
(2015) 04 UK CK 0004

In the Uttarakhand High Court

Case No : Second Appeal Nos. 30 and 31 of 2010

Bachan Lal Ghalwan and Others

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Citation : (2015) 04 UK CK 0004

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Advocate : C.D. Bahuguna, Senior Advocate assisted by A.K. Verma, for the Appellant; B.S. Negi, Dy. Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gupta, J—This judgment will adjudicate both the above-captioned second appeals as the identical substantial question of law is entailed therein. At the time of admission of these appeals, although as many as 12 substantial questions of law were formulated in the pleadings and out of those, the appeals were admitted on the questions No. I, III, IV and VIII, however, having heard the rival contentions of either party, I feel that it will be of no avail to give findings on these four substantial questions of law as have been indicated in the order sheet dated 27.10.2010 because one and the only one substantial question of law is enough to decide the fate of these second appeals and such question is formulated as under:

"Whether the lease granted by the Sub Divisional Magistrate, Bhatwari, District Uttarkashi was a valid one and the appellants have right to enjoy the fruits of that lease deeds?"

Learned Sr. Counsel on behalf of both the appellants have vehemently argued that these lease deeds were of very small pieces of land which were granted by the concerned Sub Divisional Magistrate in the year 1975 for building purposes. However, within two months, the map was got sanctioned for construction of a

dwelling place in the rear portion nay 1 or 2 shops in the front portion beside the road to each of the appellants.

2. However, in the financial year 1982-83, another incumbent District Magistrate initiated the proceedings for cancellation of those lease deeds and ultimately after rendering a hearing and passing an elaborate judgment dated 16.7.1984, those lease deeds were cancelled. The State Government started to interfere for taking the possession back. So, the original suits were filed seeking injunction in the Civil Court. During the pendency of injunction suits, an amendment application was moved seeking an additional relief for cancellation of the order dated 16.7.1984. That amendment application was rejected up to the level of District Judge in the year 1986. The order of such rejection was challenged in the High Court by way of filing revision. The High Court allowed that amendment in the revision, but after incorporation of the amendment, the plaintiffs noticed other shortcomings in their respective suits. So, they withdrew the same with liberty to file afresh and the same was granted.

3. Again fresh original suits were filed for the same relief i.e. for injunction and cancellation of the order of the District Magistrate. Those suits were dismissed by the trial court and the first appeal whereagainst. also failed. So, both the allottees are now before this Court through these instant second appeals.

4. Learned Sr. Counsel has vehemently argued that once the lease was granted to the appellants by the Sub Divisional Magistrate and even further the maps on such leased land were approved by the District Magistrate within two months of granting such lease, it was a tacit approval of the District Magistrate/Deputy Commissioner who was the competent authority for granting such lease. The lessees continued to deposit the lease rent for consecutive 9 years. So, after such a long time, such lease could not have been cancelled by the District Magistrate vide judgment and order dated 16.7.1984.

5. Learned Sr. Counsel has drawn the attention of this Court towards the judgment of the High Court dated 27.6.2008 wherein it was observed that once the lease has been executed for a period of 30 years and the appellants have made investments, the doctrine of promissory estoppel applies and the respondent cannot be permitted to get immunity from the document, which has been executed in favour of the appellant.

6. Per contra, learned State Counsel has highlighted the true facts inasmuch as these two appellants were the Class IV employees in the same office of the Sub Divisional Magistrate who granted the lease in their favour and the approval of the map was made by none other but by the same Sub Divisional Magistrate on behalf of the District Magistrate, much less the District Magistrate or the Deputy Commissioner. So, it was a clear-cut abuse of the official position by these two officials posted in that very office.

7. The crucial question is that if the lease has been granted by an authority, who was not empowered under the law to grant the same, then how such a lease can

be sustained in the eye of law. Even the Honable High Court in its judgment dated 27.6.2008, which has been relied upon by learned Sr. Counsel of the appellants, has observed in page 12 of the judgment that if the lease granted to the appellant is found valid, it is the duty of the local administration to give possession to the appellant over the land in question.

8. Now, the crux of the matter is that the lease granted to the appellants was valid one or not. In my view, the lease granted in favour of the appellants by the Sub Divisional Magistrate was totally invalid/illegal as the same were granted in exercise of the powers which were not vested in him or by an officer, who did not have any authority to grant such lease. Then the defence cannot be raised later that the lessees continued to deposit the lease rent inasmuch as for 9 years. That lease rent was very nominal one viz. Rs. 8.75/- per annum or like so. If he has raised the pucca foundation on such plot of land, the State Government cannot be held responsible for any act or expenses incurred by the lessees for such lease which could not have been granted in their favour by the Sub Divisional Magistrate. I, accordingly, answer that substantial question of law and dismiss both these appeals. Any interim order granted by this Court shall stand vacated. Let the lower court record be sent back.