

(2016) 09 AHC CK 0098
In the Allahabad High Court
Case No : Misc. Single No. 20809 of 2016

Ashutosh Nigam

APPELLANT

Vs

State of U.P Thru Prin Secy Awas

RESPONDENT

Date of Decision : 02-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 5, 9

Citation : (2016) 3 ARC 437

Hon'ble Judges : Dr. Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : Pankaj Gupta, Ram Narain Gupta, Advocates, for the Petitioner;
C.S.C, A.S.G, Gaurav Mehrotra, Shailendra Singh Chauhan, Advocates, for the
Respondent

Final Decision : Disposed Off

Judgement

Dr. Devendra Kumar Arora, J.—Vakalatnama filed by Sri Pankaj Patel, Advocate on behalf of opposite party no.2 is taken on record.

2. Heard learned Counsel for the petitioner, learned Standing Counsel, Sri Pankaj Patel, learned Counsel for opposite party no.2, Sri Shailendra Singh Chauhan, Advocate along with Suresh Chandra for the Nagar Nigam, Lucknow (opposite party no.3) and learned Additional Solicitor General for the Government of India (opposite party no.4).

3. Learned Counsel for the opposite parties has raised a preliminary objection regarding maintainability of the writ petition on the ground that the petitioner has an alternative and efficacious remedy of filing an Appeal under Section 9 of the Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972, therefore, the present writ petition is liable to be dismissed on the ground of availability of alternative remedy.

4. While opposing the preliminary objection, learned Counsel for the petitioner has contended that the petitioner is in possession over the land in question measuring 57300 sq. feet situate at 1, Chak Bast Road, Kaiserbagh, Lucknow since 1985. It is stated that the said property was held by the maternal uncles of the petitioner, and after their death, the property was inherited by the mother of the petitioner, namely, Raj Dulari. Now after death of Smt. Raj Dulari, the property is held by the petitioner and he is in continuous possession over the property.

5. It has been contended that the possession of the petitioner can be regularised on payment of certain amount in view of the Nazool Policy issued by the Government of India and the petitioner is always ready to deposit the amount as required. It has been brought to the notice of the Court that on 25.12.1991 a deed was also executed by B.N. Nigam in favour of the petitioner. Abruptedly, a Government Order was issued by the State Government on 02.12.1992, whereby a fresh policy has been issued regarding settlement of the land or Nazool Property; and person occupying without title or having any symbolise of title, they shall not be regularised according to the policy.

6. Learned Counsel for the petitioner also contended that since the Patta of the land in question was executed in favour of B.N. Nigam and S.N. Nigam on 08.05.1964 by the Rent Control and Eviction Officer, Lucknow and after their death, mother of the petitioner inherited the land in question, the petitioner is entitled for possession over the land in dispute. The maternal uncle B.N. Nigam executed a Will deed on 25.12.1991 in favour of the petitioner. On the other hand, in a very illegal manner, the Lucknow Development Authority, Lucknow executed a sale deed on 07.04.2016 in favour of Lucknow Corporation though the Lucknow Development Authority is neither owner nor has any right and title over the land in dispute. It has further been contended that by means of impugned order, the proceedings have been initiated against the petitioner under the provisions of the Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972 without there being any justification just to grab the proper in an illegal manner.

7. However, during the course of argument, it has been fairly admitted by the learned Counsel for the petitioner that there is availability of efficacious and alternative remedy for filing an appeal under Section 9 of the Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972 but he apprehends that since the remedy for filing appeal is 15 days, which have just passed, the opposite parties may evict the petitioner by force from the land in question.

8. Appreciating the submissions of learned Counsel for the parties and the fact that the petitioner is ready to file an appeal before the appropriate forum, this writ petition is disposed of finally with a direction to the petitioner to file appeal before the appropriate forum within 15 days from the date of receipt of the certified copy of this order. In the event, petitioner files such an appeal before

the appellate authority, the same shall be considered and decided by the authority concerned, in accordance with law, expeditiously. It is further provided that for a period of 15 days from today or till the date of filing of appeal, whichever is earlier, the opposite parties are restrained from taking any coercive measures against the petitioner. The appellate authority shall also considered the protection of interest of the petitioner till disposal of appeal.