
(2020) 11 UK CK 0024

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1184 Of 2020

Kunwar Lal

APPELLANT

Vs

Estates Officer Institute Of Technology And Others

RESPONDENT

Date of Decision : 04-11-2020

Acts Referred:

Public Premises (Eviction Of Unauthorized Occupants) Act, 1971 — Section 4, 5, 5(1), 9
Constitution Of India, 1950 — Article 227

Citation : (2020) 11 UK CK 0024

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Dharmendra Barthwal, Dharmendra Barthwal, V.K. Kaparuwan

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The matter is heard through video conferencing.
2. With the consensus arrived at between the parties to the writ petition, a middle path is being carved out for the purposes of deciding this lis finally.
3. The facts, which are undisputed is that the petitioner, who was serving with the respondent in MES, had attained the age of superannuation in 2014. Be it, be under whatsoever circumstances, he is alleged to have continued to occupy the premises, which was allotted to him. Consequently, a show cause notice was said to have been issued by the respondent under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, and consequent to the show cause notice, the proceedings, by way of a Case file No. ITM/3544/Wks(008) dated 13.09.2019, was initiated as against the present petitioner. The petitioner filed his reply on 18.09.2019; the copy of which was served on the respondent on 19.09.2019; and consequently, on the very next date, i.e. 20.09.2019, it is contended by the petitioner that the said case was decided without even adherence of principles of natural justice and no effective hearing was provided

to the petitioner and the matter was decided, directing to take an action in accordance with Section 5 (1) of the Act for evicting the petitioner.

4. Aggrieved against the said judgment of 20.09.2019 as was passed by the competent authority under Section 5 of the Act of 1971, despite of having filed an Appeal on 27.09.2019 and during its pendency, it is contended by the petitioner that the respondent had threatened him to get vacated the premises by force and, consequently, as per the pleadings, which has been raised in the writ petition, he has submitted that on 23.10.2019 the respondent asked the petitioner to vacate the premises. Hence, on the same day itself he has filed an application in the pending appeal under the Act, before the District Judge, which was numbered as Paper No. 18C2. In the stay application thus preferred, he has sought a prayer that the act of the respondent of forceful eviction may be kept in abeyance.

5. He has further submitted that in the Public Premises Appeal No. 02 of 2019 'Shri Kunwar Lal vs. Institute of Technology Management (ITM)', in which he has filed the stay application, the learned District Judge had granted the interim order on 23.10.2019, and the appeal was directed to be listed on 30.10.2019.

6. The petitioner's case is that despite of the fact that there was a stay granted by the appellate authority on 23.10.2019, which he contends that he has communicated the same to the respondents by various modes including forwarding of Text Screen Shot, messages, whatsapp etc., but still the respondents had forcefully evicted the petitioner from the premises in dispute. Consequently, he has complaint about the act of forceful eviction to the S.S.P., as well as, to the S.H.O., Kotwali Mussoorie, on 26.10.2019 and 28.10.2019 respectively and he contends that he has also drawn the contempt proceedings before the learned District Judge, which was numbered as Case No. R.M. No. 1166 of 2019 'Kunwar Lal vs. The Estates Officer, Institute of Technology Management and Others', on which the notice were issued by the District Judge on 11.11.2019. He prayed for that he may be put back in possession because the eviction of him from the premises as taken by the respondent was arbitrary and without due process of law and was rather arbitrary.

7. But, however, when no action preceded, at the behest of the respondents, he had filed a writ petition being Writ Petition (M/S) No. 440 of 2020, which was disposed of by this Court, thereby, directing the appellate authority to decide the application Paper No. 48 expeditiously. Consequently, the appeal of the petitioner preferred under Section 9 of the Act was dismissed by the impugned judgment dated 11.03.2020. Uptill this stage of affirmation of the proceedings under Section 4 and 5 of the Public Premises Act, is not in controversy by the counsel for either of the parties. It is further not in controversy that the petitioner had seized his legally sustainable right to continue to occupy the official premises, after his attainment of age of superannuation in 2014. His grievance is now limited to the extent that on account of an arbitrary act of eviction and locking of the premises, which was occupied by the petitioner, it has resulted into even

providing him an opportunity to take out his articles and belongings, which were lying in the premises in question, which was forcefully got vacated.

8. The writ petition was filed. The respondents were noticed. They have filed their counter affidavit. On various occasions, the arguments were held. Today, when the matter was taken up, learned counsel for the petitioner had expressed that on account of an act of forceful eviction and putting of lock on the premises in question, his belongings are still lying in the premises including important testimonials, which he wants to be handed over to him.

9. To this, the learned senior counsel Mr. Rakesh Thapliyal submits that it cannot be assured at this stage, as to whether the articles at all belonging to the petitioner are still lying in the premises of the petitioner or not; and if they are lying, what inventory it contains in it; are the aspects, which cannot be decided by this writ court while exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

10. In order to resolve the controversy finally, because being conscious that the petitioner's right to continue with the possession has ceased, but still he enjoys the legal right to possess the articles and his belongings, which are lying in the premises in question belonging to him. Thus, while affirming the impugned judgment as passed under the Public Premises Act of 1971.

11. This Court directs that the District Magistrate; as well as the S.S.P. of District Dehradun, that on a representation being submitted by the petitioner along with the certified copy of this judgment, they would thereafter within 10 days, appoint the competent authority, not below the level of Sub Divisional Magistrate; as well as the Additional Superintendent of Police, who would visit the spot along with the petitioner; as well as the competent authority to be nominated by the respondent and the premises in question, which is said to have been locked by the respondents, that would be opened in the presence of these authorities thus nominated by the District Magistrate and the Sub Divisional Magistrate or any other officer thus authorized thereto by the District Magistrate, they would open the lock in presence of all the parties, prepare the inventory of the articles, if any, lying in the premises in question and after preparing the same, they would handover the list of inventories to all the parties after taking their signatures, including the authorities conducting and preparing the inventory and the copy of the same would be retained by the respondent as well as the petitioner and the authority, who is being directed to open the lock of the premises and thereafter the aforesaid articles/belongings of the petitioner lying in the premises would be handed over to the petitioner after taking an endorsement of its receipt, which is to be duly verified by the respondent authorities as well as the authorities thus nominated by the District Magistrate for preparation of their inventories, as directed above.

11. The entire exercise after preparation of the inventory and handing it over to the petitioner, would be carried on the same day when the lock is opened by the

authorities thus appointed by the District Magistrate.

12. Subject to the above, the writ petition stands dismissed.

13. After conclusion of the judgment under the strength of the pleadings raised in the counter affidavit, the learned counsel for the respondent submits that certain amount of damages for the user of the property is due to be paid by the petitioner, which is a fact, which the petitioner has vehemently denied in the rejoinder affidavit contending thereof that the imposition of the damages was maliciously made by the respondent to pressurize him to vacate. The prayer sought for by the learned counsel for the respondent for an appropriate direction for the remittance of the damages for the user of the property, to the petitioner may not be falling within the scope of the writ jurisdiction, for the reason being that once the writ itself has been dismissed, it is always open for the respondent to file an appropriate execution proceedings, as permissible under the Act of 1971, for recovery of the amount in question, if due to be paid by the petitioner, in accordance with law.