

(2019) 10 UK CK 0031
In the Uttarakhand High Court
Case No : Special Appeal No. 222 Of 2019

Govind Ballabh Dimri

APPELLANT

Vs

Mukhya Karya Adhikari And Others

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 12

Citation : (2019) 10 UK CK 0031

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : B.P. Nautiyal, Mohd. Matloob, Vinod Nautiyal

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. B.P. Nautiyal, learned Senior Counsel for the appellant-writ petitioner and Mr. Vinod Nautiyal, learned counsel for respondents 2 to 4 and, with their consent, the Special Appeal is disposed of at the stage of admission.
2. The dispute, in this Writ Petition, relates to the order passed by the second respondent on 03.06.2016 refusing to appoint the appellant-writ petitioner as the Baridar of Laxmi Aatka and Garud places of worship.
3. The appellant-writ petitioner claims that his paternal grand-father was, and his father continued to be, the Baridar during their lifetime; after the death of his father, he and his brother were the Baridars, including in the years 2010 and 2013; and it is only for the first time in the year 2016 that he was denied Baridari rights, for Laxmi Aatka and Garud places of worship, on the ground that his grand-father had married a Kshatriya lady and taken her as his second wife, and the appellant-writ petitioner's father was born through her; and it is only pure dimri Brahmins who are entitled for the Baridari rights for the Laxmi Aatka and the Garud places of worship.

4. While the respondents have questioned the maintainability of the Writ Petition contending that neither is there any statutory violation on their part, nor are respondents 2 to 4 instrumentalities of the State under Article 12 of the Constitution of India, the learned Single Judge has non-suited the appellant-writ petitioner on the ground that there were disputed questions of fact, which could only be adjudicated before the Civil Court of competent jurisdiction by way of a Civil Suit.

5. Mr. B.P. Nautiyal, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that there are no disputed questions of fact; the contention of the respondents, that the appellant-writ petitioner's grand-father had married twice and his second wife, through whom the appellant-writ petitioner's father was born, was a Kshatriya lady, is admitted by the appellant-writ petitioner; and, since the learned Single Judge had non-suited the appellant-writ petitioner on this ground alone, the order under appeal should be set-aside, and the Writ Petition restored to file to enable submissions to be made afresh both on the maintainability of the Writ Petition and on merits.

6. Mr. Vinod Nautiyal, learned counsel for respondents 2 to 4, while contending that the Writ Petition as filed is not maintainable, would, however, fairly state that, since the appellant-writ petitioner now admits that his father was born through the second wife of his grand-father, a Kshatriya lady, there are no disputed questions of fact; and respondents 2 to 4 have no objection for the matter to be remanded to the learned Single Judge for all the contentions, including on the maintainability of the Writ Petition, to be examined in detail.

7. In the light of the submissions made both by Mr. B.P. Nautiyal, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, and Mr. Vinod Nautiyal, learned counsel for respondents 2 to 4, the order under appeal is set-aside and the Writ Petition is restored to file.

8. The learned Single Judge shall examine the rival submissions, both regarding the maintainability of the Writ Petition and on merits, including as to whether the rights, which the appellant-writ petitioner claims, are customary rights forming part of the religious affairs of the temple, or whether they would amount to secular activities, which are governed by laws made by the State Legislature and the Rules and By-laws made thereunder.

9. The Special Appeal is, accordingly, disposed of. No costs.