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**(1998) 07 AHC CK 0118**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 11780 OF 1975**

Khurshid Ali

APPELLANT

Vs

District Judge and others

RESPONDENT

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**Date of Decision :** 23-07-1998

**Acts Referred:**

Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —  
Section 4  
Uttar Pradesh Tenancy Act, 1939 — Section 180, 30

**Citation :** (1998) 4 AWC 288 : (1998) AWC 288

**Hon'ble Judges :** Alok Chakrabarti, J

**Bench :** Single Bench

**Advocate :** S.K. Dhavan, A.D. Sounders and K.S. Chauhan, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Aloke Chakrabarti, J.—Challenging the orders dated 15.12.1973 and 28.5.1975 at Annexures-2 and 3 respectively to the writ petition, the petitioner came to this Court.

2. The factual background involved herein is that a notice was issued u/s 4 of the U. P. Public Premises (Eviction of Unauthorised Occupants) Act. 1972, in respect of the disputed land. The petitioner preferred an objection stating that he had been in continuous possession over the disputed plots for the last 25 years and he had become Sirdar of the plots in dispute and that the said land did not constitute public premises within the meaning of the relevant Act. By order dated 15.12.1973, the Prescribed Authority directed eviction and awarded damages. The appeal was dismissed on 28.5.1975. Hence, the writ petition was filed. Petitioner also filed a supplementary affidavit disclosing that on 12.9.1975, the Secretary Board of Revenue to the Government of Uttar Pradesh issued a Government Order and thereunder the petitioner was entitled to relief and accordingly an additional ground was sought to be incorporated.

3. The respondents filed a counter-affidavit and also a supplementary counter-

affidavit. By order dated 17.4.1979, a report was called from the Prescribed Authority after enquiry. Ultimately the said report was submitted by the Prescribed Authority which was dated 28.6.1997. Thereafter the petitioner filed another supplementary affidavit along with an application dated 4.9.1997.

4. After considering the contentions of the respective parties, I find that the order dated 15.12.1973 was passed by the Prescribed Authority after taking into consideration the evidence of the Lekhpal. The said evidence (Annexure-1 to the writ petition) disclosed that the disputed land was held by the State Government for public purpose. In the counter-affidavit also, the respondents made out the said case and relied on the said facts for contending that no right accrued in the petitioner u/s 30 of the U. P. Tenancy Act. The finding of the Prescribed Authority is also that the said land in dispute was held by the State Government and was in unauthorised possession of the petitioner. The appellate court also decided on the said basis that the disputed land belonged to the State Government and is public premises within the meaning of the said Act.

5. In view of the aforesaid, I am of the opinion that the property belonging to State Government could not be claimed as in rightful possession of the petitioner creating his right as claimed and in the facts of the case, it also appears that neither any right u/s 30 of the U. P. Tenancy Act nor u/s 180 of the U. P. Tenancy Act was accrued resulting in Sirdart right or rendering the petitioner a hereditary tenant as contended by the petitioner.

6. With regard to rights under the Government Order dated 12.9.1975 by an order dated 17.4.1979 a report was sought for from the Prescribed Authority upon holding that the said question whether the Government Order applies to the petitioner cannot be determined without determining whether in fact the petitioner possessed land within the ceiling limits or not. The said order was never challenged by any of the parties. In compliance of the said order report of the Prescribed Authority has been sent. Though the petitioner has filed a supplementary affidavit thereafter but on a perusal of the entire record, it does not appear that the petitioner could show that he was not having land beyond the ceiling limit. In the facts involved in the present case, the petitioner could not produce any material showing that the petitioner could acquire any right in respect of the said land belonging to the State Government only by reason of the provision of the said Government Order dated 12.9.1975.

7. The contentions subsequently raised in the subsequent supplementary affidavit filed in the year 1997 also are not-acceptable for the purpose of holding any right of the petitioner in respect of the disputed land, as in view of the aforesaid findings on facts, the occupation in class 10 (A) without having any title could not create any right as claimed by the petitioner.

8. In view of the aforesaid findings, the writ petition fails and is hereby dismissed. There will be no order as to costs. The interim order, if any, is vacated.