

**(2016) 05 AHC CK 0042**  
**In the Allahabad High Court**  
**Case No : Writ C No. 14422 of 2016**

Smt. Deepika Singh

APPELLANT

Vs

Zila Panchayat, Bulandshahr & Another

RESPONDENT

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**Date of Decision :** 06-05-2016

**Acts Referred:**

**Citation :** (2016) 6 ADJ 494 : (2016) 166 AIC 940 : (2016) 3 AllWC 2784 :  
(2016) 117 ALR 550 : (2016) 3 ARC 824 : (2016) 132 RD 786

**Hon'ble Judges :** Pankaj Mithal, J.

**Bench :** Single Bench

**Advocate :** Amitabh Agarwal, Advocate, for the Appellant; C.S.C., Nisheeth Yadav, Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

Pankaj Mithal, J.—All the three writ petitions have identical facts and involve a common question of law as to the officer competent to act as a Prescribed Authority under Section 3 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (in short "Act").

2. Since the question raised in all the three writ petitions was purely legal in nature, Standing Counsel and counsel for respondent No.1 were given time to obtain instructions and, if necessary, to file counter affidavit. The respondents have chosen not to file counter affidavit and have produced various notifications issued by the Governor of U.P. in exercise of powers under Section 3 of the Act in order to get the petitions decided at the stage of admission.

3. The petitioners are facing proceedings for their eviction from the disputed premises which belong to and are owned by Zila Panchayat, Bulandshahr before the City Magistrate under the provisions of the Act. The objection of the petitioners that the City Magistrate has no jurisdiction to act as a Prescribed Authority under the Act and, therefore, the proceedings before him are without jurisdiction has been rejected by the orders impugned in the petitions.

4. I have heard Sri Amitabh Agarwal learned counsel for the petitioner, Sri C.B. Yadav, Senior Counsel for the State of U.P. and Sri Nisheeth Yadav, learned counsel appearing for Zila Panchayat, Bulandshahr. They consented for the final disposal of the writ petitions on the above legal point on the basis of the notifications placed before the Court.

5. Sri Amitabh Agarwal, learned counsel for the petitioners had argued that in the notification dated 22nd August, 1974 published in the Official Gazette dated 31st August, 1974 (hereinafter referred as "1974 Notification") issued under Section 3 of the Act, Additional District Magistrates throughout the State of U.P. have been conferred powers to act as Prescribed Authority under the Act and, therefore, neither the City Magistrate nor the District Magistrate has any authority of law to take cognizance of any matter under the Act as a Prescribed Authority.

6. On the other hand, Sri C.B. Yadav and Sri Nisheeth Yadav submit that according to the instructions received from the District Magistrate, Bulandshahr there is an earlier notification dated 14th June, 1972 (hereinafter referred as "1972 Notification") issued under Section 3 of the Act which confers the power of the Prescribed Authority under the Act upon all the Sub-Divisional Officers and the Additional Sub Divisional Officers within their sub-divisions; the City Magistrates and the Additional City Magistrates within their city divisions and the Special Secretary to Government of U.P. in Public Works Department for Lucknow and Nainital. The aforesaid notification has not been superseded by the 1974 Notification and, therefore, in the absence of Additional District Magistrates, the City Magistrates and the Additional City Magistrates continue to act as Prescribed Authority under the Act.

7. The aforesaid Act provide for eviction of unauthorised occupants from public premises and for certain incidental matters thereto. The power to draw proceedings for eviction of unauthorised occupants from the public premises and to pass orders for their eviction, if necessary, vests with the Prescribed Authority notified under the Act.

8. The Prescribed Authority has been defined in Section 2(d) of the Act to mean an Officer appointed as Prescribed Authority by the State Government. Section 3 of the Act provides that the State Government may, by notification in the Official Gazette appoint Gazetted Officers of the State Government or officers of equivalent rank or the corporate authority to be Prescribed Authority for the purposes of the Act and define the local limits or the categories of public premises in respect of which the Prescribed Authorities shall exercise their powers conferred under the Act.

Section 3 of the Act is reproduced herein-below:

"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 the prescribed authorities by or under this Act."

9. In exercise of the power under Section 3 of the Act the 1972 Notification was issued appointing ? (1) all the Sub Divisional Officers and the Additional Sub-Divisional Officers within their sub-divisions; and (2) all the City Magistrates and the Additional City Magistrates within their city divisions to be Prescribed Authority in respect of all public premises except public premises under the control of Government Estate Department which are situate in Lucknow and Nainital in respect whereof the Special Secretary to Government of U.P. in Public Works Department, Lucknow was conferred the powers of the Prescribed Authority.

10. The above notification for the sake of convenience is reproduced herein-below:

"In exercise of the powers under Section 3 of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (U.P. Act No.22 of 1972), and in supersession of Government Notification No. 4/Rajaswa 1/1 - 6(1) 72, dated March 3, 1972 and No. U.O. 260 Rajaswa-1-72, dated March 17, 1972, the Governor is pleased to appoint the following persons being Gazetted Officers of the State Government as prescribed authority for purposes of the said Act and further to define the local limits as under within which and the categories of public premises of which the said prescribed authorities shall exercise the powers conferred and perform the duties imposed on prescribed authorities by or under the said Act:

i)

All the Sub Divisional Officers and the Additional Sub - Divisional Officers, within their sub-divisions;

In respect of all Public Premises except public premises under the control of Government Estate Department which are situate in Lucknow and Nainital districts.

(ii)

All the City Magistrates and the Additional City Magistrates within their city divisions;

(iii)

The Special Secretary to Government of Uttar Pradesh in Public Works Department, Lucknow.

In respect of all the public premises under the control of Government Estate Department which are situate in Lucknow and Nainital districts."

11. The above notification clearly defines that:

(i) all the Sub-Divisional Officers and the Additional Sub Divisional Officers within their sub-divisions would act as Prescribed Authority in respect of all public premises;

(ii) all the City Magistrates and the Additional City Magistrates within their city divisions would act as Prescribed Authority in respect of all public premises; and

(iii) the Special Secretary to Government of U.P. in Public Works Department, Lucknow would act as Prescribed Authority in respect of all the public premises under the control of Government Estate Department which are situate in Lucknow and Nainital districts.

The subsequent 1974 Notification reads as under:

"In exercise of the powers under Section 3 of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (U.P. Act No. 22 of 1972), and in supersession of Government Notification No. 4/Rajaswa 1/1 - 6(1) 72, dated March 3, 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.-1-1(1)/71, dated June 14, 1972 the Governor is pleased to appoint the following persons as prescribed authority for purposes 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 the 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."

12. It states that in partial modification of the notification dated 14th June, 1972 all Additional District Magistrates of Uttar Pradesh within their own jurisdiction shall exercise the power under the Act as Prescribed Authority in respect of all public premises.

13. The 1974 Notification is plain and simple. It vests the power of Prescribed Authority under the Act in respect of all public premises upon the Additional District Magistrates within their own jurisdiction. In other words, the said notification empowers all Additional District Magistrates to act as Prescribed Authority in respect of all public premises within their jurisdiction. The aforesaid notification does not prescribe that the powers of the Prescribed Authority can also be exercised by the City or Additional City Magistrate or that such powers cannot be exercised by the Additional District Magistrates looking after the work of administration or finance & revenue. The said notification rather provides for a uniform common authority to act as Prescribed Authority under the Act.

14. Accordingly, after the issuance of the notification of 1974 only Additional District Magistrates irrespective of the nature of work assigned to them alone are competent to act as Prescribed Authority in respect of public premises within their jurisdiction except for public premises situate within the area of Lucknow Development Authority, Kanpur Development Authority and the municipal limits of Nagar Mahapalika, Kanpur or the public premises under control of Estate Management Department situate in Lucknow and Nainital for which separate notifications were issued from time to time in partial modification of the 1972 notification, and the Sub-Divisional Officers/Additional Sub-Divisional Officers as well as the City Magistrates/Additional City Magistrates ceases to be the Prescribed Authority for the purposes of the Act.

15. One of His Lordship of this Court vide judgment and order dated 7.12.2009 passed in Civil Misc. Writ Petition No. 27788 of 2009 (Kaluram v. Additional District Judge, Bijnor and others) while dealing with the aforesaid notification of 1974 issued under Section 3 of the Act held as under:

"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."

16. Section 21 of the U.P. General Clauses Act, 1904 which is para materia with Section 21 of the General Clauses Act, 1897 lays down the power to issue notifications, orders and bye laws which includes the power to add, to amend, to vary or to rescind such notifications, orders and bye laws. The said provision in a way while permits issuing of notifications, orders or bye laws also enables the Government to amend, vary and to rescind such notifications, order or bye laws. Thus, with the issuance of 1974 notification the earlier notification of 1972 stand eclipsed and varied meaning thereby that the subsequent notification takes the field irrespective of the fact that the subsequent notification is not couched in the manner completely superseding the earlier notification and rather provides for the modification of the earlier notification. In short, the 1974 notification has the effect of virtually cancelling the 1972 notification in so far it vests the jurisdiction of the Prescribed Authority upon the Additional District Magistrate exclusively.

17. It also appears that after the 1974 notification a notification No. U.O.268/Revenue-1/1-6(5)-77, dated January 24, 1978 was issued under Section 3 of the Act read with Section 21 of the U.P. General Clauses Act conferring powers of Prescribed Authority under the Act upon certain officers. Thereafter a notification dated 24th September, 1998 was issued and published in the U.P. Gazette of the same date conferring power of the Prescribed Authority under the Act upon the Labour Commissioner, U.P./Additional Labour Commissioner/Joint Labour Commissioner, U.P./Deputy Labour Commissioner/Assistant Labour Commissioner (Housing) in respect of all public premises in the whole of U.P. and upon the Regional Deputy Labour Commissioner within their respective region.

18. In view of the above notification of 1998 it transpires that after 1998 only

the Labour Commissioner, U.P./Additional Labour Commissioner/Joint Labour Commissioner, U.P./Deputy Labour Commissioner/Assistant Labour Commissioner (Housing) and Regional Deputy Labour Commissioner alone are empowered to act as Prescribed Authority in respect of all public premises within their jurisdiction and no one else. Therefore, the District Magistrate/Additional District Magistrate, City Magistrate or the Sub-Divisional Officer have no power to act as Prescribed Authority under the Act. There is no other notification which annuls the above notification.

19. Thus, in my opinion, the proceedings for eviction of the petitioners from the disputed premises before the City Magistrate are wholly without jurisdiction and invalid. Consequently, any order(s) passed by the City Magistrate in exercise of the powers of the Prescribed Authority under the Act would also be non-est and null & void.

20. Accordingly, the impugned orders dated 20.2.2016, 18.3.2016 and 18.3.2016 passed by the City Magistrate, Bulandshahr as Prescribed Authority under the Act in all the three writ petitions are hereby quashed and a writ of certiorari is issued to the above effect. All consequential orders thereof are also held to be meaningless, null and void.

21. All the three writ petitions are allowed with no orders as to costs.