



2022:JKLHC-SGR:5123

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 08.09.2022

Pronounced on:13.09.2022

WP(C) No.1966/2022

CM No.4903/2022

ASGHAR HUSSAIN & ORS.

... PETITIONER(S)

Through: - Mr. M. A. Qayoom, Advocate.

Vs.

DISTRICT & SESSIONS JUDGE

KARGIL & ORS.

...RESPONDENT(S)

Through: - Mr. T. M. Shamsi, ASGI.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1) The petitioners are aggrieved of and have called in question in question order dated 25th August, 2022 passed by Principal District Judge, Kargil, in file No.06/A tilted "Villagers of Saliskote vs. Deputy Commissioner (Collector), LAHDC, Kargil, whereby revenue appeal pending before him has been sent to Divisional Commissioner, Ladakh, for further proceedings.

2) From reading of the impugned order, it transpires that the petitioners herein had filed an appeal in terms of Section 11 of the Land Revenue Act, Samvat, 1996 ["the



Act”], before Principal District Judge, Kargil, exercising powers of Divisional Commissioner, Kargil, conferred upon him vide SRO 1 of 1981 issued by the Government in the exercise of powers conferred by sub-sections (4) and (5) of Section (6) of the Act. SRO 1 of 1981 stands withdrawn vide S.O. 91 of 2022 dated 8th August, 2022, thereby withdrawing the powers of Divisional Commissioner conferred upon District and Sessions Judges of Leh and Kargil within their respective territorial jurisdictions.

3) The impugned order is assailed by the petitioners, primarily, on the ground that S.O. 91 of 2022 dated 8th August, 2022, whereby SRO 1 of 1981 dated 01.01.1981 has been withdrawn, is prospective in operation and, therefore, Principal District Judge, Kargil, continues to have the powers of the Divisional Commissioner in respect of the cases entertained and pending before it prior to the issuance of S.O.91 of 2022. It is, thus, argued that the Principal District Judge, Kargil, had no authority or power to transfer the pending cases including appeal of the petitioners to the Divisional Commissioner, Ladakh.

4) Having heard learned counsel for the parties and perused the material on record, it is seen that under Section 6 of the Act, there are five different classes of Revenue



Officers who exercise their powers within their respective jurisdiction as are conferred upon them under various provisions of the Act. On the top of hierarchy is the Financial Commissioner followed by the Divisional Commissioner. The Collector, Assistant Collector of first class and Assistant Collector of second class are indicated at serial No.3, 4 and 5 in the hierarchy. The Deputy Commissioner of a District is ex-officio Collector and an Assistant Commissioner and Tehsildar are ex-officio Assistant Collector of first class. Similarly, Naib Tehsildar acts as Assistant Collector of second class. Under sub-section (4) of Section 6 of the Act, the Government is empowered by notification to confer on any person all or any of the powers of the Financial Commissioner, Divisional Commissioner or Collector under the Act. Any person conferred with powers in terms of sub-section (4) of Section 6 of the Act shall exercise these powers within such local limits and in such classes of cases as the Government may direct and, except as otherwise directed by the Government, shall, for all purposes connected with the exercise of his powers be declared to be a Financial Commissioner, Divisional Commissioner, Collector or Assistant Collector, as the case may be.



5) It appears that prior to re-organization and creation of Union Territory of Ladakh, there was no Divisional Commissioner stationed in Ladakh. With a view to facilitate the litigating public to avail of the remedies of appeal and revision provided under the Act to be taken before the Divisional Commissioner, the Government, in exercise of powers conferred under sub-sections (4) and (5) of Section of the Act, conferred upon the District and Sessions Judge, Leh/Kargil, the powers of Divisional Commissioner to be exercised by them within their respective jurisdiction in respect of such classes of cases as may arise out of the orders of the Collectors of the Districts concerned. For ready reference, SRO 1 of 1981 is reproduced hereunder:

“SRO 1, dated 1st January, 1981, Revenue Department.

In exercise of the powers conferred by sub-section (4) and (5) of section 6 of the Jammu and Kashmir Land Revenue Act, Samvat 1996 (XI of 1996), the Government hereby confer upon the District and Sessions Judge, Leh/Kargil, the powers of a Divisional Commissioner to be exercised by them within their respective jurisdiction in respect of such classes of cases as may arise out of the orders of the Collectors of the Districts concerned.”

6) It is in exercise of these powers, the Principal District and Sessions Judge, Leh/Kargil, had been exercising powers of Divisional Commissioner in respect of cases arising out of the orders of the Collectors of their respective Districts.



7) The petitioners appear to have filed an appeal under Section 11 of the Act before Principal District Judge, Kargil, who, in terms of SRO 1 of 1981, had been exercising the powers of Divisional Commissioner in respect of the cases arising out of the orders of the Collector of District Kargil. While the appeal filed by the petitioners was pending adjudication, the Government, in exercise of powers conferred upon it under sub-section (4) (a) and sub-section (5) of Section 6 of the Act, issued S.O. 91 of 2022 dated 8th August, 2022, whereby the earlier notification issued vide SRO 1 of 1981 was withdrawn. Consequently, the powers of Divisional Commissioner conferred upon District and Sessions Judges of Leh and Kargil also came to be withdrawn. For ready reference, S.O. 91 of 2022 is reproduced hereunder:

"S.O.91:- In exercise of the powers conferred by sub-section (4)(a) and sub-section (5) of Section 6 of the Jammu and Kashmir Land Revenue Act, Samvat, 1996, the Administration of the Union territory of Ladakh hereby withdraws the Notification issued vide SRO 01 of 1981 dated 01.01.1981, where-under the powers of Divisional Commissioner were conferred upon the District and Sessions Judges of Leh and Kargil."

8) It is true that S.O. 91 of 2022 has not been made operational retrospectively and in absence of such stipulation, it is presumed to be prospective. It is, thus, evident, that the appeals and revisions entertained by District and Sessions Judges of Leh and Kargil and the



orders passed therein, by virtue of which the appeals and revision stand disposed of, shall not be rendered without jurisdiction by issuance of S.O. 91 of 2022. However, with effect from 11th August, 2022, i.e., the date when S.O. 91 of 2022 was published in the Ladakh Gazette, the District and Sessions Judge of Leh and Kargil shall cease to have the powers of Divisional Commissioner and, therefore, would not be competent to entertain, deal with or decide the cases. The District and Sessions Judges of Leh and Kargil shall also not be entitled to hear the pending matters and pass any orders therein for the reason that the powers of Divisional Commissioner conferred upon them have been withdrawn with effect from 11th August, 2022. Viewed thus, it is not competent for the Principal District Judge, Kargil, to conduct any proceedings in the pending appeal of the petitioners and pass any orders therein. Any such course, if adopted by the Principal District Judge, Kargil, shall render its orders without jurisdiction and a nullity in the eye of law. This result would ensue even when S.O. 91 of 2022 is held to be prospective in operation.

9) There can be no second opinion with regard to the proposition that any legislative or executive action, unless made specifically or by necessary implication retrospective, would operate prospectively, as is vehemently contended by



Mr. Qayoom, learned counsel for the petitioners. However, it would be incorrect to assume that notwithstanding the withdrawal of powers of the Divisional Commissioner from the District and Sessions Judges of Leh and Kargil, they shall continue to enjoy the powers of the Divisional Commissioner in respect of the cases which they had entertained when they were conferred with such powers.

10) It is equally true that the Government by virtue of S.O. 91 of 2022 has withdrawn powers to Divisional Commissioner conferred upon District and Sessions Judges of Leh and Kargil, without specifically providing as to how the pending cases would be dealt with. Mr. Qayoom, learned counsel for the petitioners, vehemently contended that in the absence of such power of transfer conferred upon District and Sessions Judges of Leh and Kargil, it would not be competent for them to Suo-moto transfer pending appeals and revisions to the Divisional Commissioner, Ladakh.

11) I have given my thoughtful consideration to this argument raised by Mr. Qayoom. The argument, on the face of it, though appears to be attractive yet, on close scrutiny, is found to be without much substance. Inevitable, consequence of withdrawal of the power is that all the



pending appeals and revisions shall now be heard by the Divisional Commissioner, Ladakh. As a necessary, corollary, all appeals and revisions pending before District and Sessions Judges of Leh and Kargil, shall now be heard and decided by the Divisional Commissioner, Ladakh. Whether Divisional Commissioner, Ladakh, sends for the pending files or the District and Sessions Judges of Leh and Kargil, send pending files to the Divisional Commission is not of much consequence. The Principal District Judge, Kargil, has, thus, committed no illegality in transmitting the record of appeal of the petitioners to Divisional Commissioner, Ladakh, for the reason that, in any case, the appeals under the Act against the orders of Collector of District Kargil and Leh are required to be heard by the Divisional Commissioner Ladakh.

12) Mr. Qayoom has relied upon judgments reported in **(2008) 12 SCC 112, AIR 1953 SC 221** and **(2004) 8 SCC 1** to hammer his point that a statutory provision or executive instruction operates prospectively unless it is specifically or by necessary implication made retrospective in operation.

13) In view of the discussion made above, I see hardly any point to deal with all the judgments relied upon by Mr.



Qayoom. The proposition propounded by Mr. Qayoom is well established and no longer *res integra*. However, the inescapable consequences that flow from the prospective operation of S.O.91 of 2022 would include that the District Judge, Kargil, loses his jurisdiction and powers of Divisional Commissioner with effect from 11th August, 2022, and it is now his obligation to transmit the records of pending appeals and revisions to the Divisional Commissioner, Ladakh.

14) For all these reasons, I find no merit in this petition and the same is, accordingly, dismissed.

15) No order as to costs.

Srinagar,
13.09.2022
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

