

**(2011) 11 UK CK 0180**

**In the Uttarakhand High Court**

**Case No :** Writ Petition (MS) No. 3355 of 2001 (Old No. 17496 of 1997)

Mohan Singh

APPELLANT

Vs

The Civil Judge (Senior Division), Almora and others

RESPONDENT

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**Date of Decision :** 23-11-2011

**Acts Referred:**

Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —  
Section 2, 4(1)

**Citation :** (2011) 11 UK CK 0180

**Hon'ble Judges :** Brahma Singh Verma, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

Hon"ble B.S. Verma, J.—Learned Counsel for the petitioner seeks permission to implead "State of Uttarakhand, through Collector, Almora" as respondent no. 3 in the array of parties. Permission is granted.

2. Learned Counsel for the petitioner is directed to amend the memo of petition during the course of the day by impleading "State of Uttarakhand, through Collector, Almora" as respondent no. 3.

3. Learned Counsel for the State Mr. Sudhir Kumar has submitted that the counter affidavit, which has been filed on behalf of respondent no. 2, be read as filed on behalf of the State.

4. By means of this writ petition, the petitioner has sought a writ in the nature of certiorari for quashing the order dated 27.2.1997 passed by respondent no. 1 and the order dated 23.3.1994 passed by respondent no. 2 (Annexures 1 and 2 to the writ petition respectively).

5. Brief facts, giving rise to the present case according to the petitioner, are that the disputed land was previously entered as Bhumidhari of one Sri Harshad Kuruwa and, during ceiling proceeding, 408 Nali 8 Mutthi land was declared to be surplus and this land was transferred on 7.3.1987 by the District Magistrate,

Almora to Almora Magnesite Limited. This fact is not disputed.

6. A notice was issued by the General Manager, Almora Magnesite Limited to the petitioner on 8.5.1989 adverting that the petitioner is in unauthorized occupation of the land in dispute and, as such, the petitioner was directed to vacate the land mentioned in the said notice. This notice was duly replied by the petitioner. Thereafter, Patwari of the area concerned, on the basis of the complaint of the Almora Magnesite Limited, issued a notice on 2.7.1989 stating therein that the petitioner is in unauthorized occupation of the land in dispute. A copy of the notice dated 2.7.1989 has been annexed as Annexure-5 to the writ petition. Thereafter, on 26.6.1991, Patwari of the area concerned submitted a challani report under the provisions of U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (from hereinafter referred to as the Act). On the basis of this challani report submitted by the Patwari, the prescribed authority registered a case against the petitioner as Eviction Case No. 54 of 1990-91 and accordingly a notice u/s 4(1) of the Act was issued to the petitioner on 19.7.1991. A copy of notice-dated 19.7.1991 has been annexed as Annexure-6 to the writ petition. This notice was also duly replied by the petitioner.

7. Prescribed authority, after hearing the parties and on the basis of the evidence adduced by the parties, confirmed the notice u/s 4(1) of the Act and passed the order of eviction against the petitioner on 23.3.1994. Further aggrieved by the order-dated 23.3.1994, the petitioner preferred an appeal (bearing Eviction Appeal No. 19 of 1994) before the District Judge, Almora. Subsequently, this appeal was transferred to the Civil Judge (Senior Division), Almora and the Civil Judge (Senior Division), Almora vide its judgment and order dated 27.2.1997 rejected the appeal. Hence, this writ petition.

8. Learned Counsel appearing for the petitioner has contended that similar proceedings had been initiated against some other persons, in which the notice was discharged on the ground that the said land has been transferred to Almora Magnesite Limited by the State and Almora Magnesite company is a private limited company and is not owned or controlled by the State Government or Central Government and therefore the provisions of the Act are not applicable in such type of cases. The appeal preferred by the State against the judgment of prescribed authority was dismissed by the District Judge, Almora and the judgment of the prescribed authority discharging the notice was confirmed. A certified copy of the judgment is annexed as Annexure-10 to the writ petition, wherein it has been held that in view of Section 2(b)(3) of the Act, "only such corporation, which is owned or controlled by the State Government can be said to be a corporate authority. One of the test to find out whether an institution is a corporation or not or is a government department is to enquire whether the undertaking functions as a responsible independent organization and not as a part of any department of the State. Another test would be to see whether it is endowed with the capacity of contracting obligations and of suing and being sued. The most important requisite is that in order to become a corporate

authority, the corporation must be controlled or owned by the State."

9. In this case, Almora Magnesite Limited undertakes functions as a responsible independent organization and not as a part of any department of the State. It is capable of suing and being sued in its own name. There is no direct control over this corporation by the State Government nor it is owned by the State Government. Any property held in the name of Almora Magnesite Limited cannot be said to be a public premises and as such the provisions of the Public Premises Act would not apply to such property. It is pertinent to mention here that against the order of the District Judge dated 6.2.1997, the State has not preferred any writ petition.

10. For the reasons recorded above, the order dated 23.3.1994 confirming the notice issued u/s 4(1) of the Act is totally against the provisions of law and the same is liable to be set aside and is hereby set aside. The order dated 27.2.1997 is also set aside.

11. The instant writ petition is, accordingly, allowed.