
(2015) 01 UK CK 0002
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 31 of 2012

Ajay Singh Rawat

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : (2015) 01 UK CK 0002

Hon'ble Judges : Servesh Kumar Gupta, J.;Alok Singh, J.

Bench : Division Bench

Advocate : Ajay Singh Bisht, for the Appellant; V.B.S. Negi, Additional Advocate General, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Alok Singh, J.—As per the newspaper reports published in ?Dainik Jagran? and ?Amar Ujala? on 12/13.01.2015, about 4000 cases of dog biting are reported in last three years in Nainital. Mr. V.B.S. Negi, learned Additional Advocate General and Mr. Ajay Singh Bisht, learned counsel appearing for the Municipality, have stated that the State Government as well as the Municipality shall take appropriate steps immediately for the construction of dogs shelter, wherein stray dogs shall be kept to avoid the cases of dog biting which are increasing day by day. Both of them have further stated that on the next day of listing, they will come up with a concrete proposal about the monkeys and gibbons as well.

2. Mr. V.B.S. Negi, learned Additional Advocate General further contends that in terms of Act No.34 of 2003 i.e. the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, right from today, appropriate steps shall be taken and the people found smoking in the public area shall be challaned and the fine shall be recovered from them at the spot itself. For the fine, so recovered, a separate account shall be maintained by the Senior Superintendent of Police, Nainital.

3. It is pointed out by Mr. C.D. Bahuguna, learned Senior Member of the Committee of the Advocate Commissioners that notices were issued to remove encroachments long back by the administration, however few noticee have preferred their show cause before this Court. Whereas, few did not move any application within the time stipulated in the notice and even then, the State Government is not taking appropriate steps to remove those encroachers despite expiry of period of notice.

4. Mr. V.B.S. Negi, learned Additional Advocate General submits that the encroachers, who have been served with the notice, calling them to remove encroachments within 15 days and who have not preferred any show cause before this Court within 15 days time after receiving such notice, appropriate and immediate action shall be taken against them for removal of encroachment and expenses to remove the same shall also be recovered from them.

CLMA 9822/2014 (Intervention Application) CLMA 9818/2014 (Stay Application)

5. When the matter was taken up on 7.8.2014, following order was passed:-

?Mr. C. D. Bahuguna, learned senior advocate/ Head of the Committee of Advocate Commissioner, has handed over a report of Committee in the Court, which is taken on record.

Mr. Subhash Upadhyay, learned Chief Standing Counsel for State of Uttarakhand, has handed over affidavit of Divisional Commissioner in the Court, which is also taken on record.

Mr. Subhash Upadhyay, learned Chief Standing Counsel for the State of Uttarakhand, shall respond to the report submitted by Committee of Advocate Commissioner today in the Court, by way of affidavit to be filed by Divisional Commissioner on or before the next date fixed.

Mr. Sharad Sharma, learned senior counsel with Mr. M.C. Pant, Mr. B.S. Adhikari, Mr. M.S. Chauhan, Advocates appearing on behalf of the interveners, contended that without verifying as to whether person concerned is an encroacher over a public land and without giving him opportunity to show his entitlement to remain in possession, immediately constructions are being demolished. It is further submitted that District Administration is victimizing innocent people in the garb of the order of this Court to remove encroachment from the roads and public land.

We are of the considered view that public lands, roads should not be allowed to be encroached upon. In the peculiar facts and circumstances of this PIL, monitoring to remove encroachments by this court seems to be required.

Therefore, we would like to clarify that if any encroachment is found on a public land, encroacher shall be given notice by the Divisional Commissioner or Zonal Magistrate appointed by him, asking the encroacher to remove the encroachment within 15 days or to show cause by way of his personal affidavit before this

Court. It is further clarified that if this Court, after hearing the alleged noticee and all concerned, finds that person concerned is, in fact, an encroacher, this Court may impose heavy fine and damages against the encroacher and may issue direction for removal of the encroachment and expenses thereof shall be recovered from the encroacher.

It is also reported that there are small drains on the roadside and under the garb of orders passed by this Court to remove the encroachment, cemented / iron slabs, laid down on such drains to cover them in order to avoid any accident, are being removed, compelling the persons to approach the shops or houses by jumping the drains.

We clarify that for the purpose of safety and to avoid accidents, temporary cemented or iron slabs can be laid down over such drains by the Municipality or District Administration, as the case may be, in such manner that cleaning of Nalas and free flow of water therein may not be obstructed. However, no commercial or any other activity thereon shall be permitted.

We further clarify that other open Nalas can also be covered by temporary cemented or iron slabs by the District Administration or Municipality, as the case may be, to avoid any accident, however, no constructions or activity shall be allowed thereon.?

6. A notice was issued to the applicant no. 1 on 22.8.2014 by the Deputy Collector/Zonal Magistrate, Zone No. 1 informing the applicant that he has raised constructions over the rainy nala no. 58 situated within the municipal limits of Nainital. Therefore, he should remove the encroachment within 15 days from the date of serving the notice failing which appropriate action shall be taken against him. Having received the notice dated 22.8.2014, applicants have moved the present application.

7. Mr. Sharad Sharma, learned Sr. Advocate, assisted by Smt. Indu Sharma, Advocate for the applicants, submitted that the entire construction was raised by forefathers of the applicants even prior to the year 1930, and in the year 1930, forefathers of the applicants applied for sanctioning of the additional fresh constructions, viz. balcony and room, and permission for the same was also granted by the municipality in the year 1930. He further contends that, first of all, there is nothing on record to show that any part of the construction of the applicants is over the nala no. 58 and, alternatively, even if any part of the construction is found over nala no. 58, the same was raised prior to 1930.

8. Mr. Sharad Sharma further contends that for the demolition of the unauthorised construction, only development authority can initiate action against the applicants under the provisions of U.P. Special Area Development Act and U.P. Urban Planning and Development Act, and to remove the encroachment an appropriate action can be taken by the prescribed authority under the provisions of U.P. Public Premises (Eviction of unauthorised occupants) Act, 1972. Therefore, impugned notice issued by the Zonal Magistrate is without jurisdiction.

9. Nainital, known as the city of lakes, has several rainy nalas carrying rainwater to the Naini Lake, the lifeline of Nainital. To save the city of Nainital, different rainy nalas were made pucca nalas by the Britishers. Petitioner, herein, has filed the present writ petition for the preservation of different lakes as well as for the preservation of the city by removing the illegal constructions and encroachments. We are concerned about the encroachments made over the public properties, roads, lakes and different rainy nalas carrying the rainwater to the Naini Lake to save the city and citizens of this beautiful lake city and to maintain the ecological balance. Every citizen of this country has every fundamental right to have clean water and air. Therefore, removal of the encroachments from different lakes as well as rainy nalas seems to be very urgent and pressing need of the day. Therefore, initially we have asked the authorities to take appropriate steps to remove the encroachments from public places of the city. However, few people reported in the open Court that without verifying as to whether the construction is encroachment or unauthorised construction, authorities are taking steps to demolish the same. Therefore, in the interest of justice, we have passed the order dated 7.8.2014 making provision that Zonal Magistrate shall issue notice to the encroachers giving them 15 days time to remove the encroachments and, meanwhile, any noticee, feeling aggrieved by the notice, may approach this Court so that we may decide the question whether the notice is rightly issued and whether he is, in fact, an encroacher or under the garb of our orders, his authorised constructions are sought to be removed. Since we are entertaining this PIL and, in the interest of justice, after hearing Mr. Sharad Sharma, Senior Advocate, we have passed the order dated 7.8.2014, therefore, the Zonal Magistrate is authorised to issue the impugned notice. If a notice is issued to an encroacher by the district administration under the orders of this Court hearing the PIL, then the argument, that notice ought to have been issued under the U.P. Special Area Development Authorities Act, 1986 or under the Public Premises Act, does not hold water.

10. On being asked repeatedly, Mr. Sharad Sharma, learned Sr. Counsel appearing for the applicants, could not show us any sanctioned map, whereby permission was accorded to the applicants or their predecessors or their forefathers to raise any part of the construction over the nala no. 58. Mr. Sharad Sharma, learned Sr. Counsel, tried to argue that nala no. 58 is not at all in existence. We take judicial notice and agree with Mr. V.B.S. Negi, learned Additional Advocate General, that nala no. 58 is existing on the spot. Mr. V.B.S. Negi, learned Additional Advocate General, further contends that only that part of the construction of the applicants shall be demolished which is over the nala no. 58, and remaining construction of the applicants shall not be touched.

11. For the reasons discussed hereinabove, we uphold the notice and direct the applicants to remove the construction situated over nala no. 58 within 15 days from today, positively, failing which the district administration shall carry out the demolition of the said construction over nala no. 58 on the spot at the cost and expenses of the applicants and applicants shall also pay rupees one lac as

damages to the State to be recovered from them as arrears of land revenue.

12. Both the applications stand disposed of accordingly.

CLMA 10873/2014 CLMA 10874/2014.

13. Mr. Sharad Sharma, learned Senior Counsel, assisted by Ms. Indu Sharma, learned counsel for the applicants, seeks permission to withdraw these applications saying the statutory appeal against the impugned order dated 4.9.2014 shall be preferred along with an application seeking condonation of delay. Therefore, these applications may be dismissed as withdrawn with the aforesaid liberty. Order accordingly.

CLMA 11210/2014 CLMA 11056/2014

14. Mr. Ajay Singh Bisht, learned counsel for the Municipality and Mr. V.B.S. Negi, learned Additional Advocate General and Mr. Sandeep Kothari, learned counsel representing the Lake Development Authority, have submitted that the Urinal, in question, is in fact an encroachment on the public road. Therefore, the same shall be demolished and removed forthwith so that there may not be any obstruction of free flow of traffic. Order accordingly.

15. Both these applications stand disposed of accordingly.

CLMA 11175/2014

16. Mr. Sharad Sharma, learned senior counsel, assisted by Ms. Indu Sharma, learned counsel for the applicant, has stated that the applicant has moved subsequent application. Therefore, the applicant shall pursue the subsequent application only and thus, this application may be dismissed as withdrawn. Order accordingly.

CLMA 11181/2014

17. Mr. Sharad Sharma, Senior Advocate assisted by Ms. Indu Sharma, Advocate for the applicant.

18. Map of Municipality of Mall Road for the year 1950 has been produced on record. It is stated by Mr. V.B.S. Negi, learned Additional Advocate General as well as by Mr. Ajay Singh Bisht, learned counsel for the Municipality, that the measurement was carried on at the spot in presence of noticee on the basis of municipal record. Further contended that as per the measurements carried on at the spot, applicant was found having raised un-authorized/illegal construction over 9?-6?x 10? feet area, which was for the public purpose. As per Section 114 of the Indian Evidence Act, measurements and spot inspection carried out by the District Administration as well as by the Municipal Authorities, along with other Departments, shall be presumed to be correct, unless proved otherwise. Applicant could not point out nor could show any material demonstrating that this area, as mentioned in the notice dated 22.9.2014, belongs to him. Therefore, applicant is directed to ensure the compliance of the impugned notice

within 15 days from today positively failing which the district administration as well as the Municipality and Lake Development Authority shall be at liberty to demolish the same at the cost and expenses of the applicant/notice and in that event, over and above the expenses incurred for the demolition and for illegal occupation and use of the public property, Rs.1.00 lakh shall be recovered from the applicant as the arrears of the land revenue.

19. Application stands disposed of accordingly.

CLMA 11203/14 CLMA 11204/14 CLMA 11205/14 CLMA 11206/14

20. There are five temporary shops located near the High Court in front of Hotel Manu Maharani in between two roads, one going towards Kaladhungi and another towards Ayarpata. These five shops make triangle in between two roads. There is a big boundary wall of Devdar lodge about 10 feet in height and thereafter, there is a municipal drain after the boundary wall of Devdar lodge and subsequent thereto, these five shops are located on the triangular plot. This plot is a part of both the roads, one going towards Ayarpata and second towards Kaladhungi. This is what which has been shown by the Committee of Advocate Commissioners in their Spot Inspection Report. Not only this, old telephone and electricity poles are also standing in between these shops.

21. Mr. Mohit Maulekhi, learned counsel for the applicants submitted that this plot, whereupon these five shops are standing, is a part of Devdar lodge. Nothing has been produced on record to show that this is part of Devdar Lodge. Had it been a part of the said Lodge, this portion would not have been partitioned by the boundary of Devdar Lodge. Presence of Municipal drain between the boundary wall of Devdar lodge and disputed shops is a clear indication of the fact that after Municipal drain, land is a part of the public road. Presence of poles thereon also demonstrate the same. We are not inclined to buy arguments of Mr. Maulekhi that Municipal drain and poles are present on the private road of Devdar lodge. Therefore, all the applicants are directed to remove the encroachments within 15 days from today failing which the district administration as well as the Lake Development Authority and Municipality shall carry out the demolition work forthwith at the cost and expenses of the applicants. Cost of demolition along with the damages of Rs.1.00 lakh, from each and every shopkeeper to use the public property un-authorizedly, shall be recovered as the arrears of land revenue.

22. All these applications stand disposed of accordingly.

CLMA No. 11236 of 2014

23. None for the applicant.

24. By way of present application, applicant has sought permission to remove the encroachment from the drainage of Zone No. 4 within reasonable time.

25. Applicant is permitted to remove the encroachment within thirty days from

today.

26. Application stands disposed of accordingly.

CLMA No. 11419 of 2014 CLMA No. 11421 of 2014 CLMA No. 11466 of 2014
CLMA No. 11748 of 2014

27. Applicants of application No. 11466 of 2014 as well as of 11419 of 2014 and 11421 of 2014 are the tenants of Naina Devi Temple Trust in the shops constructed by the Trust. On 10 the spot inspection, both the shops are found constructed over Nala No. 23.

28. Mr. Sharad Sharma, learned Senior Counsel assisted by Ms. Indu Sharma, learned counsel appearing for the applicants/tenants and Mr. Siddharth Sah, learned counsel appearing for landlord Trust, fairly submitted that the tenants shall vacate the shops in question within sixty days and shall handover vacant peaceful possession to the landlord Trust and thereafter, landlord Trust shall demolish the shops in question for the purpose of removal of encroachment over from Nala No. 23.

29. Mr. Siddharth Sah, learned counsel appearing for the Trust, however, submits that there is a godown beneath these shops, which is being used for the purpose of storing the bamboos, which are given to the needy people for the purpose of disposal of dead bodies, therefore, Trust should be permitted to continue with that store.

30. Mr. V.B.S. Negi, learned Additional Advocate General appearing for the State and Mr. Ajay Singh Bisht, learned counsel appearing for the Municipality, submitted that in view of public interest involved in storing the bamboos for the purposes of disposal of dead bodies, Trust may apply before the District Collector seeking permission of the District Collector either to continue with the godown or to allot the alternate suitable site near the Temple, whereupon appropriate decision shall be taken by the District Collector.

31. All these applications stand disposed of accordingly.

CLMA No. 582 of 2015 CLMA No. 583 of 2015 CLMA No. 584 of 2015 CLMA No. 585 of 2015 CLMA No. 586 of 2015 CLMA No. 587 of 2015 CLMA No. 588 of 2015
CLMA No. 589 of 2015 CLMA No. 589 of 2015

32. Mr. Sandeep Kothari, Advocate for the applicants.

33. For the reasons stated in the applications, counter affidavits filed on behalf of Kumaon Mandal Vikas Nigam Limited are taken on record. All the CLMAs stand disposed of accordingly.

34. List on 22nd January, 2015.