

---

**(2015) 01 UK CK 0023**

**In the Uttarakhand High Court**

**Case No : Writ Petition No. 1355 (MS) of 2014**

Muneshwari Devi

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

---

**Date of Decision : 12-01-2015**

**Acts Referred:**

Forest (Conservation) Act, 1980 — Section 2

**Citation : (2015) 1 UC 782**

**Hon'ble Judges : Alok Singh, J**

**Bench : Single Bench**

**Advocate : S.K. Mandal, for the Appellant; Anil Kumar Joshi, Addl. Chief SC, Advocates for the Respondent**

**Final Decision : Disposed off**

---

## **Judgement**

Alok Singh, J.

1. For the reasons stated in the application, counter affidavit filed on behalf of respondent No. 2 and 6 is taken on record. Learned counsel for the parties are ready to argue the matter finally, therefore, with the consent of learned counsel for the parties, matter is taken up for hearing and is being disposed of by this judgment.

2. Present petition is filed assailing the order dated 22.07.2013 passed by Deputy Collector, Purnagiri, Tanakpur, whereby prayer of the petitioner seeking grant of Patta of land bearing Khasra Nos. 25 Khata Khatauni No. 99 in village Chandani, Banbasa, District Champawat was declined and consequently, application seeking grant of Patta was rejected. It has further been prayed in the writ petition to issue a writ of Mandamus commanding the respondents to grant Patta of land bearing Khata Khatauni No. 99, Gata No. 25, situated in village Chandani, Banbasa, District Champawat in favour of the petitioner.

3. Mr. S.K. Mandal, Advocate for the petitioner while taking me to the report of Collector dated 27.05.2003 (Annexure No. 9 to the writ petition), has

vehemently argued that learned Collector in his report admitted that 19 different people are in illegal possession of land bearing Khata Khatauni No. 99 and their possession can be regularized, after obtaining prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980, therefore, Patta can be granted in favour of the petitioner too under the Government Grants Act in view of the fact that petitioner is in actual physical possession of the land bearing Gata No. 25 Khata Khatauni No. 99.

4. A careful perusal of the report submitted by the learned Collector, Champawat dated 27.05.2003 would reveal that land bearing Khata Khatauni No. 99 is a forestland and the same is recorded as forestland in the revenue record as well therefore, no lease/Patta or regularization of the possession can be ordered without prior approval of the Central Government.

5. Section 2 of the Forest (Conservation) Act, 1980 reads as under:

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

[Explanation.-For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

6. A bare perusal of Section 2 of the Act would demonstrate that no forestland

can be permitted to be used for non forest activities without prior approval of the Central Government.

7. In the present case, in the impugned order, learned Deputy Collector has observed that since the land, in question, is a forestland, therefore, Patta/lease cannot be granted in favour of the petitioner. It has further been observed by the Deputy Collector that petitioner could not prove her possession over land, in question.

8. Learned counsel for the petitioner submits that since as per report of the learned Collector (Annexure No. 9 to the writ petition), some other people are also in possession of the same forest land, therefore, learned Collector or Deputy Collector should have made reference to the Central Government to regularize their possession and to grant Patta/lease in favour of the petitioner as well.

9. Since Deputy Collector himself was not inclined to grant Patta in favour of the petitioner, in view of the fact that petitioner could not prove her possession, therefore, Deputy Collector seems to be within its jurisdiction by not making reference to the Central Government for grant of approval for the lease.

10. Mr. A.K. Joshi, Addl. Chief Standing Counsel for the State of Uttarakhand submits that there seems to be no necessity or justification to allow any person to remain in possession of the forestland. He further contends that if few people are in unauthorized possession of the forestland, as indicated in Annexure 9 to the writ petition, appropriate steps shall be taken to remove such encroachment from the forestland within two weeks positively.

11. It is settled position of law that Mandamus can be issued to enforce the legal right. Since property, in question, has been recorded as forestland and petitioner could not prove her possession over the property, in question and, therefore, petitioner has absolutely no legal right to claim lease thereon. Consequently, writ petition fails and is hereby dismissed. CLMA No. 5954/2014 and I.A. No. 83/2015 also stand disposed of accordingly.