
(2014) 05 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition No. 90 of 2009 (M/S)

Dinesh Randhawa

APPELLANT

Vs

State of U.K. and Others

RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:

Citation : (2015) 2 UC 871

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : Seema Sah, Advocate, for the Appellant; Anil Kumar Joshi, Additional Chief Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.?Present petition is filed assailing the order/judgment dated 8.8.2008 passed by the Prescribe Authority/Divisional Forest Officer, Haldwani as well as the order/judgment dated 3.11.2008 passed by the Appellate Authority/ Conservator of Forests, Western Circle, Uttarakhand, Nainital, whereby the petitioner was directed to be evicted from the reserved forest area under Section 61-A of the Forest Act (as amended and applicable within the State of Uttarakhand). Perusal of the impugned order dated 8.8.2008, Annexure No. 5 to the writ petition, reveals that a notice was issued to the petitioner in the year 2007 directing the petitioner to appear before the court on 22.12.2007, whereupon, counsel for the petitioner appeared before respondent No. 2 and moved an application to the effect that the petitioner had absolutely no knowledge or information about the grounds of eviction, therefore, the petitioner was not able to submit detail defence; Petitioner could acquire knowledge about the case only through the publication of the notice in the newspaper.

2. Perusal of annexure No. CA-4 of the counter affidavit filed by the respondent would reveal that a notice was issued to the petitioner under sub-section (1) of Section 61-A of the Act on 7.11.2007. Neither in the impugned judgment nor in the counter affidavit, it has been stated as to when the notice dated 7.11.2007,

Annexure No. CA-4 to the counter affidavit, was served on the petitioner.

3. Section 61-A of the Act reads as under:

"61-A. Summary eviction of unauthorized occupants.--(1) If a Forest Officer, not below the rank of a Divisional Forest Officer, is of the opinion that any person is in unauthorized occupation of any land in areas constituted as a reserved or protected forest under Section 20 or Section 29, as the case may be, and that he should be evicted, the Forest Officer shall issue a notice in writing calling upon the person concerned to show cause, on or before such date as is specified in the notice, why an order of eviction should not be made.

(2) If after considering the cause, if any, shown in pursuance of a notice under this section, the Forest Officer is satisfied that the said land is in unauthorized occupation, he may make an order of eviction for reasons to be recorded therein, directing that the said land shall be vacated by such date, as may be specified in the order, by the person concerned, which shall not be less than ten days from the date of the order.

(3) If any person refuses or fails to comply with the order of eviction by the date specified in the order, the Forest Officer who made the order under sub-section (2) or any other Forest Officer, duly authorized by him in this behalf, may evict that person from and take possession of the said land and may, for this purpose, use such force as may be necessary.

(4) Any person aggrieved by an order of the Forest Officer under sub-section (2) may, within such period and in such manner as may be prescribed, appeal against such order to the Conservator of Forests of the circle or to such officer as may be authorized by the State Government in this behalf and the order of the Forest Officer shall, subject to the decision in such appeal, be final."

4. Perusal of sub-section (1) of Section 61-A of the Act would reveal that the Divisional Forest Officer, if is of the opinion that any person is in unauthorized occupation of any land within reserved or protected forest area, shall issue a notice in writing calling upon the person concerned to show cause, on or before such date as is specified in the notice, why an order of eviction should not be made. In other words, Divisional Forest Officer shall call the explanation of the trespasser as to why he should not be evicted from the reserved forest or protected forest area on such and such ground.

5. Issuance of notice under sub-section (1) of Section 61-A seems to be sine qua non for initiation of the eviction proceeding. There is nothing on record to show that notice under sub-section (1) of Section 61-A, copy of which is Annexure CA-4 to the counter affidavit, was ever served on the petitioner. Therefore, judgments impugned in the present writ petition do not sustain in the eyes of law. Consequently, writ petition is allowed. Impugned judgments are hereby quashed. However, respondent No. 2 shall be at liberty to issue fresh show cause notice under sub-section (1) of Section 61-A to the petitioner mentioning therein

the grounds for eviction and to initiate eviction proceedings thereafter in accordance with law.