

(2021) 02 UK CK 0021

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 360 Of 2021

R.K. Sharma

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 15-02-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96
Uttar Pradesh Urban Planning And Development Act, 1973 — Section 27(1)
Transfer Of Property Act, 1882 — Section 116
Constitution Of India, 1950 — Article 14, 226, 300A

Citation : (2021) 02 UK CK 0021

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : T.S. Bindra, I.P. Kohli

Final Decision : Disposed Of

Judgement

Sharad Kumar Sharma, J

(Via Video Conferencing)

1. The petitioner has preferred this writ petition with the following reliefs:-

â??(I) Issue a writ order or direction, in the nature of certiorari for quashing the impugned order/notice dated 08.02.2021 bearing reference no.

49/G.C.Kha.De. /atikraman/notice issued by the Jiledar, Irrigation Division, Dehradun attached as Annexure-1 of the Writ Petition.

(II). Issue a writ order or direction, in the nature of certiorari for quashing the impugned GO bearing no. 2352/II(2)-2020-07-02/2018 dated 29.12.2020

attached as Annexure 2 herewith.

(III) Issue a writ, order or direction, in the nature of mandamus commanding and directing the Respondents to not to evict the petitioner and

demolish/remove the structures erected over portion of the property subject matter of the Lease deed dated 20/2/90 executed in favour of the

petitioner, without due process of law i.e. without a decree/order of a competent court authorized by law.

(IV) Issue any other writ order or direction, which this Honâ??ble Court may deem fit and proper in the circumstances of the case.

(V) Award the cost of the writ petition in favour of the petitioner.â??

2. The factual backdrops, which engage consideration in the present writ petition are that, the petitioner claims that a registered lease was granted in

his favour by the respondents/Irrigation Department as back as on 20.02.1990, though it was 0granted on an application, which was filed by the

petitioner himself and it was limited to subsist for a period from 24.09.1989 to 23.09.1999, in relation to the property, which was described therein.

3. It is an admitted case of the petitioner that the said lease, after the expiry of its period i.e. dated 23.09.1999, has not been extended so far and at

present he claims his right by tenant by holding over. Though the subject matter of the lease was questioned by the petitioner, when an action was

being taken against him, by filing a Suit being Original Suit No. 453 of 1990, Shri R.K. Sharma Vs. Govt. of Uttar Pradesh, which was decreed in his

favour on 12.03.2001, and the following decree was rendered by the learned trial Court:-

â??

20.02.90

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4. Looking to the nature of the decree, as rendered on 12.03.2001, by the Court of Additional Civil Judge, 4th (Senior Division), Dehradun, in fact, a

decree of permanent injunction, which was granted as against the defendants/respondents was granted that the petitioner would not be evicted except

with due process of law. The said decree dated 12.03.2001, on a challenge being given by the State, in a Civil Appeal, under Section 96 of C.P.C.,

being Civil Appeal No. 37 of 2001, State of Uttaranchal Vs. Shri R.K. Sharma, has been affirmed, with the dismissal of the Appeal by the judgement

dated 30.11.2011, which the petitioner now contends in the present writ petition, that the same has attained finality, as it has not been questioned by

any of the respondents before any superior forum further.

5. Subsequently, when the Development Authority i.e. M.D.D.A. had taken an action against the petitioner, by issuing a notice on 03.07.1990, under

Section 27(1) of the Uttar Pradesh Urban Planning and Development Act, 1973, the petitioner, yet again had a cause of action to institute a Suit,

which he availed, being Suit No. 480 of 1990, Shri Ramesh Kumar Sharma Vs. Mussoorie Dehradun Development Authority. The said Suit too was

decreed on 16.07.1993, in favour of the petitioner, on the ground that the temporary construction, which was raised by the petitioner over the plot,

which was leased out in his favour, was after an NOC, which was granted by the MDDA, in his favour on 06.01.1990. The said decree too, which

was rendered by the Court of 2nd Additional Civil Judge (Senior Division), Dehradun, on 16.07.1993, has attained finality.

6. The grievance of the petitioner is that he is a decree-holder and during the subsistence of the decree, the respondents had proceeded to pass the

impugned orders referred to in the relief clauses, by virtue of which the consequential action, which has been taken against him is of his eviction from

the land, which was leased out to him on 20.02.1990.

7. Learned counsel for the petitioner contends that the said action being an executive action, and since it is not having any sanction of law and was

contrary to the decree itself, it cannot be permitted to override the decree of Civil Courts, which itself has been put to execution by the petitioner in

Execution No. 107 of 2020, Shri R.K. Sharma Vs. State and others, and Execution No. 108 of 2020, Shri R.K. Sharma Vs. Mussoorie Dehradun

Development Authority, where the decree dated 12.03.2001, and 16.07.1993, rendered in the two suits, had been sought to be executed. The same is

still pending consideration before the competent execution Courts, and the impugned action, if succeeded during its pendency and final adjudication, it

would have an effect of dilution of decree rendered in favour of the petitioner.

8. The further grievance of the petitioner is that, in pursuance of the impugned order dated 29.12.2020, and the consequential notice, which was issued

on 08.02.2021, by Jiledar of Irrigation Department to the petitioner to remove the encroachments made by him within seven days, is arbitrary and

violative of Articles 14 and 300-A of the Constitution of India, for the reason being that there are other 13 other identical lease-holders, who are still

permitted to continue to occupy their respective land covered by the leases and

the only action, which has been contemplated to be taken is, against the petitioner which is arbitrary.

9. The petitioner has invoked a writ jurisdiction under Article 226 of the Constitution of India, against the impugned action, alleging there to be a breach of his fundamental rights, as he claims his rights by way of effect on his rights by holding over of his lease-hold rights due to the impact of the provisions contained under Section 116 of the Transfer of Property Act, 1882.

10. Since the consequential action, which is impugned in the present writ petition entails a determination, which has already taken shape of a decree, which is under execution proceedings at the behest of the petitioner, preferred by the petitioner, this Court, without expressing any opinion on the

merits of the matter, with regard to the respective right of inter se parties to the present writ petition, with a consensus arrived at between the parties

to the present writ petition, this writ petition is being disposed of with the direction to the Executing Court concerned, who is ceased with the Execution

No. 107 of 2020, Shri R.K. Sharma Vs. State and others, and Execution No. 108 of 2020, Shri R.K. Sharma Vs. Mussoorie Dehradun Development

Authority, to proceed and decide the aforesaid execution cases itself on its own merits, as expeditiously as possible, but not later than the period of two

months from the date of production of the certified copy of this order. It is expected that the parties to the proceedings would not claim unnecessary

adjournment(s) in the execution proceedings, which are being directed to be decided as above by the said Court until and unless it is extremely

uncalled for.

11. Since it is the possessory right of the petitioner, which has now being endangered, as a consequence of the issuance of the impugned orders in

uttermost necessity of equality, which lies in favour of the petitioner, the parties are directed to maintain status quo, qua the nature and title of the

property in question till the Executions, as directed above, is decided by the Executing Court(s) within the time period, as specified therein.

12. Subject to above observation, the writ petition stands disposed of.

13. Pending Applications (IA No. 1/2021 and IA No. 2/2021) stand disposed of accordingly.