

Hon'ble Manoj K. Tiwari, J.

Heard, Mr. Yogesh Upadhyaya, Advocate holding brief of Mr. P.C. Pethshali, learned counsel for the petitioner and Mr. Saurabh Pande, learned Brief Holder for the State of Uttarakhand.

Petitioner has challenged the notice dated 15.12.2018 issued by District Magistrate, Udham Singh Nagar under Section 3(1) of the Uttar Pradesh Control of Goondas Act, 1970. Section 3(1) of the said Act is extracted below:-

“3. Externment, etc. of Goondas (1) where it appears to the District Magistrate-

- (a) that any person is a Goonda; and*
- (b) (i) that his movements or acts in the district or any part thereof are causing, or are calculated to cause alarm, danger or harm to persons or property; or*
- (ii) that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof, in the commission of an offence referred to in sub-clauses (i) and (iii) of clause (b) of Section 2, or in the abetment of any such offence; and*
- (c) that witnesses are not willing to come forward to give evidence against him by reason of apprehension on their part as regards the safety of their person or property-*
the District Magistrate shall by notice in writing inform him of the general nature of the material allegations against him in respect of clauses (a), (b) and (c) and give him a reasonable opportunity of tendering an explanation regarding them.”

Thus, it is apparent that before passing any order of externment etc, District Magistrate is required to give reasonable opportunity of hearing to the person against whom it is alleged that he is a Goonda. In the present case, the District Magistrate has done what he was required to do, asking the petitioner to appear before him on 19.03.2018 and submit his version.

Even otherwise also, writ petition is pre-mature, as a show cause notice cannot be challenged unless it is issued by an authority, which is incompetent or who has no jurisdiction.

In such view of the matter, there is no scope for interference with the notice impugned in the writ petition. Accordingly, the criminal writ petition is dismissed.

Learned counsel for the petitioner then submits that cases mentioned in the notice have resulted in acquittal of the petitioner.

If that is so, it is open for the petitioner to apprise the District Magistrate about this fact in his reply to the notice, who shall consider this aspect, while taking decision.

(Manoj K. Tiwari, J.)

30.08.2019

Aswal