

कार्यालय, रक्षा लेखा महानियंत्रक  
उलान बटार मार्ग, पालम, दिल्ली छावनी-110010

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AN/XII/18026/Subject File

Dated 1.07.2016

To

All PCsDA/CsDA, (Estate Officer)  
(Through CGDA Web Site)

Subject: Orders passed under Section 5A of the Public Premises (Eviction of unauthorized Occupation) Act, 1971.

A Copy of the circular dated 22.2.2016 along with its enclosures received from Ministry of Law and Justice, Deptt of Legal affairs is enclosed herewith for further necessary action please.



(Mustaq Ahmad)  
Dy. CGDA (Admin)

24  
25/23

No.J.17/4/2016-JS-Judl.  
Government of India  
Ministry of Law & Justice  
Department of Legal Affairs

February 22, 2016

CIRCULAR

I am forwarding herewith an important Order dated 12.1.2016 of the full Bench presided by Hon'ble Dr. D.Y. Chandrachud, Chief Justice, Allahabad High Court wherein it has been held that an order passed under Section 5A of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is not appealable and the decision in Sanjay Agarwal Writ Petition No.14580 of 2012 dated 26<sup>th</sup> March, 2012 does not lay down the correct proposition of law. The Court has held that provisions of Section 5A of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for removal of encroachment and unauthorized construction on the public premises and that Section 5B applies to the situation where a person in occupation of public premises is under an authority but the work which has been commenced without authority.

gk/v

2. The Court took note of Sections 4 and 5 as well as definition of unauthorized occupation which includes authority which has been expired or determined also.

Add  
FAL/AR/3

3. This landmark judgement may be used by various authorities to seek eviction of unauthorized occupants covered especially under Sections 5,5A and 5B of Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The Judgement and order may be downloaded from the Allahabad High Court site i.e. [www.allahabadhighcourt.in](http://www.allahabadhighcourt.in)

1052/Addl. FA(AR)  
2/2/2016

4. You are, therefore, requested to bring the same into the notice of all the Estate Officers or other authorities concerning public premises for guidance and appropriate necessary action.

28/03  
DFA (Wood.)

(SURESH CHANDRA)  
Joint Secretary & Legal Adviser

To

1. All Secretaries to the Government of India
2. Director General, Defence Estates
3. PPS to Law Secretary
4. All concerned Group Heads in the Department of Legal Affairs
5. Central Agency Section, Supreme Court, New Delhi
6. Law Officers in various High Courts
7. NIC to upload on the website
8. LIMBS Team to upload on LIMBS.

806/c/16  
19.3.16

AFR  
RESERVED

Writ-C No 40360 of 2015  
Yogesh Agarwal  
Vs  
Estate Officer & 2 Ors

With

Writ-C No 42744 of 2015  
B M Nayar  
Vs  
Estate Officer & 2 Ors

With

Writ-C No 41568 of 2015  
Anil Tripathi  
Vs  
Estate Officer & 2 Ors

And

Writ-C No 42745 of 2015  
Rajiv Kumar @ Kukku  
Vs  
Estate Officer & Anr

**Appearance:**

For the petitioners: Mr K K Arora, Advocate  
Mr Akhtar Ali, Advocate

For the respondents: Mr Ashok Mehta, Senior Advocate, ASGI  
Mr Satish Kumar Rai, Senior Panel Counsel,  
Central Government  
Mr Krishna Agrawal, Central Government  
Counsel  
Mr P S Pandey, Central Government Counsel

Hon'ble Dr Dhananjaya Yeshwant Chandrachud, CJ

Hon'ble Manoj Kumar Gupta, J

Hon'ble Yashwant Varma, J

(Per Dr D Y Chandrachud, CJ)

The issue which falls for determination in the present reference to the

Full Bench, turns upon the provisions of Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971<sup>1</sup>. Section 9 provides for an appeal against an order of the Estate Officer made in respect of public premises under Section 5 or Section 5B or Section 5C or Section 7. As the Section stands, no appeal has been provided against an order of the Estate Officer under Section 5A. Yet, a Division Bench of this Court held in *Sanjay Agarwal Vs Union of India*<sup>2</sup> that an appeal in respect of an order made under Section 5A is maintainable under Section 9. When this judgment was cited before the learned Single Judge in a batch of writ petitions, the Court found itself unable to agree with the view in *Sanjay Agarwal* on the ground that the right to appeal is a statutory right and where the statute has not provided an appeal under Section 9 in respect of an order made under Section 5A, an appeal could not be maintained. Hence, the following questions have been referred for decision before the Full Bench<sup>3</sup>:

“(1) Whether an order passed under Section 5A is appealable under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(2) Whether *Sanjay Agarwal's* case lays down the correct proposition of law.”

The Act was enacted “to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters.” The Act was preceded by a Parliamentary enactment of 1958<sup>4</sup>. In *Northern India Caterers Private Limited Vs State of Punjab*<sup>5</sup>, the Supreme Court held

<sup>1</sup> Act

<sup>2</sup> Writ-C No 14580 of 2012 decided on 26 March 2012

<sup>3</sup> Order dated 16 October 2015 in Writ-C No 40360 of 2015 and connected petitions

<sup>4</sup> The Public Premises (Eviction of Unauthorised Occupants) Act, 1958

<sup>5</sup> AIR 1967 SC 1581

that the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 was void on the ground that it conferred an additional remedy over and above the remedy of a suit and that, by providing two alternative remedies to government, the Collector had an arbitrary discretion to adopt either the normal procedure or the more drastic procedure envisaged in the Act which was violative of Article 14 of the Constitution. The Act was enacted with a view to overcome the deficiencies which had been observed in the earlier legislation in court decisions. The avowed object of the enactment was to provide a speedy machinery for the eviction of persons in unauthorised occupation of public premises. The Statement of Objects and Reasons accompanying the introduction of the Bill contained the following rationale for the enactment of the law:

“The court decisions, referred to above, have created serious difficulties for the government inasmuch as the proceedings taken by the various Estate Officers appointed under the Act either for the eviction of persons who are in unauthorised occupation of public premises or for the recovery of rent or damages from such persons stand null and void. It has become impossible for government to take expeditious action even in flagrant cases of unauthorised occupation of public premises and recovery of rent or damages for such unauthorised occupation. It is, therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying with the provision of the Constitution and the judicial pronouncements, referred to above.”

Explaining the rationale for the law, a Constitution Bench of the Supreme Court in *Ashoka Marketing Ltd Vs Punjab National Bank*<sup>6</sup> held that:

“...the Public Premises Act has been enacted to deal with the mischief of rampant unauthorised occupation of public premises by providing a speedy machinery for the eviction of persons in unauthorised occupation. In order to secure this object the said Act prescribes the time period for the various steps which are required to be taken for securing eviction of the persons in unauthorised occupation. The object underlying the enactment is to safeguard public interest by making available for public use premises belonging to Central Government, companies in which the Central Government has substantial interest, corporations owned or controlled by the Central Government and certain autonomous bodies and to prevent misuse of such premises.”

The Act has been held to be a special statute relating to eviction of unauthorised occupants from public premises. The expression 'public premises' has been defined in Section 2(e).

Section 4 empowers the Estate Officer to issue a notice to show cause for eviction where he is of the opinion that any persons are in unauthorised occupation of any public premises. The expression 'unauthorised occupation' is defined in Section 2(g) as follows:

“ “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation

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<sup>6</sup> (1990) 4 SCC 406

by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

Section 5 provides for an order of eviction against an unauthorised occupant where the Estate Officer after considering the cause shown in pursuance of a notice under Section 4 and the evidence produced, is satisfied that the public premises are in unauthorised occupation.

Sections 5A, 5B and 5C were introduced by an amendment by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act 1980<sup>7</sup> with effect from 20 December 1980. Section 5A provides as follows:

✓ "5A. Power to remove unauthorised constructions, etc.-(1) No person shall—

- (a) erect or place or raise any building or any movable or immovable structure or fixture,
- (b) display or spread any goods,
- (c) bring or keep any cattle or other animal,

on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.

(2) Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or

<sup>7</sup> Act 61 of 1980

fixture from the public premises within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause, or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any public premises, in contravention of the provisions of sub-section (1) by any person, the estate officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the public premises and recover the cost of such removal from such person as an arrear of land revenue.”

Section 5B is in the following terms:

**“5B. Order of demolition of unauthorised construction.—**(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed on any public premises by any person in occupation of such public premises under an authority (whether by way of grant or any other mode of transfer), and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then, the estate officer may,



in addition to any other action that may be taken under this Act or in accordance with the terms of the authority aforesaid, make an order, for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order

Provided that no order under this sub-section shall be made unless the person concerned has been given by means of a notice of not less than seven days served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made.

(2) Where the erection or work has not been completed, the estate officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the proviso to sub-section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under section 9.

(3) The estate officer shall cause every order made under sub-section (1), or, as the case may be, under sub-section (2), to be affixed on the outer door, or some other conspicuous part, of the public premises.

(4) Where no appeal has been preferred against the order of demolition made by the estate officer under sub-section (1) or where an order of demolition made by the estate officer under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with

the order within the period specified therein, or, as the case may be, within the period, if any, fixed by the appellate officer on appeal, and, on the failure of the person to comply with the order within such period, the estate officer or any other officer duly authorised by the estate officer in this behalf, may cause the erection or work to which the order relates to be demolished.

(5) Where an erection or work has been demolished, the estate officer may, by order, require the person concerned to pay the expenses of such demolition within such time, and in such number of instalments, as may be specified in the order.”

Section 5C is as follows:

**“5C. Power to seal unauthorised constructions-**

(1) It shall be lawful for the estate officer, at any time, before or after making an order of demolition under section 5B, to make an order directing the sealing of such erection or work or of the public premises in which such erection or work has been commenced or is being carried on or has been completed in such manner as may be prescribed, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work or any premises in which any erection or work is being carried on has, or have been sealed, the estate officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except—

(a) under an order made by the estate officer under sub-section (2); or

(b) under an order of the appellate officer made in an appeal under this Act.”

Appeals against orders of the Estate Officer are provided by Section 9. Under Section 9, Parliament envisaged an appeal from every order of the Estate Officer made in respect of public premises under Section 5 or Section 5B or Section 5C or Section 7 to the appellate officer. Section 9 is in the following terms:

“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 officer in that district of not less than ten years’ standing 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 twelve days from the date of publication of the order under sub-section (1) of that section;

(b) in the case of an appeal from an order under section 5B or section 7, within twelve days from the date on which the order is communicated to the appellant; and

(c) in the case of an appeal from an order under section 5C, within twelve days from the date of such order:

Provided that the appellate officer may entertain

the appeal after the expiry of the said period, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time,

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit:

Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 5B for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal;

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge of the city civil court therein shall be deemed to be the district judge of the district.”

A plain and simple reading of the provisions of Section 9 would indicate that the legislature has provided for appeals against orders passed by the Estate Officer under specified provisions. Prior to the insertion of Sections 5A, 5B and 5C with effect from 20 December 1980, an appeal

under Section 9 was provided only in respect of an order passed under Section 5. When as a result of amending Act 61 of 1980 Parliament introduced Section 5A, Section 5B and Section 5C, the provisions of Section 9 were also amended by the same amending legislation to provide for an appeal against an order of the Estate Officer under Section 5 or Section 5B or Section 5C. Conscious as the legislature was of the introduction of the provisions of Section 5A, it did not provide for an appeal against the order of the Estate Officer under that provision.

An appeal, it is well settled, is a creation of statute. The remedy of an appeal owes its existence to the law by which it is brought into being. The legislature which confers the right of an appeal is legitimately entitled to structure the nature and extent of the right or to subject its exercise to the fulfillment of conditions. In *Smt Ganga Bai Vs Vijay Kumar*<sup>8</sup>, a Bench of two learned Judges of the Supreme Court made a distinction between "the right of suit and the right of appeal"<sup>9</sup>. Whereas there is an inherent right in every person to bring a suit of a civil nature unless a suit is barred by statute, in the case of an appeal – the Supreme Court held – the right must be traceable to a provision of law. The Supreme Court observed thus:

"There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of

<sup>8</sup> (1974) 2 SCC 393

<sup>9</sup> At para 15 page 397

law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."<sup>10</sup>

In *Vijay Prakash D Mehta Vs Collector of Customs*<sup>11</sup>, the Supreme Court emphasised the same principle in the following observations:

"Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.

... ..

If the statute gives a right to appeal upon certain conditions, it is upon fulfillment of those conditions that the right becomes vested and exercisable to the appellant."<sup>12</sup>

These principles were followed by a Bench of three learned Judges of the Supreme Court in *Shyam Kishore Vs Municipal Corporation of Delhi*<sup>13</sup> in which the constitutional validity of the provisions of Section 170 of the Delhi Municipal Corporation Act, 1957 was upheld. Under the provisions, an appeal against the levy or assessment of a tax could be heard or determined only if the amount, if any, in dispute had been deposited by

<sup>10</sup> At para 15 page 397

<sup>11</sup> (1988) 4 SCC 402

<sup>12</sup> At paras 9 & 13, pages 406, 407

<sup>13</sup> (1993) 1 SCC 22

the appellant with the Municipal Corporation. (See also in this connection **Gujarat Agro Industries Co Ltd Vs Municipal Corporation of the City of Ahmedabad**<sup>14</sup> and **Government of Andhra Pradesh Vs P Laxmi Devi**<sup>15</sup>)

In **Competition Commission of India Vs Steel Authority of India Ltd**<sup>16</sup>, the Supreme Court adverted to the earlier decisions on the subject and held as follows:

“Right of appeal is neither a natural nor inherent right vested in a party. It is a substantive statutory right regulated by the statute creating it. **Kondiba Dagadu Kadam Vs Savitribai Sopan Gujar**<sup>17</sup> and **Kashmir Singh Vs Harnam Singh**<sup>18</sup> may be referred to on this point. Thus, it is evident that the right to appeal is not a right which can be assumed by logical analysis much less by exercise of inherent jurisdiction. It essentially should be provided by the law in force. In absence of any specific provision creating a right in a party to file an appeal, such right can neither be assumed nor inferred in favour of the party.”

In **Arcot Textile Mills Limited Vs Regional Provident Fund Commissioner**<sup>19</sup>, the Supreme Court held that no appeal, on its plain terms, was provided under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 against a determination made under Section 7-Q in regard to the interest payable by the employer. In that

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14 (1999) 4 SCC 468  
15 (2008) 4 SCC 720  
16 (2010) 10 SCC 744  
17 (1999) 3 SCC 722  
18 AIR 2008 SC 1749  
19 (2013) 16 SCC 1

context, the Supreme Court held as follows:

“...It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See; *Ganga Bai v. Vijay Kumar*<sup>20</sup>, *Gujarat Agra Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad*<sup>21</sup>, *State of Haryana v. Maruti Udyog Ltd.*<sup>22</sup>, *Super Cassettes Industries Limited v. State of U.P.*<sup>23</sup>, *Raj Kumar Shivhare v. Directorate of Enforcement*<sup>24</sup>, *Competition Commission of India v. Steel Authority of India Ltd. and another*<sup>25</sup>.”

The Supreme Court held that it was not open to the Court by means of interpretation to hold that every direction, order or decision would be

20 (1974) 2 SCC 393  
21 (1999) 4 SCC 468  
22 (2000) 7 SCC 348  
23 (2009) 10 SCC 531  
24 (2010) 4 SCC 772  
25 (2010) 10 SCC 744



appealable against a statutory provision where the statute itself has not made such a provision. If the legislature intended to expand the ambit of an appellate remedy, it was for the legislature to so provide. Where the language of a statute is clear and unambiguous, it would not be open to the Court to expand the ambit of an appellate remedy where the legislature has confined it to stipulated decisions or orders.

These decisions would indicate that the judgment of the Division Bench of this Court in *Sanjay Agarwal* (supra) has proceeded on an erroneous principle. Parliament provided in Section 9 an appeal against an order which has been passed under Section 5 or Section 5B or Section 5C or Section 7. Plainly, no appeal has been provided against an order of the Estate Officer which has been made under Section 5A. The Division Bench in *Sanjay Agarwal* held that an appeal against an order under Section 5A would be maintainable under Section 9 and in holding this, founded its rationale on the ground that otherwise a party against whom an order has been passed under Section 5A would be remediless. This line of reasoning is contrary to the well settled principle of law laid down by the Supreme Court. This Court in the exercise of its jurisdiction under Article 226 cannot create the remedy of an appeal. The power and jurisdiction to legislate for an appeal lies in the legislature. Where the legislature has provided for an appeal against orders passed under certain specific provisions but not against other orders, it would not be open to the Court by a process of interpretation to expand the ambit of the appellate remedy. This exercise is impermissible. Moreover, even though an appeal has not been provided

against an order under Section 5A, the legality of such an order is subject to judicial review under Article 226 of the Constitution.

The submission which has been urged on behalf of the petitioners, however, is that there is no practical distinction between the provisions of Section 5A and Section 5B and hence there could be no logical reason to restrict the remedy of an appeal under Section 9 to the latter but not to the former. On a close reading of the provisions of Section 5A and Section 5B, we do not find substance in the submission. Sub-section (1) of Section 5A contains certain specific prohibitions. These prohibitions are (i) erecting or placing or raising any building or any movable or immovable structure or fixture; (ii) displaying or spreading any goods; and (iii) bringing or keeping any cattle or other animal on or against or in front of any public premises except in accordance with the authority under which a person was allowed to occupy the premises. Where the provisions of sub-section (1) are breached, sub-section (2) empowers the Estate Officer to issue a notice for removal and where the cause shown is not sufficient, the Estate Officer is empowered to remove or cause to be removed the building, structure or fixture from the public premises. Similarly, if a movable structure or fixture has been erected, placed or raised or goods have been displayed or spread or an animal has been brought or kept on any public premises in breach of sub-section (1), the Estate Officer is empowered to remove it or cause it to be removed. Section 5A and Section 5B operate in clearly distinct areas. Sub-section (1) of Section 5B applies to a situation where a person is in occupation of public premises **under an authority**, whether by way of grant

or any other mode of transfer. Where such a person commences, carries on or completes the erection of a building or the execution of any work in contravention of or without being authorised by such authority, the Estate Officer is empowered to make an order directing the demolition of the erection or work, as the case may be, after furnishing an opportunity to show cause. Section 5B, in other words, applies to situations where the occupation of public premises is under authority but the work which has been commenced, carried on or completed is without authority or in contravention of the terms of the authority. Section 5A and Section 5B hence operate in different situations. The Statement of Objects and Reasons accompanying the Act 61 of 1980 which introduced Sections 5A, 5B and 5C indicates that the purpose of the amendment was to overcome the difficulties which have been experienced in the working of the Act and to make the administration of the Act more effective. This was, inter-alia, by "including suitable provisions in the Act to deal with squatting, or spreading of goods and removal of unauthorised constructions or encroachments on public premises."<sup>26</sup> Where the erection of a construction or the execution of any work is by a person who is in occupation of public premises under an authority but the work is found to be contrary to the terms of the authority or in breach of the authority, it is Section 5B which covers such a situation. The legislature in its wisdom provided for an appeal against an order of eviction under Section 5. The legislature provided for an appeal against an order under Section 5B. An appeal has also been provided against an order under Section 5C. Section 5C deals with the power to seal unauthorised

<sup>26</sup> Vol 22 Lucknow Law Times 1981 at page 71

constructions. Section 7 provides for the recovery of rent or damages and an appeal is provided against an order passed under that Section. However, the legislature not having provided an appeal under Section 9 in respect of an order passed under Section 5A, an appeal against an order under Section 5A would not be maintainable.

We accordingly answer the reference by holding that:

(1) An order passed under Section 5A of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is not appealable under Section 9 of the Act; and

(2) The decision in *Sanjay Agarwal* (supra) does not lay down the correct proposition of law.

The petitions shall now be placed before the regular Bench in accordance with the roster for disposal in light of the questions so answered.

January 12, 2016

AHA

(Dr D Y Chandrachud, CJ)

(M K Gupta, J)

(Yashwant Varma, J)