

(2023) 07 UK CK 0195

In the Uttarakhand High Court

Case No : Writ Petition No. 999 Of 2009 (M/S), 1971, 2048 Of 2011 (M/S)??????????

Narayan Singh Rawat And Others APPELLANT @Hash State Of Uttarakhand And Others

Date of Decision : 21-07-2023

Acts Referred:

Uttar Pradesh Public Premises Act, 1972 — Section 2(g), 4(1), 7(1)
Constitution Of India, 1950 — Article 14, 226

Citation : (2023) 07 UK CK 0195

Hon'ble Judges : Vipin Sanghi, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Pramod Bailwal, Pradeep Joshi, M.S. Tyagi, Sunil Chandra, Siddhartha Singh, Mohd. Umar

Final Decision : Dismissed

Judgement

Alok Kumar Verma, J

1. In SLP (Civil) 10329 of 2023, titled "Dinesh Kumar Paliwal and Others vs. Muktinath Pandey and Others", arising out of the order dated 22.12.2022, passed by this Court in Writ Petition (PIL) No.116 of 2017, the Hon'ble Supreme Court, by the Order dated 12.05.2023, has requested this Court to take up WPMS No.999 of 2009, along with WPMS No.1971 of 2011 and WPMS No.2048 of 2011 immediately on board for final hearing. The Chief Justice has been requested to assign the abovementioned Writ Petitions to an appropriate Bench, with an endeavour to decide the said Writ Petitions by 31.07.2023.

2. These Writ Petitions were listed on 09.06.2023. We asked Mr. M.S. Tyagi, learned Senior Advocate for the writ petitioners to proceed to argue the Writ Petitions. It was argued on behalf of the learned Senior Advocate that the said Writ Petitions cannot be heard by the Division Bench, and should be assigned by the Chief Justice to a Bench of learned Single Bench for hearing. We rejected the said submission of Mr. M.S. Tyagi, learned Senior Advocate. Mr. M.S. Tyagi, learned Senior Advocate, stated that he was not ready with his arguments, and

he sought an adjournment.

3. At the time of hearing on 07.07.2023, this Court was informed by Mr. Mukesh Rawat, learned counsel for the petitioners in Writ Petition (PIL) No.116 of 2017 that a SLP was filed against the order of this Court dated 09.06.2023, which has been dismissed by the Hon'ble Supreme Court.

4. The petitioners in these three petitions have approached this Court under Article 226 of the Constitution of India with the following prayers :-

Writ Petition No.999 of 2009 (M/S) :-

"i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 01.01.2008 passed by the District Magistrate (Annexure No. 18)

ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to consider the claim of each of the petitioners for grant of lease in their respective shops after taking into consideration the order passed by the District Magistrate dated 21.09.1988, order dated 27.02.1989 alongwith the report of Naib Tehsildar dated 16.04.1989 and the recommendation made by the Tehsildar dated 20.04.1989 and till then the petitioners may not be evicted.

iii) Issue any suitable writ, order or direction, which this Hon'ble court may deem fit and proper on the basis of the facts and circumstances of the case.

iv). Award the cost of the petition to the petitioners."

Writ Petition No.1971 of 2011 (M/S):-

"i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 1.1.2008 issued by respondent no.2 annexed as Annexure No.3 to the writ petition.

ii) Issue a writ, order or direction, in the nature of mandamus commanding the respondents to consider the claim of the petitioners for grant of lease in their respective shops after taking into consideration the order dated 21.09.1988, issued by the District Magistrate, the order dated 27.02.1989 along with the report of Naib Tehsildar dated 16.04.1989 and the recommendation made by the Tehsildar dated 20.04.1989 and till then the petitioners may not be evicted.

iii) Issue a writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

iv) Award the cost of the petition."

Writ Petition No.2048 of 2011 (M/S):-

"i) A writ, order or direction in the nature of certiorari quashing the order dated 01.01.2008 passed by the District Magistrate Pauri Garhwal.

ii) Issue a writ, order or direction in the nature of mandamus directing the

respondents to consider the claim of each of the petitioners for grant of lease in their respective shops after taking into consideration the order passed by the District Magistrate dated 21.09.1988, order dated 27.02.1989 along with the report of Naib Tehsildar dated 16.04.1989 and the recommendation made by the Tehsildar dated 20.04.1989 and till then the petitioners may not be evicted.

iii) Any other suitable writ, order or direction, which this Hon'ble court may deem fit and proper in the circumstances of the case.

iv) Award the cost of petition to the petitioner."

5. By this order we dispose of this and the connected two writ petitions also in view of the common questions of law and facts involved in these writ petitions.

6. We have taken the material facts from WPMS No.2048 of 2011.

7. Brief facts in nutshell for proper adjudication of the dispute involved in the present petitions are, the State of Uttar Pradesh granted a lease for 40 years to Geeta Bhawan, Swargashram, Rishikesh (in short, "Geeta Bhawan") through a registered lease deed dated 11.08.1950 for the land Khasra No.63. The total area of lease land was 23 Nali. The said land was allotted to Geeta Bhawan for construction of Pucca Ghat.

8. Geeta Bhawan constructed the Ghat on certain portion of the allotted land, rest of the land was lying vacant. Geeta Bhawan sublet the vacant land, which was measuring 18 Nali 12 Muthi, to one another religious organization namely Bharat Sadhu Samaj in the year, 1955. Subsequently, Bharat Sadhu Samaj constructed more than 45 shops, some flats and Dharmshala on the top of the shops in the year 1959-60, which were given on rent. Petitioners are tenants on the shops and Bharat Sadhu Samaj is getting the rent from them.

9. A show cause notice dated 09.07.1987 was issued to the Manager, Geeta Bhawan, the principal lease holder, by District Magistrate/Deputy Commissioner, Pauri Garhwal mentioning that 40-45 shops of Bharat Sadhu Samaj are built on a part of the lease granted to Geeta Bhawan and rent is also being taken by Bharat Sadhu Samaj. No prior approval was taken by Geeta Bhawan before handing over the possession. Thus, the terms and conditions of the lease deed have been violated by Geeta Bhawan. District Magistrate/Deputy Commissioner asked the Manager of Geeta Bhawan why not the lease agreement dated 11.08.1950 be cancelled.

10. Thereafter, by an order dated 21.09.1988, Deputy Commissioner/District Magistrate, Garhwal cancelled the lease deed dated 11.08.1950, by which the lease was granted to Geeta Bhawan. It was mentioned in the order dated 21.09.1988 that the lease of the land on which Pucca Ghat of Geeta Bhawan is built can be granted on application of Geeta Bhawan. In the said order dated 21.09.1988, it was also mentioned that several shopkeepers are in possession of a part of the lease land. Therefore, the Sub-Divisional Magistrate, Kotdwar was directed to immediately get the said land inspected and submit the details of the

names and addresses of the shopkeepers occupying the land within a month, so that actual occupants could be considered for grant of lease.

11. District Magistrate, Garhwal sent another letter dated 27.02.1989 to the Sub-Divisional Magistrate, Kotdwar in which it was mentioned that due to the dispute, there is a loss of revenue, therefore, it would be appropriate and necessary in the interest of revenue to regularize the grant in favour of the shopkeepers, for which applications have been received from the concerned shopkeepers. It was also mentioned in the said letter that if the applications are not submitted by the concerned shopkeepers, they can be evicted but loss of revenue cannot be tolerated.

12. As per the order passed by Tehsildar, Kotdwar on District Magistrate's letter dated 27.02.1989, spot was inspected by Naib Tehsildar, Kotdwar and measurement was done after receiving applications from the shopkeepers. He found that 38 shops were constructed over 16 Nali of the land. He forwarded his report to Tehsildar, Kotdwar. On the report of Naib Tehsildar, Tehsildar, Kotdwar noted on 20.04.1989 that he agrees with Naib Tehsildar's report. He (Tehsildar) recommended the grant in the name of those persons who were actually in possession.

13. Thereafter, notices dated 02.11.1998 under Section 4 (1) of the Uttar Pradesh Public Premises Act, 1972 (in short, "Act, 1972") (as applicable in the State of Uttarakhand) were issued to the petitioners and other shopkeepers mentioning therein that they are the illegal occupants. The petitioners challenged the said notices. However, the Prescribed Authority passed the eviction order against the petitioners and other shopkeepers. Against the eviction order, passed by Prescribed Authority, petitioners and other shopkeepers preferred appeals before the District Judge, Pauri Garhwal. Out of 37 appeals, 20 appeals were allowed and the rest of the appeals were dismissed. State and shopkeepers, whose appeals were dismissed, preferred writ petitions. High Court remanded all the writ petitions by order dated 18.05.2006. District Judge by judgment dated 06.08.2007 dismissed all the appeals. Against the dismissal of appeals, writ petitions were preferred. Some writ petitions were dismissed and in some writ petitions, petitioners were directed to make fresh representations before the District Magistrate for grant of lease of the land. The writ petitioners along with other shopkeepers made fresh representations before the District Magistrate, Pauri Garhwal. District Magistrate rejected the representations, submitted by the petitioners, by order dated 01.01.2008, which is impugned in the present writ petitions.

14. Heard learned counsel for the parties and perused the record.

15. Mr. M.S. Tyagi, learned Senior Advocate and Mr. Pramod Bailwal, Advocate contended that the State Government is the owner of the land but the shops were constructed by Bharat Sadhu Samaj. Petitioners are tenants since last 40-45 years. Petitioners are running their shops, but the grievances of the

petitioners were not considered by the District Magistrate, Garhwal while passing the impugned order dated 01.01.2008. The grievances of the petitioners, which are genuine, were appreciated by the then District Magistrate in its order dated 21.09.1988 as well as in the order dated 27.02.1989. Petitioners have vested rights over their shops for running their business and they had legitimate expectation in assuming that the State Government would act in pursuant to the order dated 21.09.1988 and order dated 27.02.1989, passed by District Magistrate, and, recommendation of Tehsildar, Kotdwar dated 20.04.1989. Therefore, the impugned order dated 01.01.2008 is arbitrary, unjust and improper.

16. On the other hand, Mr. Pradeep Joshi, learned Additional Chief Standing Counsel appearing for the State, contended that a lease was granted by the State of Uttar Pradesh to Geeta Bhawan in the year, 1950 for construction of Pucca Ghat on Plot No.63 area 23 Nali. Geeta Bhawan instead of constructing Pucca Ghat, constructed Ghat and house on 2 Nali 8 Muthi land and remaining 18 Nali 12 Muthi land was subletted to Bharat Sadhu Samaj in contravention of the lease deed. Bharat Sadhu Samaj constructed commercial shops over 18 Nali 2 Muthi land and let out the said shops to the petitioners on rent. After coming the said facts in the knowledge of the District Magistrate, a show cause notice was issued to the Manager, Geeta Bhawan on 09.07.1987 and after hearing to him, the District Magistrate, vide its order dated 21.09.1988, cancelled the lease of Geeta Bhawan and after cancellation of lease, granted to Geeta Bhawan all the persons, who are in illegal possession, including the petitioners, have become unauthorized occupants. Therefore, the impugned order dated 01.01.2008 has been passed rightly keeping in view the public interest.

17. The points that arise for our consideration in these petitions are –

- (i) The scope of the legitimate expectation of the petitioners.
- (ii) Whether the expectation was legitimate.
- (iii) Vested right of the petitioners.
- (iv) Whether the doctrine of legitimate expectation can be applied in the present matters.
- (v) Whether the impugned order dated 01.01.2008 is arbitrary, unjust and improper.

18. In *State of Jharkhand and Others vs. Brahmaputra Metalics Ltd., Ranchi and Another*, 2021 (1) SCJ 131, the Hon'ble Supreme Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

19. The doctrine of 'Legitimate Expectation' has been constituted by two words, 'legitimate' and 'expectation'. Therefore, expectation should be legitimate, i.e.

expectation should be fair, logical, justifiable, valid, reasonable, acceptable and protectable. Any expectation which is based on sporadic or casual or random acts or on any assumption, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. "Legitimate Expectation", is not the same thing as anticipation. It is also different from a mere wish or desire or hope. This doctrine is based on Article 14 of the Constitution of India and the rule of reasonableness and fairness. The expectations must be based on some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision.

20. The doctrine of legitimate expectation is not of universal application under all circumstances. To decide whether an expectation is a legitimate one is contextual and has to be decided on a case by case basis. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. In *State of Jharkhand and Others vs. Brahmaputra Metalics Ltd., Ranchi and Another* (Supra), the Hon'ble Supreme Court held that whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest.

21. The petitioners who base their claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus have locus standi to make such a claim.

22. The contention of Mr. M.S. Tyagi, learned Senior Advocate and Mr. Pramod Bailwal, Advocate appearing for petitioners is that petitioners are running their shops since last 40-45 years. The grievances of the petitioners were appreciated by the then District Magistrate in his order dated 21.09.1988 as well as in the order dated 27.02.1989. Petitioners have vested rights over their shops for running their business and they had legitimate expectation in assuming that the State Government would act in pursuant to the order dated 21.09.1988 and order dated 27.02.1989, passed by District Magistrate, and, recommendation of Tehsildar, Kotdwar dated 20.04.1989.

23. We do not find any substance in the contention, raised on behalf of the petitioners. On hearing the contentions of both the parties and perusing the record, it is clear that no statement or undertaking of any kind was given to the petitioners by the authority who was duty bound to take the decision. None of the grievances of the petitioners was found genuine by the District Magistrate, rather the dispute was found to result in loss of revenue. Therefore, considering the loss of revenue, the District Magistrate was compelled to pass the order dated 27.02.1989. This fact is clearly visible from the said order dated 27.02.1989 of the District Magistrate.

24. The recommendation made by Tehsildar is found to be without any basis and arbitrary. No public authority should be permitted to perfect the title of the land by giving recommendation to regularize the land in favour of unauthorized

occupants. An unauthorized possession cannot be regularized by way of recommendation.

25. A public authority possesses powers only to use them for public interest. In *Food Corpn. Of India vs. Kamdhenu Cattle Feed Industries*, JT 1992 (6) SC 259, the Hon'ble Supreme Court held that there is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is "fair play in action". In *State of Jharkhand and Others vs. Brahmputra Metalics Ltd., Ranchi and Another* (supra), the Hon'ble Supreme Court held that power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Public authority cannot play fast and loose with the powers vested in them. A decision taken in an arbitrary manner contradicts the principle of legitimate expectation.

26. The factual position of the present matter makes it clear that the doctrine of legitimate expectation has no application to the facts of the present case.

27. The Act, 1972 is concerned with the eviction of those persons who have no authority in law to remain in possession of the public premises. Clause (g) of Section 2 of the Act, 1972 defines "Unauthorized occupation". It reads as under :-

2(g) "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which or the capacity in which he was allowed to hold or occupy the premises has expired or has been determined for any reason whatsoever and also includes continuance in occupation in the circumstances specified in sub-section(1) of Section 7 and a person shall not, merely by reason of the fact that he had paid any amount as rent, be deemed to be in authorized occupation".

28. It was the duty cast upon the State Government to maintain the rule of law by evicting all those persons who were found in unauthorized occupation.

29. This fact is not disputed that proceedings were instituted against the petitioners under the Act, 1972. The Prescribed Authority passed an order of eviction against the petitioners. Petitioners' appeals to the appellate authority under the Act, 1972 were dismissed. The petitioners could not get any relief even from the High Court. Therefore, after the said proceedings, petitioners cannot claim vested right to remain in public premises.

30. The last contention has been placed by Mr. Pramod Bailwal, Advocate that five leases have been granted in the land-in-question to those who were never tenants.

31. It is pertinent to note that the said persons are not before us. Neither they have been impleaded as respondents in these writ petitions, nor have the

petitioners disclosed the circumstances under which the lease was granted to them. It is well settled that orders cannot be passed in detriment to the interest of third party without impleading them as respondents and thereafter without giving them an opportunity of being heard. The impugned decision of the District Magistrate dated 01.01.2008 clearly brings out the rationale for eviction of the petitioners. It, inter alia, states :

32. In the result, we do not find any substance in the contentions of the petitioners that the impugned order dated 01.01.2008 is arbitrary, unjust and improper. Therefore, there is no good ground for interference in the impugned order dated 01.01.2008 in exercise of jurisdiction under Article 226 of the Constitution of India. The Writ Petitions lack merit and are dismissed.

33. A copy of this judgment be placed in the connected writ petitions.