

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.2380 of 2011 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mrs. Sweta Dobhal, Advocate, holding brief of Mr. Lokendra Dobhal, Advocate, for the petitioner. Mr. Yogesh Tiwari, Standing Counsel, for the State of Uttarakhand. The petitioner in this writ petition has put a challenge to the order which has been passed by the Prescribed Authority on 12.04.2007, as well as the judgment of 27.08.2011, passed by the respondent no.2, in the exercise of its appellate jurisdiction, whereby, an order of the eviction has been passed against the petitioner under the provisions of the U.P Public Premises Eviction of Unauthorized Occupants Act, 1973. Learned counsel for the petitioner had summarized her argument from the following perspective:- (1) That the notice issued to her under Papatra 5ka, under Rule 5 is not in accordance with sub-section (2) sub-clause (a) of section 4 of the Act. To deal with the argument, a reference to sub-clause (a) as extracted made hereunder:- 2 (a) of section 4 reads as: "specified the ground on which the order of the eviction is proposed to be made". The reference of specifying the grounds for the purposes of notice under section 4/5 of the Act, would not mean a detailed deliberation on the merits of the matter, rather it should precisely specify the action to be taken and the cause of action to be taken against the person to whom the notice under section 4 of the Act, is issued, which in the instant case, in the notice which was issued under section 4 to be read with Rule 5, is on the ground that based upon the report which was submitted by the Revenue

			Officials, in that it was found that the petitioner was in an unauthorized possession of Khasara No.1480, and 2145, having an area of 0.001 and 0.060 hectares, on which, he has raised the construction, and have also sown her crop and has grown certain trees by unauthorisedly occupying the public land. Besides she had no valid document of title with her. In fact, the expression given in the notice itself, that is the notice under challenge dated 15.07.2005, itself gives the details also, as to in what manner, and over which part of the government land the petitioner had unauthorizedly occupied the same, and the nature of its user, has also been considered by the learned Prescribed Authority as to in what manner, the land has been used by the applicant, which is said to be occupied by him, without any authority being vested to her. It's not even that prior to the issuance of the notice under section 4 to be read with rule 5 of the Rules framed under the Act, a challani report was submitted on 19.03.2005, wherein, according to the report, given by the revenue officials, they have fortified the fact about the unauthorized occupation of the land by the petitioner, which is otherwise vested with the State. Thus, it cannot be said that the notice issued to the petitioner under section 4 to be read with Rule 5, didn't contained a ground as to in what manner and why she has occupied the land, and in what use she has put the land after its unauthorized possession. The second argument, which has been extended by the learned counsel for the petitioner is that, the appeal itself as against the order of the Prescribed Authority which was decided on 12.04.2007, in Case No.55 of 2005, "State Vs. Pushpa Nawani", the appeal was preferred under section 9 of the Act, and the appeal itself has been decided by the court of Civil Judge, (Senior Division) Pauri Garhwal. It has been argued that the Civil Judge (Senior Division) Pauri Garhwal, will not be a
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			competent appellate authority, to decide the Miscellaneous Civil Appeal No.26 of 2007, “Pushpa Nawani Vs. State”, under section 9 of the U.P. Eviction of Unauthorized Occupants Act, 1972. So far as the question of the competence of the appellate authority, as it has been raised by the learned counsel for the petitioner, could be better answered by extracting the appellate provisions contained under section 9 of the Act, which is extracted hereunder:- “(9) Appeals. An appeal shall lie from every order of the Prescribed Authority made in respect of any public premises under Section 5 or Section 7 to an Appellate Officer who shall be the District Judge of the district in which the public premises are situate or; such other Judicial Officer not below the rank of Civil Judge as the District Judge may designate in this behalf. (2) An appeal under Sub-section (1) shall be preferred- (a) in the case of an appeal from an order under Section 5, within fifteen days from the date of publication of the order under Sub-section (1) of that section; and (b) in the case of an appeal from an order under Section7, within fifteen days from the date on which the order is communicated to the appellant: Provided that the Appellate officer may entertain the appeal after the expiry of the said period of fifteen days, if he is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time. (3) Where an appeal is preferred from an order of the Prescribed Authority the Appellate Officer may stay the enforcement of that order for such period and on such conditions as he deems fit. (4) Every appeal under this section shall be disposed of by the Appellate Officer as expeditiously as possible. (5) The cost of any appeal under this
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			section shall be in the discretion of the Appellate Officer. (6) The District Judge may withdraw any appeal pending with any Judicial Officer referred to In Sub-section (I) and either dispose of the same or transfer It to any other Judicial Officer referred to In that sub-section.” The provisions contained under section 9 of the Act, provides that, the appellate officer would be the District Judge of the District in whose the public premises is situated “or such judicial officer not below the rank of civil judge as the District Judge may designate”. Meaning thereby, it is not an exclusive jurisdiction which has been vested with the District Judge, rather it has been left as his prerogative that he can assigned the appellate jurisdiction to the civil judge to decide the appeal under section 9 of the Act, but the said Judicial Officer, who is thus designated with the power has to be a Judicial Officer above the rank of civil judge, which may be designated by the District Judge. It’s not the case of the petitioner pleaded or argued that the Civil Judge (Senior Division) Pauri Garhwal, is not a designated authority by the District Judge, who has decided the appeal, and quite obviously the Civil Judge, (Senior Division) Pauri Garhwal, would be a Judicial Officer, who is above the rank of the Civil Judge, as provided under section 9 of the Act of 1972. Hence, the question of competence too, is answered against the present petitioner. Lastly and though contrary to the records itself, the petitioner argues that she had submitted an application before the District Magistrate as back as on 28.10.2006, praying for to allot a “patta or lease” of the said land in favour of the petitioner for which notices were issued. What is important is that the said argument which has been raised as an afterthought cannot be accepted in writ
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			jurisdiction for the reason being that (1) there is no allotment as such, as of now (2) that the said application for the first time was filed on 28.10.2006, which if at all was having any sanctity, it ought to have been a defence taken by her before the Prescribed Authority or at least before the Appellate Authority. Having not done so, the applicant's application submitted for an allotment will in itself will not amount to confer her a status or a right in favour of the petitioner over the land in question, because it is not the case of the petitioner that any order of allotment has been ever passed on the application submitted by the petitioner before the District Magistrate. This afterthought story developed by the petitioner by alleged filing of an application on 28.10.2006, is an afterthought, and beyond the scope of the pleadings raised by her before the court below, it cannot be accepted for the first time, at this stage, and that too without there being any pleadings to the said effect even in the writ petition. The petitioner has lastly contended that she has been occupying the premises for considerable long time, the occupation of the public land for a considerable long time in itself cannot be an exclusive reason to perpetuate an illegality to permit a person to occupy a premises over which, she is not otherwise legally entitled to continue to occupy and have possession, since she is not holding a right or a title legally vested with her in accordance with law. Thus, the ground agitated by the learned counsel for the petitioner is not sustainable, and since the petitioner has been concurrently held to be in unauthorized occupation of the public land, I do not find any illegality in the concurrent judgments of the eviction, thus the writ petition fails, and the same is accordingly dismissed. (Sharad Kumar Sharma, J.) 14.08.2023 NR
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