
(2012) 05 UK CK 0029

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 958 of 2012

Mrs. Savitri Sanguri and two others

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 19-05-2012

Acts Referred:

Citation : (2012) 05 UK CK 0029

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : Menka Tripathi, for the Appellant; N.P. Sah, learned Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.S. Verma, J.

(Interim Relief Application No. 4828 of 2012)

1. Heard learned counsel for the petitioners as well as learned Standing Counsel for the State of Uttarakhand. Learned Standing Counsel appearing on behalf of the respondents has submitted that this writ petition may be disposed of as on today, without inviting counter version from the respondents.

2. By means of this writ petition the petitioners have prayed for setting aside the order dated 7-9-2011 passed by the respondent no. 2-Additional District Magistrate, Nainital (Annexure-1 to the petition), whereby the lease deed, which was granted in favour of the petitioners, has been cancelled.

3. Relevant facts giving rise to the present writ petition in brief, according to the petitioners, are that the petitioner no. 1 is the mother of petitioner nos. 2 and 3. The father of the petitioners, late K.D. Sanguri was granted lease pertaining to plot no. 1934, measuring 9 Nalis, 13 Muthi under the Government Grants Act. The petitioners have annexed copy of the lease/Patta as Annexure 2 to the petition; that after the death of Mr. K.D. Sanguri in the year 2001, the land under

the lease deed was transferred in the name of the petitioners and their names have been mutated in the revenue records as successors of late K.D. Sanguri.

4. It appears that the then Patwari of Pandegaon submitted a report stating therein that the land under the lease deed falls within the boundary of Leelawati Pant Government Inter College and is being used for the purpose of school and that Sri Keshav Datt Sanguri had not been in possession of the said land. The Patwari has made a recommendation for cancellation of the lease deed. It appears that a Case No. 51/30 of 2010-2011 under the Government Grants Act was registered in the Court of Additional Collector Nainital against the petitioners.

5. Consequently, in the month of September, 2011, the petitioners received a notice from the respondent no. 2 regarding the lease deed in question. The respondent no. 2 Neeraj Sanguri sent his objection by registered post. The petitioners have annexed copy of the objection/letter dated 5-9-2011 as Annexure 4 to the petition. In the objection, there is reference of Case No. 5130 of 2010-2011 under Government Grants Act. In his objection, the respondent no. 2 has taken several grounds against allegations made in the notice including that there has not been any violation of conditions of lease deed. The respondent no. 2 has made a specific request to allow some time to him to substantiate his contention, as the respondent no. 2 is serving in defence service.

6. The learned Additional Collector in the absence of the petitioners decided the case on merits and passed the impugned order, which gave rise to the present writ petition.

7. Learned counsel for the petitioners has vehemently submitted that the impugned order has been passed in arbitrary manner and without affording reasonable opportunity of hearing to the petitioners and that the order impugned has been passed in violation of principles of natural justice and fair play, therefore, the impugned order cannot be sustained in the eye of law. The learned counsel for the petitioners further submitted that no inquiry report was sent or received by the petitioners in this case.

8. Having heard the submissions of learned counsel for the parties and having gone through the material placed before this Court, I am of the view that this fact is not disputed that a lease in respect of the land in question under the Government Grants Act (Annexure-2 to the petition) was made in favour of the father of the petitioners by the Collector, Nainital. It is also not disputed that the lease can be cancelled if there is violation of any of the conditions of the lease deed, but before canceling the lease, the Collector concerned is under obligation to satisfy whether there is violation of conditions of the lease deed.

9. From a perusal of the impugned order, it does not appear whether any survey of the spot was made by Patwari concerned or any other Officer of Revenue Department to ascertain whether the land in question falls within the boundaries of Leelawati Pant Government Inter College. The impugned order is based on the inquiry report of Up Ziladhikari/Tehsildar. Moreover, from a bare perusal of the

impugned order, it reveals that there is mention of registered letter received from the petitioners. That being so, the contention of the learned counsel for the petitioners that reasonable opportunity of hearing was not afforded to the petitioners finds corroboration and support.

10. Since the impugned order passed by the Additional Collector is an ex parte order against the petitioners and as the petitioners were not given opportunity of hearing in the matter, the impugned order is hit by the principle of natural justice and fair play, as contended by the learned counsel for the petitioners.

11. In the above facts and circumstances, in the interest of justice, the impugned order passed by the Additional Collector Nainital is liable to be set aside and the writ petition deserves to be allowed outright. It would be in the fitness of things that the matter is decided on merits after affording opportunity of hearing to the petitioners, by the Collector Nainital.

12. The writ petition is allowed. Costs easy. The impugned order dated 7-9-2011 is set aside. The Collector Nainital is directed to decide the case afresh on merits, after hearing the petitioners and the State and the case should not be assigned to the Additional Collector, Nainital.

13. The petitioners are directed to appear before the Collector, Nainital on 23-5-2012.

14. All pending applications stand disposed of. A certified copy of this order be issued to the learned counsel for the petitioners by Monday i.e. 21-5-2012, on payment of usual charges.