

(2018) 07 UK CK 0079
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 16 of 2017

Gopal Singh Bisht

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 16-07-2018

Acts Referred:

Citation : (2018) 07 UK CK 0079

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Mahesh C. Pant, Puja Banga, Navnish Negi

Final Decision : Disposed Off

Judgement

SHARAD KUMAR SHARMA, J.

K.M. JOSEPH, C.J. (Oral)

1. The reliefs sought in this Public Interest Litigation are as follows:

â??i. Issue a writ, order or direction in the nature of mandamus directing to the respondents no. 3 and 4 to initiate the inquiry against the respondent

no. 5 for his financial irregularities in respect of booking marriage hall and playground for marriage ceremonies.

ii. Issue a writ, order or direction in the nature of mandamus directing to the respondents no. 5 and 6 to stop the further implementation work on the

resolution dated 03/12/2014 (Annexure 1 to this writ petition) till the inquiry has not been completed by the respondents no. 3 and 4.

iii. Issue a writ, order or direction in the nature of mandamus directing the respondents to stop the functions of the marriage ceremonies over the

playground and childrenâ??s park, which creates lots of pollution on the bank of Shipra river.

iv. Issue a writ, order or direction in nature of mandamus directing the respondents to take immediate steps for maintaining the whole area in and around the playground for sports persons and children.â??

2. Briefly put, the case of the petitioner is as follows:

Respondent Nos.5 & 6 (Nagar Palika Parishad, Bhowali and Chairperson of Nagar Palika Parishad, Bhowali, respectively) are charging rent for a

marriage hall and playground for the purpose of marriage ceremonies on their own wish and desire from the public of Bhowali township.

According to the petitioner, the area, where this is being done, is meant to be used as a playground. The Resolution, which is subject matter of

controversy, is seen dated 03.12.2014 (Annexure No. 1). It is the case of the petitioner further that the charge is being made as per their own desire

and wish. Petitioner refers to Annexure No. 3, which is letter dated 13.10.2016 seeking information, to which Annexure No. 4 information was

provided. Further information was sought and it is pointed out that respondent Nos. 5 & 6 are charging rent as per their own wish. Petitioner made

Annexure No. 6 complaint before respondent No. 3, with a copy to respondent No. 4, to initiate an inquiry. There is reference to a big playground and

children's park, which is described as the only open area available to the students and players of the entire area of Bhowali and the village around

it. The marriage hall is adjacent to this playground. It is the complaint that, during the season of marriage, respondent Nos. 5 & 6 are regularly giving

the playground on rent for marriage ceremonies for the whole season and, due to these seasons of marriage, the students and players of the entire

area of Bhowali are deprived of the sports activities. Instead of promoting the sports activities, it is alleged that respondent Nos. 5 & 6 have, now,

started illegal encroachment on the playground during the seasons of marriage. Reference is made to Uttar Pradesh Parks, Playgrounds and Open

Spaces (Preservation and Regulation) Act, 1975. It is alleged that illegality has been committed and, hence, the reliefs sought.

3. Pleadings have been exchanged. In the counter affidavit filed on behalf of respondent Nos. 5 & 6, the allegations relating to discrimination in the

matter of charging rent are denied. Specificity is absent, appears to be the case. The writ petition is stated to be motivated. As far as the playground is

concerned, it is stated that it is only a vacant open space and it has not been

notified as a playground under the Parks and Playgrounds Act. It is stated that the issue has been settled by a coordinate Division Bench in Writ Petition (PIL) No. 123 of 2009, wherein the respondents had filed an undertaking, which was taken on record and in which it was stated that the municipal ground is one of the principal sources of revenue for the municipality, which is rented out for marriage ceremonies and other social and cultural activities as per the mandate of Board's resolution dated 03.12.2014.

4. Respondent Nos. 3 & 4, who are Commissioner, Kumaun Region and District Magistrate, Nainital, respectively, have also filed a counter affidavit.

Therein, it has been stated that there is no arbitrariness on the part of the answering respondents in charging the rent. The rates of rent have been set-out as follows:

5. It is true that as per the resolution dated 3.12.2014 the rent of one day of the entire play ground is Rs. 15000/-, rent of banquet hall is Rs.

15000/- rent of Banquet hall to part of field (up till summer house) is Rs. 16000/- and it was also resolved that for the persons residing outside of

Bhowali town apart from above rent Rs. 5000/- extra will be charged.

It is stated that the rent is mainly fixed for full day for marriage ceremonies, but the Board has passed resolution dated 16.09.2016, by which it has

been decided that, apart from marriages, for other functions, the rent will be charged on hourly basis. It is stated that there is no disparity or

irregularity in the charging of rent of the banquet hall and the field/ playground. It is further stated that the representation, which was moved by the

petitioner, has been forwarded to the office of the Sub Divisional Magistrate for taking necessary action and the report is awaited.

5. A rejoinder affidavit has also been filed by the petitioner.

6. We have heard Mr. Mahesh C. Pant, learned counsel for the petitioner; Mr. Navnish Negi, learned counsel for respondent Nos. 5 & 6; and Ms.

Puja Banga, learned Brief Holder appearing for the State.

7. As far as the question relating to the playground being used for the purpose other than sports is concerned, the case of the petitioner that it is a park

has been denied, as we have noticed, by respondent Nos. 5 & 6.

Today, Mr. Mahesh C. Pant, learned counsel appearing for the petitioner,

submitted before us that it is true that there is no notification, by which the open playground has been notified as a park under the Act, which we have referred to.

8. As far as the complaint that there is discrimination is concerned, we notice that there is already a resolution, which governs the field. We also found

a resolution of the year 2016, which is referred to in the counter affidavit filed on behalf of respondent Nos. 3 & 4.

9. In the light of this, we dispose of the writ petition directing that respondent Nos. 5 & 6 will necessarily collect the amounts, by way of fees, in

accordance with the Resolutions, which hold the field. Mr. Navnish Negi would submit that there may be some differential treatment in favour of the

poor. In this regard, we only direct that, whatever is done, there will be no discrimination between equally situated people.