

(2018) 07 UK CK 0070
In the Uttarakhand High Court
Case No : Special Appeal No. 296 of 2017

Kiran Singh Fartyal and another	Vs	APPELLANT
State of Uttarakhand & others		RESPONDENT

Date of Decision : 13-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 156(3), 340
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 15

Citation : (2018) 07 UK CK 0070

Hon'ble Judges : K.M. JOSEPH, C.J; SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : B.C. Pande, Devesh Upreti, Pradeep Hairiya, Shobhit Saharia

Final Decision : Disposed Off

Judgement

K.M. JOSEPH, C.J. (ORAL)

SHARAD KUMAR SHARMA, J.

1. Appellants are the writ petitioners. The reliefs sought by the appellants/writ petitioners before the learned Single Judge are as follows:

I. Issue a writ, order or direction in the nature of Certiorari by quashing the order dated 2nd June, 2017 passed by respondent no.5, in the capacity

of respondent no.2, vide Letter No. 564/Reader-Miscellaneous complaint/2016-17 (Annexure No.7).

II. Issue a writ, order or direction in the nature of Mandamus by commanding the respondent no.2, 3 and 4 to allow the petitioners to run their business

over the shop in question without making any interference.

III. Issue any other writ, order or direction which in the interest of justice and under the circumstances of the case the Hon'ble Court may deem

fit and proper.

IV. To award the cost of the petition from the respondents no.4, 5, 6 and 7.

V. Issue an ad-interim Mandamus by staying the effect and operation of the order dated 02.06.2017 (Annexure No.7) and further the respondents

no.2, 3 and 4 be directed to allow the petitioners to run their business over the shops in question without making any interference.â??

2. We heard Mr. B.C. Pande, learned Senior Counsel assisted by Mr. Devesh Upreti, learned counsel for the appellants/writ petitioners, Mr. Pradeep

Hairiya, learned Standing Counsel for the State of Uttarakhand /respondent nos. 1 and 2 and Mr. Shobhit Saharia, learned counsel for respondent no.

3. Respondents no. 4 to 7 are the officials, who are made EO NOMINE parties.

3. The case of the appellants/writ petitioners, in brief, is as follows:

The first appellant is the owner of a building, in which four shops were constructed. The land, over which the aforesaid four shops were constructed,

is Nazul Land. The first appellant is in possession of the said land for more than eight years. Earlier one tin-shed was in existence over the said land.

The first appellant started masonry work of the aforesaid four shops in the year 2015 and the same was completed in the year 2016. The aforesaid

building was registered as House No. 234 by Nagar Palika, Lohaghat in the year 2016. The first appellant is paying Swachhtha Shulk for the same to

the Nagar Palika. Out of these four shops, in one shop, the second appellant is running a medical shop, for which the Nagar Palika has issued a license

to the first appellant and; in one shop, one Gynecologist, namely, Dr. Suparna has been permitted for enhancing the sale in the medical shop. Rest of

the two shops are being used by the first appellant as his godowns. On 17.05.2017, the first appellant found the locks of the said premises broken and

he, therefore, gave report of the same, by means of a written complaint, to the S.H.O., Thana Lohaghat. The first appellant has CCTV footage, it is

claimed. When the First Information Report was not lodged and when the police did not take any action on the complaint, the first appellant moved an

application to respondent no. 1 as well as served a copy of the same to the Superintendent of Police, Champawat on 20.05.2017. When no action was

taken, the first appellant moved an application under Section 156(3) of Cr.P.C before the Chief Judicial Magistrate on 25.05.2017. In the meantime,

the accused persons have moved the S.D.M., Lohaghat. It is stated that

respondent nos.4 to 7 are in collusion with the accused persons and they are misusing their powers. Thereafter, the appellants/writ petitioners have been served with the impugned notice dated 02.06.2017. Therein, the respondent no.2 asked respondent no.3 to take legal action against the appellants/writ petitioners and she ordered respondent no. 3 to remove the encroachment over the property in dispute within two days and further asked to take the assistance of the police force. It is this case, which has been dismissed by the learned Single Judge in the manner noticed. The judgment of the learned Single Judge reads as follows:

Mr. B.C. Pandey, Senior Advocate assisted by Mr. Devesh Upreti, Advocate for the petitioners.

Mr. Yogesh Pandey, Additional C.S.C., for the State/respondent nos. 1 and 2.

Petitioners are aggrieved by the order dated 02.06.2017, by which the Sub-Divisional Magistrate has directed that the petitioners who are unauthorized persons, be evicted from the shop.

There is no fault in the order dated 02.06.2017 as the petitioners admittedly do not have any title on the said land, on which they claim to have allegedly constructed the shop.

The Sub-Divisional Magistrate in her order clearly stated that the shops have been constructed by the Zila Panchayat and have been allotted to

persons, but the petitioners have made unauthorized construction on the said property. Therefore, the order dated 02.06.2017 has been passed.

In view of this Court, no fault can be found with the order dated 02.06.2017.

The writ petition is liable to be dismissed being wholly without any merit. It is hereby dismissed in limine.

Let a certified copy of this order be issued within a period of twenty-four hours on payment of usual charges, as prayed.

4. Counter affidavit has been filed in the appeal and rejoinder affidavit has also been filed. In the counter affidavit, the case that is set up by the third

respondent is something completely different. It is their case, INTER ALIA, that the four shops were actually got constructed by the third

respondent after following certain procedure, which involved issuing of an advertisement and also the four persons came forward and they have

entered into a contract and; it is while so that the appellants/writ petitioners broke open the locks and trespassed into the four shops.

5. The appellants/writ petitioners have denied the same in the rejoinder affidavit. In fact, in the rejoinder affidavit Annexure RA-17 document is

produced, which allegedly is a contract entered into between the first appellant and another. In paragraph no. 53 of the rejoinder affidavit, it is stated

as follows:

“53. That the contents of para no.40 of the counter affidavit are not admitted and denied. It is respectfully submitted that the respondent no.3 is a

local body and the burden of proof lies on it that the shops were constructed by it. The deponent has constructed the shops in question at his own

expenses but he may not have any papers to show that the construction was made by him. However, it is respectfully submitted that the deponent

gave the contract to construct the shops to one contractor, namely, Sri Lal Bahadur, who to the best knowledge of the deponent has given statements

to the investigation officer, during the course of investigation against the so-called four allottee, that the deponent gave contract of constructing the

shops in question to him in the year 2015. Anything contrary to this in this para is not admitted and denied. The copy of the agreement entered

between the deponent and Sri Lal Bahadur regarding the construction of the shops in question is being enclosed with this affidavit as Annexure

No.RA17.”

6. Mr. B.C. Pande, learned senior counsel for the appellants/writ petitioners would submit that when the first appellant is in settled possession, he can

only be dispossessed from the property in the manner known to law. He invokes the provisions of the Uttar Pradesh Public Premises (Eviction of

Unauthorised Occupants) Act, 1972 (hereinafter referred to as the “Act”). He admits that there is no dispute, in fact, that the said land, over

which the four shops have been constructed, was and is Nazul Land. There was a provision for regularization (it may be noticed, no doubt, that the

said order has been struck down by a Division Bench of this Court).

7. Mr. Shobhit Saharia, learned counsel for the third respondent, on the other hand, would reiterate that this is a case, where on a Nazul Land, the third

respondent had got the shops constructed and the said land is duly recorded in the name of the third respondent-Zila Panchayat.

8. There is a dispute raised as to whether the appellants/writ petitioners have constructed the buildings or the buildings have been constructed by the

third respondent, as stated in the counter affidavit. Possibly, we cannot resolve this controversy. Furthermore, it is also brought to our notice by the

learned senior counsel for the appellants/writ petitioners that a Civil Suit is barred in respect of matters under the Act (See Section 15 of the Act).

9. In the above circumstances, we would think that it may be most appropriate that proceedings be taken against the appellants/writ petitioners under

the Act, but at the same time the proceedings be expedited and completed within a particular time frame and even the appeal, which may be filed by

the appellants should be disposed of within a time frame. There is no dispute, in fact, that there is a provision for claiming damages under the Act. In

such circumstances, we allow the appeal partly and dispose of the same as follows:

We record the submission of Mr. Shobhit Saharia, learned counsel for the third respondent that an application invoking the provisions of the Act will be

filed within a period of ten days from today. The Prescribed Authority, before whom it will be filed, shall proceed to dispose of the matter, no doubt,

after giving opportunity to both sides, at the earliest and at any rate within a period of two months from the date of filing of the application by the third

respondent before it.

We further direct that if the appellants/writ petitioners are inclined to file any appeal against the order should the matter be decided against them and if

the appeal is filed within the period of 15 days (which is the period of limitation provided under the Act), the District Court before whom the appeal is

filed will dispose of the matter again as early as possible, at any rate, within a period of six weeks from the date on which the appeal is filed. We

reiterate the case of the appellants/writ petitioners that the constructions, which according to them they have made, are on Nazul Land.

10. Since, we have proposed to dispose of the Special Appeal subject to the above terms, at this stage, we do not feel it necessary to pass any

separate order on the application under Section 340 Cr.P.C (CLMA No. 9891 of 2018). Accordingly, the said application will stand closed. We,

however, make it clear that not taking any action on the application under Section 340 Cr.P.C., should not be understood as having pronounced on this

question and it will be open to the Prescribed Authority to go into this question.