
(1984) 03 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 75 of 1984

Darshan Singh Sethi

APPELLANT

Vs

Shimla Municipal Corporation, Shimla

RESPONDENT

Date of Decision : 26-03-1984

Acts Referred:

Himachal Pradesh Courts Act, 1976 — Section 2, 28, 6, 7
Himachal Pradesh Municipal Corporation Act, 1979 — Section 268, 268(1), 268(2),
282(2), 282(3)

Citation : AIR 1984 HP 77 : (1984) 13 ILR HP 50

Hon'ble Judges : P.D. Desai, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : Kamlesh Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Desai, C.J.—The petitioner, who owns an Immovable property in Shimla, was served with an order dt. Mar. 16, 1984 passed by the Municipal Commissioner, Shimla, u/s 268 of the Himachal Pradesh Municipal Corporation Act, 1979 (hereinafter referred to as "the Corporation Act") directing him to remove certain unauthorised construction detailed in the said order within three days from the date of the receipt of the order and further intimating that in the event of the petitioner's failure to carry out the direction, further action would be taken in accordance with law. The said order, against which an appeal lies to the Court of the District Judge, Shimla. was served on the petitioner on the evening of Mar. 16, 1984. The petitioner preferred such appeal on Mar. 19, 1984 along with an application for stay. According to the petitioner, the learned District Judge was out of station and he was not likely to return till the end of the month and, under those circumstances, the Court office fixed the appeal for preliminary hearing on Mar. 31, 1984. Meanwhile, on Mar. 24, 1984, the Municipal Officers and servants accompanied by the police reached the spot where the petitioner's property is situate and threatened to proceed with immediate demolition of the alleged unauthorised construction. The petitioner thereupon instituted the present

petition and requested for its urgent circulation on the same day. The request was granted. The petition was taken up for urgent hearing and the following is the material portion of the order passed thereupon the same day : --

The petitioner has presented the petition in the Court today. In paras 7 and 8 of the petition, it has been stated that the learned District Judge, who is the appellate authority and who has the power to stay the enforcement of the impugned order, is out of station and that, therefore, the petitioner is unable to get interim relief which it is expedient in the interest of justice to obtain because the officers/workers of the respondent-Corporation accompanied by the police have reached the spot for demolition of the disputed premises.

Having regard to the statement made oath in paras 7 and 8 of the petition, ad-interim relief against the demolition till the petitioner is able to obtain an appropriate interim relief, if any, from the learned District Judge, Shimla."

2. The petition has now reached preliminary hearing today. The respondent who was duly served is not represented.

3. It appears to us that misapprehension is entertained in certain quarters that the jurisdiction to entertain an appeal u/s 268, Sub-section (2) of the Corporation Act, 1979, is conferred only on the District Judge and that such appeal cannot be entertained by an Additional District Judge. The misapprehension, in other words, is that the District Judge is a persona designata so far as the provision relating to the forum of an appeal under Sub-section (2) of Section 268 of the Act is concerned. It is, therefore, necessary to ascertain and clarify the true legal position.

4. Section 268 reads as under : --

"(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in Section 261 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act or byelaws made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed, within such period (not being less than three days from the date on which a copy of the order of demolition with a brief statement of the reasons therefore has been delivered to that person) as may be specified in the order of demolition;

Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order should not be made:

Provided further that where the erection or work has not been completed, the

Commissioner may by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct the person to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under Sub-section (2).

(2) Any person aggrieved by an order of the Commissioner made under Sub-section (1) may prefer an appeal against the order to the Court of the District Judge of the city within the period specified in the order for the demolition of the erection or work to which it relates.

(3) Where an appeal is preferred under Sub-section (2) against an order of demolition, the Court of the District Judge may stay the enforcement of that order on such terms, if any, and for such period, as it may think fit :

Provided that where the erection of any building or execution of any work has not been completed at the time of the making of the order of demolition, no order staying the enforcement of the order of demolition shall be made by the Court of the District Judge unless security, sufficient in the opinion of the Court, has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(4) Save as provided in this section no Court shall entertain any suit, application or other proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.

(5) Every order made by the Court of the District Judge on appeal and subject only to such order, the order of demolition made by the Commissioner shall be final and conclusive.

(6) Where no appeal has been preferred against an order of demolition made by the Commissioner under Sub-section (1) or where an order of demolition made by the Commissioner under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or as the case may be, within the period, if any, fixed by the Court of the District Judge on appeal, and on the failure of the person to comply with the order within such period, the Commissioner may himself cause the erection or the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act."

5. It will be seen that in Sub-sections (2), (3) (5) and (6) the legislature has used the expression "the Court of the District Judge" and not "the District Judge." The appellate forum, therefore, is the Court and not the official designated as the District Judge. Of course, the Court is identified with reference to the Presiding Judicial Officer, namely the District Judge. It does not follow therefrom, however, that the District Judge alone is the person selected to

exercise the appellate power to the exclusion of the Additional District Judge who might have been appointed to aid the District Judge in the speedy disposal of the business pending before his Court and duly empowered to discharge any of the functions of the District Judge. Indeed, once the Appellate power is shown to have been conferred in unambiguous terms on the Court, and not on a person either by name or by an official designation, the concept of conferment of power on *persona designata* is entirely out of place.

6. It would not be out of place to mention in this connection that the Himachal Pradesh Courts Act, 1976 (hereinafter referred to as the "Courts Act") provides in Section 3 that there shall be two classes of Subordinate Civil Courts in the State, namely, the Court of the District Judge and the Court of the Subordinate Judge. u/s 9, the Court of the District Judge is deemed to be the District Court or principal Civil Court of original jurisdiction in the district. Section 2, which is the definition section, provides in Clause (b) that "District Judge" shall include an Additional District Judge. Section 6 in substance provides that when business pending before the Court of the District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, such Additional District Judges as may be necessary may be appointed. An Additional District Judge so appointed is thereunder empowered to discharge any of the functions of the District Judge which the High Court or the District Judge may assign to him and in the discharge of such functions the Additional District Judge exercise the same powers as the District Judge. u/s 7, the High Court or District Judge is empowered to assign to an Additional District Judge any of the functions of the District Judge including the functions of receiving and registering cases and appeals, which, but for such assignment of functions could be instituted in the Court of District Judge and, in the discharge of those functions, the Additional District Judge shall, notwithstanding anything contained in the Act, exercise the same power as the District Judge. Section 28 inter alia provides that in the event of absence of the District Judge or in the event of a vacancy in that office for whatever reason, the Additional District Judge, or if there are more than one Additional District Judges present, the first in rank among them, shall, in addition to his own duties, discharge the functions of the District Judge with respect to the filing of the suits and appeals, receiving pleadings, miscellaneous applications and the like, as also with respect to the distribution thereof.

7. On conjoint and coherent reading of the provisions of the Corporation Act and the Courts Act, the following position clearly emerges : --

- (1) The expression "District Judge" includes an Additional District Judge;
- (2) An Additional District Judge is competent to discharge any of the functions of a District Judge assigned to him by High Court or the District Judge and in the discharge of such functions he exercises the same powers as the District Judge;
- (3) An appeal u/s 268, Sub-section (2) of the Corporation Act will ordinarily have to be instituted in the Court of the District Judge;

(4) Such appeal can be heard and disposed of by an Additional District Judge if the High Court or the District Judge has assigned to him the function to hear and decide such appeal;

(5) Such appeal can also be instituted in the Court of an Additional District Judge if the District Judge has assigned to the Additional District Judge the function of receiving such appeal as well as in the event of absence of the District Judge or in the event of a vacancy in that office for whatever reason;

(6) The Additional District Judge would be competent to entertain an interim application made in such an appeal whenever he discharges the functions and exercises the powers of District Judge in relation to such appeal in any of the aforementioned cases.

8. In view of the foregoing position, the petition requires to be rejected without entering into merits on the ground that it is competent to the petitioner to move the Additional District Judge, in the absence of the District Judge, and to request him to entertain the appeal as well as the application for stay and to grant appropriate relief. In order, however, to enable the petitioner to move the said Court and to obtain appropriate relief, if any, the ad interim relief granted on Mar. 20, 1984, will continue to operate till Mar 30, 1984.

9. Order accordingly.