
(2009) 12 AHC CK 0228

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27788 of 2009

Kaluram

APPELLANT

Vs

Additional District Judge, Bijnor and others

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 3

Citation : (2009) 12 AHC CK 0228

Hon'ble Judges : Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The petitioner has sought the quashing of the order dated 21st May, 2007 passed by the District Magistrate, Bijnor as Prescribed Authority for eviction of the petitioner from the premises in dispute under the provisions of The Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as the "Act") . The petitioner has also sought the quashing of the order dated 21st March, 2009 by which the appeal filed by him for setting aside the aforesaid order was dismissed.

2. The sole contention advanced by Sri R.K. Shukla, learned counsel for the petitioner is that the District Magistrate had no jurisdiction to decide the matter as the Prescribed Authority under the Act as the State Government had appointed the Additional District Magistrates as the Prescribed Authority under Section 3 of the Act by the Notification dated 31st August, 1974. Learned counsel for the petitioner has also placed reliance upon the judgment rendered in another appeal wherein the same submission had been accepted by the Court in Civil Appeal No. 93 of 2007 (Rajesh Kumar Vs. Executive Engineer, Shivir Praband Khand, Kalabagh district Bijnor) decided on decided on 16th May, 2008.

3. On 23rd October, 2009, time was granted to the learned Standing Counsel to file a counter affidavit within four weeks but no counter affidavit has been filed till date.

4. The petition has, therefore, been heard.

5. Section 3 of the Act deals with appointment of Prescribed Authority and is as follows:

"3. Appointment of Prescribed Authority. The State Government may, by notification in the Official Gazette,

(a) appoint such persons, being the Gazetted Officers of the State Government or officers of equivalent rank or the corporate authority, as it thinks fit, to be prescribed authorities for the purposes of this Act; and

(b) defined the local limits which, or the categories of public premises in respect of which, the prescribed authorities shall exercise the powers conferred, and perform the duties imposed, on prescribed authorities by or under this Act."

6. In exercise of the powers conferred by Section 3 of the Act, the State Government issued the Notification dated 31st August, 1974 which is as follows:

"In exercise of the powers under Section 3 of the Uttar Pradesh Public Premises (Eviction of the Unauthorised Occupants) Act, 1972 Uttar Pradesh Act No. 22 of 1972, read with Section 21 of the U.P. General Clauses Act, 1904 (U.P. Act. No. 1 of 1904), and in partial modification of Government notification No. 41 Rev.11(1)/71, dated June 14, 1972 the Governor is pleased to appoint the following persons as prescribed authority for the purpose of the said Act and further to define the local limits as under within which and the categories of public premises in respect of which the said prescribed authority shall exercise the powers conferred and perform duties imposed on prescribed authorities by or under the said Act.

In respect of all public premises.

All Additional District Magistrates Uttar Pradesh within their own jurisdiction."

It is, therefore, clear from the aforesaid notification that it is only the Additional District Magistrate who can act as Prescribed Authority under Section 3 of the Act.

7. In the present case, the Appellate Authority has rejected the contention by observing:

"Per contra the learned DGC(Civil) has submitted that in P.A Act, Addl. District Magistrate has been authorized to act as Prescribed Authority and District Magistrate includes Addl. District Magistrate meaning thereby that both have similar powers, then the act of District Magistrate in the capacity of Prescribed Authority shall be treated legalone. I am in agreement with this submission because the Addl. District Magistrate and District Magistrate both includes in eachother in terms of the powers. The impugned order has rightly been passed."

8. The reasoning given by the Appellate Authority cannot be accepted. When the State Government had appointed the Additional District Magistrate as the Prescribed Authority under Section 3 of the Act, the District Magistrate cannot

decide the matter as the Prescribed Authority.

9. Thus, the order dated 21st May, 2007 passed by the District Magistrate, Bijnor as the Prescribed Authority under the Act and the order dated 21st March, 2009 passed by the Appellate Authority cannot be sustained. They are, accordingly, set aside. This order shall not preclude the Prescribed Authority under Section 3 of the Act from proceeding in the matter.

10. The writ petition is allowed to the extent indicated above.