
(2022) 05 UK CK 0043

In the Uttarakhand High Court

Case No : Writ Petition No. 1922 Of 2018 (M/S)

Bansidhar Gayal

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Citation : (2022) 05 UK CK 0043

Hon'ble Judges : Sanjaya Kumar Mishra, J;Ramesh Chandra Khulbe, J

Bench : Division Bench

Advocate : D.S. Mehta, S.S. Chaudhary, Navnish Negi

Final Decision : Disposed Of

Judgement

Sanjaya Kumar Mishra, J

1. By filing this Writ-Petition, the petitioner has prayed for issuance of writ of certiorari quashing the notice/ order dated 27.06.2018 (annexure-1) to the writ-petition issued by respondent no.4; and, to issue a writ of mandamus directing that adequate action be taken on the representation dated 06.07.2018 filed by the petitioner and all consequential relief.

2. The facts of the case are that a PIL was filed before this Court bearing WPPIL No.11 of 2016, in which several directions were passed on 12.06.2018, especially with respect to the present petitioner. The order no.III and IV are relevant, which are being quoted below:-

"(iii) The respondent nos.2 to 4 are also directed that all the drains passing through the town of Bhowali are made encroachment free called as "Gadhera".

(iv) The encroachments made on the path leading to public institution i.e. UJALA, Air Force station shall be removed on parity basis within a week from today."

3. In pursuance of the directions passed by this Court, the Revenue Authorities held a joint inspection of the town of Bhawali on 26.02.2018 and as per the

submission of Mr. Navnish Negi, learned counsel appearing for respondent no.5/ Bhawali Nagarpalika, the petitioner was found to have encroached "Gadhera" which is recorded as Jalasaya. Therefore, on 27.06.2018 a notice was issued to the petitioner intimating him that, as per the orders passed by this Court in WPPIL No.11 of 2016 on 12.06.2018, he was directed to remove the encroachment within three days otherwise the encroachment will be demolished by the authorities at the cost of the petitioner.

4. Learned counsel for the Nagarpalika/ respondent no.5 submits that they were directed by this Court to remove all encroachment within seven days. Hence, they had no other option but to proceed with the removal of the encroachment within three days and, therefore, there was no opportunity for them to issue a notice of show cause. The notice impugned in this case also suffers from the defect that though it aims at removal of the encroachment made by the petitioner it was, in fact, addressed to one Basant Ballabh and not to the petitioner. Secondly, the notice itself did not give any opportunity to the petitioner to file show cause. In fact, final order passed by the authority was communicated to him. A copy of the joint-inspection report or the extract thereof relating to the petitioner was not communicated to the petitioner. So, he had no opportunity of filing and raising objections to the same. In that view of the matter, we are of the opinion that there is a violation of principle of natural justice and, therefore, impugned notice has to be quashed.

5. The contention of Mr. Navnish Negi, learned counsel appearing for Nagarpalika/ respondent no.5 is also not acceptable, in view of the fact that this Court never passed an order to do certain things without following the procedure established by the law. Any order passed by this Court is also inherent itself a direction to the authorities that procedure established by the law should be followed. In this case the same has not been done. Hence, we set aside the notice (annexure-1) remand the matter back to the revenue authorities with the direction to issue notice to the petitioner as well as to re-issue notice to Basant Ballabh, who is the licensor with respect to the land in question on which on license basis, the petitioner is running a tea stall.

6. The petitioner is directed to appear before the revenue authorities / the District Magistrate filing his objection if he is advised to do so. The revenue authority after giving reasonable opportunity of hearing and after supplying the extract of the joint verification to Basant Ballabh and the petitioner shall reconsider the matter and decide the matter afresh. The petitioner is directed to appear before the District Magistrate and will produce a copy certified copy of this order within a period of 15 days. The learned District Magistrate shall consider the same following the procedure and the orders passed by us and decide the matter within a period of two months from the date of production of a certified copy of this order.

7. In view of the above observations, the instant writ-petition is disposed of, accordingly.