
(2021) 12 UK CK 0028

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2508 Of 2021

Asha Joshi

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:

Enemy Property Act, 1968 — Section 3, 8(2)(ia)
Enemy Property Rules, 2015 — Rule 5

Citation : (2021) 12 UK CK 0028

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Dushyant Mainali, V.K. Kaparuwan, G.S. Negi

Final Decision : Disposed Of

Judgement

Manoj Kumar Tiwari, J

1. There is a Property known as 'Bright End Corner' in Almora Town of Uttarakhand State, which has been developed as Eco Park by the District Administration of Almora. The District Adventure Sports Management Committee of Almora invited bids in the month of October, 2020 from persons, who are interested in running a restaurant/cafe in the said Eco Park. As petitioner's bid was found to be the highest, therefore, she was granted lease for running the restaurant/cafe for a period of 11 months. The lease agreement dated 01.01.2021 executed between petitioner and Secretary, District Adventure Sports Management Committee is on record as Annexure No. 3 to the writ petition.

2. According to the petitioner, upon grant of lease, she invested huge amount in levelling/developing the land and also erecting prefabricated structure over the leased property. Petitioner further contends that she is running a restaurant in the name & style of 'Almora Fort' in the said property for the facility of tourists visiting hill town of Almora.

3. Petitioner is aggrieved by the order dated 22.11.2021 passed by Secretary,

District Adventure Sports Management Committee, whereby she was asked to vacate the premises on 30.11.2021. The reason assigned for doing so is that District Magistrate, Almora had granted temporary approval to Tourism Department for grant of lease in respect of part of the Property for running a restaurant, in anticipation of approval from Custodian, Enemy Property and such approval has not been received, therefore, it is not possible to extend term of the lease.

4. Section 3 of the Enemy Property Act, 1968 deals with appointment of Custodian of Enemy Property for India. Section 8 (2) (ia) of the said Act provides that Custodian shall have the power to fix and collect the rent, standard rent, lease rent, license fee or usage charges, as the case may be, in respect of enemy property. Rule 5 of the Enemy Property Rules, 2015 also enables the Custodian to enter into an agreement with person/persons, who are in occupation over enemy property. Thus, under the Enemy Property Act, 1968, there is no embargo on leasing out the enemy property on rent.

5. The only objection against extension of lease to the petitioner is that necessary approval of the Custodian of the Enemy Property is not received. Learned Standing Counsel for Union of India submits that if the matter is brought to the notice of the Custodian, then he shall look into the matter and take decision regarding approval to lease of the property in question

6. Accordingly, the writ petition is disposed of with liberty to petitioner to make representation to Custodian of the Enemy Property, on or before 04.12.2021. It shall be open to the petitioner to submit representation also through e-mail. If petitioner makes representation within the stipulated period, the Custodian of the Enemy Property shall look into the matter and pass appropriate order, in accordance with law, within four weeks thereafter.

7. For a period of six weeks or till decision on petitioner's representation, whichever is earlier, status quo, qua petitioner's possession over the land in question, shall be maintained. This however will be subject to petitioner depositing the agreed rent as per the rent deed dated 01.01.2021.

8. Let a certified copy of this order be issued within 24 hours.