
(2021) 07 UK CK 0226

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 924 Of 2021

Ram Kumari Devi

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 29-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 07 UK CK 0226

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Dushyant Mainali, J.S. Bisht, Siddhartha Sah, Ashish Joshi

Final Decision : Disposed Of

Judgement

Manoj Kumar Tiwari, J

1. According to the petitioner, she is neither the borrower nor the guarantor in respect of any loan taken from Almora Urban Cooperative Bank Ltd.

2. By means of this writ petition, petitioner has sought following relief:-

(i) Issue a writ order or direction in the nature of certiorari quashing the possession notice dated 6.4.2021 issued by Authorized Officer, Almora Urban

Cooperative Bank Limited and all consequential proceedings, so far as its relates to property of the petitioner situated at House No. 8-158 Kaladhungi

Road, Haldwani District Nainital inter alia directing the respondent Nos. 3 not to alienate and create any third party interest in the House No. 8-158 of

the Petitioner and to recover the dues of borrower out of the properties nos. 8-125 and 8-126 Kaladhungi Road Haldwani and other properties of the

borrower.

(ii) Issue a writ order or direction in the nature of mandamus directing the

respondent no. 1 and 4 to initiate an appropriate inquiry in the present matter and to punish the guilty persons who ever has committed fraud with the petitioner in obtaining loan against her property and to take appropriate legal action against them.

3. Learned counsel for the petitioner submits that Ranbir Nagpal, principal borrower, is brother-in-law of the petitioner and he has mortgaged the

House No. 8-158, Kaladhungi Road, Haldwani, District Nainital belonging to the petitioner in favour of Almora Urban Cooperative Bank Ltd., based

on a forged Will dated 23.04.2001.

4. Learned counsel for the petitioner has referred to a document enclosed as Annexure â?" 3 to the writ petition, which is a registered Will dated

24.06.1993 in which it has been stated that petitionerâ??s husband â?" Dharampal shall be the owner of House No. 8-158. Thus, it is the contention

of learned counsel for the petitioner that her father-in-law, Late Damodar Das, had executed only one Will i.e. dated 24.06.1993 and the subsequent

Will dated 23.04.2001, relied upon by the petitionerâ??s brother-in-law for obtaining loan, is a forged document.

5. The issue raised by the petitioner cannot be resolved in a public law remedy under Article 226 of the Constitution of India. Disputed questions of

fact, for adjudication, whereof recording of oral evidence would be necessary, cannot be decided in proceedings under Article 226 of the Constitution.

6. In such view of the matter, the relief, as claimed in the writ petition, cannot be granted to the petitioner, however, having regard to the facts and

circumstances of the case, the writ petition is disposed of with liberty to the petitioner to approach the appropriate forum available under the law for

adjudication of her right.

7. Mr. Siddhartha Sah, learned counsel for Almora Urban Cooperative Bank makes a statement that the Bank will not take any action under

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in respect of House No. 8-158, Kaladhungi

Road, Haldwani for a period of two months. Interim order, if any, stands vacated.