

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 490 of 2011**

Smt. Daljeet Kour, aged about 59 years, W/o Late Ranveer Singh Chane, R/o 25, Malviya Nagar, Durg, Chhattisgarh, Tenant Plot No. SC 151, Link Road, Camp 2, Bhilai, Tahsil and District Durg, Chhattisgarh.

---- Appellant**Versus**

1. Estate Officer appointed under the Public Premises (Eviction of Un-Authorised Occupation) Act 1971 Town - Administration Building, First Floor, Indira Place, Civic Centre, Bhilai Nagar, Tahsil and District Durg, Chhattisgarh.
2. Steel Authority of India Limited, Through, Managing Director, Ispat Bhawan, Bhilai Steel Plant, Bhilai Nagar, Tahsil and District Durg, Chhattisgarh.
3. A.K.Kureshi S/o Late Abdul Sattar, Aged about 63 years, R/o Shanti Nagar, Supela, Near Radha Krishna Mandir, Behind Hindustan Marbles, Rajendra Chowk, Kohka Road, Tahsil and District Durg, Chhattisgarh.
4. Suresh Bhansali S/o Pukhraj Bhansali, aged about 37 years, R/o 205, Arya Nagar, Durg, Chhattisgarh.
5. Nandlal Soni S/o Nansraj Soni, aged about 48 years, R/o Katora Talab, Raipur, Chhattisgarh, Approach Road, Jalebi Chowk, Camp 1 Bhilai, Tahsil and District Durg, Chhattisgarh.

---- Respondents

For Appellant : Shri V.G.Tamaskar, Advocate.
 For Respondent/SAIL : Dr. N.K.Shukla, Senior Advocate with Shri Roshan Dubey, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****08/09/2016**

1. This appeal is directed against the judgment dated 20.09.2011 passed in Writ Petition (S) No. 5814 of 2000 whereby the writ petition filed by the Appellant/Petitioner was dismissed.
2. Briefly stated facts of the case are that the Appellant was allotted one plot measuring 40'x60' as licensee for running a fruit shop by the Bhilai Steel Plant on

01.08.1976. The licence was terminated on 30.07.1986 on the ground of non-payment of dues, partition of the shop and on the allegation that there is subletting and the Appellant had encroached upon some portion of the land of the Bhilai Steel Plant. However, this termination order was withdrawn on 26.09.1989. Thereafter, the Appellant applied for permission to lay RCC Slab Roof etc. over the shop vide application dated 28.09.1989. Such permission was granted to the Appellant on 29.09.1989. The licence of the Appellant was again terminated on 05.04.1990 on the ground of subletting of the shop to a third party and violation of the proposed building plan. It was alleged that the construction had been raised contrary to the building plan. Thereafter, eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter called 'the Act') were initiated against the Appellant. The Estate Officer passed order of eviction against him on 22.09.1991. Aggrieved by the said eviction order, the Appellant filed an appeal before the 1st Additional District Judge, Durg (hereinafter referred to as 'the 1st ADJ, Durg') which appeal being Miscellaneous Civil Appeal No. 9 of 1991 was dismissed by the said officer on 10.08.2000 and affirmed the order of the Estate Officer.

3. Aggrieved by the order of the Appellate Authority, the Appellant filed Writ Petition No. 5814 of 2000 before this Court. The main ground raised before the learned Single Judge was that the 1st ADJ, Durg was not empowered to hear the case since he was not by name vested with the powers to hear such appeal under Section 9 of the Act.

4. We may make reference to Section 9 of the Act, relevant portion of which reads as follows:

"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 5-B or Section 5-C or Section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situated or such other judicial officer in that district of not less than 10 years' standing as the district judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred, -

(a) in case of an appeal from an order under Section 5, within twelve days from the date of publication of the order under sub-section (1) of that section;

(b) in the case of an appeal from an order under Section 5-B or Section 7, within twelve days from the date on which the order is communicated to the appellant; and

(c) in the case of an appeal from an order under Section 5-C, within twelve days from the date of such order;"

5. Section 9(1) of the Act provides that an appeal against the order of Estate Officer shall lie to an Appellate Authority who shall be the District Judge of the District in which the public premises is situated. It may also include any other judicial officer in that District but the caveat is that such judicial officer should have at least 10 years standing and such officer has to be designated by the District Judge. The main argument of Shri Tamaskar is that there is nothing on record to show that the 1st ADJ, Durg was designated as Appellate Authority. It is the Appellant who has raised this objection that the 1st ADJ, Durg was not competent to hear the appeal. The Appellant either in the writ petition or in this appeal should have filed the notification as to who had been designated as Appellate Authority. There is no clear cut statement made by the Appellant. Even more importantly, it is the Appellant who filed an appeal before the 1st ADJ, Durg. It is the Appellant who invoked the jurisdiction of the 1st ADJ and it appears to us that the Appellant must have invoked the jurisdiction of 1st ADJ only on the advise given by some counsel.

6. It is now stated before us that one Shri K.K.Shrivastava, later Judge of this Court was holding the post of 1st ADJ, Durg when the appeal was filed. It is further stated by Shri Tamaskar that Shri Shrivastava was transferred and thereafter Shri G. Minhajuddin, later Judge of this Court was appointed as 1st ADJ, Durg. According to Shri Tamaskar, the notification of Shri Shrivastava was by name and not by designation. If that be so, what prevented the Appellant from producing the

notification whereby Shri Shrivastava had been appointed as the Appellate Authority. When the Appellant himself is admitting that when he filed the appeal, the 1st ADJ had the powers, it was for him to show that the notification was by name and not by designation. This has not been done.

7. We are also of the view that if this allegation of Shri Tamaskar is correct, it was the duty of the counsel appearing before Shri Minhajuddin to have raised this issue before him that the Court is not competent to hear the appeal. Having taken a chance of arguing the appeal before Shri Minhajuddin, the Appellant cannot turn around to argue that Shri Minhajuddin did not have the jurisdiction to hear the appeal. The fact is that though the order by the Appellate Authority was passed on 10.08.2000 and more than 16 years have elapsed, till today no notification has been produced to show that Shri K.K.Shrivastava had to function as the Appellate Authority by name and not by designation. This was to be done by the Appellant, since this was his allegation. We therefore do not find any merit in this submission. As far as other points are concerned, they are only question of fact which have been decided by the Appellate Authority and they do not relate to question of jurisdiction.

8. We find no merit in this appeal. It is dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE