

(2014) 11 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition Nos. 1859. (M/S) of 2006 and 315 (M/S) of 2007

Murli Dhar Dangwal and Others

APPELLANT

Vs

Commissioner Garhwal Mandal and Others

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198(4)

Citation : (2014) 11 UK CK 0016

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Sharad Sharma, Sr. Advocate assisted by Pradeep Chamiyal, Advocates for the Appellant; N.P. Shah, Standing Counsel, Advocates for the Respondent

Judgement

Sudhanshu Dhulia, J.—Mr. Sharad Sharma, Senior Advocate, assisted by Mr. Pradeep Chamiyal, Advocate present for the petitioner. Mr. N.P. Shah, Standing Counsel, present for the State of Uttarakhand.

2. Mr. Mahavir Singh Tyagi, Advocate for the respondent No. 5.

3. The petitioners before this Court had challenged order dated 08.09.2006 and the order dated 30.10.2006 by which effectively the lease granted in favour of the petitioners stands cancelled. The order dated 08.09.2006 is in fact a joint Committee report consisting of the Principal Secretary, Revenue and Principal Secretary, Forest, which has been prepared and passed in pursuance of earlier direction of the Division Bench of this Court passed in Writ Petition (M/B) No. 1066 of 2003 reference of which will given in the paragraph henceforth.

4. This case has a rather checkered history, the petitioners, who. claimed to be residents of different villages of District Tehri Garhwal , have been allotted land measuring one nali (one nali = 127 Sq. Yard approximately) to each of the petitioners by an order dated 25.01.1993 by the District Magistrate, Tehri Garhwal. The lease deeds granted in favour of the petitioners have been annexed

on record and it has been stated that such lease deeds have been granted in favour of the petitioners, a fact which has not been disputed by the respondents.

5. In the year 1995, a writ petition was filed by the private respondent - Mr. Jagmohan Singh Negi (who is respondent No. 5 in the present writ petition) before the Hon'ble High Court of Judicature at Allahabad praying that the land has been wrongly allotted to the petitioners, as they were not eligible for such allotment, and moreover, such land belongs to forest, which cannot be allotted in any case.

6. The matter was initially disposed of on 31.10.1996 by the Division Bench of High Court of Judicature at Allahabad with the direction to the petitioners to avail their remedy before the District Magistrate, Tehri Garhwal/Collector under Section 198(4) of U.P.Z.A. & L.R. Act. This order was challenged by respondent No. 5 (in the present writ petition) before the Hon'ble Apex Court where the order dated 31.10.1996 passed by the High Court of Allahabad was set aside and holding that Section 198(4) of U.P.Z.A. & L.R. Act will not apply in the present case. The matter was remanded to the High Court for reconsideration.

7. During the pendency of the writ petition before the High Court of Judicature at Allahabad, the new State of Uttarakhand was created, and since the land in dispute falls within the territory of Uttarakhand the matter was transferred to this Court under Section 35 of the U.P. Reorganisation Act, 2000. The case was ultimately heard by the Division Bench of this Court and disposed of vide order dated 05.04.2006 (WPMB No. 1066 of 2003) with the direction that a High Level Committee be constituted consisting of Principal Secretary, Revenue and Principal Secretary, Forest to look into the matter. The Division Bench of this Court further directed that the Committee which consist of Principal Secretary, Forest and Principal Secretary, Revenue to inquire on the following two points, which reads as under:--

"a) Whether the grant of patta under Government Grants Act in favour of respondents Nos. 6 to 25 is in violation of the provisions and spirit of the law?

b) Whether the land in question was forest land and only with a view to enable the revenue authorities to grant patta in favour of the revenue personnel and their relatives, the same was recorded as banjar revenue land?"

8. The Committee went through the entire records and came to the conclusion that the land has been given on lease to the present petitioners under the Government Grants Act, however, the petitioners were not eligible for grant of this land. As regarding the Forest land, the Committee came to the conclusion that the land is a Forest land, and therefore, in any case the land cannot be given on lease in favour of the petitioners by the District magistrate.

9. Whether the land is a Forest land only a tentative conclusion has been arrived at and the same is not conclusive. However, at the same time, the Committee has held that on the disputed land, the provisions of Forest Conservation Act,

1980 are applicable relying upon a decision of Hon"ble Apex Court in T.N. Godavarman Thirumulkpad Vs Union of India & others (decided on 12.12.1996). Consequent to the report of the Committee, the District Magistrate, Tehri Garhwal has cancelled the lease of the petitioners.

10. The learned Senior Counsel for the petitioners Mr. Sharad Sharma has submitted that the Committee, which was constituted in terms of the decision of the Division Bench of this Court (as referred above) did not give an opportunity of hearing to the petitioners, and therefore, the entire findings of the Committee are perverse.

11. This Court, however, is not inclined to accept this submission of the learned counsel for the petitioners for the simple reason that it was only an enquiry made by the Committee. Moreover, there was no direction of the Division Bench of this Court for hearing the petitioners. The Committee arrived at certain conclusions and findings based on the records and the enquiry, it has done. No fault can be found as to the procedure adopted by the Committee, for arriving at the conclusion as it did.

12. They have given two findings that the petitioners were not in the priority list for allotment and the land is covered by the Forest Conservation Act.

13. Be that as it may, the District Magistrate relying upon the report of this Committee could not have cancelled the lease deed without giving notices to the petitioners and without giving them an opportunity of hearing. Certain rights have accrued in favour of the petitioners. There has hence been a violation of principle of natural justice and fair play, inasmuch as, that the lease deed has been cancelled without giving an opportunity of hearing to the petitioners.

14. The District Magistrate ought to have been given an opportunity to the petitioners and the petitioners have every right to challenge the findings of the Committee, based on available records or evidence. This opportunity has been denied to the petitioners.

15. In view thereof, the order dated 30.10.2006 passed by the District Magistrate, Tehri Garhwal being violative of principle of natural justice and fair play cannot stand.

16. Accordingly, the writ petitions are allowed. The impugned order dated 30.10.2006 passed by the District Magistrate is hereby set aside. The matter is remanded to the District Magistrate, Tehri Garhwal, who shall look into the matter, considering the report of the Committee and after considering the evidence of the petitioners which may be regarding their eligibility and as regarding the nature of land (Forest or Revenue as the case might be), he shall pass appropriate orders. The learned Standing Counsel for the State Mr. N.P. Shah undertakes to inform the District Magistrate concerned about this order. For this reason, Registry is directed to supply a certified copy of this order, free of cost, to Mr. N.P. Shah, for onwards compliance.