
(2024) 01 UK CK 0124

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 253, 252, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 275, 276, 277, 278, 279, 280, 283, 284, 285, 286, 287 Of 2024

Bhupendra Prasad Maithani

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 31-01-2024

Acts Referred:

Forest Act, 1927 — Section 61A

Uttar Pradesh (Regulation Of Building Operations) Act, 1958 — Section 10

Indian Forest (Uttaranchal Amendment) Act, 2001 — Section 61A

Citation : (2024) 01 UK CK 0124

Hon'ble Judges : Rakesh Thapliyal, J

Bench : Single Bench

Advocate : Rajendra Dobhal, Vijay Khanduri, Yogesh Chandra Tiwari

Judgement

Rakesh Thapliyal, J

1. Since in these writ petitions identical issue has been raised, therefore, Writ Petition (M/S) No.253 of 2024, "Bhupendra Prasad Maithani vs. State of Uttarakhand & others", is being treated as a leading case.

2. The issue, as raised in this writ petition, is that the land, in question, regarding which the proceedings have been initiated against the petitioner under Section 61A of the Indian Forest Act, 1927, is notified by the State of U.P., as a regulated area under the provisions of Uttar Pradesh (Regulation of Building Operations) Act, 1958, i.e. U.P. Act no. XXXIV of 1958. This Act of 1958 was enacted for the purpose of regulation of building operations with a view to prevent haphazard development of urban and rural areas.

3. Mr. Rajendra Dobhal, learned Senior Counsel for the petitioner submits that, since the area in question which falls in Village Chopta, Tehsil Ukhimath, District Rudraprayag, by virtue of notification dated 24.05.1996, has been notified as a regulated area under the provisions of the U.P. (Regulation of Building

Operations) Act, 1958, therefore, this area is outside the purview of the Indian Forest Act, 1927. It is further submitted by learned Senior Counsel that earlier the proceedings were initiated by the District Magistrate, Rudraprayag against the petitioner under Section 10 of the U.P. (Regulation of Building Operations) Act, 1958, and the same was decided against the petitioner on 12.04.2012, whereby directions were issued to demolish the construction raised over the land, in question.

4. Being aggrieved with the said order, a statutory appeal was preferred before the Controlling Authority/ District Magistrate, Rudraprayag, being Appeal No.04 of 2012, and the same was also dismissed vide order dated 26.02.2013 and being aggrieved with the same, a revision, being Revision No.351 of 2013, "Bhupendra Prasad Maithani vs. District Magistrate/ Vice Chairman District Development Authority, Rudraprayag", was filed, which is still pending for adjudication before the Additional Chief Administrator, Housing and Urban Development Authority.

5. Learned counsel for the petitioner submits that despite the fact that the area in question is a regulated area as per notification dated 24.05.1996, the Prescribed Authority/ Divisional Forest Officer, Kedarnath Wildlife Division, Gopeshwar, issued a notice under Section 61A of the Indian Forest (Uttaranchal Amendment) Act, 2001, wherein it has been mentioned that the area, in question, was notified as reserved forest by notification dated 10.03.1920. Pursuant to the said notice, the proceedings were initiated against the petitioner, and the petitioner responded to the said notice, and thereafter, the Prescribed Authority, vide order dated 24.08.2023, directed to evict the petitioner from the area, in question within twenty-four hours.

6. Being aggrieved with the order dated 24.08.2023, passed by the Prescribed Authority, a statutory appeal, being Appeal No.43 of 2023, was preferred before the Appellate Authority, i.e. Director/ Conservator of Forest, Nanda Devi Biosphere Reserve, Gopeshwar, and the said appeal was also dismissed by the Appellate Authority on 30.12.2023. Being aggrieved with the same, the instant writ petition has been preferred.

7. Learned Senior Counsel for the petitioner submits that in response to the notice dated 12.10.2018, a specific response was given that the area, where the land, in question, is situated, is already declared to be a regulated area.

8. The only question, which is required to be considered in this writ petition, is that if the area where the land is situated is declared to be a regulated area by virtue of notification dated 24.05.1996, under the provisions of U.P. (Regulation of Building Operations) Act, 1958, then, whether the provisions of Section 61A of the Indian Forest Act, 1927, are attracted in the said regulated area.

9. Mr. Tiwari, learned Standing Counsel for the State submits that this fact has to be verified whether the area, in question, is notified as a regulated area, or not. He prays for and is granted four weeks' time to file the counter-affidavit.

10. Two weeks' time, thereafter, is granted to learned counsel for the petitioner to file rejoinder-affidavit.

11. List in the week commencing 01.04.2024.

12. In the meantime, the parties are directed to maintain status quo in respect of the land, in question.