

Basant Singh Vs. Janak Singh

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Court : Allahabad

Decided On : Nov-16-1953

Reported in : AIR1954All447

Judge : Desai and ;Asthana, JJ.

Acts : [Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\)](#) , [1898](#) - Sections 45(3); [Evidence Act, 1872](#) - Sections 115

Appeal No. : Criminal Revn. No. 569 of 1951

Appellant : Basant Singh

Respondent : Janak Singh

Advocate for Def. : N.P. Asthana, Adv.

Advocate for Pet/Ap. : B.S. Darbari, Adv.;T.N. Madan, Brief Holder for ;Dy. G.A.

Disposition : Application dismissed

Judgement :

Desai, J.

1. This is an application under Section 439, Criminal P. C. and Article 226 of the Constitution for the quashing of an order passed by the Additional District Magistrate Agra, setting aside an order of a Sub-divisional Magistrate. The Sub-

divisional Magistrate had passed the order appointing the applicant as a mukhia under Section 45 (3) of the Code of Criminal Procedure. The Additional District Magistrate revised that order and appointed the opposite-party as the mukhia in place of the applicant.

2. An order passed under Section 45 (3) appointing a mukhia or an order removing a mukhia has been held by this Court to be an administrative (or executive or ministerial) order and not a judicial order against which any remedy can be had under the Code of Criminal Procedure. That the power to appoint a Mukhia is conferred upon a Magistrate does not make an exercise of the power a judicial proceeding. Whatever a Magistrate does or orders in exercise of a power conferred upon him is not necessarily a judicial proceeding or order. Nor is it a judicial proceeding or order just because the power is conferred by a statute. A District Magistrate is empowered under Section 3 of the Temporary Control of Rent and Eviction Act to grant permission to a landlord to eject a tenant; still it has been held by this Court that a District Magistrate's granting permission to a landlord to eject a tenant is not a judicial order against which any writ of certiorari can lie.

The criterion for deciding whether an order is a judicial order or an administrative one is not whether the authority acts under a statute; it is as pointed out recently by Sapru J. in -- 'Mohammad Buksh v. Govt. of the State of Uttar Pradesh', AIR, 1953 All 739 (A) whether it is required to act judicially in passing the order or not. If it is required to act judicially, the order is judicial or quasi-judicial and if it is not, it is administrative. The law has simply empowered District or Sub-divisional Magistrates to appoint mukhias subject to rules framed by the State Governments. The rules framed by U. P. Government mention some matters to be considered by them but not all and otherwise leave anything to their absolute discretion

It is stated by Ferris in the Law of Extraordinary Legal Remedies, 1926, p. 238: 'The distinction between ministerial and judicial and other official acts is, that where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial; but where the act to be done involves the exercise of discretion or

judgment in determining whether the duty exists, it is not to be deemed merely ministerial.'

3. On page 182 he has said that judicial action is inconsistent with discretion for the judicial body must decide according to law and the rights of the parties'. It was contended on behalf of the applicant that an order appointing a mukhia is a quasi-judicial order. The question whether an order is a quasi-judicial order or not, arises only in respect of non-judicial authorities and cannot arise in respect of judicial authorities. In case of judicial authorities, their orders can only be either judicial or administrative and cannot possibly be quasi-judicial. Since other authorities are not judicial authorities, their orders cannot possibly be judicial if they are to be passed judicially they can be only quasi-judicial. A sub-divisional Magistrate is a judicial authority and therefore, his order would be either judicial or executive. As an order passed by him under Section 45(3), Criminal P. C. has been held to be not a judicial order, it can only be an administrative order.

4. No writ of certiorari can be issued against administrative or executive orders. It was argued that the Additional District Magistrate had no power to interfere with the order of the Sub-divisional Magistrate. Under Section 45(3) of the Code, a mukhia can be appointed by a District Magistrate or a Sub-divisional Magistrate. Since a Sub-divisional Magistrate and a District Magistrate have co-ordinate powers, it was contended that once the powers are exercised by a Sub-Divisional Magistrate, the same cannot be exercised by the District Magistrate. We do not wish to enter into that question because we are of the opinion that any interference or revision or modification of an administrative order by a superior authority is itself an administrative order. The order of the Sub-divisional Magistrate was administrative, and so also the order of the Additional District Magistrate; The order of the Additional District Magistrate does not become judicial merely because it was passed illegally. It is said not to have been passed under any provision of law and therefore, it cannot possibly be judicial. We think that the Additional District Magistrate being superior to the Sub-divisional Magistrate could revise his administrative order in his executive capacity; -- 'See *Federal Radio Commissioner v. Nelson Brothers Bona and Mortg. Co.*, (1932) 77 Law Ed 1166 (B), But even if he had no power to revise his order, we think that the question is

one that concerns executive authorities, and this court has no authority to interfere with usurpation of executive power. The applicant may seek his remedy from superior executive authorities such as the Commissioner, but not from us.

5. When the Additional District Magistrate heard the revision, the applicant did not challenge his jurisdiction to hear it. If he had no Jurisdiction to hear the revision application, his jurisdiction ought to have been challenged there and then by the applicant. When he failed to challenge it, he cannot be permitted to challenge it for the first time through an application for a writ of certiorari. The latest authority in support of this view of ours is -- 'Gandhinagar Motor Transport Society v. The State of Bombay', AIR 1954 Bom 202 (C)'. If he acquiesced in the Additional District Magistrate's jurisdiction in the hope of getting a favourable decision from him the doctrine of estoppel should be applied against him and the discretionary writ of certiorari should not be issued at his instance when he is disappointed.

6. We hold that no certiorari can be issued against the Additional District Magistrate's order. The application is dismissed.

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