
(2010) 11 UK CK 0015

In the Uttarakhand High Court

Case No : Writ Petition No. 1070 of 2002 (M/S)

N.S. Rautela and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Citation : (2010) 11 UK CK 0015

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Verma, J.—Heard Mr. D.S. Patni, Advocate for the Petitioners, Mr. N.P. Sah, Standing Counsel for the State and Mr. T.P.S. Takuli, Advocate for Respondent No. 5.

2. By means of this writ petition, the Petitioners have sought the following relief:

i) Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 29th August 1998 passed by the District Magistrate, Pithoragarh (Annexure-8 to this writ petition).

ii) issue a suitable writ, order or direction in the nature of mandamus commanding the Respondents not to eject the Petitioners from the plot Nos. 35690, 35696 and 35763 (area 25 Nali 5 Muthi) situated in village Rathi, Tok Khotia, Tehsil Dharchula, District Pithoragarh.

iii) issue any other order, writ or direction in the nature of mandamus which this Hon'ble Court may deem fit and proper under the circumstances of the instant case.

iv) award cost of the petition to the Petitioners throughout as against the Respondents.

3. According to the Petitioners, the disputed plot Nos. 35690, 35696 and 35763

(area 25 Nali 5 Muthi) situated in Village Rathi Tok-Khotila, Tehsil Dharchula, District Pithoragarh, were allotted to the Petitioners vide G.O. dated 6th December, 1976 (Annexure No. 1 to the writ petition).

4. The grievance of the Petitioners is that on the complaint of Respondent No. 3 Kalu Bahadur, District Magistrate, Pithoragarh, passed an order of status quo and directed Up Zila Adhikari Dharchula to make an enquiry and also to submit a detailed report. Up Zila Adhikari, on completion of enquiry, submitted his report dated 16.3.1998. On the basis of report dated 16.3.1998, District Magistrate, Pithoragarh, passed the impugned order dated 29.8.1998 and cancelled the patta granted in favour of the Petitioners and also observed that indirect effort was made by the Petitioners to transfer the land in dispute. Hence, this petition.

5. Learned Counsel appearing for the Petitioners has submitted that no notice was given to Petitioner Nos. 1, 2 and 3 and notice was only given to Petitioner No. 4. It is contended that without affording any opportunity of hearing to Petitioner Nos. 1, 2 and 3 the lease deed granted in favour of the Petitioner Nos. 1, 2 and 3 was cancelled by the Collector vide his impugned order, which is not sustainable in the eye of law.

6. It is further contended in para-24 of the petition that on the basis of ex parte report the matter was taken by the District Magistrate, Pithoragarh, who, without giving any notice or opportunity of hearing to the Petitioner Nos. 1, 2 and 3, on the basis of irrelevant material, evidence, illegally held that there has been violation of Patta by the Petitioners and illegally cancelled the Patta granted to the Petitioners vide order dated 29.8.1998.

7. Counter affidavits have been filed on behalf of the Respondents in which it is stated that notices were issued to all the Respondents. (Copy of notice is annexed as Annexure No. CA-1)

8. From a perusal of the notice, it transpires that notices were issued to Hari Singh Rautela and his brothers but there is no mention of names of the brothers in the notice, therefore, it cannot be treated notice to Petitioner Nos. 1, 2 and 3.

9. In view of the aforesaid discussion, I hold that the impugned order dated 29.8.1998 passed by learned District Magistrate, Pithoragarh, in the absence of Petitioner Nos. 1, 2 and 3 is not justified and the same is liable to be set aside.

10. Therefore, the impugned order dated 29.8.1998 is set aside. The matter is remanded to the District Magistrate, Pithoragarh, for decision afresh, after affording opportunity of hearing and adducing evidence to the parties, in accordance with law.

11. With the aforesaid observations and directions, the writ petition is allowed.

12. Petitioners are directed to appear before the learned District Magistrate, Pithoragarh on or before 27.12.2010.