

(2019) 05 UK CK 0255

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1936 Of 2007

Rajendra Malhotra & Another

APPELLANT

Vs

Uttar Pradesh Avas Evam Vikash Parishad, Dehradun &
Others

RESPONDENT

Date of Decision : 24-05-2019

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 43

Citation : (2019) 05 UK CK 0255

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Ramji Srivastava, Shankar Aggarwal, M.S. Bhandari, Pankaj Purohit

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J

1. The petitioners before this Court had purchased residential building, from erstwhile "Uttar Pradesh Avas Evam Vikash Parishad". The building is situated in Dehradun. After the creation of the State of Uttarakhand, under the provisions of Uttar Pradesh Reorganisation Act, 2000 as per Section 43 of the Uttar Pradesh Reorganisation Act, 2000 all the properties which are situated in the territory of Uttarakhand belong to the State of Uttarakhand. Section 43 of the Uttar Pradesh Reorganisation Act, 2000 reads as under:-

"43 Land and goods.-(1) Subject to the other provisions of this Part, all land and all stores, articles and other goods belonging to the existing State of Uttar Pradesh shall,-

(a) if within the transferred territory, pass to the State of Uttaranchal; or

(b) in any other case, remain the property of the State of Uttar Pradesh:

Provided that where the Central Government is of opinion that any goods or class of goods should be distributed among the States of Uttar Pradesh and

Uttaranchal, otherwise than according to the situation of the goods, the Central Government may issue such directions as it thinks fit for a just and equitable distribution of the goods and the goods shall pass to the successor States accordingly:

Provided further that in case of any dispute relating to the distribution of any goods or class of goods under this sub-section, the Central Government shall endeavour to settle such dispute through mutual agreement arrived at between the Governments of the successor States for that purpose, failing which the Central Government may, on request by any of the Governments of the successor States, after consulting both the Governments of the successor States, issue such direction as it may deem fit for the distribution of such goods or class of goods, as the case may be, under this sub-section.

(2) Stores held for specific purposes, such as use or utilisation in particular institutions, workshops or undertakings or on particular works under construction, shall pass to the successor States in whose territories such institutions, workshops, undertakings or works are located.

(3) Stores relating to the Secretariat and offices of Heads of Departments having jurisdiction over the whole of the existing State of Uttar Pradesh shall be divided between the successor States in accordance with such directions as the Central Government may, after consultation with the Government of each successor States, think fit to issue for a just and equitable distribution of such stores.

(4) Any other unissued stores of any class in the existing State of Uttar Pradesh shall be divided between the successor States in proportion to the total stores of that class purchased in the period of three years prior to the appointed day, for the territories of the existing State of Uttar Pradesh included respectively in each of the successor States:

Provided that where such proportion cannot be ascertained in respect of any class of stores or where the value of any class of such stores does not exceed rupees ten thousand, that class of stores shall be divided between the successor States according to the population ratio.

(5) In this section, the expression "land" includes immovable property of every kind and any rights in or over such property, and the expression "goods" does not include coins, bank notes and currency notes.

2. The "Uttar Pradesh Avas Evam Vikash Parishad" has no jurisdiction in this matter, particularly now when the "Uttarakhand Avas Vikash Parishad" has already been constituted in the State of Uttarakhand, as this Court has been informed by Shri Anurag Bisaria, learned State Counsel.

3. In view thereof, I am of the considered view that the order dated 25.09.2007 passed by the "Uttar Pradesh Avas Evam Vikash Parishad" is totally without jurisdiction and is hereby quashed and set aside. Writ petition is allowed.

4. Having made the above observation, it would not mean that the petitioners would have the liberty to raise construction, without permission from the appropriate authorities. In case they are raising unauthorized construction i.e. the construction which is not authorized by law, it needs to be demolished. The matter is remanded back to the Secretary, Housing who shall look into the matter. The Registry of this Court shall send along with this order, a copy of the writ petition, counter affidavit and the rejoinder affidavit's along with annexures, so that he may take appropriate action in accordance with law. The Secretary concerned may also get inspection done by his subordinate authorities and if he comes to the conclusion that the petitioners have made unauthorized construction, he shall take all appropriate steps in accordance with law.

5. Registrar General of this Court is hereby directed to send a certified copy of this order to the Secretary, Housing, Government of Uttarakhand for onward compliance.