

(2019) 09 UK CK 0221

In the Uttarakhand High Court

Case No : Special Appeal No. 918, 919 Of 2019

Indian Fruit Company & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 30-09-2019

Acts Referred:

Citation : (2019) 09 UK CK 0221

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

Bench : Division Bench

Advocate : Arvind Vashisth, Vivek Pathak, Pradeep Joshi, Yogesh Pandey

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri Arvind Vashisth, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, Sri Yogesh Pande, learned Standing Counsel for the Mandi Samiti, and Sri Pradeep Joshi, learned Standing Counsel for the State Government and, with their consent, the Special Appeals are disposed of at the stage of admission.

2. The appellants invoked the jurisdiction of this Court seeking a writ of mandamus to direct the respondents not to demolish the appellants-writ petitioners' shops, which were allotted to them by the Mandi Samiti, Manglore, Haridwar district on 18.06.2019; not to take any steps against the petitioners; and to quash the rejection orders dated 23.09.2019.

3. The appellants-writ petitioners' case, in short, is that they were allotted stalls in the Mandi Samiti, where they have been carrying on business to eke out their livelihood; while the Mandi fees are regularly paid by them for stalls allotted in their favour, the respondents have, instead, cancelled allotment of the stalls in their favour by the order dated 23.09.2019 which is bereft of reasons; and the action of the respondents, in doing so, is arbitrary and illegal.

4. In the orders under appeal, the learned Single Judge has recorded the submission of the learned Standing Counsel for the Mandi Samiti that the appellants- writ petitioners were at liberty to apply for regular shops in accordance with law. He held that, since they have been carrying on their businesses in the sheds, they should be given one week's time to remove the sheds as well as their material and goods from the shed i.e. on or before 02.10.2019. The writ petitions were disposed of holding that the appellants-writ petitioners were entitled to apply / participate in the allotment of regular shops, which should be given in accordance with law. Aggrieved thereby, the present Special Appeals.

5. Sri Arvind Vashisth, learned Senior Counsel appearing on behalf of the appellants-writ petitioners, would submit that the impugned orders dated 23.09.2019 merely state that the report of the Joint Magistrate disclosed violation of the Allotment Rules, 2009; the appellants-writ petitioners should therefore vacate the stalls allotted to them; and a bare reading of the said proceedings would show that the respondents have not even stated as to how the Allotment Rules have been violated, and as to why they considered it appropriate to cancel the allotment.

6. Sri Yogesh Pandey, learned counsel appearing on behalf of the Mandi Samiti, would submit that the report of the Joint Magistrate discloses that the stalls allotted to the appellants-writ petitioners were located over a pond; and since it is impermissible for any shop/ stall to be constructed on a pond, the Mandi Samiti was justified in cancelling the earlier allotment granted less than three months ago, and in permitting the appellants-writ petitioners to apply for regular shops.

7. While we have no quarrel with the submission of Sri Yogesh Pandey, learned Standing Counsel for the Mandi Samiti, that no shop can be constructed on a pond, the least that the respondents should have done was to put the appellants-writ petitioners on notice, for it was always open to them to reply to the said notice, if any, issued to them to show cause, and establish that the construction of the stalls, allotted to them, was not on a pond; and, therefore, they should be permitted to continue to run their stalls at the said place.

8. We consider it appropriate, in such circumstances, to set aside the orders impugned before the learned Single Judge permitting the Mandi Samiti to issue the appellants-writ petitioners notices to show cause, grant them a reasonable opportunity to file their reply thereto, and, thereafter, pass reasoned orders in accordance with law bearing in mind that the appellants-writ petitioners were allotted shops just three months ago.

9. We make it clear that in case the Mandi Samiti, after receipt of the appellants-writ petitioners' reply to the show cause notice, is satisfied, for reasons to be recorded in writing, that the stalls, which were allotted to the appellants-writ petitioners, were located on a pond, it is always open to them to have the

appellants-writ petitioners evicted therefrom, as no construction can be permitted to be raised on lakes, ponds etc.

10. Needless to state that, irrespective of the decision which the Mandi Samiti may take to have the appellants-writ petitioners evicted from the said stalls, they shall also consider allotting them another stall strictly in accordance with law.

11. Subject to aforesaid observations, the Special Appeals are disposed of. No costs.