

**Kedar Vs. Additional Commissioner, U.P. Government and ors.**

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**Court :** Allahabad

**Decided On :** Feb-25-2003

**Reported in :** 2003(2)AWC866

**Judge :** S.K. Singh, J.

**Acts :** Uttar Pradesh Consolidation of Holdings Act, 1953 - Sections 11

**Appeal No. :** C.M.W.P. No. 8807 of 2003

**Appellant :** Kedar

**Respondent :** Additional Commissioner, U.P. Government and ors.

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** P.K.S. Paliwal, Adv.

**Disposition :** Writ petition dismissed

**Judgement :**

ORDER

**S.K. Singh, J.**

1. Heard counsel for the petitioner and learned standing counsel who appears for the respondent Nos. 1 and 2.

2. Challenged in this petition is the order passed by Additional Commissioner, Consolidation dated 14.2.2003 by which petitioner's transfer application for transferring pending appeal from the Court of the Settlement Officer, Consolidation was rejected.

3. The argument of the learned counsel for the petitioner is that although there were serious allegations against the Presiding Officer as has been stated in the transfer application itself, copy of which has been brought on record as Annexure-2 to the writ petition and although it has been held by this Court in 1984 RD 1 in the case of Indra Dev and Ors. v. District Deputy Director of Consolidation, that it is not necessary to prove allegation to its hilt and it is only an apprehension in the mind of litigant which is sufficient for transfer of case, the transfer application has been rejected by the concerned authority, without applying his mind either to the facts or to the legal aspect.

4. After hearing the arguments on a consideration of the matter, it appears that none of the arguments as advanced by the learned counsel can help the petitioner. Law is well settled on the point that for transferring a case unless the Court feels the allegations, as levelled are bona fide and there is a reasonable apprehension in the mind of the litigant, the allegations may be of any serious nature, no transfer can be allowed. Transfer of a case from one Court to another is a very serious thing and that casts a doubt on the integrity of a Presiding Officer and thus the Court may be very cautious in dealing with these matters and unless there are various attending circumstances even if there is no direct proof in respect to the allegations, no transfer is to be allowed. In the event, the submission of the learned counsel for the petitioner is accepted that as a transfer application is moved, the faith of the litigant is shaken, then it is to be allowed/accepted, then it will lead to very unhealthy results as it will be a tool for the litigant to choose a Court according to the nature of the Presiding Officer, according to his views which may be widely known. So far the case in hand is concerned, on the submission of the learned counsel, that the respondent No. 2 has not examined the grounds as has been taken in the transfer application, the allegations so made in the transfer application has been examined by this Court. It has been stated by the petitioner in para 6 of the affidavit which has been filed in

support of the transfer application that on 7.1.2003 when the petitioner went in the Court, his counsel asked the petitioner to get record inspected so that the case may be prepared and it may be argued upon which when the petitioner along with his counsel went in the Court for inspection of his file, he saw that three learned counsel who appear for the opposite party were sitting there and they were preparing a draft judgment in their favour and thus they on seeing the petitioner were cornered and immediately they handed over the file to the Reader and went away. It has been stated that in view of the aforesaid conduct and circumstances, the petitioner has a reasonable apprehension that he will not get fair justice from the Court of the present Presiding Officer. On the examination of the aforesaid averment as made in the transfer application/affidavit, the Court is of the opinion that it is a highly improbable situation as nobody can expect of preparing a draft of the judgment in the open court. It appears that for the reasons best known to the petitioner and for the purpose to linger on the pending appeal, who happens to be the appellant, he has moved transfer application which for no justifiable reason has maligned the Image of the concerned officer. The allegations as has been made by the petitioner in the transfer application appear to be totally frivolous, baseless and without any sense of responsibility and, therefore, that has been rightly rejected by the respondent No. 1. On examination of the matter, this Court is also of the view that filing of the transfer application by the petitioner before the respondent No. 1 and also filing of the writ petition before this Court is not only improper but that appears to be an abuse of process of the Court.

5. In view of the aforesaid, this writ petition fails and is dismissed.

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