

(2022) 12 UK CK 0030

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1244 Of 2022

Kastubha Nand Joshi

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 08-12-2022

Acts Referred:

Uttarakhand Urban And Country Planning And Development Act, 1973 — Section 15(5), 27

Citation : (2022) 12 UK CK 0030

Hon'ble Judges : Vipin Sanghi, CJ; Ramesh Chandra Khulbe, J

Bench : Division Bench

Advocate : M.C. Kandpal, Prabhakar Joshi, Alok Mahra, Pradeep Joshi, Sandeep Kothari

Final Decision : Disposed Of

Judgement

Vipin Sanghi, CJ

1) The petitioner has preferred the present petition to seek the following reliefs :

i) To issue a writ, order or direction in the nature of certiorari for quashing the order dated 17.02.2022, passed by respondent No. 2, in pursuance of the minutes of board meeting of District Development Authority, Nainital, held on 03.01.2022, and further the demolition order / notice dated 20.05.2022, issued by the respondent No. 2 (Contained as Annexure No. 21 and 24 to the writ petition).

ii) To issue a writ, order or direction in the nature of mandamus commanding and directing the respondent No. 2 to forthwith sanction the map of petitioner (map No. 01 of 2014) under the amended provision No. 12.3.11 of Government Order dated 16.07.2012, which has already been observed / directed by the Learned Appellate Authority, i.e., Commissioner, Kumaun Mandal, Nainital, in its judgment and order dated 10.03.2021.

2) The petitioner has statutory remedy to assail the order dated 17.02.2022,

passed by respondent no. 2, rejecting the application made by the petitioner for sanction of building plans, by invoking the remedy available under Section 15(5) of the Uttarakhand Urban and Country Planning and Development Act, 1973.

3) The second relief sought by the petitioner is to challenge the order dated 20.05.2022, directing demolition of the construction un-authorisedly raised by the petitioner. In that regard also, the petitioner has a statutory remedy under Section 27 of the said Act.

4) Learned counsel for the petitioner submits that the petitioner has already made representations addressed to the Commissioner of the Kumaun Mandal, Nainital.

5) In the light of the aforesaid, in case the petitioner prefers the appeals within two weeks, same shall not be rejected on the ground of limitation, and same shall be entertained and decided on merits. The appeals preferred by the petitioner shall be disposed of as expeditiously as possible, and preferably within six months of the same being preferred.

6) The petitioner has placed on record the photographs of the construction raised at the site, which show that pillars have been erected above the plinth level, however, no roof has been cast.

7) In the light of the aforesaid, no demolition activity be undertaken till the appeal of the petitioner is decided. At the same time, the petitioner is directed not to raise any construction whatsoever at the site till the appeal is decided.

8) The writ petition stands disposed of in the aforesaid terms.

9) All pending applications also stands disposed of.