
(2024) 09 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition Miscellaneous Single No. 2322 Of 2024

Rajendra Kumar And Others

APPELLANT

Vs

Bachan Singh & Others

RESPONDENT

Date of Decision : 03-09-2024

Acts Referred:

Citation : (2024) 09 UK CK 0016

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : S R S Gill, J.S. Bisht, Sandeep Kothari, Siddhant Manral

Final Decision : Dismissed

Judgement

Manoj Kumar Tiwari, J

1. Fourteen (14) shops were constructed by Kumaon Anusuchit Janjati Vikas Nigam at Bazpur, before 1981, which were meant to be allotted only to the persons belonging to Buksa Tribe.

2. It is not in dispute that these shops were allotted to persons belonging to Buksa Community. Petitioners, who do not belong to Buksa Tribe/Community, came to occupy these shops, and according to them, they are in possession of the shops in question, since last more than thirty years. Petitioners are aggrieved by order dated 25.07.2024 passed by Commissioner, Kumaon Division, whereby Kumaon Mandal Vikas Nigam has been directed to take necessary steps for eviction of unauthorized occupants from the shops in question and to ensure that these shops are allotted to persons for whom they were constructed. Thus, feeling aggrieved, petitioners have approached this Court challenging the order passed by Commissioner, Kumaon Division. They have also sought a writ of mandamus to formulate plan for the redevelopment of the entire Buksa Bazar and to accommodate petitioners along with persons belonging to Buksa Community.

3. It is not in dispute that ten writ petitions filed by different persons belonging to Buksa Tribe were disposed of by this Court, vide order dated 21.05.2024, by directing Commissioner, Kumaon Division to look into the matter and pass appropriate order. Operative portion of the said order is reproduced below:-

8. It is not in dispute that Kumaon Anusuchit Janjati Vikas Nigam, which was a subsidiary of Kumaon Mandal Vikas Nigam has been wound up, and all its assets and liabilities have gone to Kumaon Mandal Vikas Nigam.

9. The stand taken by Sub Divisional Magistrate, Bazpur in his counter affidavit is that since the shops were allotted by respondent no. 2, therefore, respondent no. 2 alone can pass order for eviction of the unauthorised occupants.

10. Learned counsel appearing of Kumaon Mandal Vikas Nigam submits that since the land has been recorded in the name of Nagar Palika Parishad Bazpur, therefore, Kumaon Mandal Vikas Nigam is facing difficulty in passing order of eviction against the unauthorised occupants.

11. From the stand taken by the Sub Divisional Magistrate as well as Kumaon Mandal Vikas Nigam, it is revealed that certain persons, who are not entitled to remain in possession of the shops, are occupying these shops, which are meant for persons belonging to Buksa Community.

12. Having regard to the facts and circumstances of the case, the writ petition is disposed of with a direction to the Commissioner, Kumaon Division to look into the matter and pass appropriate order as per law within eight weeks, but only after affording opportunity of hearing to the persons likely to be affected by his order.

4. Some persons (petitioners in these writ petitions) filed Special Appeal No. 192 of 2024 challenging the final order dated 21.05.2024 passed in WPMS No. 2071 of 2017 and other connected petitions. The Division Bench modified the order passed by writ court to the following extent:-

"That a direction is being given to the Commissioner, Kumaon Division to look in to the matter and pass appropriate order as per law with eight weeks, but only after affording opportunity of hearing to the persons likely to be affected by his order. It is further directed that if adverse order is passed against the appellants, they will have 15 days' time to take appropriate steps in accordance with law."

5. It is not in dispute that petitioners were given opportunity of hearing by the Commissioner, Kumaon Division before passing the impugned order. The order passed by Commissioner on 25.07.2024 has not been implemented so far, in view of the direction issued by Division Bench that petitioners shall be given fifteen days' time for seeking judicial remedy against the order to be passed by the Commissioner.

6. Perusal of the order passed by Commissioner reveals that petitioners had taken the plea that they have purchased the shops from the original allottees,

however, they could not substantiate this contention before learned Commissioner. Since petitioners could not produce any document to justify their possession over the shops in question, therefore, learned Commissioner returned a finding that petitioners are unauthorizedly occupying the shops in question. It is admitted position that these shops were constructed for the benefit of members of Buksa Tribe by Kumaon Anusuchit Janjati Vikas Nigam, out of the funds provided by the State Government. The land, over which these shops are constructed, also belongs to the State Government, therefore, the persons, to whom the shops were allotted, have no authority to sell or dispose of these shops. None of the petitioners belongs to Buksa Community, therefore, their possession, howsoever long, will not create any title in their favour.

7. Learned counsel for the petitioners contended that period of 30 years for which shops were leased out to original allottees expired in the year 2011, and, thereafter, petitioners became lessee in respect of the shops in question and their status as lessee cannot be taken away by the impugned order.

8. Learned State Counsel disputes the said contention and submits that since the shops were constructed by Kumaon Anusuchit Janjati Vikas Nigam for the benefit of persons belonging to Buksa Tribe, therefore, even if the term of lease granted to the original allottees is over, then also petitioners will not get any right in these shops and these shops are required to be allotted to members of Buksa Community alone; since petitioners do not belong to Scheduled Tribe, therefore, they do not have any right in these shops and they are liable to be evicted.

9. This Court finds substance in the submission made by learned State Counsel. Before learned Commissioner, petitioners were unable to show the authority under which they were occupying the shops in question, therefore, learned Commissioner rightly held that the petitioners are unauthorizedly occupying the shops in question. There is nothing on record to show that the finding recorded by learned Commissioner is erroneous or perverse. Thus, any interference with the impugned order dated 25.07.2024 would not be warranted.

10. In such view of the matter, there is no scope for interference with the impugned order. The writ petition fails and is dismissed. No order as to costs.