

Tara Singh v. The Additional District Judge, Ferozepur and
another (D. S. Tewatia, J.)

N. K. S.

Before D. S. Tewatia and K. S. Tiwana, JJ.

TARA SINGH,—*Petitioner.*

versus

THE ADDITIONAL DISTRICT JUDGE, FEROZEPUR AND
ANOTHER,—*Respondents.*

Civil Writ Petition No. 4627 of 1983.

October 6, 1983.

Public Premises (Eviction of Unauthorised Occupants) Act
(XL of 1971)—Section 9(1)—Constitution of India 1950—Articles

(2) AIR 1978 S. C. 930.

233 and 236—Punjab Courts Act (VI of 1918)—Section 21(3)—Order of eviction passed by the Estate Officer—Appeal against the order preferred under section 9(1)—Additional District Judge with less than ten years standing as such—Whether competent to hear the appeal—Expression 'District Judge'—Whether include additional District Judge.

Held, that a bare perusal of sub-section (1) of section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 envisages that an appellate officer mentioned therein is identified to be either a District Judge or a judicial officer of that district designated by the District Judge and of not less than 10 years standing. In other words, two categories of officers are to act as appellate officer i.e., either a District Judge or a judicial officer of not less than 10 years' standing. While in common parlance every officer who exercises judicial functions can be called a judicial officer but here the statute distinguishes a judicial officer from a District Judge. Chapter VI of the Constitution of India deals with subordinate Courts. Article 233 deals with the appointment, posting and promotion of District Judges. Article 236 which has defined the expressions 'District Judge' and 'Judicial service' in clause (a) and (b) respectively thereof had defined the expression 'District Judge' as including *inter alia* additional District Judge. Again sub-section (3) of section 21 of the Punjab Courts Act provides that an additional District Judge dealing with and disposing of the cases which are either made over to him by the District Judge or the High Court by general or special order had directed him to deal with, shall be deemed to be the Court of the District Judge. In view of these constitutional and statutory provisions, additional District Judge falls in the category of District Judge and, therefore, he does not have to have 10 years' standing to be legally competent to deal with an appeal in terms of sub-section (1) of section 9 of the Act. The requirement of 10 years' standing is prescribed for a judicial officer other than the District Judge. Thus, it is held that the requirement of 10 years' standing has to be satisfied by a judicial officer other than the District Judge which expression includes *inter alia* an additional District Judge as well.

(Paras 8, 9, 10, 11 and 12)

Bawa Gopal Singh vs. Union of India and others, 1980 R.L.R. 59.

OVERRULED.

Writ Petition Under Article 226/227 of the Constitution of India praying that :—

- (a) that a writ in the nature of Certiorari quashing the impugned order Annexure P-1 passed by Respondent No. 2 on 7th February, 1983 by which he has passed an order of eviction of the petitioner from the premises in dispute, be issued.

Tara Singh v. The Additional District Judge, Ferozepur and another (D. S. Tewatia, J.)

Also, with a further prayer for quashing the impugned order Annexure P-7 passed by Respondent No. 1 on 10th September, 1983 has dismissed the appeal of the petitioner under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, Writ of Certiorari, be issued.

- (b) that a Writ in the nature of Mandamus restraining the Respondent No. 2 not to evict the petitioner from the premises in dispute as he is the lawful Manager and is a lessee of the land in dispute, be issued.
- (c) that any other writ, order or Direction which this Hon'ble Court may deem fit under the circumstances of the case, be also issued;
- (d) that, in view of the urgency of the matter necessitating prayer for ad-interim relief, issue and service of advance notice of motion of the petition on the respondents may be dispensed with.
- (e) That the petitioner may be exempted from filing certified copies of Annexures P-2 to P-5 as the same cannot be made readily available;
- (f) that the record of the case be sent for and perused.
- (g) that the cost of the petition be awarded to the petitioner.

Further praying that the Respondents be restrained by evicting the petitioner from the premises on the land in dispute during the pendency of the present Writ Petition and the implementation of the impugned Order Annexures P-1 and P-7 may be stayed.

G. S. Dhillon, Advocate, for the Petitioner.

For the Respondent : Nemo.

JUDGMENT

(1) Air Commodore A. S. Lamba, Vir Chakra, Estate Officer, Air Force Station, Halwara, ordered the eviction of petitioner Tara Singh son of Shri Kehar Singh,—vide order dated 7th February, 1983, from the land measuring 10 Acres 2 Kanals, Plot No. 17, Khasra No. 70 Min at Ferozepur Airfield belonging to the Government of India as he was found in unauthorised and illegal occupation thereof. The appeal against that order filed by the petitioner under section 9 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was dismissed as being barred by limitation by

Shri J. C. Aggarwal, Additional District Judge (Appellate Officer), Ferozepur,—*vide* order dated 10th September, 1983. The petitioner has impugned both these orders.

(2) The order of the Estate Officer has been impugned on the ground that the same had been passed *ex parte* without giving the petitioner an opportunity of hearing. The appellate order has been challenged on two grounds : (i) that the Additional District Judge was not competent to deal with the appeal, because only that judicial officer, other than the District Judge, who has standing of ten years, could try the appeal and since Mr. Aggarwal had only two years standing, so obviously in terms of section 9(1) he was not competent to deal with the appeal; and (ii) that the appeal had been wrongly dismissed on the ground that the same was barred by limitation, because, in fact, it was not so barred by limitation.

(3) In our opinion, there is no merit in this petition. Perusal of the order of the Estate Officer would show that a notice under section 4 (1) of the Punjab Premises Act dated 29th November, 1981 exhibit E. 2 was served on Tara Singh petitioner to appear on 10th December, 1982 in the Court of the Estate Officer. When he did not appear on that date, he was again summoned,—*vide* letter dated 18th December, 1982, exhibit E-4 to appear on any date on or before 30th December, 1982. He failed to appear on 30th December, 1982 in the Court of the Estate Officer. He was given another chance to appear in the Court of the Estate Officer on any date between January 10, 1983 to January 14, 1983,—*vide* exhibit P. 6. The petitioner still did not appear in his Court.

(4) In view of the fact that Tara Singh petitioner had been served, at least once to appear in the Court of Estate Officer on 10th December, 1982 and he absented himself on that date and thereafter he had been given 2-3 more opportunities to appear in the Court of Estate Officer, so it cannot be said that the petitioner had not been given opportunity of hearing by the Estate Officer.

(5) In order to appreciate the challenge to the appellate order, relevant provision of section 9 of the Act would deserve noticing. It reads as under:—

9. Appeals:—(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under section 5 or section 7 to an appellate officer who

Tara Singh v. The Additional District Judge, Ferozepur and
another (D. S. Tewatia, J.)

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."

(6) The learned counsel for the petitioner has drawn our attention to a single Bench judgment of this Court reported in *Bawa Gopal Singh vs. Union of India and others* (1), in support of his submission that judicial officer of 10 years' sanding, if he is not a District Judge, is alone competent and not a judicial officer of less than 10 years' standing even if he be an additional District Judge.

(7) With respect, the authority cited on behalf of the petitioner does not lay down the correct law.

(8) A bare perusal of the provision of sub-section (1) of Section 9 envisages that an appellate officer mentioned therein is identified to be either a District Judge or a judicial officer of that district designated by the District Judge and of not less than 10 years standing. In other words, two categories of officers are to act as appellate officer i.e. either a District Judge or a judicial officer of not less than 10 years' standing. While in common parlance every officer who exercises judicial functions can be called a judicial officer but here the statute distinguishes a judicial officer from a District Judge. The question, therefore, would arise as to whether the Additional District Judge is a District Judge or a judicial officer. But before grappling with that aspect it deserves highlighting that the statutory provision in question when talking of the District Judge does not talk of a *persona designata* but District Judge as a Court. Had it been otherwise, then he could not designate any judicial officer to deal with the appeal for District Judge as a *persona designata* would enjoy no authority over the other judicial officers of the District. He does so only if he acts as a Court.

(9) Chapter VI of the Constitution of India deals with subordinate Courts. Article 233 deals with the appointment, posting and promotion of District Judges. Article 236 which has defined the

(1) 1980 R.L.R. 59.

expressions "District Judge" and 'judicial service' in clauses (a) and (b) respectively thereof has defined the expression 'District Judge' as including *inter alia* Additional District Judge.

(10) Sub-section (3) of section 21 of the Punjab Courts Act provides that an Additional District Judge dealing with and disposing of the cases which are either made over to him by the District Judge or the High Court by general or special order had directed him to deal with, shall be deemed to be the Court of the District Judge.

(11) In view of the aforesaid constitutional and statutory provision, Additional District Judge falls in the category of District Judge and therefore, he does not have to have 10 years' standing to be legally competent to deal with an appeal in terms of sub-section (1) of Section 9 of the Act. The requirement of 10 years' standing is prescribed for judicial officer other than the District Judge.

(12) To the extent that the learned single Judge in *Bawa Gopal Singh's case* (supra) held that an Additional District Judge of less than 10 years' standing is not competent to deal with the appeal, we may with respect say that he does not lay down the correct law and we, therefore, expressly overrule the said decision and hold that the requirement of 10 years' standing has to be satisfied by the judicial officer other than the District Judge which expression includes *inter alia* an Additional District Judge as well.

(13) Coming now to the question of limitation, it may be observed that the appellate authority has given clear finding on the basis of the facts recapitulated in the order that the appeal was clearly barred by limitation and we see no reason to differ from the said conclusion, for it cannot be said the said finding is based on no material. A finding based on requisite material of a Tribunal or a Court below is sacrosanct for the writ Court and cannot be interfered with.

(14) For the reasons aforementioned, we find no merit in this petition and dismiss the same.