

(1996) 03 KAR CK 0061
In the Karnataka High Court
Case No : C.R.P. No's. 5483 and 5690 of 1990

M. Papa Naik

APPELLANT

Vs

Commissioner, City Municipal Council

RESPONDENT

Date of Decision : 21-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 227

Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 — Section 10, 5, 7, 9

Citation : (1996) ILR (Kar) 1808 : (1996) 3 KarLJ 86

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : B.G. Sridharan, for the Appellant; M.N. Hegde, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Chinnappa, J.—These two Revision Petitions arise out of a common order passed by the District Judge, Chitradurga, in MA Nos. 130/90 and 129/90 directing to vacate and deliver vacant possession of the premises in Which they are residing to the respondents within a period of 45 days.

2. The brief facts of the case the petitioners are employees of the City Municipal Council, Davanagere. M. Papa Naik the petitioner in C.R.P. 5483/90 (MA 130/90) was working as a Manager in the Davanagere Municipality and he continued to work in that capacity tilt 14.7.89. By an order dated 6.7.1989 passed by the Director of Municipal Administration, he was sent on deputation to Ramadurg Town Municipality temporarily. Thereafter, again the petitioner was repatriated and posted to the original place of work to work as an Assessing Officer vide Order dated 18.12.1989 passed by the Government. Since the petitioner has been working as an Assessing Officer in Davanagere City Municipal Council. That being the position and facts of the case, the respondent by order dated 26.3.90 directed the petitioner to vacate & deliver vacant possession of the premises in

which he is residing within a period of 45 days and further directed him to remit a sum of Rs. 16,622.50 as damages.

3. Abdul Basheer the petitioner in C.R.P. 5690/90 (MA 129/90) Was working as Accounts Superintendent, Urban Development Authority, Davanagere. While he was working at City Municipal Council, he was allotted a quarters. While he was working at City Municipal Council, Davanagere, he was transferred and relieved with effect from 5.6.1988 to the office of the Commissioner, Urban Development Authority, Davanagere. In this place, he reported for duty on 2.11.88 as Accounts Superintendent. Thereafter, the petitioner was on leave on medical grounds from 5.6.1988 to 1.11.1988. The quarters were allotted to the petitioner by the Municipal Commissioner by order dated 11.6.1988 bearing No. GAD (Misc.) 32/84-85 and the same is not a designated one, but a general one. With these being the facts of the case, the 2nd respondent issued an order dated 26.3.1990 u/s 5 of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974, (for short "the Act"), directing him to vacate and deliver vacant possession of the quarters and further directed him to pay damages of Rs. 19,464.85 on the ground that he has occupied the premises unauthorisedly. As against this, as stated earlier, among other petitioners these two petitioners also preferred an appeal u/s 10 of the Act, before the District Judge, Chitradurga. The learned District Judge disposed of the appeals - the operative portion of the order reads as follows:

"In the result for the reasons stated above the appeals are partly allowed. The orders passed by the Estate Officer against the appellants insofar as they relate to the eviction of the appellants u/s 5 of the Act are confirmed. The impugned orders insofar as they relate to the recovery of damages u/s 7 of the Act are set aside. The Estate Officer is at liberty to initiate fresh action for recovery of damages u/s 7 of the Act. The appellants have been granted 45 days from this date to vacate and deliver vacant possession of the municipal quarters in their occupation. If the appellants fail to vacate the quarters in their occupation within 45 days from this date, the respondents may take possession of the same in accordance with law. The parties are directed to bear their own costs.

This order is questioned in these Revision Petitions.

4. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

5. The learned Counsel for the petitioners without going into the merits of the case has submitted that the order passed by the learned District Judge is contrary to law. He contended that the appeals were preferred u/s 10 of the Act. The appellate officer should have passed the order. On the other hand, the District Judge passed the impugned order. The District Court has no power but only appellate officer has jurisdiction under the Act, to pass an order. He further submits that since the District Judge passed the order, the C.R.P. is filed and not Writ Petition. In support of his argument, he placed reliance on a decision STATE

OF MYSORE v. P. SHANKARANARAYANA RAO 1975 (2) KarLJ 280 wherein this Court has held:

"The District Judge who is constituted as an appellate Officer u/s 10 of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1961, does not act as Court but as a persona designata. Hence his order is not revisable u/s 115 CPC.

Subordination means, not judicial subordination within the purview of Article 227 of the Constitution, but subordination under the hierarchy of Courts under the Civil Procedure Code."

6. Per contra, the learned Counsel for the respondents submitted that the appellate Tribunal is subordinate to High Court. Hence revision lies. The District Judge does not become persona designata. But if a retired District Judge is appointed as an appellate officer, he becomes persona designata. The contention of the petitioners that he should have preferred Writ Petition cannot be accepted. In support of his argument, he placed reliance on a decision in N.S. Ganesh Rao Vs. Sarphina D'Souza Bai and Another, the Division Bench of this Court has held while dealing with Section 48 of the Karnataka Rent Control Act, 1961:

"An Additional District Judge of the District Court having jurisdiction over an area in which the premises are situate, has jurisdiction to hear and decide an appeal u/s 48 of the Act, when such appeal has been transferred or assigned to him by the District Judge of that Court.

Even though an Additional District Judge has not been conferred under the Karnataka Civil Court Act, 1964, the powers of the District Court, when once a case is assigned or transferred to him by the District Judge u/s 5(2) of that Act, he has all the powers of the District Judge under that Act or any other law for the time being in force, in respect of that case, and he can hear and decide that case in the same manner as the District Judge could have done.

In the Karnataka State Judicial Service, there is no separate cadre of Additional District Judge. Both the District Judge and Additional District Judge are of the same cadre.

There is nothing in Section 48 of the Act which indicates that the appellate jurisdiction conferred on the District Judge thereunder, should be exercised only by the Principal District Judge of a District Court and not by an Additional District Judge of that Court. Though Section 48 of the Act designates the District Judge and not the District Court as the appellate authority, the conferment of the appellate jurisdiction on the District Judge, appears to be virtue of his presiding over the District Court & the District Judge is not a persona designata. Though the term "District Judge" has been used in Section 48 of the Act, the appeal provided thereunder is in reality to the Court of the District Judge."

Their Lordships of the Supreme Court in a decision in The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad, have elaborately discussed the definition of "persona

designata" and held:

"The District Magistrate mentioned in Section 3 of the U.P. Act is not a persona designata. Under the definition of District Magistrate in Section 2(d) of that Act the special authorisation by the District Magistrate had the effect of creating officers exercising the powers of a District Magistrate under the Eviction Act. To that extent, those officers would, on authorisation, be equated to the District Magistrate. A persona designata is a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character."

7. The learned Counsel for the respondents has further submitted that the Full Bench of this Court has held that the officer deciding the case u/s 9 of the Act is not persona designata. On the other hand, it is the District Judge who is empowered under the Act for passing the order. Therefore, it cannot be said that no revision petition lies against the said order and only Writ Petition lies. The question before the Full Court was whether a revision u/s 115 of CPC would lie against the order of the District Judge functioning as the Educational Appellate Tribunal under the Karnataka Private Educational Institutions (Discipline & Control) Act, 1975, is somewhat a significant question. The Writ appeals 1101 to 1103/1987 pending before the Division Bench came to be referred to the Full Bench. Following the decisions rendered by the Hon'ble Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, ; *Chhagan Lal Vs. The Municipal Corporation, Indore*, and *NATIONAL TELEPHONE CO., LTD. v. THE POST MASTER-GENERAL* 1913 AC 546 it is held that the District Judge who functions as Educational Appellate Tribunal under the provisions to Sub-section (2) of Section 10 of the Act does not cease to be a Court subordinate to the High Court and any order passed by him is amenable to the jurisdiction of the High Court u/s 115 of CPC. With reference to these decisions, it is now necessary to refer to Section 9 of the Act which reads:

"An appeal shall lie from every order of the Estate officer made in respect of any public premises u/s 5A or Section 5-B "or Section 5C" or Section 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."

This Section is analogous to Section 10 of the Karnataka Private Educational Institutions (Discipline & Control) Act, 1975. The Legislature also intended to mean that Appellate Officer is none other than an officer of the District Judge and he is given power under this Act, in addition to the existing power exercised by him as a District Judge. From this it is clear that in the absence of the constitution of a Tribunal under Sub-section (1) of Section 9 the District Judge of a District has been conferred jurisdiction to hear appeals. By conferring such jurisdiction the Legislature has only added one more subject besides other matters over which the District Judge has jurisdiction to deal with. The District Judge does not become persona designata. Persona designata is "a person who

is pointed out or described as an individual, as opposed to a person ascertained as a member of a class or as filling a particular character (as can be seen from Osborn's Concise Law Dictionary, 4th Edition, p. 253). This is also made clear if a reference is made to the decision in K. Parthasarathi Naidu Garu Vs. C. Koteswara Rao Garu and Another, wherein it is held as follows:

"Personae designata are "persons selected to act in their private capacity and not in their capacity as Judges."

Sub-Section (1) to Section 9 contemplates that the District Judge shall function as an appellate officer. Thus, the Legislature by making such a provision, has only enlarged the jurisdiction of a District Judge, which is an existing Court subordinate to the High Court. The District Judge, while deciding an appeal in view of the powers conferred on him under the proviso, does not become a specially constituted Tribunal as envisaged under Sub-section (1) of Section 10 of the Act. It can also be gathered from Section 9 of the Act that the appellate officer shall consist of one person who is or has been a judicial officer not below the rank of a District Judge. It may be mentioned that under Sub-section (2) of Section 10 of the Educational Appellate Tribunal shall consist of one person who is or has been a judicial officer not below the rank of a District Judge. Thus it is not necessary that a person to be appointed as a Tribunal should be a judicial officer in service; even a retired judicial officer of the rank of a District Judge can be notified to function as an Educational Appellate Tribunal. Under Sub-section (1) the Government has also to fix the jurisdiction of the Tribunal, even one person may be notified as a Tribunal to exercise jurisdiction over the entire State. But, under the proviso to Sub-section (2) of Section 10, it is the District Judge concerned of a district who has been empowered to hear appeals in the matters arising within his jurisdiction, in this view of the matter, it is not possible to hold that the District Judge exercising the powers of a Tribunal is not subordinate to the High Court. Similarly, in this case also as per Section 9 of the Act, it cannot be said that the Appellate Officer ceases to be a Court subordinate to High Court. However, it may also be mentioned here that if a retired District Judge if appointed under Karnataka Educational Appellate Tribunal as provided under that Act, he would be a persona designata but a serving District Judge who is empowered to deal with an appellate power is not a persona designata. Similarly, the District Judge who is functioning as an appellate officer u/s 9 of the Act, is not a persona designata as claimed by the learned advocate for the petitioner and it cannot be said that the revision petition does not lie against the order passed by the District Judge under the Act. This is further fortified if a reference is made to a recent Judgment of the Supreme Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, . In that decision a question arose as to applicability of Section 5 of the Limitation Act to Section 18 of Kerala Rent Control Act which is a special Act or a local Act While answering that question Their Lordships have held:

"The jurisdiction to entertain proceedings under the special laws is sometimes

given to the ordinary courts, and sometimes given to separate tribunals constituted under the special law. When the special law provides that the provision contained in Section 5 shall apply to the proceedings under it, it is really a conferment of the power of the Court u/s 5 to the tribunals under the special law - whether these tribunals are courts or not. If these tribunals under the special law should be courts in the ordinary sense an express extension of the provision contained in Section 5 of the Limitation Act will become otiose in cases where the special law has created separate tribunals to adjudicate the rights of parties arising under the special law. That is not the intention of the legislature.

The view that since the appellate authority u/s 18 of the Kerala Rent Control Act is a *persona designata* and therefore, he cannot resort to Section 5 of the Limitation Act for condoning the delay in filing appeal before him is not correct. An authority can be styled to be *persona designata* if powers are conferred on a named person or authority and such powers cannot be exercised by anyone else. The appellate authority constituted u/s 18(1) has to decide *lis* between parties in a judicial manner and subject to the revision of its order, the decision would remain final between the parties. Such an authority is constituted by designation as the District Judge of the district having jurisdiction over the area over which the said Act has been extended. Even though the District Judge concerned might retire or get transferred or may otherwise cease to hold the office of the District Judge his successor-in-office can pick up the thread, of the proceedings from the stage where it was left by his predecessor and can function as an appellate authority u/s 18. If the District Judge was constituted as an appellate authority being a *persona designata* or as a named person being the appellate authority as assumed in the present case, such a consequence, on the scheme of the Act would not follow. It must, therefore, be held that appellate authorities as constituted u/s 18 of the Rent Act being the District Judges they constituted a class and cannot be considered to be *persona designata*."

8. In this case, admittedly the order came to be passed by the sitting Judge of Chitradurga District by virtue of the power conferred on him u/s 9 of the Act who was empowered to entertain and dispose of the appeals preferred against any order passed u/s 5(A) or Section 5-B "or Section 5C" or Section 7 by the Estate Officer. Therefore, it cannot be held that the impugned order is passed by a *persona designata* and not by a Court and the order is not revisable u/s 115 CPC. On the other hand, I hold that the District Judge who functions as appellate officer u/s 9 of the Act does not cease to be a Court subordinate to the High Court and any order passed by him is amendable to the jurisdiction of the High Court u/s 115 CPC. For the foregoing reasons, I respectfully disagree with the Judgment rendered by this Court reported in 1975(2) KarLJ 280 referred to *supra* holding that the District Judge who is constituted as an appellate officer u/s 10 of the Act, does not act as Court but as a *persona designate*, and his order is not revisable u/s 115 CPC.

9. Having come to the conclusion that the revision is maintainable before the High Court. I hold that the argument of the learned Counsel for the petitioners that impugned order is liable to be set aside and remand the matter to the Court below directing the appellate Officer to pass an order u/s 9 of the Act is liable to be rejected. Accordingly, rejected.

10. I have also perused the impugned orders passed by the learned Court. The learned District Judge has taken into consideration all the materials placed before him and held that the order passed by the appellate Officer in regard to the direction to the petitioners to deliver vacant possession within 45 days does not call for interference by this Court u/s 115 CPC.

11. In the result, therefore, I proceed to pass the following:

ORDER

The revision petitions are dismissed. Under the circumstances, I hold that the parties shall bear and pay their own costs.