
(2009) 07 UK CK 0067

In the Uttarakhand High Court

Case No : Writ Petition No. 620 of 2007 (MS)

K.D. Bijwan

APPELLANT

Vs

Commissioner, Garhwal Mandal and Others

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Citation : (2009) 3 UC 1879

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Shobhit Saharia, for the Appellant; K.P. Upadhyay, Addi. Chief Standing Counsel, for the Respondent

Judgement

Sudhanshu Dhulia, J.—This writ petition has been filed by the Petitioner challenging the order dated 29th January, 1992 and 30th January, 1992 (Annexure No. 3 and 4 to the writ petition respectively), which have been passed by the District Panchayat Raj Officer, Tehri Garhwal.

2. The case of the Petitioner in short is that he is a shop keeper and he was allotted a shop bearing Shop No. 9 at Narendra Nagar, Tehri Garhwal. However, he was more interested in getting Shop No. 8, which was adjacent to Shop No. 9 and it was also more convenient for him. Consequently, he applied to the concerned authorities, and since the shop belongs to the PWD, the Executive Engineer PWD vide its order dated 27-9-1990 directed that instead of shop No. 9, shop No. 8 be allotted to the Petitioner. The case of the Petitioner is that he had approached the concerned authorities in view of the order of the Executive Engineer, PWD and he took possession of the shop No. 8 on 25th January, 1992 and shifted his entire merchandise and goods therein. The Petitioner specifically alleges that he received a notice from the District Panchayat Raj Officer, Tehri Garhwal (who had earlier been allotted shop No. 8), directing the Petitioner to return to shop No. 9, and hand over the possession of the shop No. 8 to him. Subsequently thereafter, shop No. 8 was locked and sealed by the department. It is these orders, which the Petitioner has challenged.

3. In the counter affidavit, which has been filed by the Respondent No. 6 who is a private individual like the Petitioner, it is stated that shop No. 8 had been allotted to him by the proper authorities in which there are orders of Commissioner Garhwal Division, orders of District Magistrate and subsequently order of Executive Engineer, P.W.D. dated 29th January, 1992.

4. A perusal of the order dated 29th January, 1992 indeed shows that the shop has been allotted to Respondent No. 6. In its rejoinder affidavit, Petitioner has alleged that the Respondent No. 6, who has filed the counter affidavit alleging that he is in possession of the shop, the shop could not have been allotted in favour of the Respondent No. 6 because there was no vacancy existing against the shop No. 8 etc, etc.

5. The aforesaid facts are, however, disputed and it is not clear as to whether the Petitioner or Respondent No. 6 is presently in possession of the disputed shop. One thing is, however, clear that the shop was allotted to the Petitioner and consequent to the allotment, he came in possession of the said shop and this shop could not have been allotted to any other person without hearing the Petitioner.

6. A perusal of the records filed by the Petitioner and the Respondents shows that before the order dated 29th January, 1992 was passed in favour of the Respondent No. 6, no opportunity of hearing or show cause was given to the Petitioner, therefore, the order dated 29-1-1992 is bad to that extent. Certain rights had vested with the Petitioner, after the allotment of the shop to him, therefore, an opportunity of hearing was absolutely must.

7. In the present circumstances, the order dated 29th January, 1992 is liable to be set aside and is hereby set aside. However, Respondent No. 5 i.e. the District Magistrate, Tehri Garhwal is directed to give an opportunity of hearing to the Petitioner as well as to the Respondent No. 4 i.e. the District Panchayat Raj Officer and Sri Satya Singh Rane / Respondent No. 6, by giving a proper notice to all the above, and to pass fresh orders after hearing all the parties.

8. With the above directions, writ petition is disposed of. No order as to costs.