

**(1985) 08 AHC CK 0025**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 24 of 1977

Ram Kumar

APPELLANT

Vs

The 2nd Additional District and  
Sessions Judge and Others

RESPONDENT

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**Date of Decision:** Aug. 21, 1985

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 -  
Section 17, 17(1), 17(2), 20(2), 5

**Citation:** (1985) AWC 883

**Hon'ble Judges:** S.D. Agarwala, J

**Bench:** Single Bench

**Advocate:** Bharat Ji Agarwal, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

S.D. Agarwala, J.

This is a petition under Article 226 of the Constitution of India.

2. The proceedings for eviction were initiated in respect of a part of the road land connecting Delhi-Bareilly-Lucknow road on the Collector Buckganj side. Initially, the State of Uttar Pradesh and the Union of India, Respondent Nos. 2 and 3, filed a suit against the Petitioner in the court of Munsif, Hawaii, Bareilly, in the year 1<sup>st</sup> 1969. The U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as the Act) was promulgated. In view of Section 20(2) of the Act, the suit pending in the Court of Munsif, Hawaii, Bareilly stood transferred to the Prescribed Authority under the provision of the Act.

3. The Prescribed Authority directed the Petitioner to file objections. The objections were filed. By an order dated 13th May, 1975, the Prescribed Authority dismissed the application for ejectment of the Petitioner from the land in dispute. Against the

order of the Prescribed Authority dated 13th May, 1975, the State of Uttar Pradesh filed an appeal In the Court of the District Judge, Bareilly, u/s 9 of the Act, being Civil Appeal No. 524 of 1975. When the appeal was tiled, the Petitioner moved an application that no appeal was maintainable and, as such, this be dedided as a preliminary point.

4. The 2nd Additional District and Sessions Judge, Bareilly, by his judgment dated 5th November, 1976, did not find force in the preliminary point raised by the Petitioner and held that the appeal was maintainable. It is against the order dated 25th November, 1976, that the present petition has been filed.

5. I have heard the Learned Counsel for the Petitioner and the learned Standing Counsel.

6. Learned Counsel for the Petitioner has urged that no appeal is maintainable against the order of the Prescribed Authority refusing to make an order of eviction u/s 5 of the Act and, as such, the order passed dated 25th November, 1976, is manifestly erroneous.

7. Learned Standing Counsel has brought to my notice Section 17 of the Act. Section 17(2) of the Act specifically provides as under:

17(2). In particular, and without prejudice to the generality of the provisions of Sub-section (1), the State Government or the corporate authority, as the case may be, shall have a right to produce evidence and cross-examine witnesses and to prefer an appeal u/s 9 against an order of the Prescribed Authority refusing to make an order of eviction u/s 5 or to make an order u/s 7 requiring a person to pay rent or damages.

8. The above Sub-section (2) of Section 17 of the Act is very specific. It clearly gives a right to the State Government or to a corporate authority to prefer an appeal u/s 9 of the Act against an order of the Prescribed Authority refusing to make an order for eviction u/s 5 of the Act. In view of this provision, the appeal clearly lay against the order of the Prescribed Authority. The impugned order in accordance with law and I do not find any infirmity in the same.

9. In the result, the petition is dismissed. The interim order dated 3rd January, 1977, is hereby vacated. The appellate court is directed to dispose of the appeal very expeditiously. The parties are directed to bear their own costs.