
(2013) 05 UK CK 0021

In the Uttarakhand High Court

Case No : Writ Petition (M/s.) No. 919 of 2007 with C.L.M.A. No's. 8196 of 2008 and 3892 of 2009

Intezar Hussain and Another

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 13-05-2013

Acts Referred:

Citation : (2013) 99 ALR 746 : (2013) 4 AWC 3925 : (2013) 120 RD 669 : (2013) 120 RD 106

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Sharad Sharma, Mrs. Nishat Intezar and Ahrar Baig, for the Appellant; A.S. Rawat, A.A.G., I.P. Kohli and Ashish Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this petition, moved under Article 226 /227 of Constitution of India, the petitioners have challenged order dated 3.8.2007, passed by respondent No. 5 (Prescribed Authority/City Magistrate. Haldwani), whereby said authority has held that it has jurisdiction to proceed with the proceedings against the petitioners under Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972, The question involved in this case is whether the petitioners are tenure holders, governed under any tenancy law. or is their occupation being over the Nazul land is governed by Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972? Heard learned counsel for the parties, and perused the affidavit, counter-affidavit; rejoinder-affidavit and supplementary-affidavit, filed in this case.

2. Briefly stated petitioners case is that the petitioners" grandfather Imtiaz Hussain, was a grove holder over the disputed land measuring 64 bigha 14 biswa of land, situated in Haldwani Khas. It is alleged by the petitioners that copies of khasra of the years 1320 fasli and 1331 fasli (calendar year 1913-14 and 1924-25), which are annexed as Annexures-1 and 2 to the writ petition, show

that the petitioners' predecessors in title were recorded as the grove holders. It is further alleged that as per the revenue record in the years 1383 fasli, 1384 fasli, 1385 fasli, 1386 fasli, 1387 fasli, 1390 fasli, 1391 fasli, 1392 fasli, 1393 fasli, 1394 fasli, 1395 fasli and 1396 fasli, the names of predecessors in title of the petitioners were recorded in Class 12 (land held by grove holder). Annexure-3 is copy of Jot Vahi (account of ledger of agricultural land), issued in favour of the petitioners by the authorities in respect of land in suit. The land in suit bears plots (khasra) Nos. 820, 829, 830, 832, 834, 835, 836, 837, 839, 844, 845, 847, 848, 849, 850, 851, 852, 853 and 856. In the writ petition it is further stated that the petitioners are in cultivatory possession of the land where 100 fruit bearing trees of mangoes are standing. There are also six out houses of the agricultural peasants/labourers in the land.

3. It is also stated by the petitioners in the writ petition that in the year 2005, when the petitioners came to know that the officers of the Government want to get vacated the land in suit from the petitioners, they filed Writ Petition No. 1152 of 2005 (M/B) in which, an interim order was passed. In pursuance of said order, the petitioners made a representation (copy Annexure-7 to the present writ petition) to the Government which was rejected by the Government vide order dated 17.2.2006 (Annexure-8 to the writ petition). On this, petitioners filed a civil suit No. 8 of 2006, which is pending before Civil Judge (Sr. Div.) in which an interim injunction (copy Annexure-10 to the writ petition) was passed by the civil court. However, now the respondents, claiming the land in question to be a "nazul" land (land owned by Government and administered by Municipal authorities since British period) have initiated the proceedings under U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972, against the petitioners. It appears that on this, another Writ Petition No. 1838 of 2006, challenging the show cause notice under said Act, was filed which was disposed of vide order dated 18.12.2006, passed by this Court. In pursuance of said order, objections were filed by the petitioners before the Prescribed Authority, as to the maintainability of the proceedings, which are rejected by the impugned order challenged in this writ petition.

4. In the counter-affidavit filed on behalf of the respondent No. 2 District Magistrate, Nainital, it has been stated that the land in question is a Nazul Land and as per Section 2(e) of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 the Nazul Land has also been included as a public property for which the said Act of 1972 is fully applicable. It is relevant to point out at this juncture that the petitioners' predecessor namely Sri Ballu and Sri Ajij were tenants at the annual rent of Rs. 64, Anna 11, Pai 2. The name of those persons were recorded as tenant and entered in the Nazul Register at serial No. 258. Thereafter, the annual tenancy was inherited by Sri Irshad Hussain, s/o Imtiyaz Hussain, which is recorded in the Nazul Register with map at Serial No. 232. A copy of the extract of the Nazul Register is annexed with the counter-affidavit of respondent No. 2 and marked as ANNEXURE-CA-1 to the affidavit. The land in question being a Nazul Land was under the management of Nagar Palika and is

still being managed by the Nagar Palika Haldwani. The said land was entrusted, transferred to the Nagar Palika Haldwani by the then Government vide its Government Order No. 1748/Eleven 19-1907 dated 17.5.1907. A copy of the said Government order dated 17.5.1907 is annexed with the counter-affidavit and marked as ANNEXURE-CA-2 to this affidavit. In view of the above, it is pleaded that the provisions of U.P. Tenancy Act and U.P.Z.A. and L.R. Act are not applicable to the land in question. Prior to enforcement of Uttar Pradesh Zamindari Abolition and Land Reforms Act, the land in question was within the purview of Municipal Area and was being managed by the Municipal Board of Haldwani and it is specifically mentioned in the Uttar Pradesh Zamindari Abolition and Land Reforms Act that the said Act has been extended to the whole of Uttar Pradesh except the areas which, on the 7th Day of July, 1949, were included in a municipality or a notified area under the provisions of the United Provinces Municipalities Act, 1916 or a cantonment under the provisions of the Cantonments Act, 1924, or a town area under the provisions of the United Provinces Town Areas Act, 1914. As such, it is crystal clear that the land in question, is out of purview of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. Therefore, the claim of the petitioners that they the tenure holders under the Uttar Pradesh Zamindari Abolition and Land Reforms Act is misconceived. It has been further stated in the counter-affidavit filed on behalf of the respondent No. 2 that it is relevant to point out that any wrong entry can be corrected and accordingly entry recorded in the khatauni treating the land in question as agriculture land was found erroneous entry, hence it was corrected as per provisions of the L.R. Manual as it has been found that from the year 1377 (fasli) to 1389 (fasli) (1970-1982), khatauni was wrongly recorded in Z.A. khatauni, same was accordingly corrected. The said correction was never challenged anywhere in any competent Court of law. (No bhumidhari rights can be granted under any U.P. tenancy law except under U.P. Zamindari Abolition and Land Reforms Act).

5. In the counter-affidavit filed on behalf of the respondent No. 3 Senior Superintendent of Police, Nainital, it has been stated that over the land in question a Fire Station is to be established in Haldwani, and the land in question was transferred to the Police Department vide its Government Order 2096/Vi-Aa 2005 (Saa) 2004 dated 28.9.2005.

6. In the counter-affidavit filed on behalf of the respondent No. 4 Municipal Board, Haldwani, its Officer has stated that the land in question being Nazul land was under the permanent management of Nagar Palika and is still being managed by Nagar Palika. Haldwani. The said land was entrusted/transferred to Nagar Palika Haldwani, by the then Government vide its Government Order No. 1748/Eleven 19-1907 dated 17.5.1907. A copy of the said order dated 17.5.1907 is annexed as Annexure-CA-1 to the counter-affidavit filed by the deponent on behalf of the respondent No. 4. It is further stated that prior to enforcement of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the land in question was within the purview of Municipal Area and was being managed by

the Municipal Board of Haldwani. and it is specifically mentioned in Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, that the Act has been extended to the whole of Uttar Pradesh except the areas which on the 7th Day of July, 1949 were included in a municipality or a notified area under the provisions of the United Provinces Municipalities Act, 1916, or a cantonment under the provisions of Cantonments Act, 1924. As such, the claim of the petitioners that they were tenure holders under Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 is misconceived. It is further stated in the counter-affidavit of respondent No. 4 that the entry recorded in khatauni treating the land in question as agricultural was found erroneous entry, and it was corrected as per the provisions of the Land Record Manual as it was found that from the year (1970-71) 1377 fasli khatauni was wrongly recorded in Z.A. khatauni, and the same was corrected. The correction was never challenged anywhere in any competent court of law. [At the time interim order was passed by this Court on 18.8.2007, the above mentioned counter-affidavits were not on the record].

7. In the rejoinder-affidavit filed on behalf of the petitioners, the averments made in the writ petition are reiterated. In the supplementary-affidavit filed on behalf of the petitioners it is stated that in view of Section 86 read with 87 of U.P. Reorganization Act, 2000, since the Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972, is not adopted, as such, the same is not applicable to the case. It is also stated in the said affidavit that u/s 48 of Land Revenue Act, in the fasli year 1367 (1960-61) old number of khasra No. 381 was changed in the Bandobast (settlement). It is also pleaded by the petitioners that the notification of 1907, relied by the respondents got superceded vide Notification No. 3603/XI/434-40 dated 2.9.1942 (copy Annexure-S.A.2). It is also stated in the supplementary-affidavit filed on behalf of the petitioners that in the cases of adjoining tenure holder Kishan Singh, his Writ Petition No. 1801 of 2001 was decided vide order dated 9.9.2005, in his favour, and Writ Petition No. 1805 of 2001 of another adjoining tenure holder Moti Ram was also decided in his favour by this Court vide its order dated 2.9.2005. Similar parity has been claimed in respect of the other writ petitioners Jaiprakash Mishra of Writ Petition No. 1807 of 2001, decided on 7.9.2005 and Writ Petition No. 1803 of 2001 filed by Bhairav Nath decided on 9.9.2005.

8. At the outset, it is necessary to mention here that u/s 86 read with Section 88 of U.P. Reorganization Act, 2000, not only the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, but also all other laws enforced immediately before the appointed day (9.11.2000) are applicable to the State of Uttarakhand until otherwise provided by the competent Legislature or other competent authority of the successor State. Section 87 of said Act, only empowers the new State to make modifications within two years in the law by an order instead of bringing a Bill through the Legislature. A plain reading of Section 86 read with Sections 88 and 89 of said Act, makes amply clear that the laws enforce in the predecessor State of Uttar Pradesh continue to remain in force in the successor State of Uttarakhand. unless the Legislature of the new State (Uttaranchal/Uttarakhand)

makes law otherwise.

9. Before further discussion, it is also relevant to mention here that the parity claimed by the present petitioners on the basis of the decisions given in the cases of Jaiprakash Mishra (Writ petitioner of Writ Petition No. 1807 (M/S) of 2001), Moti Ram (Writ petitioner of Writ Petition No. 1805 (M/S) of 2001, Kishan Singh (Writ petitioner of Writ Petition No. 1801 (M/S) of 2001) and Bhairav Nath (Writ petitioner of Writ Petition No. 1803 (M/S) of 2001) can be helpful to the petitioners only if the issue relating to Nazul land is discussed in those cases. The judgments in said cases are annexed as Annexure-7 and Annexure-8 to the supplementary-affidavit filed by the petitioners and Annexure-22 of the main petition. In none of these cases, the issue relating to occupancy over the Nazul land has been discussed. Rather what has been simply held in those cases is that persons whose occupation over the land is governed by U.P. Zamindari Abolition and Land Reforms Act, 1950, their eviction shall not be made under the provisions of Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972. And it is left open in said cases for the authorities of the State are to proceed for eviction of such petitioners under U.P. Zamindari Abolition and Land Reforms Act, 1950.

10. Mr. Sharad Sharma, learned senior counsel for the petitioners heavily relied in the case of State of U.P. (Now Uttarakhand) Vs. Rabindra Singh, in which the Apex Court has held that the eviction of the tenure holders governed by any tenancy law cannot be evicted under Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972. This Court has carefully gone through the said case law. In said case also nothing has been mentioned as to the situation when the nature of the land in question was a Nazul land, i.e., land owned by Government and administered by Municipal authorities since British period. In the opinion of this Court said case decided by the Apex Court and the other above mentioned cases can be helpful to the petitioners only if the land occupied by them as tenure holders is not the Nazul land.

11. Learned counsel for the petitioners drew attention of this Court to the definition of Nazul land, which is given in Rule 1 of Nazul Rules. Rule 1 defines "Nazul" as under:

1. Definition of Nazul--For the purposes of these rules, "nazul" means any land or building which, being the property of Government is not administered as a State property under the control of the Land Reforms Commissioner or the Forest or the Irrigation Department, or is not under the control of the Military, Postal, Telegraph, Railway or other purely Central Government Department.

The Tarai and Bhabar estates in the Nainital District, the Garhwal Bhabar estates in the Garhwal District and the Kausani Soldiers' Settlement in the Almora and Garhwal districts are also no nazul for the purpose of these rules.

These rules are, however, applicable to territories of late Tehri Garhwal, Rampur and Banaras States merged with this State.

It is submitted on behalf of petitioners that the Tarai and Bhabar estates of Nainital District, are not included for the purposes of Nazul Rules.

12. However, above definition of "Nazul" does not say that there is no nazul land (land of Government administered as a State property in the Municipal areas since British period) in the Tarai and Bhabar Estates of District Nainital. What definition clarifies is that the Nazul rules would not be applicable to such estates. The impugned proceedings initiated against the petitioners are not under Nazul Rules/Nazul Manual (which is in fact compilation of various Government orders).

13. Next, attention of this Court is drawn on behalf of the petitioners to the definition of words "premises" and "public premises" given in U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972. The said definitions are being reproduced as under:

2 (b) "premises" means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes:

(i) the garden, grounds and out houses, if any, appertaining to such building or part of a building, and

(ii) any fittings or fixtures affixed to or any furniture supplied with such building or part of a building for the more beneficial enjoyment thereof; but does not include land which for the time being is held by a tenure holder under any law relating to land tenures.

(e) "public premises" means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government and includes any premises belonging to or taken on lease by or on behalf of--

(i) any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty-one percent of the paid or share capital is held by the State Government; or

(ii) any local authority; or

(iii) any corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government: or

(iv) any society registered under the Societies Registration Act, 1860, the governing body whereof consists under the rules or regulations of the society, wholly of public officers, or nominees of the State Government, or both;

and also includes--

(i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds on land belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or

any other local authority under any law relating to land tenures;

(ii) any premises acquired under the Land Acquisition Act, 1894 with the consent of the State Government for a company, (as defined in that Act) and held by that company under an agreement executed u/s 41 of that Act providing for re-entry by the State Government in certain conditions.

On the basis of the definition of word "premises", it is argued on behalf of the petitioners that the land held by tenure holder are excluded from the clutches of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972.

14. Undoubtedly, land held by the tenure holders under any tenancy law is excluded from the clutches of Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972, but for taking benefit of said provision of law, the petitioners will have to prove they are tenure holders under any tenancy law. It is contended on behalf of the petitioners that the petitioners are recorded as grove holders in respect of the plots in question in class-12 in the revenue papers as mentioned in above mentioned Para 3 of this judgment.

15. I have gone through the copies of the khatauni and khasra filed with the petition showing name of the petitioners' father Irshad Hussain and from these papers, it is clear that their entry in the revenue record in Non-Zamindari Abolition (Non Z.A.) area. In other words, the land occupied by the petitioners is not governed by the provisions of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.

16. It is contended by Mr. Sharad Sharma, senior advocate, that even if the land is Non Z.A., still the same is governed by the United Provinces Tenancy Act, 1939. However, the petitioners failed to show that they had paid any land revenue as tenure holder to the State Government at any point of time. What is proved on the record is that the petitioners were lessee of Nagar Palika on annual rent, over the land in question for cultivation purposes.

17. Perusal of the Annexure-1 filed with the counter-affidavit of respondent No. 2 shows that the land in question was initially given to Balu and Aziz Hussain (the ancestors of the present petitioners) on payment of annual rent of Rs. 64, Ana 11, Paisa 2. Copy of said entry in the Nazul Register of Notified Area of Haldwani is Annexure-1 filed with the counter-affidavit of respondent No. 2. From column 6 of said document it is also clear that the land in question stood transferred to the Municipal Board for management under Government Order No. 1748-XI-19-1907 dated 17th of May, 1907.

18. Copy of Government Order No. 1748-XI-19-1907 dated 17th of May, 1907 is reproduced below:

1. With reference to the correspondence ending with your letter No. 267/XI-621 dated the 16th April, 1907, I am directed to say the Lieutenant Governor is pleased to authorize the transfer to the committee of the notified area of Haldwani of the whole of mauza Haldwani Khas (including the small area of

agricultural land) to be managed by it as nazul property, the only land exempted from the transfer are those occupied by canals, gules, and provincial roads. In return for this transfer the committee will take over the maintenance of all roads other than provincial roads within the limits of the notified area.

2. The committee will meet the cost of management of the property from the annual proceed of it but will pay one fourth of the total receipts into the treasury to the credit of the Bhabar Government estate in accordance with the nazul rules.

3. The lands will be administered in accordance with Rules 13, 14, 16, 18 and 19 and 20 of the nazul rules, as amended and set out in accompaniment to this letter, No sale of land and no perpetual lease will be allowed.

19. If the revenue records relied by the petitioners are read with the aforesaid Government order and extract of the copy of Nazul Register, it is clear that the land in question which was a Nazul land was given to the ancestors of the petitioners on only on annual rent but their status in the circumstances cannot be said to be that of any tenure holder under the tenancy law.

20. On going through the Para 124 of U.P. Land Records Manual, provides kinds of grove holders in Class 12. Section 3 of U.P. Tenancy Act, 1939, defines "grove land" and "tenants" and after going through the same, this Court is of the view that the same does not apply to the Nazul land. From sub-section (6) of Section 3 of U.P. Tenancy Act, 1939, grove land means any specific piece of land in a Mahal or Mahals having trees planted thereon in such numbers that they preclude the land from being used primarily for any other purposes. It is not clarified by the petitioners that the land in question belongs to which of the Mahals. Sub-section (23) of Section 3 of U.P. Tenancy Act, 1939, while defining "tenants" excludes grove holders, mortgagee or proprietors etc. As such, from these definitions also, the petitioners who are claiming to be a grove holders cannot be said to be tenants under U.P. Tenancy Act, 1939.

21. On behalf of the petitioners, it is also submitted that similarly situated land held by one Smt. Ila Pant (wife of late Sri K. C. Pant) was purchased by the Government in 1985 by the Government of India (not the State Government). In reply to this, learned counsel for the State submitted that assuming not admitting that some irregularity has been committed, in respect of some person it cannot be claimed as parity for making the State authorities to commit irregularities/illegalities.

22. Annexure-4 to the counter-affidavit filed on behalf of the respondent No. 2 shows that by the notice dated 1.5.2006, u/s 106 of Transfer of Property Act 1882, Collector, Nainital and Nagar Palika, Haldwani, served on the petitioners, the tenancy of the petitioners was terminated stating that they were simply tenants of Nagar Palika on rent @ Rs. 64.70 and the same is terminated by giving notice of six months. It appears that after expiry of said period, the proceedings under Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972, were initiated.

23. In the above circumstances. since, the petitioners could not show themselves to be tenure holders, governed by any tenancy law, as such, the impugned order does not suffer from any illegality, and this Court is of the opinion that the Prescribed Authority/City Magistrate, had power to proceed under Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972, to evict the petitioners from the land in question, which is part of Nazul Land. For the reasons as discussed above, the writ petition is dismissed. Interim order dated 18.8.2007 stands hereby vacated (Stay Vacation Application No. 8196 of 2008 and Stay Vacation Application No. 3892 of 2009 stands disposed of).