
(2022) 08 UK CK 0071

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1659, 1661, 1772, 1829 Of 2022

Nadeem Ahmad And Another

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 24-08-2022

Acts Referred:

Citation : (2022) 08 UK CK 0071

Hon'ble Judges : Sanjaya Kumar Mishra, J

Bench : Single Bench

Advocate : Vikas Anand, T.S. Phartyal, S.K. Mishra, Sandeep Kothari, Arvind Kumar Sharma, Sanjay Bhatt, Syed Kashif Jafari

Final Decision : Disposed Of

Judgement

Sanjaya Kumar Mishra, J

Upon hearing the learned counsels, the Court made the following Order.

1. By filing this writ application, the petitioners have prayed for the following reliefs:

“(1) To issue a writ, order or direction in the nature of mandamus directing the respondent authorities not to de-possess/evict the petitioners from their respective property except through due process of law provided under U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972.

(2) To issue a writ, order or directions in the nature of mandamus direct the respondent authorities not to demolish the establishment (residential) of the petitioners without giving them an opportunity of being heard.

(3) To issue a writ, order or directions in the nature of mandamus directing the respondent authorities to maintain a status quo with regard to the property in question and conduct a proper survey and planning and protect the interest of the petitioners.

(4) To issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case.

(5) To award cost of the petition to the petitioners."

2. In fact, there are four writ applications, the petitioners in WPMS No. 1659 of 2022 Nadeem Ahamad and Zameer Ahmad are the builders. They have raised constructions of five stories building, allegedly, without taking the permission of the Lake Development Authority, which is now known as the District Level Development Authority and it is stated to be contrary to the master-plan of the Nainital town. The rest of the petitioners are purchasers of flats from the builder.

3. Learned counsel for the petitioners would submit that the Lake Development Authority has permitted other persons to raise constructions and they are not taking any steps against them for demolition of such unauthorized constructions. However, this Court is of the view that the petitioners cannot claim equality in illegality. Therefore, such a contention cannot be taken into consideration.

4. We have carefully perused the supplementary affidavit filed by the respondent no. 3, i.e., the Secretary of the District Lake Development Authority, Nainital. He has categorically mentioned in para 4 of the Supplementary Affidavit that a report was called for from the Associate Town Planner, Kumaon Region, Town and Country Planning Department. The said associate Town Planner submitted a report on 16.08.2022 indicating that property in issue is situated in Green Zone/Green Belt (विशेष वनाच्छादित क्षेत्र) As per the master plan of the Nainital, which is annexed as 'SA1' to the Supplementary Affidavit, it is borne out from the records as well as the submissions made by the learned counsel appearing for the petitioners as well as the Lake Development Authority and the State Government, that the un-authorized constructions have been made on a Green Zone, which is completely prohibited.

5. In that view of the matter, this Court is of the opinion that there is no merit in the writ applications. However, keeping in view the prevailing weather conditions, specially, in Kumaon Region, with specific reference in the Town of Nainital, which is facing heavy rainfalls now a days, this court is inclined to give a moratorium period of three months to remove the encroachment. In that view of the matter, the writ application is dismissed with the observation that the authorities will allow the petitioners three months time, keeping in view the weather conditions, to remove the encroachment/illegal constructions at their own costs. Failing which the Authorities are at liberty at the end of three months from today to proceed according to law for demolition of the encroachment.

6. With such observations, the writ applications are disposed of.