

(2002) 08 GAU CK 0011

In the Gauhati High Court

Case No : Writ Petition (C) No. 191 (SH) and 2001

Union of India (UOI) and Others

APPELLANT

Vs

Gopesh Chandra Dey

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Administration of Justice and Police in the Garo Hills District Rules, 1937 — Rule 1, 1A
Constitution of India, 1950 — Article 226, 227, 50
Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 — Section 1, 3, 4(2), 5A(2), 9
Scheduled Districts Act, 1874 — Section 15, 24, 6

Citation : (2003) 1 GLT 213

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : S.C. Shyam, for the Appellant; A.S. Siddique, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—The question paused for consideration in this writ petition has arisen in consequence of failure of the State to effectively separate the Executive from Judiciary as envisaged by the Directive Principles of State Policy contained in Article 50 of the Indian Constitution.

2. By making this application under Article 226 and 227 of the Constitution of India, the Petitioner No. 1, namely, Union of India has approached this Court terming as illegal and without jurisdiction the exercise of powers of a District Judge by Additional Deputy Commissioner (hereinafter referred to as "the A.D.C"), Tura, u/s 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1980 (hereinafter referred to as "the said Act").

3. In a narrow compass, facts giving rise to this writ petition may be put as follows:

Alleging that the building erected by the Respondent on the land, in dispute, actually belongs to the Petitioner No. 1, the Estate Officer, appointed u/s 3 of the

said Act, issued a notice under Sub-section 1(i) and Clause (b)(i) of Sub-section 2 of Section 4 of the said Act, contained in Memo No. E-21/90(3)-34, dated 10.1.2001, directing the sole Respondent to appear on 12.2.2001, at Shillong, before the Estate Officer, in person or through duly authorized representative, to answer all material questions along with the evidence. The Respondent, on receipt of the notice, submitted his show cause. The Estate Officer, on considering the same, did not find the stand of the Respondent tenable in law and, hence, issued a notice u/s 5A(2) of the said Act directing the Respondent to vacate, on or before 11.6.2001, the said allegedly encroached portion of the land and to remove the structure constructed thereon by him. The Respondent, however, preferred, on 8.6.2001, an appeal u/s 9 of the said Act in the Court of learned Deputy Commissioner, West Garo hills, Tura, impugning the notice, dated 11.5.2001, aforementioned. This Appeal was registered as Civil Appeal No. 01/2001 and was made over to learned A.D.C., Tura, who, in turn, vide order passed, on 8.6.2001, entertained the appeal and stayed operation of the notice aforementioned. It is this order, which stands impugned in this writ petition on the ground that the learned A.D.C., Tura, lacked jurisdiction to entertain the said appeal.

4. I have carefully perused the materials on record. I have heard Mr. S.C. Shyam, learned Additional C.G.S.C., who has appeared on behalf of the Petitioners, and Mr. A.S. Siddique, learned Counsel appearing for the sole Respondent.

5. It has been submitted by the learned Additional CGSC that u/s 9(2) of the said Act, an appeal against the order of the Estate Officer lies to the District Judge of the district or to a Judicial Officer of the district, having ten year's standing, designated in this regard, by the District Judge, but so far as the Addl. D.C., Tura, is concerned, he is, contends learned Addl. C.G.S.C., neither a District Judge nor is he a judicial officer having ten years of standing. Hence, the ADC, submits Mr. Shyam had no jurisdiction to entertain the said appeal.

6. Drawing this Court's attention to the notification No. LJ(B)92/93/94, dated 26.10.95, issued by the Government of Meghalaya, learned Addl. C.G.S.C. has submitted that by this notification, Mr. N.D. Sangma, (who has passed the impugned order) was appointed, as Addl. D.C., West Garo Hills District, for trial of cases, civil as well as criminal. This notification shows, points out Mr. Shyam, that Mr. Sangma was appointed to exercise the powers of the Deputy Commissioner under the Rules for Administration of Justice and Police in the Garo Hills District and Mr. N.D. Sangma is, thus, contents Mr. Shyam, neither a District Judge nor a judicial officer with 10 years' standing. Pointing out to the memorandum of appeal, learned Addl. C.G.S.C. has submitted that though the appeal was preferred to the learned Deputy Commissioner, Garo Hills District, it was entertained by the learned A.D.C., who had reiterates Mr. Shyam, no jurisdiction to entertain the appeal. Even the Deputy Commissioner, Garo Hills, contends learned Addl. C.G.S.C., is not really a District Judge within the meaning

of the said Act. The learned Addl. C.G.S.C. has further submitted that since there is only one District Judge in the State of Meghalaya, namely, District Judge, Shillong, the appeal may be made over to him for hearing and disposal.

7. Controverting the above submissions made on behalf of the Petitioners, Mr. Siddique has submitted that under the Rules of Administration of Justice and Police in the Garo Hills District (hereinafter referred to as "the said Rules"), not only the criminal justice, in the said district, but also the civil justice is administered, in the district, by the Deputy Commissioner and while so functioning, the Deputy Commissioner, as head of the administration of Civil Justice in the district, exercises the powers of a District Judge and, while discharging the functions of the head of the administration of Criminal Justice, in the district, the Deputy Commissioner exercises the powers of Sessions Judge. This apart, points out Mr. Siddique, though there is no specific provision in the said Rules stating that the expression "Deputy Commissioner" shall include "A.D.C.", the "A.D.C." has, in fact, the same powers as the Deputy Commissioner and this aspect of the matter has been dealt with and decided by this Court, contends, Mr. Siddique, in (*Sri Monmatha Nath Vyakaran Sastri v. The State of Meghalaya and Ors.*) reported in (1993) 1 GLR 53.

8. Mr. Siddique has also submitted that since the A.D.C. has the same powers as the Deputy Commissioner, the learned A.D.C., in the instant case, acted within the ambit of law in entertaining the appeal as the said appeal had been made over to him for disposal by the learned Deputy Commissioner.

9. Having heard both sides and upon perusal of the materials on record, what I notice is that the said Rules nowhere clearly states that the expression "Deputy Commissioner" shall include the Additional Deputy Commissioner, i.e., "the A.D.C.".

10. It may be mentioned that in exercise of powers contained in Section 6 of the Scheduled Districts Act, 1874, the said Rules were framed.

11. According to Rule 1 of the said Rules, the administration of Garo Hills is vested in the Governor, Deputy Commissioner and his Assistants, the Mauzadars, lascars, sardars, nokmas and Gaonburas or such other classes of officers as the Governor may see fit, from time to time, to appoint in that behalf, subject, so far as their judicial and police jurisdiction is concerned, the exceptions and restrictions contained in the said Rules.

12. As far as Rule 1-A is concerned, it lays down that the Governor may appoint an Additional Deputy Commissioner, either generally, or for the trial of a particular case or particular cases, civil or criminal, and may direct that such Additional Deputy Commissioner shall, for the general or special purposes aforesaid, exercise all or any of the powers of the Deputy commissioner.

13. Section 15, contained in Chapter III of the said Rules, under the heading "Administration of Criminal Justice" reads as follows:

15. Administration of Criminal Justice Criminal Justice shall be ordinarily administered by the Deputy Commissioner and his Assistants and by the lascars according to their jurisdiction, but Mauzadars may be empowered by the Deputy Commissioner to dispose of petty criminal cases. Mauzadars so empowered will exercise the same powers and be subject to the same restrictions as are hereinafter provided for lascars.

14. Similarly, Section 24, contained in Chapter IV of the Rules, under the heading "Authorities of Civil Justice" lays down as follows:

Authorities of Civil Justice. The Administration of Civil Justice in the Garo Hills is entrusted to the Deputy Commissioner, his Assistants and the lascars.

15. A careful reading of the above provisions shows, as rightly contended by Mr. Siddique, that the Deputy Commissioner is at the head of the administration of Criminal Justice as well as Civil Justice in the Garo Hills districts and, as such, the Deputy Commissioner exercises the same powers as does a District and Sessions Judge, Though there is no express provision to show that an Additional Deputy Commissioner falls within the expression "Deputy Commissioner", it clearly follows from a reading of Rule 1 and 1-A aforementioned that an Additional Deputy Commissioner, if empowered, may exercise the same powers as those of the Deputy Commissioner, but as the Additional Deputy Commissioner is not the head of administration of the Criminal and/or Civil Justice in the Garo Hills districts, he is not at par with the Deputy Commissioner and cannot, therefore, be equated with District and Sessions Judge.

16. What logically follows from the above discussion is that an A.D.C., if not empowered by the Governor, cannot exercise powers of the Deputy Commissioner in the realm of Criminal and/or Civil Justice.

17. A bare reading of the decision in Monmatha Nath Vyakaran Sastri (supra) shows that this case lays down that an A.D.C., in Garo Hills districts, will, by virtue of his appointment as A.D.C., exercise his appellate and/or revisional powers of the Deputy Commissioner. I respectfully agree with the views so expressed subject to the two conditions aforementioned and hold, if I may reiterate, that an A.D.C. can, in the said district, exercise judicial powers of the Deputy Commissioner only if he is empowered by the Governor under Rule 1-A of the said Rules and the extent of exercise of such powers by the A.D.C. will depend on the extent to which such powers, under Rule 1-A, stands vested in such A.D.C.

18. Turning to the question as to whether the learned A.D.C., in the case in hand, could have entertained the appeal u/s 9 of the said Act, it needs to be noted that under notification No. LJ(B)92/93/43(A), dated 26.10.95, aforementioned, learned Additional Deputy Commissioner, Tura, is empowered to exercise all the powers of the Deputy Commissioner under the said Rules, but the fact remains that he is not the Deputy Commissioner and cannot, as such, be equated with District and Sessions Judge. In other words, notwithstanding the judicial powers

that Mr. N.D. Changma aforementioned may exercise by virtue of the said notification, he, not being the Deputy Commissioner of the said district, is not at par with a District and Sessions Judge.

19. In the above backdrop, when I closely read Section 9 of the said Act, I find that this Section clearly lays down that an appeal, as the one that we have at hand, can be entertained by the District Judge of the district in which the public premises, in question, are situated or by such Judicial Officer, in the district, who has not less than ten years" standing and is designated, in this behalf, by the District Judge concerned.

20. From a bare reading of the above provisions, it becomes crystal clear that an appeal of the present nature has to be entertained either by the District Judge or by a Judicial Officer, who has been designated, in this behalf, by the District Judge, but such judicial officer must have not less than ten years of standing as a Judicial Officer.

21. In the case at hand, the learned A.D.C., who passed the impugned order, was appointed to exercise the judicial powers vide notification, dated 26.10.95, aforementioned and he can not, therefore, be treated as a Judicial Officer having ten years of standing. This apart, under the scheme of Section 9(1) of the said Act, if the appeal is to be entertained and heard by any one other than the District Judge, then, it can be done only by a person, who is designated, as aforesaid, by the District Judge. In the case at hand, it is admitted position that the Deputy Commissioner, as District Judge, has not so designated the learned A.D.C., whose order stands impugned in this revision. Moreover, the learned Addl. Deputy Commissioner aforementioned does not have the requisite qualification to be so designated.

22. Situated thus, there can be no escape/from the conclusion that the appeal, in the instant case, ought to have been heard by none other than the Deputy Commissioner, Garo Hills district, and the learned Addl. Deputy Commissioner, who has passed the impugned order, had no jurisdiction at all to entertain/hear the appeal.

23. In the result and for the reasons discussed above, this writ petition succeeds. The impugned order is set aside and the appeal preferred by the Respondents aforementioned is directed to be heard by the learned Deputy Commissioner, Garo Hills District.

24. In order to ensure expeditious disposal of the appeal, the parties are directed to appear in the Court of learned Deputy Commissioner, Garo Hills, on 20.9.2002, who shall dispose of the appeal within a period of two months from the date of receipt of the relevant record along with a copy of this judgment and order.

25. With the above observations and directions, this writ petition shall stand disposed of.

26. Send back the L.C.R. along with a copy of this judgment and order.
27. No order as to costs.