

(2007) 08 UK CK 0018

In the Uttarakhand High Court

Case No : Writ Petition No. 900 of 2007 (M/S)

Rajendra Prasad Tamta

APPELLANT

Vs

Assistant Collector/Sub Divisional Magistrate (Sadar) and
Another

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Uttar Pradesh Road Side Land Control Act, 1945 — Section 13, 13(1), 13(2)

Citation : (2007) 08 UK CK 0018

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

Bench : Single Bench

Advocate : Sharad Sharma, for the Appellant; H.M. Raturi, for the Respondent

Judgement

B.S. Verma, J.—Learned Standing Counsel for the State has submitted that this writ petition may be disposed of today itself without obtaining counter affidavit. Learned Counsel for both the parties are ready to argue the writ petition finally at the admission stage.

2. This writ petition is directed against the impugned order of demolition dated 26-7-2007 passed by the Prescribed Authority under the U.P. Road Side Land Control Act 1945 (for short the Act)/Up Zila Adhikari Sadar, Almora thereby directing the Petitioner to remove the illegal encroachment/construction existing on the land of the Respondent.

3. Brief facts giving rise to writ petition are that, according to the Petitioner, he purchased certain land of Khata No. 96 from one Mohan Singh Bisht through registered sale deed dated 21-1-1996 and consequently, his name was mutated thereon as co-tenure holder under the orders of the Tahsildar concerned in Mutation Case No. 110/1995096. Lateron, the Petitioner moved an application under the provisions of the Act before the Collector for permission to erect the building. Ultimately sanction was granted to the Petitioner for construction vide order dated 30-5-2000 passed by the prescribed Authority/Sub Divisional Officer, Sadar Almora (Annexure No. 1). According to the Petitioner, the Respondent No.

2 made an application before the Executive Engineer, Public Works Department, Almora, that the Petitioner has encroached the State land and has violated the terms and conditions of the sanction accorded to the Petitioner. Preliminary enquiry was conducted by Tahsildar in the matter and his report is dated 7-7-2007. Proceedings under the Act were initiated and a show cause notice dated 10-7-2007 was issued against the Petitioner by the Prescribed Authority to submit his reply vide Annexure No. 3 wherein it was mentioned that the Petitioner had made construction of his house at a distance of 19 ft. from the centre line of the road, while the permission was accorded to raise construction beyond the distance of 33 ft. from the centre line of the road. A copy of the same was endorsed to the Executive Engineer of the P.W.D. It is obvious that the Assistant Engineer, Provincial Division P.W.D. Almora also issued a notice on 11-7-2007 to the Petitioner to remove his encroachment from the land of the Public Works Department. The Petitioner gave reply to the Assistant Engineer concerned. Ultimately, the Prescribed Authority / Respondent No. 1 vide order dated 26-7-2007 passed the order to the effect that the explanation submitted by the Petitioner was not found satisfactory and it was found that the Petitioner has violated the conditions of the permission given to him under the Act. The Petitioner was directed to remove the encroachment immediately, which gave rise to the present writ petition.

4. The Petitioner has contended that the permission for construction was obtained on 30-5-2000 from the Prescribed Authority/Sub Divisional Officer, Sadar Almora. A copy of the same is Annexure No. 1, wherein the permission to raise construction at a distance of 33 ft., beyond the centre line of the motor road was given to the Petitioner with certain conditions.

5. It is not disputed that the proceedings were initiated on the complaint made by Respondent No. 2 and after a preliminary enquiry, a show cause notice was issued to the Petitioner by the Prescribed Authority, which was replied to by the Petitioner. The Petitioner has further submitted that no opportunity of hearing or adducing evidence was given to him and without having been heard, the impugned order of demolition has been passed on the basis of spot inspection report of Tahsildar concerned.

6. I have heard learned Counsel for the Petitioner at length and perused the impugned order and the material brought on record by the Petitioner as well as the Annexures annexed to the writ petition.

7. It is not disputed that the impugned order has been passed by the Prescribed Authority after perusing the explanation filed by the Petitioner as well as on the basis of the report of Tahsildar dated 6-7-2007. As per report the construction raised by the Petitioner were found existing at a distance of 19 ft. from the centre line point of the motor road, which was disputed by the Petitioner. I have perused the explanation filed by the Petitioner as Annexure No. 2. The Petitioner though has alleged that the constructions were made only on the area for which permission was accorded to him in the year 2000 but he added that if there was

any fault regarding the place/point of construction, then it was the mistake of the Public Works Department. There is no specific averment that the house of the Petitioner exists at the distance of 33 ft. beyond the centre line of the motor road or that at what distance therefrom the house of the Petitioner exists. What is the distance between the centre line of the motor road to the house of the Petitioner is a disputed question of fact, which cannot be examined in the writ jurisdiction.

8. The learned Counsel for the Petitioner has assailed the impugned order mainly on the ground that the Prescribed Authority has no jurisdiction to pass the demolition order under the provisions of the Act. I do not agree with the contention of the learned Counsel for the Petitioner. Section 13 of the Act provides for offences and penalties. u/s 13 (1) of the Act, the defaulting person can be punished for an offence committed for the breach of the provisions of the Act for which sentence of fine has been provided as mentioned in Clause (b) of Sub-section (1). Section 13(2) of the Act reads as under:

(2) Without prejudice to the provisions of Sub-section (1), the Collector may, order any person who has committed a breach of the provisions of the said Sub-section to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravention such as is described in the said Sub-section has been committed, and if such person fails to do so within three months of the order, may himself take such measure as may appear to him to be necessary to give effect to the order, and the cost of such measures shall be recoverable from such person as arrear of land revenue.

9. In view of the provision of Section 13(2) of the Act, I am of the considered view that the Collector is empowered to pass suitable order so as to restore the land to its original state. I am fortified in my view by the judgment of the Allahabad High Court in the case of "Smt. Sumaria v. State 1973 A.L.J. 654. In that case, the law laid down by the Allahabad High Court in the case of Smt. Krishna Devi v. State of U.P 34 A.Cr.R. 427 was relied on. Relevant extract of Paragraph No. 9 of the judgment reads as under:

19. Thus, it is obvious that the two remedies that have been provided under Sections 13 (1) and 13(2) are exclusive of each other. In the one case, the judicial remedy of punishment of the accused for an offence committed for the breach of the provisions of the Act has been provided and in the other case u/s 13(2), the Collector has been authorized to direct the removal of the encroachment.

10. If the construction is not found in conformity with the conditions of the permission and if there is violation of the conditions of permission, the Collector may order the person concerned to remove the encroachment and if such person fails to do so within three months of the order, necessary action may be taken to give effect to the order at the cost of the person concerned.

11. Learned Counsel for the Petitioner further contended that the Petitioner has

already filed a Civil Suit for permanent injunction in the Court of Civil Judge (SD) Almora and the controversy is sub judice inter se between the Petitioner and Respondent No. 2, therefore, the proceedings of the Act are vitiated. A copy of the plaint is annexed as Annexure No. 6. The civil suit is pending between two private persons and State Government is not a party to the said suit. The proceedings under the Act are separate and independent in nature and that too between the Petitioner and the State. The argument is misconceived.

12. Learned Counsel for the Petitioner has vehemently urged that the Prescribed Authority has not given proper opportunity of hearing to the Petitioner to rebut the enquiry report submitted by the Tehsildar particularly because the inspection of the spot was not made in his presence This submission of the learned Counsel for the Petitioner has some force.

13. I have perused the impugned order dated 26-7-2007. From a bare perusal of the order, it does not disclose that the Petitioner was given any opportunity to rebut the enquiry report of Tahsildar or to adduce any evidence to substantiate his contention. In such circumstances, in the interest of justice, it is desirable that the Prescribed Authority be directed to afford reasonable opportunity of hearing to the Petitioner to adduce evidence in rebuttal to the effect whether the house of the Petitioner is situated at a distance of 19 ft. from the centre line of the motor road or at a distance beyond 33 ft. from the centre line of the motor road. Reasonable opportunity to rebut the enquiry report of Tahsildar ought to have been given to the Petitioner by the Prescribed Authority.

14. On the other hand, learned Standing Counsel has submitted that the High Court cannot certify by writ of certiorari that there is error in impugned order of the Prescribed Authority. He has relied upon the Division Bench judgment of the Allahabad High Court in the case of Noorul Hasan Vs. Assistant Sub-Divisional Magistrate, Fatehpur and another, . The ratio of the case cannot be disputed, but the facts of the present case are quite distinct.

15. For the discussion aforesaid, the writ petition deserves to be partly allowed.

16. The writ petition is partly allowed. The impugned order dated 26-7-2007 is set aside. The matter is sent back to the Prescribed Authority / Sub Divisional Officer, Almora, who shall give opportunity of adducing evidence to the Petitioner to rebut the report of Tahsildar and any other evidence, which the Petitioner may intend to lead in support of his explanation. The Prescribed Authority is directed to conclude the proceedings of the case and to pass the order afresh in accordance with law, preferably within a period of three months.

17. All applications stand disposed of.