
(1999) 03 AHC CK 0067

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28807 of 1990

Pratap Singh

APPELLANT

Vs

D.J.Almora and Others

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 7(3)

Citation : (1999) 03 AHC CK 0067

Hon'ble Judges : P.K.Jain, J

Final Decision : Partly Allowed

Judgement

P.K. Jain, J.—Heard Sri B.D. Upadhyay, learned counsel for the petitioner and Sri S.D. Singh, learned Standing Counsel.

2. No counteraffidavit has been filed even though time was granted on 9111990.

3. Petitioner challenges order, dated 1631990 passed by the Prescribed Authority/ Pargana Adhikari, Ranikhet, whereby the petitioner was directed to be evicted from plots Nos. 27,28,30,33,34,35 and 36 of Khata No. 72 in exercise of the powers under Section 4(1) of the Public Premises Act and was further directed to pay Rs. 2,500 as damages under Section 7 of the Public Premises Act, herein called "the Act" and the judgment and order dated 391990 passed by the District Judge, Almora whereby appeal filed by the petitioner was dismissed.

4. The petitioner claims that the land in question was originally allotted by the competent authority to one Mahendra Ram who could not pay the dues and allotment in his favour was cancelled. Thereafter the petitioner approached the Land Management Committee to allot the land to the petitioner. A resolution was passed by the Land Management Committee and in pursuance to the said resolution the petitioner was given possession. The notice served upon the petitioner under Section 4(1) of the Act was contested on the said grounds. The Prescribed Authority as well as the appellate authority found as a fact that even though resolution for allotment was passed in favour of the petitioner, no

allotment order was issued to the petitioner as the allotment was not approved by the Collector.

5. The orders passed by the authorities below are challenged on the grounds that the petitioner is in possession in pursuance to the allotment in his favour and that order under Section 7 imposing damages has been passed without serving a notice as required under Section 7 (3) of the Act. Learned Standing Counsel submits that there being no allotment order the petitioner is not entitled to remain in possession.

6. So far as eviction from the plots in question is concerned, it is not disputed that the allotment was not made in favour of the petitioner. By mere passing a resolution the petitioner is not entitled to retain possession which he might have obtained in pursuance to the resolution passed by the Land Management Committee. Therefore, so far as first part of the order passed by the learned Prescribed Authority is concerned, the petition is without any merit.

7. There is substance in the second submission of the learned counsel for the petitioner. Copy of the notice under Section 4(1) has been filed as Annexure 3 to the petition, perusal whereof shows that the notice was served only to show cause why the petitioner^ be not evicted from the plots in question. The impugned order passed by the learned Prescribed Authority does not show that any notice as required by Section 7(3) of the Act was ever served upon the petitioner. Section 7(3) of the Act reads as follows:

?(3) No order under subsection (1) or subsection (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be Specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may " produce in support of the same, have been considered by the estate officer.?

8. Perusal of this subsection clearly indicates that the Order imposing penalty or assessing damages and directing the unauthorised occupants to pay damages cannot be passed without affording opportunity to the said person by issuing a notice in writing calling upon him to show cause why such order be not passed against him.

9. In this view of the matter the order so far as it relates to imposing damages to the tune of Rs. 2,500, the same cannot be sustained.

10. In this view of the matter, the petition is disposed of at the admission stage itself.

11. The petition is partly allowed. Order imposing penalty/direction to pay damages under Section 7 of the Act is quashed. The order relating to eviction of the petitioner, however, is not interfered with.

No order as to costs.