
(2011) 03 UK CK 0022

In the Uttarakhand High Court

Case No : Contempt Petition No. 220 of 2010

Sri Upendra Kumar and Others

APPELLANT

Vs

Sri Sachin Kurvey D.M. and Another

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Citation : (2011) 03 UK CK 0022

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—Heard Sri Neeraj Garg, the learned Counsel for the Petitioners and Sri Sudhir Kumar, the learned Brief Holder for the opposite parties.

2. The writ court by an order dated 5th October, 2010 allowed the writ petition and directed the Respondents No. 1, 2 and 3 to handover the possession of the land in question to the Petitioners within a period of six weeks. The operative portion of the order is quoted hereunder:

The writ petition is partly allowed with no order as to costs. The Respondents No. 1 to 3 are directed to hand over possession of the land in question to the Petitioners, mentioned in the judgment and decree passed by the Civil Judge (Senior Division)/F.T.C. VI, Dehradun in Original Suit No. 8 of 1989, wherein the boundaries of the land were also specified, within a period of six weeks from the date of production of a certified copy of this order.

3. The Respondents No. 1, 2 and 3 are District Magistrate, Dehradun, Special Land Acquisition Officer, Dehradun and Kumbh Mela Adhikari, Haridwar. It transpires that the order of the writ court was not the only order against the State and the opposite parties. There was some previous litigation being Suit No. 9 of 1989, which was decreed holding that the State Government had failed to establish that plot No. 279/12 was owned by the State Government. It was also held that plot No. 279/1 belongs to the Plaintiffs. Subsequently, when temporary

requisition of the land was made by the State Government, the Petitioners' plot was again requisitioned temporarily but after the expiry of the notification, the possession was not handed back to the Petitioners, which led to the filing of the writ petition.

4. In spite of the direction of the Court dated 5th October, 2010 to deliver the possession within six weeks, the same was not done. The Applicants, consequently, filed the present contempt petition, in which notices were issued on 22.11.2010 fixing 4th January, 2011. The office report indicates that notices to the opposite parties No. 1 and 2 were duly served, in spite of which, the opposite parties chose not to appear nor filed any counter affidavit. This Court, consequently, had no choice but to pass an order dated 23rd February, 2011 directing the opposite parties No. 1 and 2 to appear in person for the framing of the charge. The said order is quoted hereunder:

Mr. Neeraj Garg, Advocate for the Applicants.

Mr. Sudhir Kumar, Brief Holder for the State.

In spite of service of summons, the opposite parties have neither filed any counter affidavit nor have complied with the order of the writ court. Consequently, a prima-facie case of willful disobedience is made out against the opposite parties. Let the opposite party Nos. 1 and 2 be present before the Court for the framing of the charge on 1st March, 2011. This order has been passed in the presence of the learned Brief Holder, Shri Sudhir Kumar appearing for the opposite parties.

List on 1st March, 2011.

5. Today, the Opposite Party No. 1, namely, Sri Sachin Kurve, presently holding the post of District Magistrate, Dehradun, and Sri Mohan Singh Barnia, presently posted as Special Land Acquisition Officer, are present.

6. The opposite party No. 1 has filed an affidavit of compliance today, which is taken on record, contending that there is no willful disobedience of the order of the writ court and that, without any delay, the opposite party has tried to comply with the order of the writ court and still is ready to deliver the possession of the land in dispute upon identification of the land on the date and time fixed by this Court. The contention of the opposite party is that the order of the writ court was duly served upon him on 14th October, 2010, but possession could not be given since the land could not be identified by metes and bounds. It was further stated that the Special Land Acquisition Officer issued a notice dated 26th February, 2011, which was served by affixation, directing the Petitioners to be present on the spot on 27th February, 2011 so that possession could be given. It was also stated that the possession could not be given as the Applicant was out of station in Jaipur.

7. Similarly, Sri Mohan Singh Barnia has filed an affidavit of compliance reiterating the same submission as stated by the opposite party No. 1. Sri Barnia

has further stated that earlier the Special Land Acquisition Officer was Sri H.D. Pandey, who was transferred during the pendency of the case and, in his place, Sri Mohan Singh Barnia has now been posted, who is present in Court today.

8. In view of the aforesaid, the Court suo motu directs that the name of Sri Mohan Singh Barnia be impleaded as opposite party No. 3. The registry is directed to carry out the necessary correction in the array of parties within three days.

9. From the affidavits filed by opposite party No. 1 and the newly impleaded opposite party No. 3, it is clear that the order of the writ court has not been complied with by the opposite parties till date. The explanation given that the opposite parties are unable to identify the land, is a clear afterthought and is also mischievous. When temporary requisition of the land was made, then the opposite parties did not find it proper to identify the land at that stage, but now at the time of giving back the possession, various hurdles are being imposed by the opposite parties frivolously, so that possession is not given. The stand taken by the opposite parties clearly appears to be an afterthought.

10. The fact remains that the opposite parties did not comply with the order of the writ court, but also chose not to appear before the contempt court inspite of service of summons. The opposite party No. 1 has nowhere stated in the affidavit of compliance that summons in the contempt proceedings were not served upon him. On the other hand, the opposite party No. 1 has admitted that the order of the writ court was duly served upon him on 14th October, 2010. By not appearing before the Court and not answering to the summons and by not complying with the order of the writ court till date, a clear willful disobedience is made out against the opposite parties No. 1 and 3. Since the opposite parties No. 1 and 3 are present, the Court is framing the following charge in their presence:

(1) You, Sachin Kurve, presently posted as District Magistrate, Dehradun, has willfully and deliberately disobeyed the order of the writ court dated 5th October, 2010 by not handing over the possession of the land in question to the Petitioners and consequently, committed contempt of the Court.

(2) You, Mohan Singh Barnia, presently posted as Special Land Acquisition Officer, Dehradun, has willfully and deliberately disobeyed the order of the writ court dated 5th October, 2010 by not handing over the possession of the land in question to the Petitioners and consequently, committed contempt of the Court.

11. The opposite parties No. 1 and 3 are allowed three weeks' time to file reply to the aforesaid charge. A week's time thereafter is allowed to the Petitioners to file rejoinder affidavit.

12. List this matter for hearing on 5th April, 2011, before the appropriate court. On that date, the opposite parties No. 1 and 3 will be present in the Court.

13. Certified copy of the order to be made available to the learned Counsel for the parties within 48 hours on payment of usual charges.