

**Mohan Singh Vs. State Officer Public Premises Eviction Act and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Jul-04-1991

**Reported in :** AIR1991MP365

**Judge :** A.G. Qureshi, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115; Madhya Pradesh Amendment Act, 1984

**Appeal No. :** C.R. No. 150 of 1989

**Appellant :** Mohan Singh

**Respondent :** State Officer Public Premises Eviction Act and ors.

**Advocate for Def. :** B.I. Mehta, Adv.

**Advocate for Pet/Ap. :** N.S. Purohit, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**A.G. Qureshi, J.**

1. This order shall govern the disposal of Civil Revision Petitions Nos. 150 of 89, 151 of 89, 151 of 89, 153 of 89 and 154 of 89. All these revision petitions have been filed against the order dated 17th June, 1989 passed by the second Addl.

Judge to the court of District Judge, Ratlam in Civil Misc. Appeals Nos. 43 of 83, 45 of 82, 44 of 83, 44 of 82 and 46 of 83, respectively.

2. The facts relevant for the decision of these revision petitions are that the respondent No. 1 State Officer, Public Premises Eviction Act (Divisional Engineer, W. R. Ratlam) in exercise of his powers under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 issued a notice for eviction of the premises occupied by the petitioners in all the five revision petitions holding that they are occupying the premises belonging to the Railways. An objection was raised by the petitioners stating therein that the premises do not belong to the Railway. The notice was further resisted on the ground that the Railway has already filed a civil suit and, therefore, the proceedings under the Act could not be initiated. However the order was passed by the respondent No. 1 directing the eviction of the applicants from the premises on 2-6-1982. Aggrieved by the aforesaid order the present applicants filed appeals before the District Judge, Ratlam Under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter called the Act). All the appeals were registered as miscellaneous appeals before the lower court and vide the impugned orders the learned Addl. Judge to the court of District Judge has disallowed the appeals. Hence these revision petitions.

3. A preliminary objection was raised about the maintainability of the revision petitions against the order of the appellate court on two grounds. Firstly, that Section 10 of the Act in unequivocal terms attaches finality to the appellate order and, therefore, it could not be challenged by filing a revision petition. Secondly that in view of the amendment made in Section 115, CPC by the State of M.P. also the revision petitions are not tenable.

4. The learned counsel for the applicants Shri Purohit supporting the tenability of the revision petitions has vehemently argued that in view of the various decisions of this court the revisions are maintainable. On the other hand the learned counsel for the Railways states that in view of the clear provisions of law these revision petitions are not maintainable.

5. The first judgment on this point under the Act cited before me is one reported in AIR 1966 MP 7 Hargovind Sharma v. Divisional Engineer Railway Administration, S. E. Railway Bilaspur wherein it has been held that an appeal lies to the District Judge as a persona designate and not to a court of the District Judge. This is clear from the language of the provisions of Sections 9(1) and 10. As such the decision of the District Judge as persona designata is not revisable in view of the clear provisions of Section 10 of the Act wherein even the challenge to the appellate order by way of an application is barred. In another judgment of this court in Harischandra v. Life Insurance Corp. 1982 MPWN Short Notes 312 it has been held that in view of the provisions contained in Section 9 of the Act an appeal will lie to an appellate officer who shall either be the District Judge of the District in which the public premises are situated or such other judicial officer having not less than 10 years standing as would be designated by the District Judge in that behalf and, therefore, passing an order in exercise of revisional jurisdiction, this court has held that the order of the appellate court was without jurisdiction as the Addl. Judge had no power to hear that appeal and the case was, therefore, remanded to the District Judge for disposal.

6. The judgment in Hargovind Sharma v. Divisional Engineer, S.E. Railway, Bilaspur (supra) was considered by this court in a later decision in the case of Ayodhya Prasad v. Union of India AIR 1983 MP 39 wherein it was held that Section 10 of the Act does not exclude the further remedy of revision provided Under Section 115, CPC against the order of the court subordinate to High Court. Court of District Judge being a court subordinate to High Court revision would lie against the order of the District Judge in appeal u/ S. 9 of the Act. While disagreeing with the decision in Hargovind Sharma's case (supra) the court has followed the Supreme Court decision in Thakurdas v. State of M.P. AIR 1978 SC 1 : (1978 Cri LJ 1) wherein the provisions of Section 6C of the Essential Commodities Act were interpreted by the Supreme Court and it was held that then Sessions Judge was appointed as an appellate authority Under Section 6C of the Essential Commodities Act and the Sessions Court being an inferior criminal court to the High Court, the order in appeal passed in exercise of powers conferred by Section 6C, a revision application would lie to the High Court and the High Court would be entitled to entertain a revision application Under Sections 435 and 439 of

the Code of Criminal Procedure 1898, which was in force at the relevant time. In such a case the Sessions Court is not persona designata. As such the view taken in Ayodhya Prasad's case (supra) is that a District Judge is not a persona designata and, therefore, even if a finality is attached to his order in appeal, still the court of District Judge being a subordinate court to the High Court a revision would lie to the High Court against the order passed by District Judge in exercise of his appellate powers.

7. It may be noted that all those decisions pertain to the period before the incorporation of the State Amendment Under Section 115, CPC. Now, by the Code of Civil Procedure (M.P. Amendment Act, 1984) (hereinafter called the M.P. Amendment) Section 115 of the C.P.C, has been substituted as under :--

'115, The High Court, in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above, and the District Judge in any other case may call for the record of any case which has been decided by any court subordinate to such High Court or District Judge, as the case may be, and in which no appeal lies thereto, and if such subordinate court appears :--

(a) to have exercised a jurisdiction not vested in by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of the jurisdiction illegally or with material irregularity; the High Court or the District Judge, as the case may be make such order in the case as it thinks fit;

Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Judge the High Court alone shall be competent to make an order under this section :

Provided further that the High Court or District Judge shall not, under this section, vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceedings, except where:--

(i) the order, if so varied or reversed, would finally dispose of the suit or other proceedings; or

(ii) the order, if allowed to stand would, occasion a failure of justice; or cause irreparable injury to the party against whom it was made.

Explanation -- In this section, the expression 'any case which has been decided' includes any order deciding an issue in the course of a suit or other proceeding.'

From the language of the substituted Section 115, CPC by M.P. Amendment it is manifest that the High Court can exercise its revisional powers in all the original suits and other proceedings of the value of Rs. 20,000/- and above and the District Judge has been given a power of revision in all other cases which have been decided by any court subordinate to High Court or District Judge where no appeal lies and thereafter the extent of the revisional powers have been enumerated. A proviso has also been added wherein it has been laid down that in all those cases which arise out of original suits or other proceedings of any valuation, decided by the District Judge, the High Court alone shall be competent to make an order under this section. As such by virtue of the aforesaid M. P. Amendment the powers of the High Court in respect of revisions have been circumscribed and the High Court can hear revisions only in those cases which arise out of original suits or other proceedings of the value of Rs. 20,000/- and above and orders passed in original suits or proceedings of any valuation which have been passed by the District Judge.

8. Now in the instant case these revisions have been filed undisputedly against the appellate order of the court of District Judge and in none of the cases it has been stated that the valuation of the matter is above Rs. 20,000/ -. The orders impugned cannot be treated as orders passed in original suits or proceedings. Therefore, in view of the M.P. Amendment to the Code of Civil Procedure this court cannot hear a revision against the order impugned passed by the court of District Judge in exercise of its appellate jurisdiction.

9. Shri Purohit has also drawn my attention to a recent judgment of this court in Lali Bai v. Gula Bai reported in 1990 (Vol. II) MPWN Short Notes 99, wherein it

has been held that when the subject matter of the suit is Rs.40,000/- then even against the appellate order passed by the District Judge a revision lies before the High Court. In the instant case, however, in none of (he cases it has been shown that the valuation of the matter before the appellate court was above Rs. 20,000/-. Therefore, I need not discuss this judgment in details. Although different judgment of this court have been cited in respect of the issue whether the District Judge while hearing the appeal exercises the appellate power as persona designata or not, but as in view of the amendment I am of the opinion that these revision petitions are not tenable, therefore, I need not go into the interpretation made in the aforesaid decisions by this court in different orders.

10. In the result these revision petitions deserve to be dismissed as untenable and, therefore, they are accordingly dismissed. If the applicants may be so advised they may move this court challenging the orders impugned by way of a writ petition if that remedy may be legally available to them. In the circumstances of the case there shall be no order as to costs.

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