
(2014) 04 UK CK 0004
In the Uttarakhand High Court
Case No : Writ Petition No. 658 (MS) of 2006

Durga Singh

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

General Clauses Act, 1897 — Section 9

Citation : (2015) 110 ALR 850 : (2015) 128 RD 549 : (2015) 1 UC 385

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : Lokendra Dobhal, Advocate, for the Appellant; R.C. Arya, Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.?Present petition is filed assailing the judgment and order dated 31.05.2005 passed by Prescribed Authority/Estate Officer and judgment and order dated 06.03.2006 passed by District Judge, Pithoragarh whereby petitioner was directed to be evicted under the provisions of Sections 4 and 5 of the Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972 (for short "the Act") and appeal filed by the petitioner was also dismissed. Brief facts of the present case, inter alia, are that a notice under Section 4(1) of the Act was issued to the petitioner on 09.09.2003 calling his explanation, as to why he be not evicted from the property, in question, and to remain present before the Prescribed Authority on 19.09.2003 to furnish his explanation to the show cause notice.

2. Section 4 of the Act reads as under:

"Issue of notice to show cause against order of eviction - (1) If the prescribed authority either of its own motion or on an application or report received on behalf of the State Government or the corporate authority, is of opinion that any persons are in unauthorised occupation of any public premises and that they

should be evicted, the prescribed authority shall issue in the manner hereinafter provided a notice in writing authority shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made,

(2) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The prescribed authority shall cause the notice to be served either personally on all those persons concerned or by having it affixed on the outer door or some other conspicuous part of the public premises and in any other manner, provided in the Code of Civil Procedure, 1908.

(4) Where the prescribed authority knows or has reasons to believe that any persons are in occupation of the premises, then, with prejudice to the provisions of sub-section (3), he shall cause copy of the notice to be served on every such person by registered post or by delivering or tendering it to that person or in such other manner as may be prescribed.

3. Having perused the Section 4(2)(b) of the Act, I have no hesitation to hold that a minimum 10 days notice shall be issued to the unauthorized occupant under Section 4(1) of the Act. If sub-Section (2) is read with sub-Section (3) and (4) the reasonable interpretation would be that minimum ten days time should be given to the unauthorized occupant to furnish explanation to the show cause notice from the date of service of notice under Section 4(1) of the Act. In the present case, notice under Section 4(1) was said to be issued on 09.09.2003 asking the petitioner to remain present for furnishing explanation on 19.09.2003.

4. Section 9 of the General Clauses Act, 1897 reads as under:

Section 9 - Commencement and termination of time (1) If any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first of a series of days or any other period of time, to use the words "from", and, for the purpose of including the last in a series of days or any other period of time, to use the words "or".

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Having perused Section 9 of the General Clauses Act, in my considered opinion, to compute a period, first day in a series of days has to be excluded, therefore, 09.09.2003 has to be excluded for the purpose of computing the mandatory period of ten days of notice. Notice dated 09.09.2003 if taken to be served on

the same day, which however is not possible, even then, it falls short of ten days, if 09.09.2003 is excluded for the purpose of computing the period of ten days. Consequently, show cause notice cannot be said to be legal notice. Therefore, entire proceedings and orders impugned stand vitiated. Therefore, present petition is allowed. Impugned orders dated 31.05.2005 and 06.03.2006 are hereby quashed. However, respondents shall be at liberty to proceed against the petitioner de novo, after serving proper legal notice to the petitioner under Section 4(1) of the Act. No order as to costs.