
(1976) 05 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Civil Revision No, 100 of 1975

Badri Nath Gupta

APPELLANT

Vs

The Estate Officer (Controller of Aerodromes)

RESPONDENT

Date of Decision : 26-05-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5, 5(1), 7, 9

Citation : AIR 1977 J&K 23

Hon'ble Judges : Adarsh Sein Anand, J

Bench : Single Bench

Advocate : R.P. Sethi, for the Appellant; R.P. Bakshi, for the Respondent

Judgement

Adarsh Sein Anand, J.—The short point that arises for consideration in this revision petition is, whether the District Judge, Jammu, could

transfer an appeal filed against the order of the Estate Officer, (Controller of Aerodromes) Delhi Region, Civil Aviation Department, New Delhi,

to the Additional District Judge, Jammu, under the Public Premises (Eviction of Unauthorised Occupants) Act of 1971, (hereinafter referred to as

'the Act' in this judgment).

2. It is not necessary for me to go into the detailed facts of the case except to state that the Estate Officer (Controller of Aerodromes) Delhi

Region, Civil Aviation Department, acting u/s 5(1) of the Act ordered the petitioner to vacate the premises of Air-port Restaurant at Civil

Aerodrome, Jammu within thirty days of the publication of the said order. Against that order, the petitioner filed an appeal u/s 9 of the Act before

the District Judge Jammu. On 30th October 1975 the learned District Judge, Jammu, transferred the appeal to the Additional District Judge,

Jammu. The petitioner after the order of transfer, approached the learned Additional District Judge, Jammu, with an application stating that he had no jurisdiction to proceed with the appeal since no proper transfer of the case had been made to him by the District Judge: This application was rejected by the learned Addl. District Judge vide order dated 17-12-1975. The petitioner has come up in revision petition u/s 115 of the CPC against this order of the Additional District Judge, rejecting to accede to the request of the petitioner not to hear the case.

3. Mr. Sethi, the learned Counsel for the petitioner in support of the revision petition has submitted in the first instance that since the learned District Judge has stated in his order that he was transferring the case u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) Act of 1977 and there being no such Act of 1977, the exercise of jurisdiction by the learned District Judge to transfer the case was illegal.

4. A perusal of the order of the learned District Judge shows that he has mentioned ""1977"" instead of ""1971' while mentioning the year of the Act but that is purely a typographical mistake and does not vitiate the order of the learned District Judge. I would therefore, repel this argument of Mr. Sethi, and hold that the transfer has been made u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) Act of 1971 and that the said transfer is not bad on account of the alleged mistake.

5. Mr. Sethi, has then contended that the District Judge could not transfer the case to the Additional District Judge, as when he hears appeals under the Act he does so as an appellate authority and not as a court, and an appellate authority being persona designata has no jurisdiction to delegate his authority. This argument, to my mind has no merit, A plain grammatical reading of Section 9 of the Act, which reads as follows:

Appeals:-- (1) An appeal shall lie from every order of the Estate Officer made in respect of any public premises u/s 5 or 7 to an appellate officer who shall be the District Judge of the District in which the public premises are situate or such other judicial officer in that district of not less than ten years' Standing as the District Judge may designate in this behalf.

(2) An appeal under Sub-section (1) shall be preferred:

(a) in the case of an appeal from an order u/s 5, within fifteen days from the date of publication of the order under Sub-section (1) of that section,

and

(b) in the case of an appeal from an order u/s 7 within fifteen days from the date on which the order is communicated to the appellant:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of fifteen days, if he is satisfied that the appellant was

prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the Estate Officer, the appellate Officer may stay the enforcement of that order for such period

and on such condition as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate Officer as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section, a presidency town shall be deemed to be a district and the Chief Judge or the principal Judge of the City Civil

Court therein shall be deemed to be the District Judge of the district.

shows that the legislature, itself, has given jurisdiction to the District Judge to designate any judicial officer in the district of not less than ten years

standing to hear the appeals. In this view of the matter, it is apparent that the appellate authority has been vested with the jurisdiction to delegate his

functions within the limits imposed by the section, to any judicial officer of ten years standing. The transfer of the case by the District Judge under

the circumstances is not bad on the ground alleged. This argument of Mr. Sethi also therefore, fails.

6. The last submission of Mr. Sethi, is to the effect that the learned District Judge has transferred the case to the Additional District Judge

mechanically and with-out applying his mind to ascertain whether or not the judicial officer to whom the case was being transferred was of ten

years standing.

It would be relevant at this stage to note the order of transfer made by the learned District Judge:

30-10-75.

Counsel for the parties present.

Mr. Sethi appearing on behalf of the appellant contends that he has not been

served with a notice to argue the case, but instead a notice for appearance has been served upon him. He seeks time for addressing arguments. This appeal is transferred to the Additional District Judge, Jammu

I as a District Judge of the District Jammu hereby designate the Additional District Judge who is a judicial Officer in the District of not less than 10

years standing to hear and dispose of this appeal as an appellate officer u/s 9 of the Public Premises (Eviction etc) Act 1977. The counsel for the

parties are directed to appear before the Additional District Judge, Jammu on 31-x-1975.

7. A perusal of this order is a complete answer to the submission made by the learned Counsel for the petitioner. The order shows that the learned

District Judge had applied his mind while designating the Additional District Judge to hear the appeal, There is no doubt about the fact that the

Additional District Judge, Jammu, is a Judicial Officer of not less than ten years standing. Under these circumstances this argument of the learned

Counsel for the petitioner also must fail.

8. No other argument was raised.

9. As a result of the above discussion I find that the order of the learned Additional District Judge, Jammu holding that the appeal has been

transferred to him properly and in accordance with law after he had been designated, by the learned District Judge, u/s 9 of the Act to hear the

appeal as also the order of transfer dated 30-10-1975 made by the District Judge, Jammu, do not suffer from any jurisdictional defect. The order

does not suffer from any illegality, irregularity or impropriety in the exercise of the jurisdiction vested in. the learned District Judge and Additional

District Judge, Jammu. There is no gross palpable error in the case. I would, therefore, dismiss this revision petition but without any order as to

costs.

10. The parties, through their learned Counsel, are directed to appear before the Additional District Judge Jammu on June 2, 1976 when a date for

arguments would be fixed by him. It is hoped that the case shall be speedily disposed of by the learned Additional District Judge, Jammu as it has

already been delayed a lot, though not due to any fault of the court.