
(2009) 07 UK CK 0019
In the Uttarakhand High Court

Narayan Singh Rawat and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 10, 80G

Citation : (2009) 3 UC 1523 : (2009) 2 UD 202

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Since the controversy involved in all these 60 writ petitions are similar and the orders under challenge in all these writ petitions are the same, therefore, for the sake of convenience all these writ petitions are being disposed of finally by this common order at the admission stage by the consent of the parties. Since the Writ Petition 2006 of 2007 (MS) is already admitted, the same is being decided on merits along with other 59 writ petitions.

2. The background fact in nutshell giving rise to the present writ petitions is that the Deputy Commissioner (now Zila Adhikari) Garhwal granted a lease of Nazul land in favour of Geeta Bhawan on 11-8-1950, which was granted for a period of forty years and consequently, a lease deed pertaining to 23 Nali land of old plot No. 1 (new Plot No. 63) situated in village Jaunk, Tok Swargashram, Patti Talla Udaipur,, District Pauri Garhwal was executed by the then Deputy Commissioner, Pauri Garhwal, in favour of Geeta Bhawan, Swargashram on 6-10-1950, which was duly registered in the office of Sub Registrar, Lansdowne (Garhwal). The period of the said lease was to expire on 5-10-1990. It appears that Sub Divisional Officer Kotdwar made a report to the District Magistrate that Bharat Sadhu Samaj had taken forcible possession over 18,12/16 Nali of the lease land granted in favour of Geeta Bhawan. It was found that about 40- 45 shop keepers are in occupation of the shops constructed over the said land and Bharat Sadhu Samaj was collecting rent from the tenants. Accordingly, notice was issued by the District Magistrate, Garhwal to the Manager, Geeta Bhawan to show cause

why the lease granted in its favour be not cancelled for violation of terms and conditions of the lease. It also emerges out from the record that the Deputy Commissioner/Zila Adhikari Garhwal, by his order dated 21-9-1988 passed in Case No. 13 of 1986-87 had cancelled the lease deed granted in favour of Geeta Bhawan as the lessee had violated the terms and conditions of the lease. It was also observed that since the lessee Geeta Bhawan had constructed pucca building/Ghat in an area of 2,8/16 Nali only, hence the lease to that effect may be granted in its favour on application for the same having been made.

3. Brief facts giving rise to the present writ petitions are that the Patwari Patti Udaipur Talla filed Challani report along with copies of site plan, Khasara and Khatauni against the alleged illegal occupants before the Prescribed Authority/S.D.M. Kotdwar, who in turn on the basis of challani report issued notices u/s 4(1) of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act 1972 (for short the Act) to the alleged illegal occupants as to why eviction proceedings be not initiated against them. They filed their written objection before the Prescribed Authority contending that the notice is not based on facts. They admitted their occupation on the part of the land under reference. It was also contended that the occupation of the opposite party is not illegal rather on the basis of permission of the government and that the District Magistrate Pauri Garhwal has proposed to grant lease to the occupants by letter dated 27-2-1989. The petitioners have spent huge amount thereon to make the premises fit for business. The notice is barred by the principle of promissory estoppel and not legally tenable.

4. In support of its case, the State has examined Sri Anil Negi, the Patwari concerned of the area, who proved the challani report filed by him before the Prescribed Authority.

5. The record reveals that during the pendency of the proceedings initiated before the Prescribed Authority under Sections 4/5 of the Act, Swami Sukhdevanand Trust Parmarth Niketan (for short the Trust) moved an application before the Prescribed Authority on 2-12-2000 for its impleadment as opposite party in the proceedings contending that the Trust is an affected party and its interest is involved in the disputed premises. The application of the Trust was allowed and the Prescribed Authority served copy of notice dated 2-11-1998 u/s 4(1) of the Act on the Trust. The Trust filed its objection contending that huge properties of the Trust are standing at Swarg Ashram, village Jaunk. Notice is against the facts and not sustainable in law. It was also contended that the challani report dated 30-10-98 has not been made part of the notice. It was also alleged that the Trust has been in possession of the disputed premises. It was further alleged that the Prescribed Authority has not applied its mind in issuing the notice. It was further alleged that plot Nos. 63 and 64 are in continuous possession of the Trust since 1958-59 and trust has invested huge amount in the constructions raised thereon. The State intended to oust the Trust, hence the Trust filed a Civil Suit No. 3 of 1990 in the Court of Civil Judge (Senior Division)

Pauri Garhwal. The Trust has perfected its rights over the disputed premises on the basis of its long standing possession and no suit was filed within a period of 30 years for eviction of the Trust.

6. It also reveals from a perusal of the record that the respondent-Bharat Sadhu Samaj (for short the Samaj) also moved an application on 31-5-2000 before the Prescribed Authority contending therein that the Samaj had constructed the shops in dispute about 40 years back. It was also alleged that the land was sublet by Geeta Bhawan in favour of the Samaj and the Samaj is in physical possession of the disputed premises. The alleged shopkeepers are paying rent to the Samaj and they are the tenants of the Samaj. The Prescribed Authority allowed the application for impleadment moved by the Samaj and accordingly, a copy of the notice dated 2-11-1998 was supplied to the Samaj. The Samaj filed his objection and contended that the disputed portion of the land of plot No. 63 of village Jaunk, which was earlier recorded in the name of the State of Uttar Pradesh, had been leased out in favour of the Samaj by Zila Adhikari Pauri Garhwal and the Samaj had constructed building and shops thereon and let out the shops on rent. The lease was illegally cancelled on 21-09-1988 by the District Magistrate Pauri. Though no appeal was filed against the said order, the Commissioner has stayed the operation of the order passed by the District Magistrate on 29-08-1989. It was also contended in the objection that the Trust filed a Suit No. 3 of 1990 against the State of U.P. and the Samaj in the Court of Civil Judge (Senior Division) Pauri, which was decreed. The Samaj also alleged that it preferred appeal against the judgment and decree passed by the said Court before the Allahabad High Court, which is still pending.

7. It is also obvious from the record that the occupants further filed additional reply before the Prescribed Authority contending that the notice is not in consonance with the provisions of the Act and the Patwari filed challani report wrongly and have raised certain pleas therein, which shall be dealt with in the latter part of the judgment as and when required.

8. The Prescribed Authority after hearing learned Counsel for the parties and on perusal of evidence led before him ultimately confirmed the notices issued on 2-11-1998, dated 26.8.2000 and 27-1-2001 and passed the order of eviction against each of them by order dated 18-11-2002.

9. Aggrieved by the said order dated 18-11-2002, a number of Miscellaneous Civil Appeals were preferred separately by the persons including the Samaj and the Trust against whom the order of eviction was passed by the Prescribed Authority. According to the petitioners, the Sub Divisional Magistrate Kotdwar during the pendency of the said appeals, on the application made by the petitioners/alleged shopkeepers directed the Amin concerned to verify the land of plot Nos. 63, 64, 65, 66, 67, 68, 69, 70 and 71 of village Jaunk (Swarg Ashram), who in turn submitted his report. The petitioners are said to have filed application before the appellate court to bring on record the Amin's report as additional evidence which was allowed and the Amin's report was taken on

record. Report of Amin was not proved at any stage. Ultimately, the Appellate Court allowed some of the appeals by a common judgment and order dated 6-9-2005. It is obvious from the record that the State of Uttarakhand challenged the said order passed by the appellate court by filing writ petitions before this Court. Ultimately, this Court by an order dated 18-5-2006 passed in Writ Petition (MS) Nos. 457 of 2006, 459 of 2006, 460 of 2006, 461 of 2006 and 462 of 2006 remanded the matter to the District Judge for decision afresh for deciding all the appeals afresh after awaiting the results of the proceeding with regard to the cancellation of the lease.

10. After remand, the District Judge Pauri Garhwal, consolidated all the 84 Misc. Civil Appeals together and after hearing learned Counsel for all the parties dismissed the appeals by a common order dated 6-8-2007, which is impugned in these writ petitions.

11. There are two sets of petitioners- one set of petitioners claim themselves to be tenants of the disputed premises and the other is the Trust, which alleges itself to be the owner thereof. The petitioner in each of the Writ Petition (M/S) No. 1568, 1572, 1573, 1574, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1597, 1598 of 2007, 2220 of 2007, 2222 of 2007, 2223 of 2007, 2224 of 2007, 2227 of 2007, 2228 of 2007, 2229 of 2007, 2230 of 2007, 2231 of 2007 and 18 of 2008 have claimed themselves to be tenants of the Samaj-respondent for a period of more than 35 years or so and alleged that they are running shops in the disputed premises. The petitioners have challenged the order dated 18-11-2002 passed by the Prescribed Authority/Sub Divisional Magistrate, Kotdwar passed in separate cases under the Act as well as the order dated 6-8-2007 passed by the appellate court (District Judge, Pauri Garhwal) in different Miscellaneous Appeals. Some of the petitioners also challenged the notice dated 2-11-1998 issued u/s 4(1) of the Act.

12. Writ Petition (M/S) Nos. 2006 of 2007, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036 and 2037 of 2007 have been preferred by the Trust, which alleged itself to be owner of the disputed premises. The Trust has challenged the order dated 18-11-2002 passed by the Prescribed Authority as well as the order dated 6-8-2007 passed by the appellate court and the notices dated 2-11-1998, 26-8-2000 and 22-2-2001 issued by the Prescribed Authority u/s 4(1) of the Act.

13. The writ petitions have been filed by the petitioners (other than the Trust) mainly on the ground that the petitioners are running their respective shops on rent under the tenancy of the Samaj- respondent and they are paying regular rent to it, therefore, they cannot be treated to be an unauthorized occupant of the disputed premises. By way of supplementary affidavits, the petitioners have filed a number of copies of documents including photocopy of lease deed dated 6-10-1950 executed in favour of Geeta Bhawan (Swag Ashram), copy of Katkannama (sub-lease) executed on 4-5-1955 by the representative of Geeta

Bhawan in favour of the Samaj, photocopy of judgment and order dated 18-6-1957 passed in Civil Suit No. 92 of 1955 by the then Munsif Lansdowne, Garhwal, which were neither filed by them either before the Prescribed Authority or the appellate court. These documents shall be referred to in this judgment within the scope of Article 227 of the Constitution of India, as and when required.

14. The Trust has preferred the writ petitions against the State of Uttarakhand as well as the alleged tenants/shopkeepers and the Samaj stating that the petitioner is a society duly registered under the Societies Registration Act and is a charitable and religious institution duly registered by the Government of India and is entitled to exemptions u/s 80G and Section 10 of the Income Tax Act. It is alleged that the petitioner has vast properties and buildings and the main office of the petitioner-Trust is situated in the name and style of Parmarth Niketan in Swarg Ashram (Rishikesh) in revenue village Jaunk, Tehsil Kotdwar (now Yamkeshwar). The petitioner Trust is providing services, medical and education and other services to the society at large. The Trust also claims itself to be owner in possession of various shops and premises situated in Khasra Nos. 63 and 60 on the eastern bank of river Ganges in Swarg Ashram. It is alleged in the writ petition that the petitioner had constructed the shops in the year 1958-59. It is also alleged that proceedings for ejectment in respect of plot No. 63 were started against one Swami Nitya Nand, but the same was withdrawn by order dated 12-6-1986 passed by S.D.M. Kotdwar in P.L.E. Case No. 13 of 1986.

15. The petitioner-Trust filed a suit for permanent injunction in the Court of Civil Judge (Senior Division) Pauri Garhwal against the State of U.P., Zila Parishad, Bharat Sadhu Samaj and the alleged shopkeepers, who were represented through Swarg Ashram Vyapar Mandal. The suit was registered as Original Suit No. 3 of 1990 Swami Sukhdevanand Trust v. State and Ors. Ultimately, by judgment and decree dated 23-4-1998, the suit was partly decreed. It was ordered that the plaintiff shall not be evicted from plot No. 63 and 64 situated in village Jaunk, Patti Udaipur Talla except by due process of law. Suit in respect of plot Nos. 65 to 71 was dismissed. Counterclaim filed by Bharat Sadhu Samaj was also dismissed. Appeals were preferred before this Court by the Samaj and Swarg Ashram Vyapaar Mandal separately, which were dismissed for want of prosecution vide order dated 13-8-2004 and 10-8-2004 respectively. On the strength of the judgment and decree passed in Original Suit No. 3 of 1990, the Trust claims ownership over the disputed premises, though the fact remains that in the suit, the State was restrained to proceed for eviction against the Trust except by due process of law.

16. On 2-7-2009, a counter affidavit has been filed on behalf of the respondent-Samaj wherein it has been stated that the possession of plot No. 63 was handed over to Swami Krishnanand Chela Sri Swami Kewalanand Ji through Katkannama executed by the General Power of Attorney Holder of Geeta Bhawan on 5-5-1955. It was also stated that on 23-3-1960, a lease deed was executed in favour of the Samaj on 23.3.1960 in respect of total 42.11 Nali of land pertaining

to old plot Nos. 34, 35 and 36 (new Nos. 64, 65 and 66) situated at village Jaunk, Patti Talla Udaipur. It has been stated that the possession of land of plot Nos. 34, 35 and 36 is with the Samaj since before 1958 onwards. It has also been stated that Geeta Bhawan filed a Civil Suit bearing No. 92 of 1955 Raghuvir Singh v. Swami Krishnanand and Swami Sukhdevanand. In that suit, Swami Krishna nand and Swami Sukhdevanand were arrayed as defendants, but neither Bharat Sadhu Samaj or Sukhdevanand Trust were represented through these defendants. In that suit, it was found by the trial court that Swami Krishnanand owned an Ashram in plot No. 34, 35 and 36. Ultimately the suit was dismissed on 18-6-1957. In consequence of the sub-lease granted in favour of Swami Krishnanand, the Samaj constructed the Ashram, shop and Dharamshala over plot Nos. 64, 65 and 66 and the Samaj is in physical possession thereof. It may be noted here that the Samaj has also filed photocopy of lease dated 6-10-1950 executed in favour of Geeta Bhawan, copy of sub-lease (Katkannama) allegedly executed by Geeta Bhawan in favour of Swami Krishnanand on 4-5- 1955, copy of lease deed dated 23-3- 1960 allegedly executed by the State Government in favour of Bharat Sadhu Samaj, wherein plot Nos. 34, 35 and 11 have been mentioned, copy of Khatauni pertaining to Nazul land of village Jaunk relating to plot Nos. 34, 35 and 36, copy of judgment dated 18-6-1957 passed in Civil Suit No. 92 of 1955 Sri Raghubir Singh v. Swami Krishna Nand and Swami Sukhdeva Nand and copy of lease granted on 22-3-1978 by the State Government in favour of Bharat Sadhu Samaj through Swami Chaitanya Nand Saraswati, Secretary in respect of land of plot Nos. 65, 66, 67 and 68 measuring 32 Nali, 8 Muthi. In none of these documents there is reference of old plot No. 1 (new plot No. 63) of village Jaunk, Udaipur Talla, which is the subject matter of dispute in these writ petitions. Moreover, no such document has been brought on record by either of the parties which could indicate that plot No. 63 ever corresponded to any of the plot numbers referred in the sub-lease dated 4-5-1955 and other lease deeds executed subsequently in favour of either of the parties.

17. It has been also stated that notice u/s 4(1) of the Act was issued to 37 shopkeepers/tenants of the Samaj, the Samaj and the Trust on 27-1-2001 by the Prescribed Authority against the provision of law. Some of the tenants moved application before the Assistant Collector Kotdwar for verification of plot Nos. 63, 64, 65, 66, 67, 68. 69. 70 and 71 on 3.12.2002 on which direction was given to the Amin for physical verification of the land in accordance with law. It was mentioned by the Amin that out of 48 shops, there are ten shops situated on plot No. 63. It was stated that the Samaj had right to construct those shops on the strength of Katkannama existing in its favour. It has also been stated that there was a valid lease for a period of 30 years granted on 22.3.1978 in respect of Plot Nos. 65, 66, 67 and 68 in favour the Samaj, therefore, no notice u/s 4(1) of the Act could have been issued against the Samaj. It has been contended that the notice issued against the Samaj is without jurisdiction and without verifying the land in question.

18. I have heard learned Counsel for the parties at length and perused the entire

material placed before this Court including the copies of documents which have been filed by the parties by way of supplementary affidavits and along with counter affidavit filed by the Samaj.

19. The following questions are to be answered to resolve the controversy involved in these writ petitions:

1. Whether the notice u/s 4(1) of the Act issued to the petitioners is illegal and invalid?
2. Whether the provisions of the Act are not applicable to the disputed premises?
3. Whether the judgment and orders passed by the courts below suffer from any manifest error of law or jurisdictional error?

20. At the outset it may be mentioned that the scope of writ jurisdiction under Article 227 is limited. This Court in exercise of writ jurisdiction cannot sit like a court of appeal and cannot re-appreciate or reevaluate the evidence so as to arrive at a different conclusion. Only perversity in the impugned order can be seen to find out whether there is a case of mis-reading of evidence by the court concerned. It has been observed by the Apex Court in the case of *Surya Dev Rai Vs. Ram Chander Rai and Others*, that "On the other hand, supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does not have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction." In the case "*Ranjeet Singh Vs. Ravi Prakash*, page 682, the Apex Court has observed inter alia in paragraph 4 of the judgment that "An error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in *Surya Dev Rai* that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal." Quite recently, the Apex Court in the case of *Radhey Shyam and Another Vs. Chhabi Nath and Others*, has held that "Article 227 of the Constitution vests the High Court with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and law."

21. The learned Counsel appearing on behalf of the petitioners (other than the

Trust), who have claimed themselves to be the shop keepers over the disputed premises, Sri Arvind Kumar Shukla, Advocate, firstly submitted that the petitioners are the tenants of the Samaj and they are not in illegal occupation. According to the learned Counsel the Geeta Bhawan had given the land measuring 18, 12/16 Nali to the Samaj on sub-lease. Bharat Sadhu Samaj constructed building and shops thereon and has let out the disputed shops on rent to the petitioners. The contention of the learned Counsel cannot be accepted and merely because the Samaj had given the disputed premises on rent to the petitioners does not establish that the petitioners are in lawful occupation of the disputed premises. It has been submitted by the learned Counsel for the petitioners that a valid lease had been executed by Geeta Bhawan in favour of the Samaj on 4- 5-1955 in respect of the land in question of Khasra No. 63 and the occupation of the petitioners is permissive. It was also pointed out that a suit was filed by Sri Raghubir Singh, representative of Geeta Bhawan against Swami Krishna Nand bearing C.S. No. 92 of 1955 for cancellation of sub-lease (Katkana) alleging that it was obtained by fraud. The suit was dismissed by the judgment and decree dated 18-6- 1957 passed by Munsif Lansdowne, Garhwal. Therefore, also the petitioners cannot be held to be in illegal occupation.

22. It is significant to mention that Plot No. 63, which is the subject-matter of dispute in the present writ petitions bears old number 1, as is apparent from the copy of lease deed dated 6-10-1950. From a bare perusal of sub-lease, it is obvious that Katkannama (sub-lease) only refers to plot Nos. 34, 35 and 36 of village Jaunk (Swarg Ashram). Both the petitioners as well as Samaj has placed reliance on these documents. One important aspect which emerges from a bare perusal of the alleged Katkannama on the basis of which Bharat Sadhu Samaj claims its possession is that undisputedly the agreement (Katkannama) had been executed by Sri Raghubir Singh, son of Sri Amol Singh, General Power of Attorney Holder of Geeta Bhawan in favour of Swami Krishnanand Ji Guru Ji Sri Swami Kewalanand Ji village Jaunk. This document was executed on 4-5-1955 and was registered on 7-5-1955. There is not a single word showing the interest of Bharat Sadhu Samaj in this document. Moreover, the suit for cancellation of sub-lease was filed by Sri Raghubir Singh against Sri 108 Shwami Krishna Nand and Sri 108 Shwami Sukhdevanand in the court of Munsif Lansdowne. Even from a remote consideration, I am unable to accept that at the time of execution of sub-lease Bharat Sadhu Samaj was represented through Swami Krishnanand or that Bharat Sadhu Samaj was a party to the sub-lease in question, as is the case of the Samaj before this Court.

23. Even just for the sake of arguments it may be presumed that there was a valid sub-lease in favour of the Samaj, even then it is not disputed that the sub-lease, which has been termed as Katkannama, according to the petitioners, was executed for a period of 35 years and that too had already expired as far back as 4-5-1990. It is admitted to the petitioners including the Trust that notice was issued by the Zila Adhikari Garhwal to Geeta Bhawan by order dated 9-7-1987 in Case No. 13/86-87 to show cause why the lease granted in its favour be not

cancelled for violation of the terms and conditions of the lease. It has also not been disputed by either of the parties that the lease granted on 6-10-1950 in favour of Geeta Bhawan was for a fix term of forty years, which too was to expire on 5-10-1990, had there been no cancellation of the lease by order dated 21-9-1988 passed by the Zila Adhikari Garhwal. It is not the stand of the petitioners that the period of sub lease was extended thereafter. The notice under Sections 4(1) of the Act was admittedly issued to the petitioners on 2-11-1998. According to the own stand of the petitioners, their occupation over the disputed premises after expiry of the term of said sub-lease cannot be said to be lawful.

24. It has been next contended by the learned Counsel for the petitioners (other than the Trust) that the notice issued u/s 4(1) of the Act is illegal because the boundaries of the disputed premises have not been given in the notice. This contention of the learned Counsel for the petitioners is also not tenable for the simple reason that the petitioners, while filing their reply to the notice, have admitted that they are in occupation of the disputed premises, but have claimed that their possession is permissive. In the notice u/s 4(1) of the Act, the plot No. 63 has been mentioned and specific area in illegal occupation of the petitioners has been given. The ground for eviction has been clearly mentioned in the notice. In these circumstances, it cannot be said that any of the mandatory requirement of Section 4 of the Act is lacking in the notice. In my view, the notice dated 2-11-1998 u/s 4(1) of the Act to the petitioners is a valid notice.

25. It has also been argued on behalf of the petitioners (other than the Trust) that the proceeding for eviction under the Act drawn against the petitioners is not tenable because the lease was granted in favour of Geeta Bhawan under the Government Grant Act. As such, Central Act is applicable to the cases at hand. I am not inclined to accept this argument of the learned Counsel for the simple reason that undisputedly the lease was granted of Nazul land by the then Deputy Commissioner/District Magistrate Pauri Garhwal by his order dated 11-8-1950 and the lease deed was executed on 6-10-1950 between Prantiya Sarkar (State Government) through Sub Divisional Officer Lansdowne and Geeta Bhawan through its General Power of Attorney Holder Sri Raghubir Singh. It is also not disputed that the disputed land is recorded as Class-10 Baggarh, i.e. the land along the bank of river in the revenue records and the same belongs to the State and comes within the purview of the public premises. As such, the land is a public utility land and is fully covered under the provisions of the Act. The argument of the learned Counsel is not tenable.

26. It was vehemently argued by the learned Counsel for the petitioners (other than the Trust) that the order dated 6-8-2007 has been passed by the learned appellate court in a cursory manner and on surmises, therefore, the order impugned passed by the learned District Judge, Pauri Garhwal dismissing as many as 84 Miscellaneous Civil Appeals comprising 32 bunches by a common order is not tenable in the eyes of law. I have perused the impugned order dated

6-8-2007. there are numerical/ arithmetical mistakes at a few places but just for that reason, the propriety of the order cannot be lost sight of. Learned Counsel for the petitioners also contended that the findings already recorded by the appellate court in the order dated 16-2-2005 while deciding three Misc. Civil Appeals No. 35 of 2002, 61 of 2002 and 101 of 2002 have not been taken into consideration. I do not agree with this submission of the learned Counsel for the petitioners for the simple reason that the order dated 16-2-2005 was challenged by the State of Uttaranchal in Writ Petition No. 457 (MS) of 2006 along with four other writ petitions before this Court and this Court while disposing of the writ petitions remanded the matter to the District Judge for a decision afresh with certain direction. Moreover, it is not disputed that this Court has not affirmed any of the findings recorded by the appellate court in the order dated 16-2-2005, therefore, the argument of the learned Counsel is not tenable.

27. Sri Arvind Kumar Shukla, Advocate, appearing on behalf of the petitioners (other than the Trust) has further contended that the proceedings initiated under Sections 4/5 of the Act by the Prescribed Authority/Sub Divisional Magistrate Kotdwar are without jurisdiction inasmuch as the proceedings can be initiated by the Additional District Magistrates and not by the Sub Divisional Magistrate. Learned Counsel has referred to a paper Annexure-35 to the writ petitions filed by the Trust. From a bare perusal of this paper, it is obvious that earlier all the Sub Divisional Officers and Additional Sub Divisional Officers within their sub-divisions were empowered to exercise the powers of the prescribed authorities under the Act and by a subsequent Notification, powers of Prescribed Authority have also been conferred on the Additional District Magistrates. The argument of the learned Counsel for the petitioners falls to the ground. Moreover, it is not the stand of the petitioners including the Trust that the S.D.M. Kotdwar was not empowered to initiate the proceedings for eviction under the provisions of the Act or that some other Officer was exercising such powers of a Prescribed Authority at the relevant time.

28. Sri Arvind Kumar Shukla, Advocate, appearing on behalf of the petitioners (other than the Trust) has next contended that the doctrine of Legitimate Expectation is fully applicable to the cases at hand. This argument shall be dealt with at a latter part in the body of this judgment.

29. Learned Counsel appearing for the petitioners (other than the Trust), Sri Rakesh Thapliyal, Advocate, has contended that the petitioners were occupants of the shops, which are allegedly constructed by the Samaj over the land owned by the Government, therefore, the disputed premises do not come within the purview of the public premises. In support of his contention, he has relied upon the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, , Page 872. In that case, the Express Newspapers Pvt. Ltd. with the sanction of the lessor, i.e. the Union of India, constructed the Express Buildings. The lease granted in favour of the lessee was a perpetual lease. Therefore, it was observed by the Apex Court that there is no question of the lessor applying for

eviction of the Express Newspapers Pvt. Ltd. u/s 5(1) of the Public Premises Act 1971. The ratio of the judgment is not disputed, but the facts of the case at hand are quite distinct. The constructions raised on the land of the lessor i.e. State were not made with the permission/sanction of the lessor. Therefore, the case law relied upon by the learned Counsel for the petitioners does not help them.

30. It has been further argued by Sri Rakesh Thapliyal, Advocate, on behalf of the petitioners (other than the Trust) that the provisions of the Act are not applicable to the cases at hand because the land falls in Gram Sabha Jaunk, Patti Udaipur Talla. This argument is misconceived. The land is Nazul land and does not belong to Gaon Sabha. It is pertinent to mention here that the lease on which the petitioners claim right to continue is lease of Nazul land. Moreover, this argument has already been considered by the learned appellate court in its judgment.

31. Learned Counsel for the petitioners (other than the Trust) Sri Rakesh Thapliyal has vehemently submitted that the learned appellate court failed to consider the additional evidence, i.e. certified copy of Amin's report filed in appeal. Though the report of Amin was filed in appeal, but it is not a public document and had not been proved in appeal. Without being proved, the report of Amin cannot be read in evidence, therefore, in my view the learned District Judge while passing the impugned order dated 6-8-2007 has rightly ignored the Amin's report, the same being inadmissible in evidence.

32. It is also pertinent to mention that most the petitioners including the Samaj and one Parmarth Niketan (Swarg Ashram) moved separate applications before grant of lease in respect of the shops in their possession before the District Magistrate, Pauri Garhwal, who after considering the applications, rejected the applications by order dated 1-1-2008. In these applications also, the petitioners/alleged shopkeepers have admitted their possession over the disputed premises and have also admitted the land belonging to the State.

33. Learned Counsel for the Trust, Sri Alok Singh, Senior Advocate assisted by Sri Neeraj Garg appearing on behalf of the Trust has firstly contended that the disputed shops were constructed by the Trust in the year 1958-59 over Khasra Nos. 63 and 64. Learned Counsel further contended that in the Original Suit No. 3 of 1990 which was filed by the Trust against the State and Samaj and others, the Civil Judge (Senior Division) Pauri Garhwal had recorded a finding on Issue No. 11 that all the shops are standing over plot No. 63, which were constructed by the plaintiff-Trust. Hence the Trust is the owner of the disputed shops. It was also contended that the shopkeepers, who are petitioners before this Court were represented through Swarg Ashram Vyapar Mandal in that suit, therefore, the finding recorded on Issue No. 11 is binding, the judgment of the Civil Judge having attained finality. The Trust is in possession of the disputed premises through its tenants.

34. From the argument of the learned Senior Advocate appearing for the Trust,

only this much comes out that the shops were constructed by the Trust. Ownership of the State over the land on which the shops are situated is crystal clear. There is no such finding that the alleged constructions made by the Trust are lawful, rather there is a direction of the civil court that the trust shall not be evicted except by due process of law.

35. Learned Counsel for the Trust further argued that since the constructions were made by the Trust in the year 1958-59 and the period of 30 years had expired in the year 1989 and no proceedings were initiated within the period of limitation, therefore, the present proceedings have become time barred.

36. Undisputedly there is no lease of the disputed land in favour of the Trust. In the Civil Suit No. 92 of 1955, Swami Sukhdevanand was arrayed as defendant No. 2 in individual capacity by the plaintiff Sri Raghubir Singh, representative of Gita Bhawan. The suit was filed for cancellation of sub-lease executed by Gita Bhawan in favour of Swami Krishna Nand, defendant No. 1. The said suit was dismissed on 18-6-1957. Moreover, from the finding of the Civil Judge (Senior Division) Pauri Garhwal recorded on Issue No. 5 of Civil Suit No. 3 of 1990 reveals that the Trust was registered with the Registrar of the Societies vide Registration No. 1520 of 1975-76. Moreover, from a perusal of record, it is obvious that in Case No. 13/86-87, the District Magistrate Pauri Garhwal had issued a notice by his order dated July 9, 1987 to Geeta Bhawan to show cause why the lease granted in its favour be not cancelled for violation of terms and conditions of the lease. Undisputedly the said lease was granted in respect of 23 Nali of Nazul land of plot No. 1, new plot No. 63 of village Jaunk, Patti Talla Udaipur. Subsequently, the lease was cancelled vide order dated 21-9-1988 by the District Magistrate. The Civil Suit No. 3 of 1990 was filed by the Trust much after the passing of order dated 21-9-1988 by the District Magistrate Pauri, whereby lease pertaining to Plot No. 63 was cancelled. Moreover, the tenants/shopkeepers, who are petitioners before this Court, have not admitted the Trust as owner of the shops, rather they claim to be the tenants of the Samaj. Be that as it may, on this point learned appellate court has already recorded a finding that the Trust failed to show that it was in continuous and uninterrupted possession of the disputed premises within the knowledge of the true owner i.e. State for a period of 30 years. This Court under Article 227 of the Constitution cannot record a finding of fact whether the Trust has perfected its right or title by adverse possession. The argument raised by the learned Counsel is not acceptable. The argument raised on behalf of the Trust does not inspire any confidence. I am also of the view that the proceedings for eviction initiated under the provisions of the Act are not at all barred by limitation.

37. Learned Counsel for the Trust has further argued that earlier P.L.E. Case No. 13 of 1986 was filed against one Swami Nitya Nand Saraswati, Manager, Bharat Sadhu Samaj. By order dated 12-06-1986, it is evident that the S.D.M. Kotdwar had mentioned that plot No. 63 was leased out to Geeta Bhawan and the land does not come within the provisions of the Act. As such no proceedings for

eviction could have been drawn in respect of the same land by way of summary proceedings. I am not inclined to accept the contention of the learned Counsel for the Trust for the simple reason that the lease granted in respect of plot No. 63 to Geeta Bhawan was in force. The said lease was cancelled by the District Magistrate Pauri Garhwal by his judgment and order dated 21-9-1988. Therefore, unless the lease in question was in force, no proceedings could have been taken for eviction against any unauthorized occupant. Admittedly the present proceedings under the Act have been initiated on the challani report of the Patwari concerned dated 30-10-1998, i.e. much after the cancellation of lease granted to Geeta Bhawan. This argument also does not help the Trust.

38. Learned Counsel for the Trust in the last has made an attempt to show that that the name of the Trust does find place in the Khatauni of village Jaunk, Patti Udaipur Talla in plot No. 63. A reference has been made by the learned Counsel for the Trust to Annexure-25 collectively filed along with the writ petitions. From a bare perusal of this Khatauni, it is obvious that the entry is in the name of Geeta Presss Sukhdevanand Makan-Ghat. I am not at all convinced that Geeta Press Sukhdevanand, whose house and Ghat have been recorded in the remarks column of Khatauni, and Swami Sukhdevanand Trust are one and the same person. Therefore, this document is of no avail to the Trust. As mentioned earlier, Sri Raghbir Singh, a representative of Geeta Bhawan had filed a civil suit for cancellation of sub-lease against two private individuals- Swami Krishnanand and Swami Sukhdevanand who were arrayed as defendants. The suit was ultimately dismissed.

39. Now coming to the contention of the learned Counsel for the Samaj, it would suffice to mention that the Samaj has not challenged the order dated 6-8-2007 passed by the appellate court by filing writ petition. The present writ petitions have been filed either by the shopkeepers or the Trust, wherein the Samaj has been arrayed as a respondent. The order dated 6-8-2007 passed by the District Judge has become final so far as eviction of the Samaj is concerned. So far as the averments of counter affidavit that original lease was granted in favour of Geeta Bhawan and sub lease i.e. Katkannama was executed in favour of the Samaj and the shops were constructed over the lease land is concerned, as discussed above in the earlier part of this judgment, after the expiry of lease or sub-lease period, the Samaj, the Trust and Shopkeepers have become unauthorized occupants and they have no right to continue over the disputed premises. The disputed questions of fact whether the alleged constructions were made by the Samaj or the Trust cannot be decided in writ jurisdiction. But it is admitted to the Trust as well as the Samaj that on the spot, shopkeepers are in possession over the disputed premises as tenants. According to the shopkeepers, they are tenants of the Samaj and according to the Trust, they are the tenants of the Trust. This question cannot be decided in writ jurisdiction and the possession of the Samaj, the Trust or the shopkeepers on the disputed land is unauthorized.

40. Now coming to the last contention of the learned Counsel for the petitioners-

shopkeepers that the doctrine of legitimate expectation is applicable to the case of the present petitioners, particularly because they have been tenants of the Samaj for a long period and the District Magistrate Garhwal by his order dated 27-2- 1989 had directed the Sub Divisional Officer Kotdwar to take steps to regularize the shopkeepers, who are in occupation in the shops constructed over 18,12/16 Nali land of the disputed plot No. 63. It was also directed that applications be obtained from the occupants/shopkeepers concerned so as to grant lease to them. Learned Counsel for the petitioners/shopkeepers contended that the shopkeepers have made applications for grant of lease and to regularize their occupation in the disputed premises and they kept waiting for the decision of the Administrative Authorities for about a decade. On the other hand, a harsh decision was taken by initiating proceedings under Sections 4/5 of the Act against them. In support of his contention, the learned Counsel for the petitioners has relied upon the following case-law:

Official Liquidator Vs. Dayanand and Others,

Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, ,
Ibrahimpattam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others,

Madras City Wine Merchants Association : A.J. Joy: Ramanathapuram:Madurai
Distt. Liquor Dealer Association v. State of Tamil Nadu;

Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others,

Punjab Communications Ltd. Vs. Union of India and Others, .

41. I have perused the verdict of the Apex Court in the above cases, wherein the doctrine of legitimate expectations has been dealt with. Ratio of the judgments cannot be disputed. It is pertinent to mention here that the District Magistrate Garhwal by his order dated 1- 1-2008 after considering the applications as well as the report of Sub Divisional Officer dated 9-6-1984 and the spot inspection report of Officer Incharge (Nazul) Pauri dated 22-4-1987 as well as taking into consideration the order dated 21-9-1988, report of Naib Tahsildar Kotdwar and report of Tahsildar dated 20-4-1989, has rejected the applications made by the applicants for grant of lease in their favour. Moreover, in the petitions at hand, the petitioners/shopkeepers are not occupying the premises with the permission of the State Government, rather they claimed to be the tenants of the Samaj, which itself is an unauthorized occupant as there has been no lease in favour of Bharat Sadhu Samaj in respect of plot No. 63. In the facts and circumstances of the case, I am not inclined to accept that it was open to the petitioners/shopkeepers to invoke the doctrine of legitimate expectation.

42. Learned Counsel for the petitioners have pointed out that the order dated 1-1-1008 passed by the District Magistrate Garhwal has also been challenged by the petitioner in separate writ petition under Article 226 of the Constitution of India.

43. Having considered the contentions of the learned Counsel for the parties and

having gone through the entire material placed before the Court and in view of the discussion made in foregoing paragraphs, I am of the considered view that the notices issued u/s 4(1) of the Act to the petitioners is legal and valid and the provisions of Sections 4/5 of the Act for eviction of the petitioners are fully applicable since the disputed premises is public premises. I am also of the view that after the cancellation of original lease deed dated 6-10-1950, which was granted in favour of Geeta Bhawan, by the District Magistrate Garhwal by his order dated 21-9-1988, the sub- lease (Katkannama) executed on 4-5-1955 in favour of Swami Krishnanand by Geeta Bhawan has also become non est. The term of lease had not been extended for any further period. Therefore, after cancellation of original lease deed, the occupants of the disputed premises became in unauthorized occupation of the public premises. Even otherwise the term of original lease was to expire on 6-10-1990 and that of the sub-lease on 4-5-1990 respectively. The proceedings for eviction had been rightly drawn against the petitioners. The impugned order dated 18-11-2002 has been rightly passed by the Prescribed Authority after confirming the notices dated 2-11-1998, 26- 8-2000 and 27-1-2001 issued u/s 4(1) of the Act against the petitioners. The appellate court has also rightly dismissed the appeals by its order dated 6-8-2007. The impugned orders do not suffer from any manifest error of law or the jurisdictional error or any perversity. All the three questions are answered accordingly.

44. In the result, all the writ petitions are devoid of merit and are liable to be dismissed at the admission stage. So far as Writ Petition No. 2006 of 2007 (M/S) Swami Sukhdevanand Trust v. State of Uttarakhand and Ors. is concerned, the controversy involved therein is the same, therefore, this petition is also liable to be dismissed on merits in view of the discussion made above.

45. All the 59 writ petitions except W.P.M.S. No. 2006 of 2007 are accordingly dismissed in limine. Writ Petition No. 2006 of 2007 Swami Sukhdevanand Trust v. State of Uttarakhand and Ors. is accordingly dismissed on merits. Costs easy.

46. Interim order, dated 20-11-2007, passed by this Court is vacated.