

**WPMS No.1811 of 2013**

**Hon'ble V.K. Bist, J.**

Mr. Neeraj Garg, Advocate for the petitioner.

Mr. V.B.S. Negi, learned Assistant Solicitor General for Union of India/ respondent nos.1 & 2.

Mr. Paresh Tripathi, Additional C.S.C. for the State/respondent no.3.

Heard learned counsel for the parties.

Present petition has been filed by the petitioner for quashing the order dated 29.04.2013 passed by the respondent no.2 i.e. Estate Officer, Uttarakhand Sub-Area, Station Head Quarter Cell, Dehradun under Section 5A (2) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (*hereinafter referred to as the 'Act'*).

The contention of the learned counsel for the petitioner is that though initially notice was issued to the petitioner under Section 4 (1) of the Act, but the order impugned has been passed under Section 5 A (2) of the Act. Learned counsel for the petitioner submitted that before passing the order impugned, no notice as provided under Section 5 A (2) of the Act has been given to the petitioner.

Mr. V.B.S. Negi, learned Assistant Solicitor General for Union of India/ respondent nos.1 & 2 submitted that though the order dated 29.04.2013 is a notice under Section 5A (2) of the Act, but in fact the authority concerned has passed the order impugned without giving time to the petitioner. He fairly conceded this fact

that before passing the order under Section 5A (2) of the Act, the Estate Officer should have given opportunity of hearing/show cause to the petitioner as provided under Section 5A (2) of the Act.

Considering the fact that no opportunity of hearing/show cause was given to the petitioner as provided under Section 5A (2) of the Act prior to passing of the impugned order, I allow the writ petition and set aside the order dated 29.04.2013 passed by the respondent no.2. However, liberty is given to the respondent no.2 to proceed afresh, after giving show cause notice to the petitioner as provided under Section 5A (2) of the Act.

Stay application (CLMA No.7961 of 2013) stands disposed of.

No order as to costs.

*Arpan*

**(V.K. Bist, J.)**  
31.07.2013