
(2019) 05 UK CK 0322

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 1480 Of 2013

Hansa Singh And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 31-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Forest Act, 1927 — Section 26, 61, 63

Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 — Section 229B

Citation : (2019) 05 UK CK 0322

Hon'ble Judges : R.C. Khulbe, J

Bench : Single Bench

Advocate : Sandeep Kothari, J.S. Virk, Shiwali Joshi

Final Decision : Allowed

Judgement

R.C. Khulbe, J

1. This application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C') by the applicants for quashing the impugned summoning order dated 12.09.2013 passed by learned Judicial Magistrate, Ramnagar, District Udham Singh Nagar in Criminal Case No. 596 of 2013, (case Crime No. 128/Ramnagar/2013-14) Divisional Forest Officer vs. Hansa Singh and Others under Sections 26, 61, 63 of the Indian Forest Act, 1927.

2. As per the complaint, on 28.11.2012 when the forest personnel were in the routine inspection, the applicants have encroached the forest land by constructing the huts over the forest land. On the basis of this complaint under Sections 26, 61, 63 of the Indian Forest Act filed by the Forest Department, the cognizance was taken and the accused were summoned on 12.09.2013.

3. Aggrieved thereby, the present application has been filed under Section 482 of Cr. P.C. for quashing the entire proceedings.

4. Heard Mr. Sandeep Kothari, learned counsel for the applicants and Mr. J.S. Virk, learned A.G.A. along with Ms. Shiwali Joshi, learned Brief Holder for the State.

5. It is argued by the learned counsel for the applicants that the applicants were residing at the present place for last 50-55 years and it is not the forest land. As per the record, it is in Khasra Nos. 2, 3 and 4, Village Baithkhedi, Tehsil Bajpur, District Udham Singh Nagar. It was also recorded in the revenue record and since it is the revenue land, the forest officer has no right to file the complaint case against the applicant under the Forest Act.

6. From the perusal of the record, the civil suit No. 94 of 1994, Hansa Singh and others vs. State of Uttar Pradesh and others was filed before the Civil Judge (J.D.), Kashipur against the State and Forest Officials. The said suit was decreed on 31.05.2000 against which, the Civil Appeal No. 10 of 2002 was filed before the District Judge, which was transferred to the Additional District Judge, Kashipur. After hearing both the parties, the appeal was dismissed on 27.11.2002, against which, the State and the Divisional Forest Officer filed the Second Appeal No.07 of 2003 before this Court which was dismissed on 27.03.2008. Thereafter a joint inspection was done.

7. Apart from that an Eviction Suit No. 22/4 of 1994-95, Forest Department vs. Hansa Singh and others, was filed, which was allowed on 30.07.1996. Against which a writ petition No. 1073 of 2002 (M/S) Hansa Singh vs. Special Judge/ADJ, Nainital was filed before this Court. The aforesaid writ petition was dismissed on 05.09.2008 with the direction that it shall be open for the State to evict the petitioners from the disputed land in accordance with the provisions of U.P. Jamindari Abolition & Land Reforms Act. It was also open for the petitioners to get their title declared by filing a suit under Section 229-B of U.P.J.A. & L.R. Act.

8. From a perusal of the record, it is clear that the applicants are in possession since long and their possession has been affirmed by this Court also in Second Appeal No. 07 of 2003, State of U.P. and others vs. Sri Hansa Singh and others; the High Court has also directed the State Government to evict the applicants from the disputed land; and the applicants have also been given a right to file an application under Section 229-B of the U.P.Z.A. & L.R. Act for confirming their rights.

9. It is also argued by the learned counsel for the applicants that as per the directions of Hon'ble High Court, an application under Section 229-B of the U.P. Z.A. & L.R. Act was filed, which is pending.

10. Since the applicants had filed an application for confirming their rights under Section 229-B of the U.P. Z.A. & L.R. Act before the S.D.M. Court, which shows that the matter is sub judice and their possession has been confirmed by this Court also. In these circumstances, the complaint under Sections 26, 61, 63 of the Indian Forest Act is not tenable and thus, the complaint as well as

summoning cognizance order dated 12.09.2013 is liable to be quashed.

11. Resultantly, the application filed under Section 482 of Cr.P.C. is allowed. This summoning order dated 12.09.2013 and the proceedings of Criminal Case No. 596 of 2013 Divisional Forest Officer vs. Hansa Singh and others, pending before the Court below, are hereby quashed.