

20 kilograms of milk was found present in the back room. However, these facts were not mentioned in the F.I.R. which had been lodged after about 5 months of the incident. So the statements of the witnesses regarding the presence of the milk and the milk separating machine cannot be accepted. There is no evidence to hold that Amarjit Singh had used milk in the preparation of cream.

(12) From a bare reading of clause 2 *ibid*, it is apparent that mere possession of cream is no offence. Only using milk for manufacturing the cream, or the sale, serving, supply of cream and other milk products had been prohibited. There is no prohibition on the mere possession of the cream.

(13) The case of Surjit Singh is also similar. It is also alleged that on 10th June, 1983 Atma Singh, Dairy Extension Officer, Nabha, along with Narinder Kumar Sharma, Assistant Dairy Extension Officer, raided the business premises of Punjab Dairy, Anardana Chowk, Patiala. Surjit Singh was present there. He was found cleaning the cream separating machine at that time. The cream was also found lying there in a container and three samples were taken which were found to contain cream. There is no evidence that Surjit Singh had used milk in the preparation of the cream. It is quite possible that the cream might have been prepared by someone else. The mere fact that Surjit Singh was cleaning the cream separating machine will not lead to irresistible conclusion that he used milk in preparation of the cream. No milk was found there. In the case of Surjit Singh, there is another flaw. No case was registered against Surjit Singh. He has been challaned only on the basis of the F.I.R. registered against Amarjit Singh referred to in the earlier part of the judgment. That related to a separate premises. The two have no connection whatsoever.

(14) In the result, we find that the prosecution has not been able to establish its case against Amarjit Singh and Surjit Singh appellants. We allow their appeals and set aside their convictions and sentences and acquit them. Fine, if recovered from Surjit Singh be repaid to him.

## FULL BENCH

Before M. M. Punchhi, Ujagar Singh and A. P. Chowdhri, JJ.

RAJINDER GILL,—Petitioner.

versus

DEV SAMAJ COUNCIL SOCIETY and others,—Respondents.

Civil Writ Petition No. 99 of 1985.

February 28, 1989.

Punjab Affiliated Colleges (Security of Service of Employees) Act (XXIII of 1974)—S. 4(4)—Punjab Courts Act (VI of 1918)—Ss. 18(1), 20, 21 and 21-A—General Clauses Act (X of 1897)—S. 2(15)—S. 4(4) providing for appeal before the District Judge—Appeal decided by Additional District Judge—Additional District Judge; whether competent to decide the appeal—Expression 'District Judge' whether includes Additional District Judge.

Held, that it is the Court of the District Judge which is the appellate forum and as such it receives appeal, and not a *persona designata* in the District Judge or the District Judge in person. Once the appeal is entertained and received by the Court of District Judge, it inevitably follows that the District Judge has a right not only to retain the appeal for disposal by myself but also to make over the same to the Additional District Judge appointed by the State to exercise jurisdiction in his Court under Section 21 of the Punjab Courts Act, 1918, and while dealing with an disposing of that appeal the Additional Judge shall deemingly be the court of the District Judge on the making over of the appeal to him, is as good as a District Judge for the appeal.

(Paras 12, 13).

Held, that Sections 20 and 21 of the Punjab Courts Act, 1918 were meant to be read together and on interpreted to avoid ouster of the jurisdiction of the Additional District Judge. There is nothing in the Act to suggest that the Legislature was zealous in providing the appellate forum in the person of the District Judge alone. In fact the appellate forum was provided in the Court of District Judge to which the Additional District Judge is a part and parcel. The decision rendered by the Additional District Judge can, in no event, be said to be lesser in quality and efficacy than that rendered by the District Judge. We find no material in the Act to oust the jurisdiction of the Additional District Judge especially when the Punjab Courts Act does not in judicial terms create such a distinction.

(Para 16).

Held, that :—

- (a) The Additional District Judge is fully competent to decide an appeal under sub-section (4) of Section 4 of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974, if the appeal is made over to him by the District Judge for being dealt with and disposed of. And this is our answer to the jurisdictional question ;
- (b) The Court of the District Judge in a district comprises, firstly the person of the District Judge and then the Additional District Judge/Judges, appointed to exercise jurisdiction in his Court, for such court business as only assigned to him or them and dealt with an disposed of by him or them, deemingly as the Court of the District Judge. This is for judicial efficacy and not for creating a second District Judge. This is our answer to the ancillary question ; and
- (c) for the reasons recorded heretofore, we overrule the views expressed in *Managing Committee's case* and *Mangal Ram's cases* being too narrow, in so far as they relate to interpretation of Ss. 20 and 21 of the Punjab Courts Act while interpreting the provisions of the Act in hand.  
(Para 26).

1. *Managing Committee, Guru Gobind Singh Republic College, Jandiala v. State of Punjab and others* decided on May 20, 1980 in *Civil Writ Petition No. 4337 of 1979*.
2. *Mangal Ram vs. Union Territory of Chandigarh and others*, 1977, P.L.J. 375.  
(over-ruled).

(This case was referred to Larger Bench by Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice S. S. Sodhi on 3rd September, 1987 for decision of an important question of law involved in this case. The Full Bench consisting of Hon'ble Mr. Justice M. M. Punchhi, Hon'ble Mr. Justice Ujagar Singh, and Hon'ble Mr. Justice A. P. Chowdhri decided the question of law and sent the case back to Division Bench on 28th February, 1989 for disposal in accordance with law).

H. L. Sibal, Sr. Advocate with H. S. Toor, and D. S. Narula, Advocates, for the petitioners.

J. N. Kaushal, Sr. Advocate and V. K. Bali, Sr. Advocate with Ravi Kapoor, and Rajiv Vij, Advocate, for the respondents.

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JUDGMENT

Madan Mohan Punchhi, J.—

(1) The jurisdictional question that requires determination before this Full Bench is—Whether an Additional District Judge is competent to decide an appeal under sub-section (4) of section 4 of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (hereinafter referred to as 'the Act').

(2) The aforesaid question has arisen in this writ petition since Annexure P-12, the order impugned herein has been passed by the Additional District Judge, Chandigarh, in the purported exercise of his appellate powers under the afore-referred to provision of the Act. The Motion Bench straightway admitted the writ petition to a Division Bench noticing conflict of judicial opinion on the point. The matter when placed before the Division Bench presented the same difficulty. Before the Division Bench, a decision of a Division Bench of this Court rendered in (*Managing Committee, Guru Gobind Singh Republic College, Jandiala v. State of Punjab and others*) (1), was pressed into service by the petitioner. The Division Bench entertained doubt as to the correctness of the said decision. In these circumstances, the Division Bench referred the said point for decision by a larger Bench. It is in this way that the question is before us, soliciting answer.

\*Foundational facts would still be necessary to give the necessary fillip. And they are these :

(3) The petitioner in January, 1982, was selected and appointed as Principal of Dev Samaj College of Education, Chandigarh, a privately managed college under the management of Dev Samaj Council Society, respondent No. 1. According to the petitioner, the Management made her sign two blank papers before her selection as Principal obviously to be put to use to an appropriate time at an appropriate stage. Sometimes later, she fell out with some of the members of the Managing Committee and they threatened to put to use the blank papers in their possession. Under the threat of some of the members of the Managing Committee, she tendered her resignation in April 1983, which was accepted by the Management on April 23, 1983. Thereafter she asked for the return of the blank papers but they were returned after obtaining another writing

(1) C.W.P. No. 4337 of 1979 decided on May 20, 1980.

from the petitioner that she had resigned voluntarily. She then chose to take protection of the provisions of the Act. On May 31, 1983, she invoked the jurisdiction of the Director of Public Instructions, Union Territory, Chandigarh, contending that the resignation of the petitioner was not voluntary and without complying with the provisions of sections 3 and 4 of the Act. Section 3 contemplates a domestic enquiry and section 4 puts a letter of removal and dismissal of an employee unless the same was approved by the Director of Public Instructions. The said Officer on hearing the petitioner and the Management on the point accepted the contention of the petitioner and ordered on February 14, 1984 (order Annexure P-11) that the petitioner be deemed to be holding the post of Principal, entitling her to all the benefits of service etc. The Society, respondent No. 1, and the Managing Committee of the Institution, respondent No. 2, filed an appeal before the District Judge, Chandigarh, against the order of the Director of Public Instructions. The appeal was made over by the District Judge to Shri O. P. Gupta, Additional District Judge, Chandigarh, who in the purported exercise of power under section 4(4) of the Act, accepted the appeal and set aside the orders of the Director of Public Instructions,—*vide* order dated December 12, 1984, Annexure P-12. The plea of the Management as to the resignation of the petitioner being voluntary was accepted by the Additional District Judge. The order of the Additional District Judge, Chandigarh, stands challenged in the writ petition. We need not burden this judgment with factual pleas of the respondents.

(4) Now, who is this 'District Judge' who figures so prominently as the appellate forum in the scheme of the Act? A *persona designata* or a Court? Though Mr. Hira Lal Sibal, learned counsel appearing for the petitioner, straightaway conceded that he is a Court and not a *persona designata*, but his concession alone will not solve the question. It would yet have to be solved with the aid of the relevant provisions of the Act.

(5) The 'District Judge' has been defined in section 2(c) of the Act to mean the District Judge of the district in which the affiliated college is situated. Neither has the expression 'District Judge' nor the word 'District' been distinctly defined and the Act assumes that there would be a District Judge and there would be a district of which he is the District Judge. Straightaway the search leads us to the provisions of the Punjab General Clauses Act, 1898. In Section 2(15) the 'District Judge' has been defined to mean the

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Judge of a principal Civil Court of original jurisdiction; but shall not include the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. The word 'District' is not defined in the Punjab General Clauses Act. However, the expression 'District Judge' does disclose that the said Judge is of a principal Civil Court of original jurisdiction. And to discover that Court and its jurisdiction, one needs to go to the Punjab Courts Act, 1918. Section 18(1) thereof, occurring in Chapter-III, provides classification of Civil Courts and the Court of the District Judge is the first of such classified Courts. Prior to the enactment of Punjab Act No. 35 of 1963 the Court of the Additional Judge was the second of such classified Courts. But the said Act omitted such classification. In order to fulfil the purposes of Chapter III, section 19 specifically enjoins the State Government to divide the territories of the State under its administration into civil districts, preserving the power to alter the limits or the number of these districts. This is how a district is made. Section 20 enjoins the State Government to appoint as many persons as it thinks necessary to be District Judges, and shall post one such person to each district as District Judge of that district. Under the proviso thereto, the same person may, if the State Government thinks fit, be appointed to be District Judge of two or more districts. A joint reading of sections 19 and 20 gives us the mechanics of the creation of a district and the appointment of one person as the District Judge of that district. So the Legislature while enacting the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974, and when assuming the existence of a District Judge of the district in which the affiliated college is situated, and creating an appellate forum, must be assumed to be cognizant of the creation of civil districts and the District Judges under sections 19 and 20 of the Punjab Courts Act, 1918. So far no difficulty is experienced. That the District Judge is the Judge of a principal Civil Court or original jurisdiction also presents no difficulty. Mr. Sibal's concession that the District Judge referred to in section 2(c) of the Act is the Court of the District Judge is apparently sound, for that is the correct statement of law as would gradually become clear in the succeeding paragraphs.

(6) Now another pair of sections deserves attention. And these two are sections 21 and 21-A of the Punjab Courts Act, 1918, which are reproduced below :—

"21. Additional District Judges.—(1) The State Government, in consultation with the High Court, may also appoint

Additional District Judges to exercise jurisdiction in one or more courts of the District Judges.

- (2) Additional District Judges shall have jurisdiction to deal with and dispose of such cases only as the High Court, by general or special order, may direct them to deal with and dispose of or as the District Judge of the District may make over to them for being dealt with and disposed of :

Provided that the cases pending with the Additional District Judges immediately before the 28th day of June, 1963, shall be deemed to be cases so directed to be dealt with or disposed of by the High Court or so made over to them by the District Judge of the District as the case may be.

- (3) While dealing with and disposing of the cases referred to in sub-section (2), an Additional District Judge shall be deemed to be the Court of the District Judge.

21-A. Assignment of functions of District Judge to Additional District Judge.—The High Court or the District Judge may assign to an Additional District Judge any of the functions of the District Judge, including the functions of receiving and registering cases and appeals, which but for such assignment of functions could be instituted in the Court of the District Judge, and in the discharge of those functions the Additional District Judge shall, notwithstanding anything contained in the Act, exercise the same powers as the District Judge."

(7) A plain reading of sub-section (1) of section 21 makes it clear that the appointment of the Additional District Judge by the State Government is to empower him to exercise jurisdiction in one or more Courts of the District Judges. In other words, the Additional District Judge exercises jurisdiction in the Court of the District Judge. His is not a classified Court by itself and he is a part and parcel of the Court of the District Judge. His jurisdiction, however, is defined in sub-section (2) of section 21. A plain reading thereof makes it clear that he has only two sources of jurisdiction: (i) jurisdiction to deal with and dispose of those cases which are placed before him by general or special order of the High Court; and (ii) jurisdiction to deal with and dispose of cases which are made

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over to him by the District Judge. He thus has no power to entertain Court business directly unless it can be routed through the two sources afore-pointed. Sub-section (3) of section 21 further mandates the jurisdiction of the Additional District Judge to mean, that while dealing with and disposing of the cases referred to him from either or both of the afore-referred to two sources, he shall be deemed to be the Court of the District Judge. Thus, being a deemed Court of the District Judge he has all the judicial powers of the Court of the District Judge. A fictional legal status is thus conferred on him to be of the Court of the District Judge regarding business under sub-section (2) of section whichever stands assigned to him. And pointedly it is evident that when the District Judge of the district makes a case over to the Additional District Judge he does not create another District Judge. So to complete the string, it would be legitimate to say that the Additional District Judge exercises jurisdiction in the Court of the District Judge and he will deal with and dispose of any matter made over to him by the District Judge of the district, deemingly as the Court of the District Judge. In such a situation, the District Judge of the district keep intact his identity, as a Court, and yet a deemed colour of such Court is also conferred on the Additional District Judge. Harmoniously construed this is what section 21 as a whole provides for.

(8) Section 21-A, however, covers a different field. When there is a direct assignment to one Additional District Judge of any of the functions of the District Judge, including the functions of receiving and registering cases and appeals, he then exercises the same power as the District Judge. But under sub-section (3) of section 21 he is deemingly the Court of the District Judge for only that part of the business of the Court which by general or special order of the High Court he receives or that business which is made over to him for being dealt with and disposed of by the District Judge. This pair of sections in no way militates against the providing of one District Judge of a district under section 20. To be deemed to be the Court of the District Judge or to be exercising the same powers as the District Judge is not being the District Judge himself. And Additional District Judge enjoying those powers under sections 21 and 21-A no way becomes a second District Judge so as to violate section 20 of the Act. This is the clear interpretation which presents itself to us.



(9) The preamble suggests that the Act is a measure to provide for the security of service to the employees of the affiliated colleges. Section 3 thereof provides that no employee shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Sub-section (1) of section 4 provides that the penalty of dismissal or removal from service shall not be imposed unless the same is approved by the Director. The Director here means [when read with the aid of section 2(b)] the Director of Public Instructions, Chandigarh to include an other officer authorised by the State Government to perform the functions of the Director under the Act. Sub-section (2) of section 4 provides that where after the inquiry referred to in section 3, it is proposed to impose the penalty of dismissal or removal from service the proposal shall be referred to the Director along with the relevant record, and intimation about the proposal having been so referred shall be sent to the employee concerned also simultaneously. Sub-section (3) of section 4 enables the employee to make a representation against the proposed penalty to the Director within a period of 30 days of the receipt of intimation referred to in sub-section (2), who may, after examining the record and giving to the parties an opportunity of being heard, by an order in writing, give his approval to the imposition of the proposed penalty of dismissal or removal from service, as the case may be, or refuse to give approval if the proposal is found to be *mala fide* or by way of victimisation or not warranted by the facts and circumstances of the case. Sub-section (4) of section 4 provides an appellate forum. Any party aggrieved by an order of Director under sub-section (2) may file an appeal to the District Judge, who may, after giving to the parties an opportunity of being heard, pass such order as he may deem fit. Now it is under this provision that respondents Nos. 1 and 2 filed an appeal to the District Judge, Chandigarh, against the order of the Director of Public Instructions.

(10) Mr. Sibal contends that the appeal lay to the District Judge alone; it is he who had to give the parties an opportunity of being heard; it is he who had to pass an order as he deemed fit, and that he had no power to make over the appeal to the Additional District Judge despite the fact that the appeal was filed in the Court of the District Judge and that the Additional District Judge was a Judge who exercised jurisdiction in the Court of that District Judge under the provisions of the Punjab Courts Act. So the ancillary question is—what does the Court of the District Judge

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comprise of ? He himself alone ? Or is the Additional District Judge, appointed to exercise jurisdiction in the Court of the District Judge, part and parcel of that Court, to whom the Court business of the District Judge may be assigned ?

(11) It would be worthwhile to digress a little and take note of the District Judge figuring elsewhere in the Act. Sub-section (1) of section 5 of the Act provides that where after the inquiry referred to in section 3, it is proposed to impose the penalty of reduction in rank, the employee shall be given a reasonable opportunity of making a representation on the penalty proposed to be imposed and no order of reduction of rank shall be passed unless such an opportunity has been given. Reduction in rank does not require the approval of the Director of Public Instructions like dismissal or removal from service. On the reduction in rank, the employee alone is the aggrieved party. So a right of appeal has been carved out for an employee in sub-section (2) of section 5, which provides that an employee against whom an order of reduction in rank is passed may, within the period prescribed and in the prescribed manner, file an appeal to the District Judge, and the District Judge may, after examining the record and giving to the parties an opportunity of being heard, set aside the order of reduction in rank if the same is found to be *mala fide* or by way of victimisation and not warranted by the facts and circumstances of the case. Section 12 empowers the State Government to make rules for carrying out the purposes of the Act. Sub-section (2)(ii) of section 12 provides that such rules may provide the manner of filing an appeal to the District Judge under section 5 and the period within which the same is to be filed. Sub-section (3) thereof enjoins that every rule made under this section shall be laid before the House of the State Legislature for approval in the manner postulated therein. Rule 7 of the Punjab Affiliated Colleges (Security of Service) Rules, 1978, covers the field of an appeal under section 5(2) of the Act. Sub-rule (1) of rule 7 of the Rules provides as under :—

“(1) An appeal under sub-section (2) of section 5 shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the District Judge within thirty days of the date of the order. The memorandum shall be accompanied by a copy of the order appealed against (unless appellate Court dispenses therewith) and of the inquiry report on which it is founded.”

Sub-rule (3) provides as follows :—

“(3) The appellant shall not, except by leave of the District Judge, urge to be heard in support of any ground of objection not set forth in the memorandum of appeal; but the District Judge, in deciding the appeal; shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule.”

(12) The employment of the words “Court/Appellate Court” in Rule 7 interchangeably with the ‘District Judge’ is a clear pointer that the Legislature used the expression ‘District Judge’ interchangeably as the ‘Court’ or the ‘Appellate Court’ of the District Judge. Rule 7 is statutory in character in view of its having received approval under sub-section (3) of section 12 of the Act. It is as if rule 7 is bodily studied in the text of the Act. It cannot thus be conceived that the District Judge is the appellate Court or the Court for the purposes of the appeal under sub-section (2) of section 5 and not such Court or the appellate Court for the purposes of sub-section (4) of section 4 of the Act. It does not make the slightest difference that no rule so far has been made under the general power of the State Government to prescribe the manner of filing an appeal under section 4(4) to the District Judge or the period of limitation for the purpose. May, be the Legislature in its wisdom thought of keeping the appellate forum widely open to the aggrieved parties unfettered by the rules of limitation and pleadings, and the jurisdiction of the District Judge invocable by the aggrieved parties at any time. We do not mean, however, to pronounce finally on this aspect, for it does not directly concern us. In the instant case, however, the emphasis which we lay at this stage is that it is the Court of the District Judge which is the appellate forum and as such it receives the appeal, and not a *persons designate* in the District Judge or the District Judge in person. Once the appeal is entertained and received by the Court of the District Judge, it inevitably follows that the District Judge has a right not only to retain the appeal for disposal by himself but also to make over the same to the Additional District Judge appointed by the State to exercise jurisdiction in his Court under Section 21 of the Punjab Courts Act. and while dealing with and disposing of that appeal the Additional District Judge shall deeming be the Court of the District Judge. Reinforcedly we come back to the same view bereft of judicial authority.

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(13) Mr. J. N. Kaushal, on the other hand, argued that once Mr. Sibal had conceded that the District Judge entertains an appeal as a Court, then on the reading of the provisions of the Punjab General Clauses Act and the Punjab Courts Act one is goaded to hold that the provision of the appellate forum in the Act is with the Court of the District Judge, and no objection can be raised as to the making over of the appeal to the Additional District Judge. Secondly, he pointed out that actually the jurisdiction of the Additional District Judge was never questioned. It is not within our domain to advert to the second argument, for that pay have to be seen by the Bench disposing of the writ petition. However, we are impressed by the argument of Mr. Kaushal that the Act intended to provide only an appellate forum and the appellate decision was not confined to be of the person of the District Judge alone. In the eye of law, the Additional District Judge, exercising jurisdiction in the Court of the District Judge on the making over of the appeal to him, is as good as a District Judge for the appeal.

(14) Significantly, stating a general proposition of law, a Division Bench of the Lahore High Court in *Main Abdul Azir v. Punjab Government* (2), while interpreting section 16 of the Telegraph Act, 1885, observed that when a Court normally consists of a single judicial officer, as the Court of a District Judge does (for then the Court of the Additional District Judge was separately classified) it is quite an ordinary practice in the drafting of Indian statutes for a reference to be made to that officer under his particular title and the intention is to refer to the Court and hence no distinction can be drawn between a reference to the District Judge and a reference to the District Court for deciding whether the authority referred to was acting as a judicial authority. In that conduct it was held that the High Court had power to entertain a petition for revision of the order passed by the District Judge under section 16.

Now over to the militating case law.

(15) In *Managing Committee, Guru Gobind Singh Republic College, Jandiala's case* (supra), a Division Bench of this Court took a different view. That case arose under the present Act. There the Director did not accord approval for removal of the employee. The appeal of the Management under section 4(4) of

(2) A.I.R. (29) 1942 Lahore, 186.

the Act against the order of the Director was filed before the District Judge, who assigned the appeal to the Additional District Judge. On rejection of the appeal, the appellate order of the Additional District Judge was challenged in this Court and it took the view that the Additional District Judge had no jurisdiction to hear and decide the appeal under the Act. A literal construction was put to the expression 'District Judge of the district'. The writ petition was allowed by observing as follows :—

“ .....It is no doubt true that the Additional District Judge while disposing of the case entrusted to him by the District Judge, would be deemed to be the Court of District Judge, but by no stretch of reasoning it can be held that the Additional District Judge while disposing of such cases would be deemed to be the District Judge of the district. Under section 20 of the Punjab Courts Act, there can be only one District Judge of the district. If the argument of the learned counsel for the respondents is to prevail in that case it would follow that in addition to the District Judge appointed under section 20 of the Punjab Courts Act, Additional District Judge, shall also be the District Judge of that district. Such an interpretation violates the very language of the provision of section 20 wherein it has been provided that there can be only one District Judge of the District. In this view of the matter, we are of the opinion that the Additional District Judge had no jurisdiction to decide the appeal filed by the petitioner.”

(16) With due respect, the views expressed by B. S. Dhillon and G. C. Mital, JJ. in the said case were too narrow. The Act only provides an appellate forum and an appellate decision from a judicial seat. We have not, despite our pondering over the matter, been able to discover any rationale in confining the appellate power resting in the person of the District Judge, who obviously is the long District Judge of the district. The views of the Division Bench seem to base as if the appeal lay to the District Judge in person. Had the Bench been advised that there was only one Court of the District Judge, the principal Court of original jurisdiction, and the Additional District Judge, if appointed, is part and parcel of that Court and deeming, a District Judge in Court for the business assigned to him, then this view perhaps could not have been taken. It is a salutary rule of interpretation of statutes that Courts must so interpret its various provisions to harmonise them and to avoid any inconsistency in the provisions of the Act. Sections 20 and 21

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of the Punjab Courts Act were meant to be read together and so interpreted to avoid ouster of the jurisdiction of the Additional District Judge. There is nothing in the Act to suggest that the Legislature was zealous in providing the appellate forum in the person of the District Judge alone. Rather we are of the view that the appellate forum was provided in the Court of the District Judge, of which the Additional District Judge is a part and parcel. A decision rendered by the Additional District Judge can, in no event, be said to be lesser in quality and efficacy than that rendered by the District Judge. We find no material in the Act to oust the jurisdiction of the Additional District Judge specially when the Punjab Courts Act does not in judicial terms create such a distinction. So we have no option but to overrule the law laid down in *Managing Committee's* case (supra).

(17) Another Division Bench decision quoted for the petitioner was *Mangal Ram v. Union Territory of Chandigarh and others* (2), use under the Public Premises (Eviction of Unauthorised occupants) Act, 1971. There again the same view was taken A.S. Narula, C.J. and P.C. Jain, J. (as their Lordship then were). Under section 9 of the said Act the appeal to an appellate officer who shall be the District Judge of the district or such other judicial officer in that district of not less than 10 years' standing as District Judge may designate in this behalf. The such, in the context of section 9 of the said Act observed as follows :—

"6. From the bare perusal of sub-section (1) of section 9 of the Act, it is evident that the appeal lay to an appellate officer who shall be the District Judge of the district or such other judicial officer in that district of not less than 10 years' standing as the District Judge may designate in this behalf. In the instant case it was very fairly conceded at the bar by Shri Anand Swaroop, Senior Advocate, learned counsel for the respondents, that the Additional District Judge was not designated by the District Judge to hear the appeal as envisaged under section 9 of the Act."

(18) The alternate argument, on the strength of sections and 21 of the Punjab Courts Act, rejecting the plea for the jurisdiction of the Additional District Judge, the same view was taken. It was observed as follows :—

".....There can be no gainsaying that the Additional District Judge while disposing of the cases would be deemed to

be the Court of the District Judge, but by no stretch of reasoning it can be held that the Additional District Judge while disposing of the cases would be deemed to be the District Judge of the district. Under section 20 of the Punjab Courts Act, there can be only one District Judge of the District. If the argument of the learned counsel for the respondent is taken to some logical end then the result that would follow would be that in addition to the District Judge appointed under section 20, the Additional District Judge appointed under section 21 of the Punjab Courts Act, shall also be the District Judge of that district. Such an interpretation is neither plausible nor deducible from the relevant provisions of the statute."

(19) Here again, the views expressed by the Division Bench, with due respect, are narrow in the context and have to be departed from. For the same reasoning as in the earlier case, we have to overrule the proposition of law afore-quoted, which interprets sections 20 and 21 of the Punjab Courts Act narrowly as if the appeal lay to the sole person of the District Judge of the district.

(20) Other precedents cited at the bar are of lesser significance. To be fair to the learned counsel for the parties, we would note them.

(21) In *The Kerala State Electricity Board, Trivandrum v. T. P. Kunhaliumma* (4), the Supreme Court, took the same view as taken in *Mian Abdul Aziz's* case (supra) and held that under the provisions of sections 10 and 16 of the Telegraph Act, 1885, the District Judge acts judicially as a Court and that in many statutes when reference is made to the District Judge under this particular title, the intention is to refer to the Court of the District Judge. Viewing it in the context of the Telegraph Act, the Supreme Court ruled that in that Act there was nothing in the context to suggest that the reference to the District Judge was not intended as a reference to the District Court which seemed to be the meaning implied by the definition applicable thereto.

(22) In *Central Talkies Ltd., Kanpur v. Dwarka Prasad* (5), the Supreme Court affirmed the views of both the Judges of the Division Bench of the High Court of Allahabad. In particular, the

(4) A.L.R. 1977, S.C. 282.

(5) A.L.R. 1961 S.C. 606.

views of Brij Mohan Lal, J. were affirmed, to conclude that the District Magistrate by transferring the case to the Additional District Magistrate had authorised him to perform his functions under the U.P. (Temporary) Control of Rent and Eviction Act, 1947, in this behalf since the Additional District Magistrate was included in the definition of "District Magistrate" under section 2(d) thereof, who was competent to grant the permission for filing a suit for ejection. This decision in an oblique way, is supportive of the case of the respondent, through cited by Mr. Sibal.

(23) In *Ram Chandra Aggarwal and another v. The State of Uttar Pradesh and another* (6), the Supreme Court rejected the contention that a reference under section 146(1) of the Code of Criminal Procedure to a Civil Court for decision was a reference to a *persona designata* and held that the provision of section 24 of the Code of Civil Procedure, permitting the District Judge to transfer the case from one Court to another, was available in the case of such a reference.

(24) In *Thakur Dass (dead) by LRs. v. State of Madhya Pradesh* (7), the Court ruled that when the Sessions Judge was appointed an appellate authority by the State Government under section 6C of the Essential Commodities Act, what the State Government did was to constitute an appellate authority in the Sessions Court over which the Sessions Judge presided.

(25) The underlying strain in all these decisions of the Supreme Court, inclusive of one in *T. P. Kunhaliumma's* case (supra), is to the effect that when power is conferred on the District or the Sessions Judge to decide a case, it is meant to confer not in him as a *persona designata* but in his Court over which he presides. And if this is so, all the necessary consequences follow as well as the diversion and making over or assignment of Court business as permitted under the law, whereby courts are constituted. We need not burden judgment with case law available from other High Courts.

(26) To conclude, we hold as follows :—

(a) The Additional District Judge is fully competent to decide an appeal under sub-section (4) of section 4 of the Punjab

(6) A.I.R. 1966 S.C. 1888.

(7) A.I.R. 1978 S.C.I.



Affiliated Colleges (Security of Service of Employees) Act, 1974, if the appeal is made over to him by the District Judge for being dealt with and disposed of. And this is our answer to the jurisdictional question;

- (b) The Court of the District Judge in a district comprises firstly the person of the District Judge and then the Additional District Judge/Judges, appointed to exercise jurisdiction in his Court, for such court business as only assigned to him or them and dealt with and disposed of by him or them, deemingly as the Court of the District Judge. This is for judicial efficacy and not for creating a second District Judge. This is our answer to the ancillary question; and
- (c) for the reasons recorded heretofore, we overrule the views expressed in *Managing Committee's* case and *Mangal Ram's* case (supra), being too narrow, in so far as they relate to the interpretation of sections 20 and 21 of the Punjab Courts Act while interpreting the provisions of the Act in hand.

Having determined, the point referred in the above manner, we send the case back to the Division Bench for disposal in accordance with law.

R.N.R.

Before Amarjeet Chaudhary, J.

SHUKAN KUMAR AND OTHERS,—Petitioners.

versus

MUNICIPAL CORPORATION, LUDHIANA,—Respondent.

Civil Writ Petition No. 8224 of 1987.

January 19, 1989.

Punjab Municipal Corporation Act (XLII of 1975)—S. 275—Punjab Municipal Act (III of 1911)—S. 192—Municipal Corporation transferring shop to tenant in occupation—Condition of sale restricting shop owner from constructing first floor—Effect of such restriction on ownership rights, stated—Absence of Town Planning or Building Scheme—Effect of, on regulation of building activity—Fact that Corporation itself having constructed double storeyed buildings—Permission for further construction—Whether can be validly rejected.

Held, that Section 192 of the Punjab Municipal Act, 1911 is in para materia with the provisions of Section 275 of the Punjab Municipal Corporation Act, 1976. As no town planning or building scheme is in existence the Municipal Corporation cannot impose any condition which may restrict the right of the shop owners from raising structures on their shops. Since the Municipal Corporation has itself raised multi storeyed buildings the shop owners cannot be restricted from raising further structures. Under the general law when a vendor transfers the property, then he cannot put any condition in the sale deed which may effect the right of ownership. The shop owners being owners of the land and building they can make use of them in any manner subject to the condition that it does not violate any statutory scheme. In the absence of statutory scheme there can be no violation of any such rule. Hence, it has to be held that the Corporation cannot validly refuse permission to the shop owners from raising further structure over their shops.

(Para 4)

Petition under Articles 226 and 227 of the Constitution of India praying that :—

- (a) an appropriate writ, order or direction may kindly be issued to the Respondent No. 1, directing the Respondent No. 1 to accord sanction to the building plan submitted by the Petitioners;
- (b) In case it is held that there is a statutory ban on raising on more than one storey, then the Municipal Corporation