
(2010) 04 UK CK 0080
In the Uttarakhand High Court

Kishna Nand

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 4(1)

Citation : (2010) 04 UK CK 0080

Hon'ble Judges : V.K. Bist, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Bist, J.—Present petition has been filed by the petitioner challenging the judgment and order dated 04.08.2009 passed by the learned District Judge, Champawat and the order dated 11.07.2008 passed by the Prescribed Authority/ Sub Divisional Magistrate, Sri Poornagiri, Tanakpur. The petitioner has also sought a writ of mandamus directing the respondents not to take any coercive measures and not to evict the petitioner from the shop in question. The petitioner has further prayed for a writ of mandamus directing the respondents not to demolish the construction set up by the petitioner on the land in dispute.

2. Brief facts of the case, interalia, are that a large number of persons, including the petitioner, have set up and constructed wooden shops and tin shades by the side of the road heading to the temple of goddess Poornagiri from Thuligarh to Poornagiri temple situated at Tuniyas in Tehsil and District Champawat. As many as 40 to 50 wooden shops and tin shades have been constructed by the side of the road approaching to the said temple. It is averred in the petition that in the said stall the petitioner is carrying on business of selling the Pooja Samagri, sweets and also offering drinking water to the pilgrims. The pilgrims have to take rest after covering a distance of one or two kilometers and the said shopkeepers have, therefore, constructed tin shades in which the pilgrims take rest, during the rains or hail storm. In his tin shade, the petitioner also provides shelter to

the pilgrims, as there is no other covered building by the side of this road constructed by Public Works Department. The petitioner has made a wooden shop and tin shade in an area of 105 Square Meter over the land in dispute. It has been further asserted that the land in dispute belongs to Zila Parishad for which the Zila Panchayat was charging rent from the shopkeepers sometime in the form of rent and sometime as Mela Fee. The Public Works Department has constructed Kaccha Road in the year 1993-94 which passes through the land on which the petitioner has constructed wooden stall. It has been further stated that since the shop in question was constructed by the petitioner in the land for which he is paying rent to the Zila Panchayat, therefore the Forest Department has no authority to get his shop demolished, particularly when the Zila Panchayat has been regularly charging rent from the petitioner. It has been further stated that the wooden shop and the tin shade constructed by the petitioner is not causing any obstacle on the hill road as the same has not been constructed on the road. After the Forest Department approached to the Prescribed Authority for getting the petitioner evicted from the land in question, a notice was issued to the petitioner u/s 4 (1) of the U.P. Public Premises (Eviction of Unauthorized Occupation) Act, 1972 (hereinafter referred to as the "Act") by the Prescribed Authority asking the petitioner to show cause as to why he may not be evicted from the land in dispute. A case thereof was also registered against the petitioner. Thereafter, vide order dated 11.07.2008 the Prescribed Authority passed order evicting the petitioner from the land in dispute. Aggrieved with the order of eviction, the petitioner preferred Eviction Appeal before the District Judge, Champawat and vide order dated 04.08.2009 passed in the Eviction Appeal the appeal was also dismissed and the order dated 11.07.2008 passed by the Prescribed Authority/Sub Divisional Magistrate, Sri Poornagiri, Tanakpur was affirmed. Being aggrieved with both these orders, the petitioner has filed the instant petition.

3. A counter affidavit has been filed on behalf of the respondent Nos. 4 & 5, which has been sworn in by Sri S.P. Singh, Divisional Forest Officer, Champawat, Forest Division in which the deponent stated, on oath, that Purnagiri Devi Temple situates in the forest area at the peak of a hill at a distance of about 10 kms. from Thuligarh and not in the place known as Tuniyas. It has been admitted that though motorable road has been constructed upto Bhairav temple, but during festival season vehicles are allowed upto Thuligarh only from where the devotees have to reach the temple on foot. It has also been admitted that during festival season, some persons temporarily install their stalls for selling Pooja Samagri by the side of the road leading to the Poornagiri temple, however some persons have placed their stalls permanently which amounts to encroachment by the side of the road. The road, by the side of which the petitioner has erected stall, plunges in the forest area and no land belonging to Zila Parishad is there by the side of the road. This road also does not belong to Public Works Department, but it situates in the forest area. It has further been stated in the counter affidavit that if, in case, the Zila Panchayat has realized any amount from the

shopkeepers as Mela Fee or rent, the same is wholly unauthorized and illegal. The encroachers, like the petitioner, have encroached upon the forest land by installing their shops, therefore the Forest Department has started clearing the same. The petitioner cannot continue his illegal act of encroachment over the forest land alleging hardship to pilgrims. The petitioner has never raised the plea either before the Prescribed Authority or before the Appellate Authority that the land over which he has installed his shop belongs to Zila Panchayat. The petitioner has never claimed his title before the Zila Panchayat. No documentary evidence was produced by the petitioner, whatsoever, in support of his contention that the disputed land belongs to Zila Panchayat. The petitioner has only admitted his possession over the land in dispute and he never claimed his ownership. It is stated that the petitioner has also not produced any documentary evidence showing that the land is not the forest land, on the other hand the entire area had been declared as the forest land vide Notification dated 8th June, 1932. Lastly, it is stated in the counter affidavit that since the petitioner had been an unauthorized occupant, as such, he was liable to be evicted from the land in dispute and has rightly been ordered to be evicted from the land in dispute.

4. I have heard the Sri Prabhakar Joshi Advocate and Sri B.S. Negi, the learned Counsel for the petitioner and Sri Sudhir Kumar, the learned Brief Holder for the State and perused the record.

5. Learned Counsel for the petitioner first of all has submitted that the petitioner is in possession of the land in dispute since long and is regularly paying rent to Zila Panchayat either in the form of Mela Fee or as an annual rent. He contended that the Forest Department is not the owner of the land in dispute. He argued that neither any opportunity was given to the petitioner before the Prescribed Authority for producing any documents in support of his statement, nor the Zila Panchayat was afforded any opportunity with regard to ownership of the land in dispute. Mere admitting that the petitioner is in possession of the land does not mean that the land belongs to the Forest Department, therefore the Courts below have erred in holding that the petitioner is an unauthorized occupant. The Forest Department failed to prove before the Courts below that the land in dispute belongs to it. It has been argued that the disputed construction is not causing any obstacle on the hill road beyond Tuniyas and the petitioner is still willing to pay rent to the Zila Panchayat as the land in dispute belong to Zila Panchayat. He further argued that the Panchayat has not given any notice for terminating his tenancy. The petitioner is in occupation of the land for the last 30 years. Since tenancy of the petitioner has not been terminated, the Forest Department is not entitled to eliminate his construction. He argued that the respondents may be restrained from demolishing or removing the shop in question.

6. Perusal of the record reveals that the petitioner has nowhere claimed his ownership over the land in dispute. On the other hand the entire area had been declared as the forest land vide Notification dated 8th June, 1932. Eviction of the

petitioner has been done invoking Section 4 (1) of the "Act", therefore, before entering into the merits of the case it is pertinent to refer the relevant Section of the Act.

4. Issue of notice to show cause against order of eviction:

(1) If the prescribed authority either of its own motion or on an application or report received on behalf of the State Government or the corporate authority, is of opinion that any persons are in unauthorized occupation of any public premises and that they should be evicted, the prescribed authority shall issue a notice in writing in calling upon all persons concerned to show cause why an order of eviction should not be made.

7. Perusal of the record further reveals that Divisional Forest Officer, Boom Forest Division, South Pithoragarh Forest Division submitted its report to the Prescribed Authority, Lohaghat, District Champawat about the encroachment done by the petitioner with the request for his eviction from the land in dispute, alongwith the report a map of the site was also appended. On the basis of said report the Prescribed Authority issued a notice to the petitioner u/s 4 (1) of the "Act" in the eviction proceedings. Both the parties led their evidence in the eviction proceedings. Having heard the learned Counsel for the petitioner, the learned Prescribed Authority passed order on 11.07.2008 evicting the petitioner from the land in dispute with the observation that there is nothing on record which may prove ownership of the petitioner over the land in dispute. The Appellate Court also noticed the fact that the land in dispute has been notified and the same has been declared as the forest land. The petitioner is not recorded as Bhumidhar or Abadkar in the revenue records over the land in dispute. Paying rent or Mela Fee to the Zila Panchayat as Tahbazari or ownership of the Zila Panchayat over the land in dispute is immaterial. The Petitioner also does not claim himself to be the owner, therefore, there vests no right to an unauthorized occupant against the true owner. The unauthorized occupant accrues no legal right over the land for his regularization. The Appellate Court has given categorical findings that by paying Tahbazari or tax no person can be supposed to be the legal owner of any property. It has been further observed that from the evidence on record, it is also apparent that the appellant is in unauthorized occupation of the property in dispute and no Fard of Khasra or Khatauni was filed on behalf of the petitioner to prove his ownership as well as his legal possession. The witness produced before the Trial Court has also described measurement of the encroached land and its description. Both the Court's below has given concurrent findings that to prove his ownership over the land in dispute, the petitioner failed to produce any documentary evidence despite affording opportunity. Similarly, no right accrues to the petitioner simply submitting receipts of electric consumption issued by the Uttarakhand Power Corporation.

8. Upon overall appraisal of the material available on record and after hearing arguments advanced by the learned Counsel for the parties, I do not find any illegality, infirmity or perversity in the orders passed by the Courts below.

Consequently, the writ petition fails and is liable to be dismissed.

9. Accordingly, the writ petition is dismissed. Interim order dated 14.01.2010 passed by this Court stands vacated.

10. Costs easy.