintainable before High Court subject to some restrictions.

20. Moreover, the Supreme Court in **Ibrat Faizaan** (Supra) and **Universal Sompo General Insurance Co. Ltd.** (Supra) has held that writ petition against order of National Commission is maintainable either under Article 226 or Article 227 of the Constitution. Subsequently, the Supreme Court in **Rikhab Chand Jain** (Supra) has held that writ petition under Article 226 would not be maintainable if there is an alternative remedy under different jurisdiction of the same High Court.

21. In light of the judgments referred above, we are of the view that when a supervisory jurisdiction under Article 227 is available to the petitioner, writ petition under Article 226 should not be normally entertained but the remedy under Article 226 would be available under exceptional circumstances. Furthermore, writ jurisdiction under Article

226 is cautiously to be used when grave injustice has been caused due to violation of principles of natural justice and/or when there is a clear violation of fundamental rights or patent illegality in the impugned order. [see **Radha Krishan Industries** (Supra)]

22. In the present case, the District Consumer Forum after perusal of evidence placed on record has held that despite the amount paid by the respondents under the aforesaid scheme, neither the possession had been handed over to them nor any construction work had been carried out by the petitioner. It is the case of the petitioner that the consolidation proceedings had been initiated after the launch of the project by the petitioner. But the District Commission has observed that petitioner was never in possession of the land as it was already under consolidation proceedings and petitioner had taken the aforesaid amount from the respondents by hiding the fact that the land was under consolidation proceedings. Hence, petitioner had committed an unfair trade practice and was therefore liable to return the said amount to the respondents.

23. The petitioner then approached the State Commission to contend that District Commission had overlooked the fact of possession and consolidation proceedings as the possession is still with the petitioner and it had come under consolidation proceedings after launch of the project by the petitioner which is a ‘force majeure’ event rendering him incapable of completing the project. State Commission has dismissed the appeal by upholding the order of the District Commission. Subsequently, the National Commission also dismissed the appeal on the ground of absence of any substantial question of law.

24. The petitioner is here before this Court and has again reiterated the same ground that has already been taken by him before the District Commission, State Commission and National Commission who have concurrently come to a finding against the petitioner. The issue of the knowledge of consolidation proceedings as to from when they were being carried out and the fact of possession of the land are purely factual in nature and based on disputed questions of fact which cannot be gone into by us in writ jurisdiction. The other pleas taken by the petitioner are

also not so cogent as to persuade us to interfere with the findings of the National Commission. It is to be further noted that till date, the petitioner has not given the possession of the land to the respondents who are the allotees of land.

25. The case of the petitioner does not fall under any of the grounds mentioned herein below:-

i) the writ petition has been filed for the enforcement of any of the Fundamental Rights;

ii) where there has been a violation of the principle of natural justice; or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged;

iii) the findings of the Commission (District Commission, State Commission, National Commission) are perverse.

26. In fact, we are of the view that the Commissions have rendered a finding that is reasonable and cannot be termed as perverse. Ergo, we come to an obdurate finding that the petitioner has failed to make out a case requiring interference of orders passed by the three consumer commissions.

27. In light of the above, the writ petition is dismissed. Parties shall bear their own costs.

December 2, 2025
Ashutosh/cks/-

(Shekhar B. Saraf, J.)

I agree

(Prashant Kumar, J.)

Digitally signed by :-
CHANDRA KANT SINGH
High Court of Judicature at Allahabad,
Lucknow Bench