

(1985) 04 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2374 of 1976

Kartar Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Public Land (Eviction and Recovery of Damages) Act, 1959 — Section 3(1)
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 4, 4(1), 9
Uttar Pradesh Tenancy Act, 1939 — Section 180, 59
Constitution of India, 1950 — Article 226
Uttar Pradesh Public Land (Eviction and Recovery of Damages) Act, 1959 — Section 3(1)
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 4, 4(1), 9
Uttar Pradesh Tenancy Act, 1939 — Section 180, 59
Constitution of India, 1950 — Article 226
Uttar Pradesh Public Land (Eviction and Recovery of Damages) Act, 1959 — Section 3(1)
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 4, 4(1), 9
Uttar Pradesh Tenancy Act, 1939 — Section 180, 59

Citation : (1988) 1 AWC 574

Hon'ble Judges : J. N. Dubey, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J. N. Dubey, J.—This writ petition is directed against the order dated 31-1-1976 of the District Judge, Kumaun, Nainital passed u/s 9 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as the Act).

2. The Petitioners were served with a notice u/s 4(1) of the Act to show cause why they may not be evicted from the land in dispute. The Petitioners Bled

objection claiming that they were tenants of the land in dispute and the claim made in the notice that they were unauthorised occupants of public premises was incorrect. The opposite party No. 2 rejected the objections filed by the Petitioners and ordered for their eviction on 3-11-1975. The Petitioners filed appeal to. the District Judge, Kumaun, Nainital which was dismissed on 31-1-1976. Feeling aggrieved, the Petitioners have come up to this Court under Article 226 of the, Constitution.

3. I have heard the learned Counsel for the parties and have perused the record.

4. The learned Counsel for the Petitioners contended that the judgment passed in suit No. 22/1 of 1956 would operate as res-judicata in the present proceedings and the view to the contrary of the courts below is illegal. I find force in this contention of the learned Counsel for the Petitioners. One Singhara Singh had filed Suit No. 22/1 of 1956 in the Revenue Court u/s 59/180 of the U.P. Tenancy Act against the Petitioners in which the State of U.P. was also impleaded as one of the Defendants. The suit was contested both by the Petitioners as well as the State of U.P. In the written statement filed on behalf of the State of U.P. it was asserted that the Petitioners were the tenants of the land in dispute and, therefore, the suit was liable to be dismissed. The Assistant Collector, Kashipur who tried the suit dismissed it on 16-7-58 holding that the Petitioners were the tenants of the land in dispute. Singhara Singh filed appeal to the Commissioner, Kumaun Division, Kumaun which was dismissed on 28-11-1958. The second appeal filed against the order of the Commissioner was also dismissed by the Board of Revenue on 31-8-1961. Singhara Singh filed writ petition No. 3658 of 1961 in this Court which was allowed on 22-12-1965. However, the special appeal No. 44 of 1966 filed by the Petitioners was allowed on 17-2-1971 and the order dated 22-12-1965 was set aside with the result the judgment passed by the Revenue Authorities dismissing the suit filed by Singhara Singh became final.

5. Once the Petitioners were declared tenants of the land in dispute no action against them could be taken treating them to be unauthorised occupants of the land in dispute, more so, when the State Government has admitted their claim in the written statement filed in that suit. However, it appears that a notice was served upon them u/s 3(1) of the U.P. Public Land (Eviction and Recovery of Damages) Act, 1959 to show cause why they may not be evicted from the public premises. The Petitioners filed objection claiming that they were held to be the tenants of the land in dispute in suit No. 22/1 of 1956 and, therefore, the notice was liable to be discharged. The Prescribed Authority after hearing both the parties discharged the notice on 20-7-1972. No appeal was preferred by the State Government against that order and as such the same became final. In my opinion, the judgment passed in Suit No. 22/1 of 1956 would operate as res-judicata in the present proceedings and the court below erred in taking the contrary view. Moreover, the attempt of the opposite party No. 1 to evict the Petitioners from the land in dispute u/s 3(1) of the U.P. Public Land (Eviction and Recovery of Damages) Act has also failed. For this reason also no action could

legally be taken against the Petitioners under this Act. The view of the Respondent No. 3 that the U.P. Public Land (Eviction and Recovery of Damages) Act, 1959 was declared ultra vires and as such the orders passed under that Act were not binding against the State is illegal. Similarly, the finding of the opposite party No. 1 that the identity of land was changed is also incorrect. According to the Petitioners, the number of plots were changed because of the construction of the canal. This contention of the learned Counsel for the Petitioners finds support from the order dated 23-12-1978 passed in Suit No. 306/76-77 arising out of the fresh proceedings initiated against the Petitioners u/s 4 of the Act. The opposite party No. 2 in his order dated 23-12-1978 has clearly held that the plots in dispute were covered by the earlier suits and proceedings. No counter affidavit has been filed on behalf of the opposite parties and, therefore, it has to be accepted that the land in dispute was also subject matter of the earlier suit and the proceedings. Moreover, the order dated 23-12-1978 of the opposite party No. 2 passed during the pendency of the writ petition has become final and as such is binding upon the opposite party. In my opinion, the orders passed by the opposite parties No. 1 and 2 suffer from errors apparent on the face of the record.

6. In the result, the writ petition succeeds and is allowed and the order dated 3-11-1973 of the Prescribed Authority and the order dated 31-1-1976 of the District Judge Kumaun, Nainital are quashed. There shall be no order as to costs.