
(2003) 03 JH CK 0070

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3881 of 2002

Rajendra Prasad Sharma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

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

Citation : (2003) 2 JCR 752

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : S. Nayak and L.N. Mishra, for the Appellant; Rajiv Ranjan, GP II, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has challenged the jurisdiction of the Additional District Judge Court, Bokaro to hear and dispose of the appeals filed u/s 9 of the Public Premises (unauthorised occupants) Act, 1971, in short the said Act.

2. It appears that petitioner was employed in Board Steel Plant since 1969 and he was superannuated in 1996. It is contended by the petitioner that instead of payment of retiral benefits the respondents have initiated a proceeding for eviction under the said Act. The Estate Officer exercising power under the said Act passed final order in the said proceeding and ordered for conviction of the petitioner. Aggrieved by the said order, petitioner preferred appeal u/s 9 of the said Act before the District Judge, Bokaro being MA No. 4/2001. The District Judge, Bokaro after admitting the appeal transferred the same to the Court of IVth Additional District Judge, Bokaro for disposal. Before the Additional District Judge, Bokaro, petitioner filed an application challenging the jurisdiction of the Court on the ground that it is only the District Judge or the Judicial Officer whom power is delegated by the District Judge has jurisdiction to hear the appeal. Respondents in their counter-affidavit have stated that as per the service

condition petitioner was required to vacate the quarter within two months from the date of superannuation. But the petitioner has been continuing in unauthorized occupation of the quarter although his retiral benefits have been calculated and the same is lying with the respondents but the petitioner deliberately avoiding to receive the retiral dues.

3. The only question that falls for consideration is as to whether the Additional Judge is competent to hear and disposed of the appeal u/s 9 of the said Act,

4. Before deciding the question, I would like to refer Section 9 of the said Act, which reads as under :

"Appeals.--(1) An appeal shall lie from every order of the Estate Officer made in respect of any public premises u/s 5 or Section 5B or Section 5C or Section 7 to an appropriate 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 twelve days) from the date of publication of the order under Sub-section (1) of that section;

(b) in the case of an appeal from an order u/s 5B or Section 7, within twelve days from the date on which the order is communicated to the appellate; and

(c) in the case of an appeal from an order u/s 5C within twelve days from the date of such order ;

Provided that, the appellate officer may entertain the appeal after the expiry of the said period 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 conditions as he deems fit :

Provided that, where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made u/s 5B for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal.

(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.

5. From bare reading of the aforesaid provisions, it is clear that an appeal will lie against the order of the Estate Officer before District Judge of the district in which public premises are situate or such other officers in the district of not less than 10 years standing as District Judge may designate in this behalf. In other words the District Judge may either hear the appeal himself or delegate the power to any Judicial Officer of that district having 10 years standing as a Judicial Officer.

6. In the Bengal, Agra and Assam Civil Courts Act, 1887, which is applicable in the State of Bihar and also in the State of Jharkhand, following classes of civil Court have been constituted :

- (i) The Court of the District Judge,
- (ii) the Court of the Additional District Judge,
- (iii) the Court of the Sub-Ordinate Judge,
- (iv) the Court of the Munsif.

7. Section 8 of the said Act reads as under:

"Additional Judges.--(1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the (State) Government may (having consulted) the High Court appointed such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and in the discharge of those functions, they shall exercise the same powers as the District Judge."

8. From perusal of the aforesaid provision, it is manifest that the Additional District Judges are competent to discharge any of the function of a District Judge which the District Judge may assign to them and in discharging those function they shall exercise same power of a District Judge. The law has been well settled that the District Judge includes the Additional District Judge. Section 9 of the said Act clearly provides that the appeal will lie to the District Judge of the district. The District Judges including the Additional District Judges are therefore fully competent to hear and dispose of the appeal filed u/s 9 of the said Act. The contention of the petitioner is wholly misconceived and devoid of any substance.

9. For the reasons aforesaid, I do not find any merit in this writ application, which is accordingly dismissed.