

(2012) 05 UK CK 0035

In the Uttarakhand High Court

Case No : C.M.W.P. No. 1068 of 2007 with C.M.W.P. No. 1067 of 2007

M/s. Makhan Lal Shanti Prasad

APPELLANT

Vs

Divisional Forest Officer and others

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2

Citation : (2012) 2 EFLT 884

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : S.K. Jain and B.S. Thind, for the Appellant; P.C. Bisht for the State, Sharad Sharma and Anirudh Joshi for the U.P.S.R.T.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The petitioner has filed the present writ petition praying for a writ of mandamus commanding the respondents to renew the lease of the plot in question and further not to interfere in the possession during the lease period. The facts leading to the filing of the writ petition as disclosed in the writ petition is, that the petitioner alleges that a lease of plot of forest land measuring 90 ft. x 45 ft. was granted in favour of the petitioner under the Government Grants Act on 25th October, 1974 with retrospective effect with 1st January, 1954 for a period of 30 years. In this lease, it was stipulated that the total period of the lease would be 90 years and that the lease could be renewed twice at enhanced rates. The petitioner contended that pursuant to the grant of the aforesaid lease, the petitioner was paying the lease rent and the same was being accepted by the Forest Department. The petitioner contended that as far back as on 24th July, 1977, the petitioner had written a letter to the Divisional Forest Officer to furnish details of the premium which the petitioner was required to pay and, in response to that, the Divisional Forest Officer by its order dated 28th July, 1977 provided the details to the petitioner with regard to the premium that was to be deposited. It is contended that the petitioner deposited the amount and raised a driveway

toilet and rest rooms for the purpose for which the lease was granted to him. It was contended that the lease expired after 30 years in the year 1983 and, consequently, letters were written by the petitioner for the renewal of the lease. It was contended that the Divisional Forest Officer by a letter dated 24th October, 1983 directed the petitioner to complete the various formalities for the purpose of the renewal of the lease. It is contended that the petitioner complied and completed the formalities in spite of which the lease was not renewed. In this regard, several letters were written to the authorities, representations were made but for reasons best known, the renewal of the lease was not made and, consequently, the petitioner filed this petition in the year 1994 before the Allahabad High Court praying for a writ of mandamus commanding the respondents to renew the lease in favour of the petitioner.

2. The Court while entertaining the writ petition, issued an order dated 27th January, 1994 staying the dis-possession of the petitioner but subsequently by an order dated 8th August, 1996, the interim order was vacated by the High Court. The matter remained pending and it transpires that the disputed land was transferred by the respondents to the U.P.S.R.T.C. by an order dated 5th September, 2000. The petitioner, being aggrieved by the transfer of the said land to the U.P.S.R.T.C., filed another writ petition and prayed for the quashing of the said order. Both the writ petitions have been connected together and, upon the creation of the State of Uttarakhand, these two petitions have been transferred to this Court and are being decided together.

3. The counter-affidavit of the Forest Department reveals some further facts, namely, that the petitioner had encroached the forest land and was an unauthorized occupant. The disputed land was a part of Ram Nagar Reserve Forest in the Malani Range and the eviction proceedings were initiated against the petitioner on 26th July, 1973. In these proceedings, the petitioner applied for withdrawal of the eviction proceedings and for regularization of his possession. The Divisional Forest Officer by an order dated 31st August, 1973 directed the petitioner to deposit a sum of Rs. 1,600/- to consider the plea for withdrawal of the case. The said amount was deposited by the petitioner and, by an order dated 13th September, 1973, the eviction proceedings were withdrawn without giving any right to the petitioner with regard to his possession.

4. It transpires that on the request of the petitioner for regularization of his possession, a proposal to grant lease to the petitioner was sent by the Forest Department to the State Government. This was done with the ostensible purpose to regularize the encroachment of the petitioner on the land in question. The State Government considered the request of the Forest Department and, by an order dated 6th December, 1974, agreed to sanction a lease in favour of the petitioner for a period of 30 years with retrospective effect from 1954 on certain terms and conditions. Based on the said order of the Government, the petitioner was informed accordingly by the Divisional Forest Officer and the terms and conditions were accepted by the petitioner. Amounts as directed under the

Government Order and as directed by the Divisional Forest Officer from time to time was deposited by the petitioner. On 18th May, 1976, the draft of the lease was sent to the State Government for approval. The counter-affidavit reveals that from time to time certain objections were raised by the State Government with regard to the fact as to whom the lease is required to be executed, namely, in the name of the individual or in the name of the firm. As a result of all this correspondence, the counter-affidavit indicates that no lease was executed and the period of 30 years expired in 1983.

5. Since no lease was executed between the parties and the period expired, a proposal was sent for renewal of the lease and on such proposal, the Forest Department again started the correspondence with the petitioner as well as with the State Government. Eventually, the State Government issued an order dated 18th September, 1993 holding that it was no longer proper to grant a lease to a private institution for commercial purpose on a forest land which is covered under the Forest Conservation Act, 1980 and, consequently, directed the authorities to take steps for taking back the possession from the petitioner. The counter-affidavit reveals that in November, 1993 proceedings were initiated against the petitioner for his eviction under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

6. In spite of the order of the Government dated 18th September, 1993, the petitioner continued his correspondence with the Forest Department as well as the State Government seeking review and praying for a renewal of his lease. It transpires that the State Government referred the matter to the Central Government since necessary permission was required under the Forest Conservation Act, 1980. The Central Government issued a letter dated 13th September, 2000, approving in principle to transfer the land for the purpose of a construction of a petrol pump subject to certain terms and conditions, such as, depositing the cost for penal compensatory afforestation and directed the State Government to do the needful and, only thereafter, the Central Government would grant formal approval if required u/s 2 of the Forest Conservation Act, 1980. The pleadings in the connected writ petition indicates that notwithstanding the order passed by the Central Government on 13th September, 2000, the land was already transferred to U.P.S.R.T.C. for the purpose of parking of their buses by an order dated 5th September, 2000.

7. In the light of these facts, the Court has heard "Shri S.K. Jain, the learned Senior Counsel for the petitioner, Shri P.C. Bisht, the learned Brief Holder for the State and Shri Sharad Sharma, the learned Senior Counsel for the U.P.S.R.T.C.

8. Upon hearing the learned Senior Counsel for the petitioner in some length, the contention of the learned Senior Counsel can be summarised as under:

9. That a lease having been sanctioned by the Government under the Government Grants Act, it was not necessary that a formal lease deed was required to be executed and that it would be deemed that a lease was executed.

In support of this contention, the learned Counsel placed reliance upon a decision of the Division Bench of the Allahabad High Court in *Zahoor Ahmad Abdul Sattar Vs. State of Uttar Pradesh and Another*, . Further, the lease amount as well as the enhanced amount pursuant to the renewal clause was being paid by the petitioner which was accepted, by the respondents and, consequently, there was a deemed renewal of the lease deed as per the conduct between the parties. In support of this submission, the learned Counsel placed reliance upon a decision of the Allahabad High Court in *Purshottam Dass Tandon and Others Vs. State of U.P. Lucknow and Others*, , and another decision of the Calcutta High Court in *Bengal National Bank Ltd. Vs. Janoki Nath Roy and Others*, , in which it was held that the tenant holding over and paying enhanced rent as contained in the renewal clause coupled with the fact that the landlord was accepting the rent was not a monthly tenant but deemed to have taken a renewal. Lastly, it was urged that the lease was not required to be registered and, in support of the submission, the learned Counsel placed reliance upon a decision in *The State of Madhya Pradesh Vs. Jhankar Singh*, .

10. Having heard the learned Senior Counsel at some length, the Court finds that the submission raised at the bar is patently untenable. The petitioner is not a valid lessee but is an unauthorized occupant having encroached the forest land. The record indicates that eviction proceedings were initiated in 1973 but were dropped subsequently and an effort was made to regularize the encroachment made by the petitioner. The Government issued an order dated 25th October, 1974 sanctioning execution of the lease deed in favour of the petitioner on certain terms and conditions for reasons best known. The pendulum shifted from one party to another resulting in the non-execution of the lease deed. The petitioner is claiming certain rights from the Government Order dated 25th October, 1974 and is laying stress on the renewal clause. In the opinion of the Court mere sanction by the Government for execution of the lease deed does not give any indefeasible right to the petitioner for demanding execution of a lease or for renewal at this stage and the reason is not far to see. Before the lease deed, if any, could be executed between the parties, the Forest Conservation Act, 1980 came into existence. It became necessary for the State Government to take previous permission and approval from the Central Government for the execution of a lease with regard to the forest land or for its renewal. A fait accompli happened for which the State Government cannot be blamed nor a mandamus could be issued directing the State to renew the lease.

11. The Court further finds that the State Government took a decision on 18th September, 1993 to regularize the lease to a private institution for commercial purpose. This order comes in the way of the petitioner since this order has not been challenged. Consequently, so long as the order of the State Government dated 18th September, 1993 remains in existence, no relief can be granted to the petitioner.

12. Much had been contended that the Central Government had approved the

transfer of the land by its order dated 13th September, 2000 as required u/s 2 of the Act. In this regard, the Court finds that the Central Government by its order dated 13th September, 2000 had only agreed in principle to transfer the land and de-reserve the forest subject to certain terms and conditions. Nothing has been indicated in the writ petition that the said terms and conditions were duly complied with by the petitioner.

13. In the light of the aforesaid, the submissions raised by the learned Counsel for the petitioner is bereft of merit. The decisions cited are either not applicable or are totally distinguishable. The decisions are based on the issue that there existed a lease deed for which a renewal was required but in the instant case there exists no lease deed. The Government Order of 1974 is not a lease deed. It has come on record that a draft lease deed which was sent to the State Government pursuant to the Government Order dated 25th October, 1974 which was not accepted by the State Government.

14. Nothing has been brought on record to state that the transfer of the land to U.P.S.R.T.C. was in violation of the Forest Conservation Act. The only ground urged is that the land was required to be renewed in favour of the petitioner and, consequently, could not have been transferred. The Court further finds that there is nothing on record to indicate that the petitioner was in physical possession of the land. The counter-affidavit of U.P.S.R.T.C. reveals that the land was transferred and that they are in possession. In the light of the aforesaid, both the writ petitions fail and are dismissed.