
(2019) 10 UK CK 0099

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3196 Of 2019

Jai Prakash Maurya

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 23-10-2019

Acts Referred:

Uttar Pradesh Public Premises (Eviction Of Unauthorised Occupants) Act, 1972 —
Section 4

Citation : (2019) 10 UK CK 0099

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

Bench : Division Bench

Advocate : T.A. Khan, Aitya Kumar Arya, C.S. Rawat, Dr. Kartikey Hari Gupta

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri T.A. Khan, learned Senior Counsel appearing on behalf of the petitioner, Sri C.S. Rawat, learned Additional Chief Standing Counsel for the State of Uttarakhand, and Sri Kartikey Hari Gupta, learned counsel for the fourth respondent and, with their consent, the writ petition is disposed of at the stage of admission.

2. The petitioner has invoked the jurisdiction of this Court seeking a mandamus directing the respondents not to evict him from the shop in his possession, except upon initiating proceedings under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (for short the '1972 Act').

3. The petitioner's case, in short, is that his predecessor was in possession of the subject land for several years; there was no pond on the subject land; a notice was issued to him, under the 1972 Act, on 01.07.1991; proceedings were initiated under Section 4 of the 1972 Act, for his eviction; the prescribed authority had, by its order dated 31.05.1993, directed eviction of the petitioner; aggrieved thereby, the petitioner had preferred Eviction Appeal No. 192 of 1993;

the District Judge had, by his order dated 28.09.1996, set aside the order of the prescribed authority, granting liberty to the State to file fresh eviction proceedings; the order of the learned District Judge dated 28.09.1996 has not been subjected to challenge so far; the petitioner was sanctioned a site-plan to raise construction in 1991; and he has been paying house tax regularly.

4. It is also the petitioner's case that the third respondent had, by his order dated 30.08.2018, directed the subordinate officers and the police to have the land, pertaining to the pond, vacated in terms of the order passed by this Court in Writ Petition (PIL) No. 59 of 2016 dated 04.09.2018; on coming to know of such an order, the petitioner had filed a modification application; in the meanwhile, the said order dated 04.09.2018 was modified by a Division Bench of this Court on 03.12.2018; in the light of the said order dated 03.12.2018, the petitioner had withdrawn the modification application filed by him; in similar circumstances, a few others had filed Writ Petition (M/S) No. 1634 of 2019, which was decided on 31.05.2019; and the petitioner's case is also covered by the order passed by this Court in Writ Petition (M/S) No. 1634 of 2019.

5. The order of the Division Bench, in Writ Petition (PIL) No. 59 of 2016 dated 04.09.2018, required the respondents to remove all encroachers, from the Khasras mentioned in Para-3 of the counter affidavit filed therein, within three months; and all District Magistrates, throughout the State, were directed to ensure that no construction was made on pond land henceforth at the peril of contempt of court.

6. Recall Application No. 1467 of 2018 was filed to recall the said order dated 04.09.2018, and a Division Bench of this Court had, by its order dated 03.12.2018, followed the judgment of the Supreme Court in Jagpal Singh and others vs. State of Punjab and others : (2011) 11 SCC 396, and had directed the State Government to prepare a Scheme for eviction of illegal / unauthorized occupants of municipal lands in the State, which were covered by water bodies such as lakes, ponds, streams, water-courses etc. The Scheme was to provide, among others, for a show cause notice to the encroachers, and an opportunity of a brief hearing. The State Government was directed to take note of the exceptions carved out by the Supreme Court, in the aforesaid judgment, regarding lease granted under the Government notification to landless labourers or members of the Scheduled Castes, or areas where there exists a school, dispensary or other public utility on the land. The State Government was also directed to prepare a Scheme at the earliest and, in any event, not later than six months from the date of receipt of a certified copy of the order; and to take action forthwith, after such a Scheme is formulated, to evict encroachers or unauthorized occupants from such lands in accordance with the said Scheme. The Division Bench made it clear that, on such a Scheme being prepared and notices being issued to those in possession of the land in terms of the Scheme so formulated, it was open to persons in possession of such lands, to whom the notices were given, to put forth all such defenses as were available to them in

law, including that the subject land, over which they were in possession, was not a water-body after the 1950 Act came into force.

7. As noted hereinabove, the petitioner herein had filed Modification Application No. 1567 of 2018. In the affidavit filed in support thereof, he had specifically pleaded regarding the order passed by the District Judge, under the 1972 Act, having attained finality. Without seeking an adjudication of the modification application, the petitioner chose to withdraw the same; and the modification application was accordingly dismissed as withdrawn by order dated 07.12.2018.

8. Any relief, which the petitioner is entitled to, can only be granted in accordance with the order of the Division Bench dated 03.12.2018. The petitioner claims that he is similarly circumstanced as the petitioner in Writ Petition (M/S) No. 1634 of 2019, in which this Court had passed an order on 31.05.2019. In our order, in Writ Petition (MS/) No. 1634 of 2019 dated 31.05.2019, we had recorded the submission, urged on behalf of the State Government, that any action which would be taken for removal of the encroachments would be in strict compliance with the order of the Division Bench in WPIL No. 59 of 2016 dated 03.12.2018. We had, after recording the submission urged on behalf of the State Government that the Scheme would be formulated and action would be taken strictly in compliance with the order passed by the Division Bench of this Court in WPIL No. 59 of 2016 dated 03.12.2018, disposed of the said writ petition.

9. All the judgments referred to hereinabove obligate the State Government to prepare a Scheme, to issue notices to encroachers in terms of the said Scheme, and after giving them an opportunity of being heard, to evict them in case they are in illegal occupation of the land belonging to a Gram Panchayat, or which forms part of a pond, lake etc.

10. Sri C.S. Rawat, learned Additional Chief Standing Counsel, states that the State Government had, by its proceedings dated 15.07.2019, directed the District Magistrates concerned to formulate Schemes within their territorial limits; such Schemes have, in fact, been formulated; in terms of the orders passed by the Division Bench, both on 03.12.2018 and 31.05.2019, show cause notices shall be issued to those in possession of the said land, enclosing thereto a copy of the Scheme; such persons shall be called upon to show cause why they should not be evicted from the subject land, as they do not fall within the exceptions carved out in the Scheme; they shall be given a reasonable opportunity of submitting their reply thereto; and, after considering their reply, a decision would be taken on whether or not such occupants are liable to be evicted.

11. Recording the aforesaid submissions of Sri C.S. Rawat, learned Additional Chief Standing Counsel for the State Government, the writ petition is disposed of. No costs.