
(2014) 08 UK CK 0032
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 : 28-08-2014

Acts Referred:

Citation : (2014) 08 UK CK 0032

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

Bench : Division Bench

Advocate : Rajeev Singh Bisht, Advocate, Sharad Sharma, Senior Advocate assisted by Vandana Singh, Advocate for the Appellant; U.K. Uniyal, Advocate General, K.P. Upadhyaya, Chief Standing Counsel and D.S. Patni, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

CLMA 5815 of 2014

1. Mr. U.K. Uniyal, Advocate General submits that the State Government is consulting the experts from the National Institute of Hydrology, I.I.T., Roorkee, for the purpose of preservation and beautification of Sukhatal Lake. Mr. Uniyal undertakes to place on record the proposal on or before the next date fixed.

CLMA 8498 of 2014

CLMA 8499 of 2014

CLMA 8500 of 2014

CLMA 8501 of 2014

2. Mr. B.S. Adhikari has handed over the affidavits of Smt. Gayatri Devi Rawat and Smt. Guddi Devi, which are taken on record.

3. Mr. B.S. Adhikari with Mr. B.D. Pandey, Advocate appear for the applicants.

4. In the present public interest litigation, we are dealing with the removal of encroachments from different Nalas carrying rain water to Naini Lake as well as from the roads and other public properties keeping in mind that the ecological balance should be maintained. We are also dealing with the preservation of different water bodies including the Naini Lake and Sukhatal Lake. This Court has issued several directions to the Municipal Authorities as well as to the State Authorities to take appropriate steps to remove the encroachments from different Nalas, roads and other public properties. When this petition was taken up on 7.8.2014, this Court was pleased to pass the order as under:-

"Mr. C.D. Bahuguna, learned Senior Advocate/Head of the Committee of Advocate Commissioners, 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."

5. Both the applicants have moved the present applications contending that the land, in question, was allotted to them to install kiosks near the Mansarovar Hotel at Mall Road, Nainital about 20 years back. Therefore, both of them cannot be said to be encroachers. It is further stated that the Civil Suit No. 107 of 1992 was filed by the applicant Smt. Gayatri Devi against the Municipal Board, Nainital as well as the Nainital Lake City Development Authority for permanent prohibitory injunction, restraining the defendants in dispossessing Smt. Gayatri Devi from the property in question. The Suit was decreed by the learned Civil Judge (Senior Division) vide judgment dated 26.5.1998 restraining the defendants in dispossessing the plaintiff i.e. Smt. Gayatri Devi without adopting the due process of law.

6. The Municipal Board, Nainital vide order dated 2.8.2014 was pleased to cancel/ revoke the allotments, so made, in favour of the applicants. The situation and location of both the kiosks, in question, is shown in the photographs available on the record. From the photographs, it is apparent that both the kiosks are located at the beginning point of middle Cheena Road as well as on the side of Mall Road just adjacent to the Mansarovar Hotel. The location of both the kiosks is not in dispute.

7. It is stated by the Executive Officer of the Municipal Board as well as by the District Magistrate, Nainital, in their affidavits that both the kiosks, in question, are on the drain as well as on the part of the Mall Road. The Spot Inspection Map was submitted, along with both the affidavits submitted by the Executive Officer and the District Magistrate, which shows that the drain is coming from the west-side and part of both the kiosks is over and above the drain on the Mall Road and rest of the part of kiosks is on the Mall Road.

8. Mr. Subhash Upadhyaya, learned Chief Standing Counsel, appearing for the State, while placing reliance on the judgment of the Apex Court in the case of Municipal Board, Manglaur Vs. Sri Mahadeoji Maharaj, has vehemently argued that in the said case, even the statue of father of the nation Mahatama Gandhi was directed to be removed from the road holding that no part of the road can

be used for any other purpose except for the road.

9. Mr. Upadhyaya, having placed reliance on the judgment of the Apex Court in the case of North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs., as well as in the case of Smt. Badami (Deceased) By her L.Rs. Vs. Bhali, , has vehemently argued that fraud vitiates the entire proceedings and any allotment obtained from the Municipality allotting part of the road and public drain and any decree obtained on the basis of alleged illegal allotment is nullity in the eyes of law.

10. We have carefully perused all the three judgments relied upon by Mr. Subhash Upadhyaya. In our considered opinion, all the three judgments, relied upon by Mr. Upadhyaya, have full application in the present controversy.

11. At this stage, Mr. B.S. Adhikari tried to argue that part of the kiosks is on the road and over the drain but the other part of the kiosks is on the private property belonging to Mansarovar Hotel. There is no such case in their applications as well as in the affidavits. Earlier, the case taken was that the land, in question, was allotted to the applicants by the Municipal Board. Since part of the Mall Road as well as of the public drain was allotted, which was not permissible under the law, therefore, the Municipality was well within its jurisdiction while cancelling allotment vide order dated 2.8.2014. Not only this, behind the kiosks, in question, there is a boundary-wall of the Mansarovar Hotel. Therefore, it cannot be said that the said Hotel would have left its private land after its own boundary-wall. Consequently, we are of the view that kiosks are on the public drain as well as on the Mall Road and at the beginning of the middle Cheena Road. Therefore, we direct the applicants to remove the encroachments within two weeks from today, failing which it would be open to the District Administration as well as to the Municipal Board, Nainital to remove the encroachments and to recover the charges for the removal of such encroachments from the applicants. We further direct that if the encroachment is not removed by the applicants within two weeks from today, the applicants shall also pay Rs. 1.00 lakh each for illegally using the public road and drain by raising kiosks over it. 50% of the fine shall be paid to the Municipality and 50% shall be paid to Uttarakhand State Legal Services Authority. With these observations, all the four applications stand disposed of.

CLMA 8554/2014

CLMA 8555/2014

CLMA 8560/2014

CLMA 8561/2014

CLMA 8886/2014

CLMA 8887/2014

12. Mr. Subhash Upadhyaya, Chief Standing Counsel seeks and is granted one

weeks" more time to file reply.

CLMA 9316/2014

13. None is present to press this application. All the points, sought to be raised in the application, are already the subject matter of the present petition. Therefore, the applicant, if so desires, may address the Court at the time of hearing.

14. With these observations, the application stands disposed of.

CLMA 9542/2014

CLMA 9543/2014

15. Mr. Gopal K. Verma, Advocate, appearing for the applicant/owner of Nanak Restaurant, Mall Road, Nainital, submits that the encroachment from Nala No. 16 shall be removed by the applicant positively within three months. Mr. Verma further contends that the structural engineer is being consulted how to remove the encroachment so that the entire building may not be damaged. Mr. Upadhyaya, learned Chief Standing Counsel for the State and Mr. D.S. Patni, Advocate, appearing for the Municipal Board, have contended that the applicant is although undertaking to remove the encroachment from Nala No. 16, however, he should also remove the encroachment from the Mall Road.

16. Mr. Gopal K. Verma submits that in case any encroachment is pointed out on the part of the applicant on the Mall Road, he shall also remove the same within no time. We appreciate the gesture shown by the applicant as also by his counsel Mr. Gopal K. Verma. Therefore, three months" time is granted to the applicant to remove the encroachment completely.

17. With these observations, both the applications stand disposed of accordingly.

WPPIL No. 31 of 2012

18. Mr. C.D. Bahuguna, Senior Advocate, Mr. H.M. Bhatia and Mr. Siddharth Jain, Advocates, the Members of the Committee of Advocate Commissioners, so appointed by this Court, have pointed out that earlier the Octroi and Toll Tax Booths were located at Sariatal, Baldiyakhan and Kailakhan. If the present collection booths are shifted to the old places viz. Sariatal, Baldiyakhan and Kailakhan, and parking lots are provided nearby areas, the problem of traffic jam would be 90% solved. Mr. Bahuguna further contended that even the District Administration can monitor the traffic over these points.

19. Mr. C.D. Bahuguna further contends that after providing the parking facility nearby these points, for all the big and other vehicles, the State Government may come up with the idea to provide City Bus service from those collection points and parking lots to the city of Nainital.

20. Mr. U.K. Uniyal, learned Advocate General, in all fairness for which he is known at the bar, submits that the State Government, with the consultation with Municipality and other Departments, will take appropriate steps to shift the Toll

Collection Booths to the old locations and to find out the appropriate location for the parking facility close to the old collection booths. Mr. Uniyal further contends that he will request the Divisional Commissioner to hold a meeting of the District Administration as well as of the Municipal Officers to discuss this issue.

21. Mr. Uniyal further contends that the outcome of the meeting for this purpose shall be communicated to this Court within next two weeks.

22. Mr. Subhash Upadhyaya, learned Chief Standing Counsel shall report to the Court on the next date fixed about the proper steps taken by the Administration to make the District Nainital polythene free.

23. List this matter on 4.9.2014.