

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

## EDITORIAL TEAM

### EDITORS

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

## Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



## Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.



## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.



---

CASE COMMENTARY

**IJLRA**

CASE TITLE: OM PRAKASH JAIWAI V. D.K. MITTAL & ANR

---

# **OM PRAKASH JAISWAL V. D.K** **MITTAL & ANR**

AUTHORED BY: THARANI. M  
2<sup>nd</sup> YEAR  
SCHOOL OF LAW  
SASTRA UNIVERSITY

CASE NO.: Appeal (civil) 1632 of 1990  
PETITIONER: OM PRAKASH JAISWAL  
Vs.  
RESPONDENT: D.K. MITTAL & ANR.  
DATE OF JUDGMENT: 22/02/2000  
BENCH: R.C. Lahoti, K.T. Thomas

## **INTRODUCTION:**

In the case of Om Prakash Jaiswal v. D.K. Mittal, a disagreement develops regarding the demolition of structures on a plot of property. The appellant seeks possession protection, but the respondents allegedly breach a court order by demolishing the structures. The appellant then files a contempt of court application. The main issue before the court is whether the actions were initiated within the one-year limitation period prescribed by Section 20 of the Contempt of Courts Act, 1971. The court's interpretation of Section 20 and subsequent decisions have important significance for the case.

## **FACTUAL MATRIX OF THE CASE:**

The case involves a dispute over the demolition of certain constructions on a piece of land between the appellant and the Nagar Mahapalika, Allahabad, and Allahabad Development Authority. The appellant filed a writ petition before the High Court seeking a direction to prevent the respondents from dispossessing or interfering with their possession. After the respondents gave an undertaking not to disturb or demolish the construction until the writ petition was disposed of, the application was dismissed.

Later, the employees of the respondents allegedly demolished the appellant's construction in violation of the court order. The appellant then filed an application seeking initiation of proceedings under Section 12 of the Contempt of Courts Act, 1971 against the respondents. The Court issued a show-cause notice to the respondents as to why contempt proceedings should not be initiated against them. However, the court did not sign an order to this effect on 16.12.1987.

On 6.1.1988, the court passed an order to issue notices to the respondents to show cause why they should not be punished for disobeying the court's order dated 19.12.1986. The court also listed the case for hearing on 28.1.1988. The question before the court is whether this order dated 6.1.1988 amounted to the initiation of proceedings for contempt.

## **ISSUES BEFORE THE COURT:**

The primary issue, in this case, is whether the bar created by Section 20 of the Contempt of Courts Act, 1971 is applicable to the case. Section 20 of the Act provides that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of one year from the date on which the contempt is alleged to have been committed. The question before the court is whether the proceedings initiated by the appellant on 6.1.1988 fall within the one-year limitation period set out in Section 20.

## **ARGUMENTS ON BOTH SIDES:**

### **APPELLANT:**

The appellant argued that the proceedings were initiated on 6.1.1988 when the court issued notices to the respondents to show cause why they should not be punished for disobeying the court's order dated 19.12.1986. According to the appellant, this notice amounted to the initiation of proceedings for contempt. The appellant further argued that the proceedings were not barred by Section 20 of the Act because they were initiated within one year of the alleged contempt.

### **RESPONDENT:**

The respondents, on the other hand, argued that the proceedings were not initiated until the court signed an order to that effect, which did not happen until after the expiry of one year from the date on which the contempt was alleged to have been committed. According to the respondents, the



proceedings were therefore barred by Section 20 of the Act.

## **JUDICIAL INTERPRETATION THAT DEDUCED THE VERDICT:**

- 1) BARADA KANTA MISHRA V. MR. JUSTICE GHATIKRUSHNA MISHRA
- 2) ADVOCATE GENERAL ANDHRA PRADESH V. A.V KOTESHWARA RAO
- 2) KISHAN SIGNH V. T. ANJALIAH CHIEF MINISTER

## **INTERPRETATION OF THE COURT:**

court's interpretation in this case was that the mere issuance of a show-cause notice to the respondents did not amount to the initiation of proceedings under Section 12 of the Contempt of Courts Act, 1971. The court held that until the proceedings were actually initiated, the bar created by Section 20 of the Act applied, which meant that the application filed by the appellant seeking initiation of proceedings against the respondents was liable to be rejected.

The court also clarified that the outcome of the main writ petition filed by the appellant, in which the respondents had given an undertaking not to disturb or demolish the construction until the writ petition was disposed of, would have a material bearing on the discretion of the court to proceed or not to proceed with the proceedings for contempt. The court left this aspect to be taken care of by the High Court.

## **VERDICTS:**

The verdict in this case is that the appeal is allowed, which means that the decision of the High Court to dismiss the proceedings under Section 12 of the Contempt of Courts Act is set aside. The proceedings are restored to the file of the High Court, which shall hear the parties and then proceed according to the law.

The court also clarified that during the course of the hearing, they had asked the learned counsel for the parties about the result of the main writ petition wherein the undertaking was given on behalf of the respondents. The learned counsel for the parties were not duly instructed to assist this Court on this aspect. The findings arrived at by the Court in the main case, if the same has been disposed of, would have a material bearing on the discretion of the Court to proceed or not to proceed ahead with

the proceedings for contempt. However, the court left that aspect to be taken care of by the High Court.

## **CRITICISM:**

1. Technicality over substance: Critics may argue that the court's decision to dismiss the application on the basis of a technicality (Section 20 of the Act) rather than the substance of the case (whether or not the respondents were in contempt of court) is a narrow interpretation of the law that fails to address the underlying issue at hand.

2. Delayed justice: The fact that the case was pending for several years and that the court ultimately dismissed the application may be seen as a failure of the justice system to provide timely and effective redress to the appellant.

3. Limited scope of contempt law: Some critics may argue that the Contempt of Courts Act, 1971 is overly broad and gives the court too much discretion in deciding what constitutes contempt. They may also argue that the Act does not provide enough protection for citizens against violations of their rights by powerful entities such as government bodies.

4. Lack of accountability: Critics may argue that the court's decision not to pursue contempt proceedings against the respondents for violating the court's order sets a dangerous precedent and sends a message that those in positions of power can act with impunity without fear of consequences