
(2004) 07 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition No. 1809 of 2001 (M/B)

Gyan Chand and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-07-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 11

Citation : AIR 2005 Utt 4 : (2004) 2 UD 272

Hon'ble Judges : V.S.Sirpurkar, C.J;P.C.Verma, J

Bench : Division Bench

Advocate : Alok Singh, for the Appellant; N.C. Gupta, for the Respondent

Judgement

V.S. Sirpurkar, C.J.—As many as 118 writ petitioners have filed this writ petition for a very peculiar relief. In their prayer clause, they seek quashing of the order dated 4-9-1996 and Notification dated 13-8-1966 and 30-8-1966. They also seek a direction for complying the Government order dated 5-2-1988.

2. All the writ petitioners claimed to be refugees from West Pakistan and further claimed that they belong in all to 135 families. Out of them, the petitioners belonged to 79 families, whereas the remaining persons belonged to other 56 families. The writ petition is filed on behalf of 79 families, who, according to the petition, have remained high and dry without any semblance of rights on the land, which continues to be in their possession and is being cultivated by them. It is the case of the petitioners that under the rehabilitation policy of the Government of India, namely, Displaced Persons (Compensation and Rehabilitation) Act, 1954, one Triveni Das and Group" applied for Award of compensation in lieu of the agricultural land left by them in Pakistan and also claimed rehabilitation. They further claimed that by order dated 14-11-1953, the Commissioner, Relief and Rehabilitation, U.P. located 135 families known as Triveni Das and Group" and decided that each family should be allotted 10 acres of land in Jogipura Block in Tarai Bhabhar Govt. Estate in Nainital (presently in

District Udham Singh Nagar). It is also claimed that all the families, known as Triveni Das and Group were directed to fill up appropriate forms, which was done by 135 families. It is then claimed that 10 acres of land in Jogipura Block, was allotted to each of the family by the Commissioner, Relief and Rehabilitation U.P. and letter to that effect was sent to the representative of the allottees for information to contact the Superintendent T and B and also Peshkar Bajpur for compliance. The petitioners heavily rely on this letter. A detailed survey plan was enclosed by the Superintendent, T and B Government Estate, vide order dated 22-1-1954 and letters to that effect were sent to the District Magistrate, Nainital in his capacity as District Relief and Rehabilitation Officer. The petitioners also relied on letters dated 22-1-1954 and 22-2-1954. The petitioners have then given broad history. However, we need not go into the that history because the only grievance of the petitioners was that the land given only to 56 families out of the original group led by Triveni Das, and remaining 79 families remained without being granted Pattas. According to the petitioners, the land which was to be given to them has already been demarcated along with approach roads etc. and possession was given to all 135 families including the present 79 families, who are in possession of the land. Now the petitioners want to be known as "Gyan Chand and party". They seem to be a fall out group of original Triveni Das and party".

3. There was a writ petition filed earlier that being Writ Petition No. 18408 of 1989 in Allahabad High Court. That writ petition was disposed of with the direction that the respondents (Government) shall decide the claim of the petitioners for the settlement of the land by speaking order within a period of three months. Now this petition was filed by about 79 families, giving their family members names therein because in some cases the person, who headed those families, died.

4. It is on the basis of this, a further inquiry came to be made by the Government and after considering the matter afresh, an order dated 4-9-1996 came to be passed by the Additional District Collector. The Additional District Collector had passed this order after considering the claims of the petitioners as also the Government. He held that 56 families of Triveni Das Group were rehabilitated by giving 10 acres of land to each families. However, the remaining families could not be granted the land and hence encroached upon some lands which belonged to the forest department because of the notification dated 25-6-1966 declaring the same to be a forest. He further clearly expressed that firstly the concerned land was a forest land and as such would not be given to the petitioners for the non-forest user. Secondly, unless the land was declared and made over to the revenue department it could not be granted to Gyan Chand and party. He also noted that Gyan Chand was none other but the son of Triveni Das, who had formed the original group. Now the petitioners are before us and claim that they are in possession and though it is in their continuous lawful possession ever since then till date, yet Pattas are not being given to them. Now, 118 persons have filed this petition claiming to be the same persons and

belonging to the same 79 families which were parties to the earlier writ petition. They point out further that due to non-availability of the land, the 79 families remained without lands when in fact the Government had earlier agreed to grant land to them and had put them in possession.

5. Learned standing counsel for the Government, however, opposes the writ petition and specifically raises objection firstly that this land cannot now be given to the petitioners because it has become the forest land. His second contention is that it is not clear as to whether the petitioners are members of the same 79 families, which have filed the earlier writ petition. Learned standing counsel goes on to say that out of the 135 families, which were found to be entitled to the land, the land has been given to the 110 families leaving only 25 families. Lastly learned standing counsel relies on the counter and says that there is nothing to suggest that all the petitioners, who claim to be the members of 79 families, have to do anything with the 25 remaining families which are left out. Thus, there is a basic difficulty and it is to be seen whether the petitioners have any right because of their belonging to original 79 families or as the case may be left out 25 families. It is then pointed out in the counter affidavit that the concerned land in this petition, is the land of reserved forest block of Jogipura and Guljarpur. It is on this basis that the Government opposes the writ petition. One plea raised in the counter is that one Triveni Das, who headed original party has given a statement on 1-7-1955 that 110 families have received the land from Jogipura block, Dhimari block and Dalpura block, while the remaining 25 families should be allotted the land from Maholi forest block and such forest land should be allotted to them after deforestation. In their counter affidavit, the Government says that out of the original 135 families, 110 have already been given possession and remaining 25 families could not be allotted land because it was a forest land.

6. When we specifically confronted the learned counsel for the petitioners as to whether the present petitioners were part and parcel of the original 79 families, the learned counsel asserts that they are the original families, whereas the Government very seriously disputes this proposition and learned standing counsel says that some other persons have sneaked into 79 families. Learned counsel for the petitioners also pointed out that all the petitioners are in possession of same land continuously and cultivating those lands. The learned counsel says that steady and lengthy possession on the part of the petitioner should have been taken into consideration before passing the order and rejecting the claims on the specific plea that the land is a forest land. Learned Government counsel however suggests that writ petition was filed before 8 years and Government is not in a position to accept the lengthy possession of the petitioners.

7. Under these considerations that there are number of questions of facts which are to be decided and which cannot be decided under Article 226 of the Constitution of India, the learned counsel for the petitioners very fairly accepted

the suggestion that it is appropriate for the Government to undertake an inquiry on the subject by some responsible officer and find out firstly as to whether the land which is claimed in the possession of the petitioners is in reality in their possession or not. Secondly it will be found out whether this land is a forest land or revenue land. Thirdly, it would have to be found out whether these petitioners are part of 135 families, out of which 110 families have been allotted the land and only 25 families have been left out. A complete exercise will be gone into to decide as to whether these petitioners are part of those 25 families or not. It is on this basis that the matter can be settled. This matter is pending for the last 10 years. It is proper that this exercise be done in six months from the date the order reaches the Government. In that, if it is found that the land is forest land, the Government shall take immediate steps to oust the encroachers. The learned counsel for the petitioners has no objection to it. However, if it is found that the land is the revenue land, then the Pattas will be given within one month of inquiry, only if the petitioners are found to be part of 135 families, who have not been so far allotted the land. All the interested parties would be given opportunity to take part in the enquiry.

8. The petition is disposed of accordingly.

9. No order as to costs.