

Chandra Singh Vs. Ist Additional District Judge and ors.

Chandra Singh Vs. Ist Additional District Judge and ors.

SooperKanoon Citation : sooperkanoon.com/485761

Court : Allahabad

Decided On : Sep-02-2003

Reported in : 2004(1)AWC731

Judge : V.M. Sahai, J.

Acts : Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Sections 9(1)

Appeal No. : C.M.W.P. No. 5377 of 1986

Appellant : Chandra Singh

Respondent : ist Additional District Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : V.M. Zaidi, Adv.

Disposition : Petition allowed

Judgement :

ORDER

V.M. Sahai, J.

1. The short question that arises for consideration in this petition is whether an appeal would lie under Section 9(1) of the Public Premises (Eviction of

Unauthorised Occupants) Act, 1971 (in brief Act) against an order rejecting the application for setting aside an ex parte order passed by the prescribed authority?

2. The petitioner purchased plot No. 219 area 3.5 acres situate in village Bawli district Bijnor from Inder Raj Singh through a registered sale deed dated 17.3.1972. The petitioner was also put in possession by his vendor. The lekhpal of the village made a complaint to the prescribed authority that the petitioner is in unauthorised occupation over the land in dispute. On the basis of this complaint, notices were issued to the petitioner. It was claimed by him that the notices were not served on him and an ex parte order was passed on 9.4.1984 directing eviction of the petitioner from the land in dispute and damages of Rs. 4,966 was imposed on him. The petitioner came to know about the ex parte order dated 9.4.1984 on 27.2.1985 and filed an application for recalling the said order. The application of the petitioner was rejected by the prescribed authority on 14.6.1985, as quoted in paragraph 7 of the petition without recording any reasons. The order dated 14.6.1985 was challenged by the petitioner in appeal. The appeal of the petitioner had been dismissed on the ground that under Section 9 of the Act, only appeals under Sections 5 and 7 were provided and that the same was not maintainable. It is this order, which has been challenged in this writ petition. For better understanding of this case Section 9(1) of the Act is quoted below :

'9. Appeals.--(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under Section 5 or Section 5B or Section 5C 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 officers in that district of not less than 10 years' standing as the District Judge may designate in this behalf.'

3. From the bare reading of Section 9(1) of the Act, it is clear that the appeal is provided against every order passed by estate officer in respect of public premises. Since the order earlier passed by the prescribed authority was an ex parte order, the petitioner applied for setting aside the same, which was rejected by the prescribed authority. The order by which the application of the petitioner was rejected, also related to the public premises. Therefore, it was appealable

under Section 9(1) of the Act. The District Judge, has failed to consider the true import of Section 9(1) of the Act. Therefore, the order dated 1.2.1986, passed by respondent No. 1 cannot be maintained.

4. In the result, the writ petition succeeds and is allowed. The order dated 1.2.1986, passed by respondent No. 1, Annexure-3 to the writ petition, is quashed. He is directed to register the appeal of the petitioner and decide the same expeditiously, in accordance with law.

5. Parties shall bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com