



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 12831/2025

Jagdish Prasad Sharma S/o Sh. Ramlal, R/o Khasra No. 112/1,  
Village- Harnathpura, Niwaru Road, Jaipur.

----Petitioner

Versus

Jaipur Development Authority, Through Its Secretary,  
Ramkishore Vyas, Indra Circle, Jawahar Lal Nehru Marg, Jaipur.

----Respondent



For Petitioner(s) : Mr. Sunil Samdaria with  
Mr. Arihant Samdaria  
Dr. Abhinav Sharma  
Mr. Yuvraj Samant,  
Mr. R. B. Bansal,  
Mr. Jai Lodha,  
Mr. Surya Pratap Singh Rajawat,  
Mr. Sandeep Kumar,  
Mr. Rahul Kamwar,  
Ms. Sara Parveen, and  
Mr. Rameet Pareek

For Respondent(s) : Mr. Bharat Vyas, AAG assisted by  
Mr. Harshvardhan Katara  
Mr. Lalit Bhardwaj  
Mr. Jay Vardhan Joshi

**HON'BLE MR. JUSTICE SAMEER JAIN**

**Judgment**

**REPORTABLE**

**Reserved on: 20/09/2025**

**Pronounced on: 04/11/2025**

**PREFATORY NOTE:**

1. The present writ petition has been filed by the petitioner invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, and not under Article 227 thereof. Before advertng to the merits of the case, it becomes necessary to address the preliminary issue pertaining to the maintainability and the appropriate constitutional provision under which the present petition has been instituted.



2. The distinction between the scope and ambit of jurisdiction exercisable under Articles 226 and 227 of the Constitution of India has been the subject of extensive judicial interpretation. While Article 226 confers upon the High Court the power to issue directions, orders, or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari for enforcement of fundamental rights or for any other purpose, Article 227 vests in the High Court the power of superintendence over all courts and tribunals within its territorial jurisdiction. Thence, the choice of provision has material bearing on the nature of relief, the extent of judicial review, and the availability of appellate or revisional remedies.

3. In the instant case, the petitioner has approached this Court under Article 226 challenging the following actions of the respondents:

3.1 Issuance of notice dated 11.03.2025 under Section 32/34A of the Jaipur Development Authority Act, 1982, which is alleged to be without jurisdiction;

3.2 Sealing of the premises by the respondents on 12.03.2025, purportedly in violation of the principles of natural justice, and in a manner alleged to be arbitrary, discriminatory, and without lawful authority; and

3.3 The review order dated 15.07.2025, whereby in Appeal No. 250/2025, the learned Jaipur Development Appellate Tribunal has upheld the sealing of the premises wherein a marriage garden has been in operation, and has further directed the petitioner to





seek conversion of the land in accordance with the JDA Rules and the applicable bye-laws.

4. In view of the nature of the impugned actions and the reliefs claimed, the preliminary question that arises for consideration is whether the present petition is appropriately maintainable under Article 226, or whether the supervisory jurisdiction under Article 227 ought to have been invoked, given that one of the impugned orders emanates from a quasi-judicial authority, namely, the Jaipur Development Appellate Tribunal. The resolution of this jurisdictional issue is imperative before entering into the merits of the controversy, as the constitutional foundation of the petition directly influences the standard and scope of judicial scrutiny applicable to the actions impugned herein.

5. Accordingly, the body of the present judgment is structured into two distinct parts: **Part A** deals with the jurisdictional issue concerning the maintainability of the petitions (illustratively the present petition), wherein Bar at large had been invited to put-forth their stance and assist the Court; and examines the appropriateness of invoking Article 226 as against Article 227 of the Constitution of India, in light of the nature of the impugned actions and the reliefs sought; and **Part B** thereafter proceeds to consider the substantive aspects of the matter, delving into the legality, propriety, and validity of the impugned actions of the respondents, and the entitlement of the petitioner to the reliefs claimed by way of the present writ petition. Accordingly, the discussion in **Part A** is devoted to a comprehensive examination of this foundational issue before the





Court proceeds to evaluate the merits of the petitioner's claims in

**Part B.**

**PART-A**

6. On the issue pertaining to the defects pointed out by the Registry, it is observed that the question raised is of a recurring nature and carries substantial significance for the legal fraternity. Accordingly, in order to ensure clarity and uniformity in practice, and to settle the legal position on the point, a question of law was proposed for consideration on 27.08.2025 and 01.09.2025, which reads as under:-

*"**Note:** The Court proposes to consider the issue as under what grounds and with what rationale the Registry raises objections regarding maintainability of writ petitions under Article 226 or Article 227 of the Constitution of India. The Bar at large is invited to address the Court on the said issue on 04.09.2025 at 2:00 P.M."*

7. This question had been formulated with the intent to address the recurring objections raised by the Registry in matters involving the maintainability of writ petitions under Article 226 and/or 227 of the Constitution of India, and to delineate the extent of the Registry's authority vis-à-vis judicial determination of maintainability, thereby serving as a guiding precedent for future cases before the Court as well as for members of the Bar, in consonance with the settled position of law and the *ratio decendi* passed by various Courts over the years.

8. In the said matter, pertaining to the defect raised by the Registry, and the question of law formulated for authoritative consideration, whereto the Bar at large was invited to advance





their submissions on the said issue. In pursuance thereof, several learned members of the Bar, namely Shri Sunil Samdaria, Dr. Abhinav Sharma, Shri Yuvraj Samant, Shri R. B. Bansal, Shri Jai Lodha, Shri Surya Pratap Singh Rajawat, Shri Sandeep Kumar, Shri Rahul Kamwar, Ms. Sara Parveen, and Shri Rameet Pareek, marked their presence before the Court and also submitted their written arguments on the issue relating to the maintainability of writ petitions under Articles 226 and 227 of the Constitution of India, as well as on the scope and powers of the Registry in relation to raising objections on maintainability.

9. The aforesaid submissions were heard at length and duly considered by the Court. The Court also records and expresses its appreciation and satisfaction for the active and constructive participation of the members of the Bar in assisting the Court on this significant question of law, which bears recurring implications for the administration of justice and the procedural functioning of the Registry.

10. At the outset, it was urged by the learned counsel for the petitioner – Shri Sunil Samdaria that, independent of the merits of the case, Defect No. 6 as pointed out by the Registry regarding the maintainability of the present writ petition under Article 226 of the Constitution of India does not warrant consideration and deserves to be overruled for the following reasons:

(a) That the Registry has no jurisdiction, authority, or competence to adjudicate upon the issue of maintainability of a





writ petition, as the same falls exclusively within the domain of judicial determination by the Court.

(b) That the present petition invokes issues pertaining to jurisdiction, violation of the principles of natural justice, and infringement of fundamental rights, which are squarely covered by the dictum of the Hon'ble Supreme Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others: (1998) 8 SCC 1**, wherein it had been categorically held that the existence of an alternative remedy is no bar to the exercise of writ jurisdiction under Article 226 when-

- (i) the order is wholly without jurisdiction;
- (ii) there has been violation of the principles of natural justice,
- (iii) the fundamental rights of the petitioner have been infringed.

The relevant extract from the aforementioned ratio is reproduced hereinbelow:

*"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has 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."*

11. It was further submitted that Tribunals are subject to the certiorari jurisdiction of the High Court, as recognized by the Hon'ble Supreme Court in the dictum passed in **Rupa Ashok**





**Hurra v. Ashok Hurra, AIR 2002 SC 1771.** Learned counsel further contended that a writ petition can only be maintained under Article 226 of the Constitution of India and not under Article 227, and placed reliance on the ratio encapsulated in **Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329,** and **Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423,** wherein it was held that orders of Civil Courts or Judicial Courts stand on a different footing from quasi-judicial orders passed by authorities or Tribunals. The Court therein clarified that orders of Tribunals are amenable to the writ jurisdiction under Article 226 of the Constitution of India, where the action is without jurisdiction or suffers from patent illegality, whereas judicial orders of Civil Courts are not amenable to such jurisdiction.

12. Subsequently, it was submitted that Tribunals are distinct and separate from Courts, as they are statutory creations constituted to deal with specific fields through an alternative institutional mechanism. Tribunals may consist of members who are not necessarily judges/judicial officers but include subject-matter experts. Nevertheless, they are empowered to frame their own procedural rules, and the provisions of the Code of Civil Procedure and the Indian Evidence Act (now *Bhartiya Sakshay Adhinyam*) apply only in a modified or limited manner. In support of this proposition, reliance was placed on the authoritative pronouncements of the Hon'ble Supreme Court as in **Chandra Kumar v. Union of India: (1997) 3 SCC 261, Rojer Mathew v. South Indian Bank Ltd.: (2020) 6 SCC 1, P. Surendran v. State by Inspector of Police: SLP (Crl.) No. 1832/2019,**





**Ram Sharan Lal Tripathi v. State of Chhattisgarh: WPC No. 2113/2015, Shiv Shakti Coop. Housing Society v. M/s Swaraj Developers: (2003) 6 SCC 659, Surya Dev Rai v. Ram Chandar Rai: (2003) 6 SCC 675, Jogendrasinhji Vijaysingh ji v. State of Gurjarat: (2015) 5 SCC 1, Rt. Rev. Timothy Ravinder Dev Pradeep v. Rev. Charles Samraj: CRP Sr. No. 109971 of 2021.**

13. Consequentially, it was submitted that in light of the aforesaid legal position and judicial pronouncements, it is submitted that the defect pointed out by the Registry is unsustainable in law and liable to be overruled, and that the present writ petition is maintainable under Article 226 of the Constitution of India.

14. Learned counsel Shri Rahul Kumar, R.B. Bansal, and Ms. Sarah Praveen, in consonance with and adopting the line of submissions advanced by learned counsel Shri Sunil Samdaria, submitted that the issue of maintainability of a writ petition is a matter requiring judicial adjudication and cannot, under any circumstance, be determined by the Registry. It was urged that the Registry lacks the jurisdictional competence or authority to raise objections pertaining to the maintainability of a writ petition, as such an objection involves a substantive question of law which falls exclusively within the domain of the Court.

15. It was further contended that the Registry's role is purely administrative in nature and is limited only to pointing out procedural or formal defects, such as deficiencies in court fees, formatting, or documentation and not to engage in any





assessment of the legal tenability or maintainability of a petition filed before the Court. Learned counsel emphasized that the authority to determine the maintainability of writ petitions under Articles 226 or 227 of the Constitution of India vests solely with the judiciary, being an exercise of judicial discretion and constitutional interpretation. Any attempt by the Registry to preemptively decide or raise objections on maintainability, it was argued, would be beyond its administrative jurisdiction and would encroach upon the judicial domain, thereby undermining the constitutional guarantee of access to justice enshrined under Article 14 and Article 21 of the Constitution of India.

16. Learned counsel Shri Sandeep Kumar submitted that the judgments rendered by the Hon'ble Supreme Court in **Radhey Shyam (supra)** and **Jogendrasinghi (supra)** did not advert to or consider the enforcement of fundamental rights guaranteed under Part III of the Constitution of India, when such rights stand infringed by orders passed by inferior courts. It was contended that the said judgments are silent on this crucial aspect and, therefore, cannot be construed as creating any embargo upon the jurisdiction of the High Courts to entertain writ petitions under Article 226 read with Article 227 of the Constitution of India against orders of inferior courts where there is a violation of fundamental rights.

17. Learned counsel further submitted that, in view of this omission, the aforesaid judgments do not operate as binding precedents so as to curtail or restrict the constitutional jurisdiction of the High Court in exercising its powers under Article 226 for





enforcement of fundamental rights in appropriate cases. Hence, it was urged that there exists no legal impediment or bar to the maintainability of writ petitions invoking the High Court's jurisdiction under Article 226 read with Article 227 against orders of subordinate or inferior courts where such orders infringe the petitioner's rights guaranteed under Part III of the Constitution.

18. Learned counsel Shri S. P. Singh Rajawat and Shri Jai Lodha submitted that Article 226 of the Constitution of India confers writ jurisdiction upon the High Courts, whereas Article 227 vests the High Courts with supervisory jurisdiction over all subordinate courts and tribunals within their territorial limits. It was contended that judicial orders passed by courts are not amenable to challenge by way of a writ of certiorari under Article 226, but are subject only to the supervisory jurisdiction under Article 227, as categorically laid down by the Nine-Judge Bench of the Hon'ble Supreme Court in **Naresh Shridhar Mirajkar and Others v. State of Maharashtra: AIR 1967 SC 1.**

19. Learned counsel further submitted that the writ jurisdiction under Article 226 is not intended to be exercised in a sweeping or indiscriminate manner, 'like a bull in a china shop,' to correct every conceivable error committed by courts or tribunals acting within the scope of their jurisdiction. It was emphasized that the power of superintendence under Article 227 is to be exercised sparingly and with circumspection, only to ensure that the subordinate courts and tribunals act within the bounds of their lawful authority and do not transgress their jurisdictional limits. The jurisdiction under Article 227, it was urged, is therefore





corrective and supervisory, not appellate, and must not be invoked in a cursory or routine manner to re-appreciate evidence or substitute the Court's view for that of the subordinate forum.

20. However, a distinguishable stance had been put forth by learned counsel Dr. Abhinav Sharma; as it was submitted that there exists a clear and well-recognized distinction between the exercise of jurisdiction by the High Court under Articles 226 and 227 of the Constitution of India. The jurisprudential demarcation between the two provisions, it was contended, stands well-settled through a catena of judicial pronouncements, as referred to by the learned counsel appearing for the Bar, and further reaffirmed by the Larger Bench of the Rajasthan High Court in **Mahendra Kumar Jain v. Appellate Rent Tribunal, Ajmer, D.B. Civil Reference No. 1/2020**, decided on 26.05.2022. In the said decision, the Larger Bench held that the orders passed by the Rent Tribunals and Appellate Rent Tribunals, being judicial tribunals manned by judicial officers, are amenable only to the supervisory jurisdiction under Article 227 of the Constitution and not to the writ jurisdiction under Article 226.

21. Learned counsel further pointed out that the Jaipur Development Authority Tribunal (JDA Tribunal), constituted under Section 83(6) and (7) of the Jaipur Development Authority Act, exercises powers analogous to those of a Civil Court, and its orders are declared to be final and binding upon the parties. Having regard to the fact that the Tribunal is composed of judicial officers nominated by the High Court, its character and functioning are judicial in nature. Accordingly, in parity with the principles and





ratio laid down in **Mahendra Kumar Jain (supra)** and **Radhey Shyam (supra)**, it was contended that a writ petition under Article 226 of the Constitution of India against the orders of the JDA Tribunal would not be maintainable. Entertaining such petitions under Article 226, it was urged, would, in effect, amount to creating an intra-court appeal, which would be contrary to the legislative intent underlying the JDA Act, and would further amount to judicial re-legislation by expanding the scope of remedies beyond what the statute contemplates.

22. Learned counsel Shri Ramit Pareek submitted that the Hon'ble Supreme Court has categorically and explicitly held that the determination as to whether a petition is to be filed under Article 226, Article 227, or under both provisions conjointly, is to be guided by and shall depend upon the Rules framed by the respective High Court. He contended that the orders passed by Civil Courts are amenable to scrutiny by the High Court in the exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, which is distinct in nature and scope from the writ jurisdiction exercisable under Article 226. The learned counsel emphasized that the supervisory jurisdiction under Article 227 is meant to ensure that subordinate courts and tribunals function within the bounds of their authority and do not commit errors apparent on the face of the record, whereas the writ jurisdiction under Article 226 is invoked primarily for enforcement of fundamental and legal rights and to correct jurisdictional errors of statutory or quasi-judicial authorities.





23. It was further submitted that an order passed by a Civil Court, which is not appealable or whose correctness cannot be assailed by way of revision, would appropriately fall within the supervisory ambit of Article 227 of the Constitution of India. Conversely, the orders passed by Tribunals and quasi-judicial authorities, being statutory creations distinct from civil courts, are required to be challenged through a writ of certiorari under Article 226, as such bodies are amenable to the writ jurisdiction of the High Court on grounds of lack of jurisdiction, violation of natural justice, or error of law apparent on the face of the record.

### **PART-B**

24. Upon attaining a comprehensive understanding of the issue concerning the maintainability of petitions of the present nature, and after due consideration of the judgments cited and relied upon by the learned members of the Bar, this Court now proceeds to examine the merits of the case. Accordingly, the latter part of this judgment is devoted to the adjudication of the substantive issues arising between the contesting parties, based on the pleadings, submissions, and material placed on record, and is structured as follows:

### **SUBMISSIONS BY LEARNED COUNSEL APPEARING ON BEHALF OF THE PETITIONER:**

25. Learned counsel appearing for the petitioner – Shri Sunil Samdaria had contended the petitioner is engaged in operating a marriage garden situated on his 1/10<sup>th</sup> share of *khatedari*- agricultural land bearing Khasra No. 135, and has been doing so since the year 2008 under the name and style of 'Shree





Ram Marriage Garden.' It was further contended that the petitioner had duly obtained the requisite permission/license from the Jaipur Municipal Corporation (JMC) for running the aforesaid marriage garden, and all operational requirements prescribed under law for the running of such establishments were duly complied with by the petitioner; which included obtaining a valid license from JMC, payment of registration fee, and continuous payment of Urban Development Tax in the commercial category from the year 2010 up to 2025-26. Moreover, the petitioner has also complied with the requirements prescribed under the Bye-laws for Registration of Marriage Places, 2011 (hereinafter referred to as "the Bye-laws of 2011"), having been duly registered thereunder and having adhered to the terms and conditions specified therein.

26. It was further submitted that under the said Bye-laws of 2011, agricultural lands were included within their purview, and the license fee for operating a marriage garden thereon was determined on a per square yard basis, which the petitioner has duly deposited. Additionally, the petitioner has regularly deposited renewal charges, permit charges, fire control charges, cleaning charges, and other levies, together with Urban Development Tax, on an annual basis, thereby satisfying all the requirements contemplated under the Bye-laws of 2011.

27. In this background, learned counsel submitted that the Jaipur Development Authority (JDA) has wrongly assumed jurisdiction under Sections 32 and 34A of the Jaipur Development Authority Act, 1982 (for short, "the Act of 1982"), in a matter





where it had no lawful authority to intervene. It was contended that there existed no requirement for obtaining any additional license or permission from JDA in light of the license already issued by JMC under the Bye-laws of 2011. Accordingly, the action initiated by JDA, including the issuance of notice, sealing of the premises, and the order passed by the JDA Tribunal, is illegal, sans jurisdiction, and *ab initio void*.

28. Learned counsel further contended that the impugned orders dated 01.02.2025, 11.03.2025, 12.03.2025 and 15.07.2025 passed by the JDA Tribunal are cryptic and non-speaking in nature. It was also urged that even as per Section 32 of the Act of 1982, no notice could have been issued after the lapse of ten years from the completion of construction, and therefore, the proceedings initiated by JDA are time-barred.

29. It was further submitted that the petitioner has been subjected to hostile discrimination, inasmuch as several other marriage gardens situated in the same vicinity and adjoining plots, such as Chandra Paradise Marriage Garden, Hans Paradise, R.C. Paradise, Peacock Marriage Garden, Sundar Paradise, Punsumi Farms, Yagh Paradise, Sultan House Garden, Maan Bagh Garden, R.B. Paradise Marriage Garden, Prabhat Paradise Marriage Garden, Shri Ganesh Marriage Garden, Shri Govindam Paradise, and Moon Paradise Marriage Garden, which stand on identical factual and legal footing, have been permitted to operate without any interference from JDA. Therefore, it can be deduced that the impugned proceedings, have been initiated selectively and with





mala fide intent, motivated by vindictive conduct and corruption on the part of certain officers of JDA.

30. Learned counsel further submitted that the marriage-related activities at the petitioner's premises are seasonal and limited, functioning only for approximately 30 to 40 days in a year, and hence cannot be treated as a regular commercial use attracting the rigours of the Act of 1982. It was lastly argued that the Jaipur Municipal Corporation alone has the jurisdiction and regulatory control over the functioning of marriage gardens within its territorial limits, and that JMC has raised no objection to the petitioner's operations. The intervention by JDA, therefore, is wholly unwarranted and without legal sanction, and all proceedings initiated under the guise of Sections 32 and 34A of the Act of 1982 are liable to be quashed as void and *ultra vires*. In support of the contentions made insofar learned counsel had placed reliance upon the interim order dated 28.01.2025 passed in **SBCWP No. 1546/2025** titled as **Shri Yashwant Singh v. Municipal Corporation, Kota, Rajasthan through its Commissioner and ors.**

**SUBMISSIONS BY LEARNED COUNSEL APPEARING ON BEHALF OF THE RESPONDENTS:**

31. *Per contra*, learned Senior Counsel Mr. Bharat Vyas, appearing on behalf of the respondents, had not only raised a preliminary objection as to the maintainability of the present writ petition under Article 226 of the Constitution of India, but had also prayed for dismissal of the petition on merits after adjudication of the said preliminary objection. It was submitted that, as the





controversy involved in the present case is narrow and confined, his oral arguments may be treated as advanced, covering both the issues of maintainability and merits. Learned Senior Counsel had submitted that the order passed by the JDA Tribunal suffers from no infirmity and calls for no interference by this Court. To substantiate the said contention, attention of the Court was drawn to the provision as enumerated under Section 17 of the Act of 1982, which provides that no person or authority shall undertake or carry out any development, construction, or advertisement activity within the jurisdiction of the Jaipur Development Authority (JDA) without obtaining prior permission or sanction from the said Authority.

32. It was contended that the petitioner's activities, having been carried out without requisite sanction or approval, are clearly in contravention of Section 17 of the Act of 1982. Further, reliance was placed upon the definition clauses contained in Section 2 of the Act of 1982, more particularly sub-sections (1), (3), (5), and (15), which respectively define "agriculture," "authority," "development," and "plan." Further, Section 2(8) defines the "Jaipur Region," which expressly includes the area wherein the petitioner's premises are situated. On the strength of Section 3, it was contended that the Jaipur Development Authority is a body corporate and is deemed to be a local authority for the purposes of administration, regulation, and development within its territorial jurisdiction.

33. Adverting to Section 17 of the Act of 1982, learned Senior Counsel submitted that the said provision vests exclusive





authority in JDA to grant permission for all developmental or constructional activities to be undertaken within the notified region and any such activity must conform to the bye-laws, rules, and master plan framed under the Act. It was further urged that Section 17 is couched in 'non-obstante terms', thereby conferring overriding effect upon the powers of JDA *vis-à-vis* other local bodies.

34. Learned Senior Counsel had also drawn attention to Section 92 of the Act of 1982, which provides that the provisions of the said Act shall have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force, including laws governing municipal corporations such as the Jaipur Municipal Corporation Act. Thus, the jurisdiction of JMC stands excluded or subordinated in matters falling within the domain of urban development under the Act of 1982. Subsequently, with respect to the contention raised by the counsel for the petitioner under Section 32 of the Act of 1982, it was submitted that the protection of limitation of ten years envisaged therein applies only in cases where construction or development has been undertaken pursuant to a valid permission. The said provision cannot be invoked to shield an unauthorized, concealed, or illegal construction carried out without any sanction or in violation of master plan and bye-laws. In the matter at hand, since the petitioner has admittedly not obtained any valid permission from JDA, the said plea is wholly misconceived and untenable. It was further submitted that the petitioner has an adequate statutory remedy to seek conversion of his agricultural





land into non-agricultural use in accordance with the rules, regulations, and master plan framed under the Act of 1982 and only thereafter, if permissible under law, can a marriage garden be established or continued to be operational. The JDA Tribunal, while passing the impugned order, has already clarified this aspect, and therefore its findings merit no interference.

35. Learned Senior Counsel further contended that the Bye-laws of 2011 governing registration of marriage gardens are confined only to operational and regulatory aspects, for instance, safety, sanitation, and licensing and do not extend to the question of land use, development, or construction, which fall exclusively within the purview of JDA under Section 17 and the Master Plan of Jaipur Region. Hence, reliance placed by the counsel for the petitioner on the said bye-laws is misplaced and legally unsustainable. Adverting further, with regard to the petitioner's plea of hostile discrimination, learned Senior Counsel submitted that the principle of negative equality has no application in law. Merely because certain similarly situated persons may have been permitted to continue illegal use or construction, the petitioner cannot claim parity in illegality. It was submitted that if any other violators exist, the Authority shall take appropriate action against them in accordance with law, but no person can claim equality in illegality. In support of the said submission, learned Senior Counsel placed reliance upon the ratio encapsulated in **Secretary, Jaipur Development Authority v. Daulat Mal Jain: (1997) 1 SCC 35** wherein the Hon'ble Supreme Court categorically held that no negative equity can be claimed to perpetuate an illegal or



unauthorized act, and each case must stand on its own legal merits.

36. Accordingly, it was urged that the impugned order passed by the JDA Tribunal is well reasoned, within jurisdiction, and consistent with the statutory framework, and thus does not warrant interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

### **DISCUSSION AND FINDINGS VIS-À-VIS PART-A AND PART-**

#### **B**

37. Having heard the submissions made by learned counsel representing the contesting parties vis-à-vis the merits of the matter at hand, upon an assiduous scanning of the judgments cited at the Bar and as written submissions by the members of the Bar vis-à-vis the maintainability, scope of interference and modus of pointing out defects by the Registry, and upon a careful and serious scrutiny of the record together, the following view is recorded:

37.1 The rival contentions have been examined in the light of the pleadings, the nature and character of the forum which passed the impugned order, the statutory scheme under which that forum has been constituted, and the relevant judicial precedents forming a settled catena of decisions.

37.2 The questions canvassed before this Court viz., the distinction between writ jurisdiction under Article 226 and supervisory jurisdiction under Article 227, the characterization of the JDA Tribunal, and the competence of the Registry to raise maintainability objections, are matters of substantive





constitutional law which require adjudication on established principles of precedent and statutory construction.

37.3 The material available on record indicates that the impugned order emanates from a statutory tribunal exercising functions and powers akin to those of a civil court; consequently, the availability and propriety of invoking Article 227, rather than Article 226, require determination in accordance with the ratio of binding and/or persuasive authorities.

37.4 While procedural or formal irregularities may appropriately be noticed by the Registry in the discharge of its administrative functions, questions going to the maintainability of a petition under Articles 226 and 227 engage judicial consideration and are to be decided by the Court in exercise of its constitutional jurisdiction.

38. For the foregoing reasons, and for the reasons detailed in the subsequent paragraphs of this judgment, this Court proceeds to pronounce its conclusion on the maintainability issue as follows:

38.1 It is an admitted position that the impugned order and the proceedings emanate from actions undertaken by the Jaipur Development Authority (JDA) and its authorities, culminating in the impugned order passed by the JDA Tribunal.

38.2 Under Article 227 of the Constitution of India, the High Court is vested with the power of superintendence over all courts and tribunals functioning within its territorial jurisdiction, except those constituted under laws relating to the Armed Forces. Therefore, applying the principle of literal construction to the said





provision, and having regard to the factual matrix of the present case, this Court finds that the impugned order having been passed by the JDA Tribunal, which is constituted under Section 83 of the Jaipur Development Authority Act, 1982, the present petition would be maintainable under Article 227 and not under Article 226 of the Constitution of India. For the sake of brevity the relevant sections and provisions are reproduced herein below:

**"226. Power of High Courts to issue certain writs.**

**(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]**

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause

(1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall





dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

**[(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]**

### **227. Power of superintendence over all courts by the High Court—**

**(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.**

**(2) Without prejudice to the generality of the foregoing provision, the High Court may—**

**(a) call for returns from such courts;**

**(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and**

**(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.**

**(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.**

**(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.**

### **83. Constitution of Tribunal—**

**(1) The State Government shall, by notification in the Official Gazette, constitute a Tribunal for the purposes of this Act.**





(2) *The Tribunal shall consist of one person who shall be an officer of the State Government and shall be paid such Salary and allowance as may be determined by the State Government.*

(3) *The State Government may, to assist the Tribunal, direct the Authority to appoint such number of servants and of such cadre as may be deemed necessary.*

(4) *The expenses of the Tribunal shall be borne by the Authority.*

(5) *The procedure to be followed by the Tribunal in deciding the appeals or disputes referred to it under this Act shall be such as may be prescribed.*

(6) *The Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of hearing and deciding of an appeal or any dispute referred to it.*

***(7) Except as otherwise provided, any dispute arising out of any provision of this Act may be referred to the Tribunal by the Authority. The decision of the Tribunal shall be final and binding on all the parties thereto.***

***(8) Except as otherwise provided,— (a) any person aggrieved by an order or notice of the Authority may file an appeal in the Tribunal within thirty days of the communication of such order Or notice to him; and***

***(b) any person aggrieved by any threatened act or injury from the Authority affecting his rights may refer the dispute to the Tribunal within thirty days of the communication or knowledge of such threatened act or injury: and the decision of the Tribunal shall be final.***

38.2.1 Furthermore, reliance can also be placed upon the ratio enunciated in the judgment of the Larger Bench of this Court in **Mahendra Kumar Jain (supra)**, wherein it has been categorically held that the Rent Tribunals and Appellate Rent Tribunals, though not designated as "civil courts" in nomenclature, exercise judicial powers of the State, discharge judicial functions akin to civil courts, and possess the trappings of a civil court. Consequently, they were held to be equated with civil courts for





the purpose of determining the appropriate constitutional remedy.

The relevant extract from the aforementioned ratio is reproduced herein below:

*"80. In the result, we answer the questions referred in terms that the Rent Tribunal and the Appellate Rent Tribunal constituted under the Act of 2001, while adjudicating the disputes between landlord and tenant, exercising the judicial power of the State, discharge judicial functions, which are akin to judicial functions discharged by civil Courts and thus, **keeping in view the law laid down by the Hon'ble Supreme Court in various decisions including in Radhey Shyam and Life Insurance Corporation of India, the judicial orders passed by the Rent Tribunal and the Appellate Rent Tribunal are not amenable to writ jurisdiction under Article 226 of the Constitution and the legality of said judicial orders can only be questioned by invoking power of superintendence of this Court under Article 227 of the Constitution and thus, no intra-Court appeal would be maintainable against the orders passed by the learned Single Judge of this Court in such proceedings.**"*

*(emphasis supplied)*

38.2.2 Further, applying the ratio decidendi of the aforesaid Larger Bench judgment, as also that of the Hon'ble Supreme Court in **Radhey Shyam (supra)**, which was relied upon therein, this Court is of the considered view that the JDA Tribunal, being vested with the powers and functions analogous to those of a civil court, falls within the ambit of Article 227 jurisdiction. Accordingly, the present petition is maintainable under Article 227 of the Constitution of India, and not under Article 226, in the specific facts and circumstances of the case.

38.3 This Court also deems it appropriate to note that the constitutional history and legislative intent underlying Article 227 trace their origin to Section 107 of the Government of India Act,





1915, and Section 224 of the Government of India Act, 1935, which are *pari materia* with the existing provision of Article 227 of the Constitution. The 44<sup>th</sup> Constitutional Amendment further expanded the scope of Article 227, conferring upon the High Courts a broad and supervisory character over subordinate courts and tribunals. In this regard, Section 83(6) of the Act of 1982 expressly provides that the Tribunal shall have the same powers for hearing and deciding appeals or disputes as are conferred upon civil courts under the Code of Civil Procedure, and Rule 16 of the Rules framed thereunder is in conformity with the same principle.

### **INFERENCE**

39. In light of the foregoing discussion, and upon due consideration of the written submissions filed by the learned members of the Bar, this Court finds itself not persuaded by the arguments advanced on behalf of the petitioner seeking to invoke jurisdiction under Article 226 of the Constitution of India. Since a specific, efficacious, and constitutionally recognized remedy under Article 227 is available in the facts of the present case, this Court holds that the present writ petition under Article 226 is not maintainable.

40. This Court has given its profound consideration to the rival submissions advanced by learned counsel for the petitioner and learned Additional Advocate General appearing for the respondents (as spelled out in PART-B of the present judgment), as well as to the material placed on record for adjudication of the





instant matter qua its merits. The reasoning and findings of this Court are delineated as under:

40.1 It is pertinent to refer to the scheme of the Act of 1982, wherein as per the definition contained in Section 2(15), the term "Plan" has been defined, and as per Section 2(5), the expression "development" includes carrying out of building, engineering, mining or other operations in, on, over or under land, or making of any material change in any building or land, etc.; under Section 17 any person intending to undertake development within the jurisdiction of the Jaipur Development Authority (JDA) is mandatorily required to obtain prior permission from the Authority. The said provision begins with a *non-obstante clause*, thereby conferring overriding effect upon the JDA's control and ensuring that no development is undertaken without its approval.

40.2 The Bye-laws of 2011, as relied upon by the counsel for the petitioner, have a limited operational scope, as they primarily regulate licensing and operational modalities of establishments such as marriage gardens, but do not confer any independent right of development or construction on agricultural land. Even assuming their existence, these bye-laws, being subordinate and delegated legislation, cannot supplant the substantive provisions contained in the parent statute, i.e., the Act of 1982. In this regard, it is a settled proposition of law that delegated legislation must supplement and not supplant the parent Act, as opined in **State of Tamil Nadu v. P. Krishnamurthy, (2006) 4 SCC 517:**





"*St. Johns Teachers Training Institute v. Regional Director NCTE [2003 (3) SCC 321]*, this Court explained the scope and purpose of delegated legislation thus :

"A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. **The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.** The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. **Delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes.**"

(emphasis supplied)

40.3 Further, Section 92 of the Act of 1982 specifically provides that the provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Hence, the statutory supremacy of the Act of 1982 cannot be diluted by the bye-laws framed under the JMC Act.

40.4 Therefore, the contention of the petitioner that the bye-laws of 2011 validate his establishment or operation of the marriage garden since 2008 cannot be sustained. Nevertheless, acceptance of such contention would amount to rendering the





mandatory provisions of Section 17 and Section 92 otiose and nugatory.

40.5 This Court also finds substance in the submission advanced by learned AAG that under the Master Plan and Rules framed under the Act of 1982, no commercial activity can be carried out on agricultural land unless the same is converted into the appropriate category, following due process. Even the license and registration issued by the JMC, as referred to in Annexure-2, stipulate Condition No. 12 which categorically clarifies that issuance of a license for operational purposes cannot be construed as conversion of land or permission for construction.

"विवाह स्थल का रजिस्ट्रेशन होने के बाद एक एक प्रति संबंधित पुलिस थाना व जिला कलेक्टर को देनी आवश्यक होगी। विवाह स्थल का रजिस्ट्रेशन किया जाकर लाईसेंस लिया जाना व्यावसायिक भू उपयोग में परिवर्तन नहीं माना जावेगा। नियमानुसार राज्य सरकार या संबंधित संस्था भू-परिवर्तन की राशि लेने के लिए सक्षम होगी।"

40.6 So far as the plea of discrimination under Article 14 of the Constitution of India is concerned, the same also lacks merit, as the principle of equality enshrined under Article 14 cannot be invoked to perpetuate an illegality or irregularity. If certain similarly placed persons are also operating marriage gardens without requisite permissions or conversion, the same would not confer a right upon the petitioner to claim negative equality. In this context, reliance can be placed upon the ratio encapsulated in **Daulat Mal Jain (supra)**, wherein it was held that "Article 14 does not envisage negative equality and cannot be relied upon to perpetuate an illegality." Accordingly, if there exist other marriage





gardens operating contrary to the Master Plan or in violation of the Act of 1982, the JDA shall take uniform action against all such establishments to ensure parity and fairness in enforcement.

41. In view of the aforementioned, this Court, directs the Jaipur Development Authority to examine whether any marriage gardens are being operated in contravention of Section 17 of the Act of 1982 or the provisions of the master plan and to take appropriate action in accordance with law. The Zonal Officer, who has issued notices or taken inconsistent stands, shall be made answerable, and stern disciplinary action shall be taken against such officers as well as against the Commissioner, JDA, if found adopting a pick-and-choose approach, which is wholly impermissible and inconsistent with the principle of sovereign accountability.

42. For the reasons discussed hereinabove, this Court does not find any infirmity, illegality or impropriety in the impugned order. The said order has been passed in due compliance with the procedural as well as substantive requirements envisaged under the governing statute, and in a reasoned, speaking and lawful manner. Accordingly, no ground is made out for exercise of the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. Consequently, the writ petition, being devoid of merit, stands dismissed. No orders are passed as to costs. Pending applications, if any, shall stand disposed of.

(SAMEER JAIN),J

Pooja /170

