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**(2019) 05 UK CK 0090**

**In the Uttarakhand High Court**

**Case No : Writ Petition (M/S) No. 1596, 1597 Of 2015**

Suresh Kumar & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

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**Date of Decision : 02-05-2019**

**Acts Referred:**

Constitution Of India, 1950 — Article 226

**Citation : (2019) 05 UK CK 0090**

**Hon'ble Judges : Sharad Kumar Sharma, J**

**Bench : Single Bench**

**Advocate : Pradeep Kumar Chauhan, K.N. Joshi, Ajay Veer Pundir, V.K. Kohli**

**Final Decision : Dismissed**

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## **Judgement**

Sharad Kumar Sharma, J

1, This writ petition was listed on 15.04.2019 and the same was dismissed for want of prosecution in the absence of the counsel for the petitioner. Later on the petitioner has preferred a restoration application being Restoration Application No. 338 of 2019, which was preferred well within time and considering the grounds, which has been taken in the restoration application, the reason for non-appearance has been satisfactorily explained, the same is allowed, and the writ petition is restored to its original number.

2. Thereafter the writ petition was heard on merit with the consent of the counsel and proceeded to be heard on merits. As per the facts which emerges from the pleadings of the writ petition are that the petitioner in the present writ petition has challenged the impugned order dated 15.06.2015, as has been issued by the Secretary B.H.E.L. Grah Nirman Samiti Limited, as well as, the Administrator, B.H.E.L. Grah Nirman Samiti, Shivalik Nagar, Haridwar. In pursuance to the notice in question, which is impugned in the petition, the petitioner was called upon to submit his reply with regards to his act of encroachment and making an unauthorized construction on the rood of the shop allotted to him since being

contrary to the terms of allotment made in his favour by the B.H.E.L. Sahkari Grah Nirman Samiti. The allegation attributed to against him was that he was raising construction on the roof of the shop allotted to him, which was not permissible under the terms of allotment and was contrary to the bylaws of the Society.

3. The petitioner during the course of his argument has questioned the impugned notice before this Court on the ground that the Secretary of the B.H.E.L. Grah Nirman Samiti was not competent to pass the notice dated 15.06.2015 on account of the fact that there had been various litigations going on and a reference has been made by the petitioner to the order passed by this Court in Writ Petition No. 551 of 2014 'Himanshu Diwedi & Others vs. State of Uttarakhand & Others', which was decided by the Coordinate Bench of this Court along with other two writ petitions on 03.04.2014.

4. As per the findings, which has been recorded therein by this Court is the above referred writ petition, in the said writ petition the question was raised pertaining to the election of the Society, which was held under the supervision of the Registrar of the Cooperative Society Uttarakhand, and the Coordinate Bench of this Court by the findings recorded in paragraph nos. 5 & 6, which are quoted hereinbelow, had left it open that the controversy to be decided after inviting objections from the public at large and after making publications in the two newspapers and if thereafter the Registrar Cooperative Society finds any illegality in the allotment or finds that earlier all the members of the Housing Society were not given the opportunity to participate in the allotment process, he would cancel the allotment:

"5. Thereafter, learned Registrar Cooperative Society shall invite the objections through publication in two newspapers having circulation in District Haridwar on the legality/illegality of the alleged allotment of the plots and shall decide the same after perusing the record and objections and hearing all the interested within next four weeks.

6. If Registrar Cooperative Society, Uttarakhand finds illegality in the allotment or finds that earlier all the members were not given opportunity to participate in the allotment process, he shall cancel the allotments and shall issue appropriate directions for the de novo allotment amongst the members of the Society."

5. The petitioner in the present writ petition has raised a question with regards to the competence of the Secretary to issue of impugned notice dated 15.06.2015 that is from the view point that there had been certain disputes, which was being raised against him and his eligibility to hold the office of the Secretary and, hence, in view of the said controversy he was not exercising the powers of the Secretary of the Cooperative Society nor was holding the authority to pass the impugned notice dated 15. 06.2015, at the relevant point of time. In response to it, it has been argued by the learned counsel for the respondent that though there had been a controversy but on preferring of a review an order has been

passed by the Registrar Cooperative Society and the following findings have been recorded therein:

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6. Apparently if we go through the order of review also what is reflected therein is that rather it projects that the Cooperative Society itself was functioning and was in control of the affairs of the society, though it seems that there were certain anomaly in the allotment process but the same was directed to be rectified. The only observation, which has been made was with regards to the certain issues pertaining to the irregularities in allotment which was directed to be made by the Cooperative Society by adopting the lottery system.

7. On reading of this order, yet again which was passed on 21.02.2014 what is reflected is that in fact the Cooperative Society was functioning and in control of the affairs of the Cooperative Society, at the relevant point of time when the impugned notice dated 15.06.2015 was issued to the petitioner.

8. Later on, the learned counsel for the petitioner has raised an argument to the effect that since there were certain dispute pertaining to the office of Secretary and his continuance in his office, hence the notice was not issued by the competent officer as he ought not have issued notice as the administrator was in control of the affairs and the business of the Cooperative Society, hence, it could be challenged by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

9. This argument too is not sustainable for the reason that as per the arguments

which are raised by the learned counsel for the petitioner himself, he has submitted it was rather the administrator, who was the competent authority who could have issued the notice to the petitioner. After having gone through the impugned notice dated 15.06.2015, it in fact shows that the said notice calling a reply from the petitioner within a period of three days from the date of its issuance has been duly endorsed by the administrator, as well as, by the Secretary. Hence, it could not be said that the notice issued lacked competence of the authorities issuing it, as administrator too was signatory to the notice.

10. In view of the above reasons, since the challenge in this writ petition was confined to the notice, whereby, only a reply has been called upon from the petitioner against his act of encroachment and raising of an unauthorized construction, it is open for the petitioner to file his reply before the competent authority of the Cooperative Society in question and seek his remedies as available to him after the decision of his reply by them. Relevant paragraph of the impugned notice is quoted hereinbelow:

[illegible]

11. In the light of the reasons, which has been assigned above, since this writ petition has been preferred only as against the order dated 15.06.2015, which was only a notice issued to the petitioner seeking for a reply and which has been issued by the competent authority, who was otherwise authorized under law, to do so, this writ petition would not be tenable and the same is accordingly dismissed.

12. Lastly, it was prayed for by the counsel for the petitioner that in case if the petitioner prefers a reply within a period of three weeks from the date of receipt of this order, the same may not be rejected on the ground of limitations, and it would be decided on its own merits after providing an opportunity of hearing to the petitioner.