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(2019) 10 UK CK 0092

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3061 Of 2016

Sundar Singh And Others — APPELLANT

Vs

State Of Uttarakhand And Others — RESPONDENT

Date of Decision : 22-10-2019

Acts Referred:

Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 — Section 9(3)(E), 117(6), 178, 195, 197, 198
United Provinces Panchayat Raj Act, 1947 — Section 42
Constitution Of India, 1950 — Article 39(b)

Citation : (2019) 10 UK CK 0092

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Arvind Vashistha, Vivek Pathak, Anurag Bisaria, S.K. Jain, Siddhartha Jain

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J

1. The petitioners before this Court, who are five in numbers, are all residents of Village "Banglow Ki Kandi", which has its "Gram Sabha" and its "Panchayat." This village is admittedly situated in close proximity to the hill station "Mussoorie", in Uttarakhand. It is also adjacent to a favourite tourist point which is a water fall, called "Kempti Fall".

2. The petition has been filed by the petitioners challenging the two orders i.e. order dated 27.05.2016 passed by the Additional Secretary, Government of Uttarakhand and the subsequent order dated 15.07.2016 by which the District Magistrate/ Collector of District Tehri Garhwal has executed a lease deed in favour of private respondent no. 3, for constructing and running a parking area, in the land of Gram Sabha "Banglow Ki Kandi". The land is admittedly a part of the village and is classified under Section 9(3)(E) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (from hereinafter referred to as the Act),

which is a "banjar". It is the nature of allotment which is in question as it is purely for commercial purposes and allegedly in violation of the Government Orders dated 09.05.1984 and 12.09.1997, apart from the violation of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. The petitioners allege that all principles of equity, fair play and transparency have been set aside while giving this allotment in favour of private respondent no. 3. The allotment has been made in favour of respondent no. 3 simply on his moving an application for allotment of the land for a period of ninety years on lease, for establishing and running a parking area near "Kempty Fall", On this application, the Additional Secretary, Government of Uttarakhand has passed an order dated 27.05.2016, granting such allotment, and in consequence of this order the District Magistrate/ Collector of District Tehri Gahrwal by order dated 15.07.2016 has executed a lease deed in favour of private respondent no. 3, on certain conditions. These are the two orders under challenge.

3. The petitioners allege that this has all been done as respondent no. 3 is a former "Pradhan" of Gram Sabha "Banglow Ki Kandi" and has close links with the powers that be, and it is because of his close proximity with the authorities and politicians that he has procured a lease in his favour for a period of ninety years. The land has been given to him not for agricultural purposes but purely for commercial purposes. It is not the case of respondent no. 3 that he is landless and needs land for agriculture and for his sustenance and livelihood. The land which is covered under the lease deed is in khasra no. 450 within the limits of Gram Sabha "Banglo Ki Kandi" and measures 0.200 hectare. It is also alleged that there are more than 1000 trees standing on the property which are liable to be felled for construction of a parking lot, and that a part of the area is also forest area.

4. The further case of the petitioners is that before allotting in form of a lease deed, no general notice was given to the villagers or in the Gram Sabha. Initially, there was an application moved by an "Educated Unemployed Association", of which one of the members was the son of respondent no. 3 and initially proceedings were initiated on the application of this Association, but ultimately the land was allotted in favour of respondent no. 3 on his subsequent application. It is also alleged that the land is prone to land slide and a concrete parking structure is not practical and in fact it is against the environmental laws.

5. Although the State has been made a party through Additional Secretary, Revenue, which has passed the order dated 27.05.2016, the State Government has not even bothered to file a counter affidavit, inspite of opportunities. Counter affidavit has come on behalf of respondent no. 2 i.e. the District Magistrate, Tehri Garhwal, which has been sworn by the Tehsildar, Dhanolti, District Tehri Garhwal and not by the District Magistrate. Respondent no. 2 denies all the allegations and submits that the impugned orders have been passed as per the Government orders dated 09.05.1984 and 12.09.1997.

6. A similar counter affidavit has been filed on behalf of the private respondent

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no. 3, denying the averments made in the writ petition regarding improper allotment in his favour. Respondent no. 3 further states that there was a total transparency in the matter, inasmuch as there is a resolution of the Gram Sabha in this regard which states that it has no objection if such an allotment is done in favour of respondent no. 3.

7. Although the respondents have denied that any part of the land is a forest land or even the village forest, but they have fairly admitted that the land is a barren land under the control of Land Management Committee or the State Government.

8. Land belongs to the State, though it is under the management of the Gram Sabha. It can only be allotted under the provisions of Section 198 of the U.P.Z.A. and L.R. Act. Section 198 of the Act reads as under:-

"[198. Order of preference in admitting persons to land under Sections 195 and 197.-(1) In the admission of persons to land as [bhumidhar with non - transferable rights] or asami under Section 195 or Section 197 (hereinafter in this section referred to as allotment of land) the Land Management Committee shall, subject to any order made by a Court under Section 178, observe the following order of preference:

[(a) landless widow, sons, unmarried daughters or parents residing in the circle of a person who has lost his life by enemy action while in active service in the Armed Forces of the Union;

(b) a person residing in the circle, who has become wholly disabled by enemy action while in active service in the Armed Forces of the Union;

(c) a landless agricultural labourer residing in the circle and belonging to a Scheduled Caste, Scheduled Tribe, Other Backward Class or a person of general category living below poverty line];

(cc) [* * *]

(d) any other landless agricultural labourer residing in the circle;

(e) a bhumidhar, [* * *] or asami residing in the circle and holding land less than 1.26 hectares (3.125 acres);

(f) a landless person residing in the circle who is retired, released or discharged from service other than service as an officer in the Armed Forces of the Union;

(g) a landless freedom fighter residing in the circle who has not been granted political pension;

6[(h) any other landless agricultural labourer belonging to [a Scheduled Caste, Scheduled Tribe, Other Backward Class or a person of general category living below poverty line] not residing in the circle, but residing in the Nyaya Panchayat circle referred to in Section 42 of the United Provinces Panchayat Raj Act, 1947.]

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Explanation. - For the purposes of this sub-section -

(1) 'landless' refers to a person who or whose spouse or minor children hold no land as bhumidhar, 7[* * *] or asami, and [** *] also held no land as such within two years immediately preceding the date of allotment; and

(2) 'agricultural labourer' means a person whose main source of livelihood is agricultural labour;

(3) 'Freedom-Fighter' means an inhabitant of Uttar Pradesh who is certified by the Collector to have participated in the National struggle for freedom during the period between 1930 and 1947 and who in connection with such participation, is similarly certified to have-

(a) undergone a sentence of imprisonment for a period of at least two months; or

(b) been in jail for a period of at least three months by way of preventive detention or as an undertrial; or

(c) been subjected to at least ten stripes in execution of a sentence of whipping; or

(d) been declared an absconding offender; or

(e) suffered a bullet injury; and includes a person who was involved in the Peshawar- Kand or who was a recognised member of the Indian National Army or former India Independence League; but does not include a person who was granted pardon on account of his tendering apology or expressing regret for such participation:

(4) "Other Backward Classes" means the backward classes of citizens specified in Scheduled-I of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (U.P. Act 4 of 1994).

(5) "persons of general category living below poverty line" means such persons as may be determined from time to time by the State Government.]

(2) [* * *]

(3) [The land that may be allotted under sub-section (1) shall not exceed-

(i) in the case of a person falling under clause (c) such area as together with the land held by him as bhumidhar, [* * *] or asami immediately before the allotment would aggregate to 1.26 hectares (3.125 acres);

(ii) in any other case, an area of 1.26 hectares (3.125 acres)].

[(4) The [Collector] may of his own motion and shall on the application of any person aggrieved by an allotment of land inquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular, he may cancel the allotment and the lease, if any.

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(4-A) [* * *]

(5) No order for cancellation of an allotment or lease shall be made under sub-section (4), unless a notice to show cause is served on the person in whose favour the allotment or lease was made or on his legal representatives:

Provided that no such notice shall be necessary in proceedings for the cancellation of any allotment or lease where such proceedings were pending before the Collector or any other court or authority on August 18, 1980.

(6) Every notice to show cause mentioned in sub-section (5) may be issued-

(a) in the case of an allotment of land made before November 10, 1980 (hereinafter referred to as the said date), before the expiry of a period of [seven years] from the said date; and

(b) in the case of an allotment of land made on or after the said date, before the expiry of a period of [five years from the date of such allotment or lease or up to November 10, 1987, whichever be later].

(7) Where the allotment or lease of any land is cancelled under sub-section (4) the following consequences shall ensue, namely-

(i) the right, title and interest of the allottee or lessee or any other person claiming through him in such land shall cease and the land shall revert to the Gaon Sabha;

(ii) the [Collector] may direct delivery of possession of such land forthwith to the Gaon Sabha after ejectment of every person holding or retaining possession thereof and may for that purpose use or cause to be used such force as may be necessary.

(8) Every order made by the Collector under sub-section (4) shall, subject to the provisions of Section 333, be final.]

(9) Where any person has been admitted to any land specified in Section 132 as a sirdar or bhumidhar with non-transferable rights at any time before the said date and such admission was made with the previous approval of the Assistant Collector in-charge of the sub-division in respect of the permissible area mentioned in sub-section (3), then notwithstanding anything contained in other provisions of this Act or in the terms and conditions of the allotment or lease under which such person was admitted to that land, the following consequences shall, with effect from the said date ensure, namely-

(a) the allottee or lessee shall be deemed to be an asami of such land and shall be deemed to be holding the same from year to year, and the allotment or lease of the land to the extent mentioned above shall not be deemed to be irregular for the purposes of sub-section (4);

(b) the proceedings, if any, pending on the said date before the Collector or any other court or authority for the cancellation of the allotment or lease of such

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land, shall abate.]"

9. The above provision gives a detail procedure as to the order of preference in admitting a person to a Gram Sabha land under Section 195 and 197 of the Act.

10. Section 195 and 197 are the category of land which is the land under the control of Land Management Committee or is a vacant land or is vested with the Gram Sabha. The above provision also shows that the mandate of law is that this land has to be given to landless persons of various categories or where there is no landless then a "bhumidhar" or an "asami" residing in that circle having less than 1.26 hectares (i.e. 3.125 acres) will be considered. Admittedly, respondent no. 3 has not got this land under this category.

11. Under sub-section (6) of Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the surplus land which falls under the Gram Sabha is under the management and control of the Gram Sabha. The Government Order dated 9.05.1984, of which heavy reliance has been placed by all the respondents, is actually a Government Order which states that the land which is under the management and control of the Gaon Sabha and which is actually the land of the State (only the management is with the Land Management Committee or the Gram Sabha) for this land when all the eligible persons under Section 198 have been given land and there is still a surplus land available with the Management Committee, then first it should be given to the State Authorities meaning Government Companies having at least 50% share of the Government. It will be given to private persons in the last when all other eligible persons are not available as provided in Section 198 of the Act. The other Government Order dated 12.09.1997 which is a subsequent Government Order states the same except that it charges the rates on which it has to be given.

12. There is no whisper in the counter affidavit filed by private respondent as well as the District Magistrate stating that the procedure as given under Section 198 and the two Government Orders dated 9.05.1984 and 12.09.1997 have been followed, and there were no other eligible persons in the Gram Sabha or nearby who could have been allotted this land. Therefore, first and foremost, it is a clear violation of the provisions of Section 198 as well as Government Orders dated 09.05.1984 and 12.09.1997.

13. Secondly, a larger question also comes up before this Court, which is whether public resources, which is in form of land in the present case, can be distributed in the manner in which it has been done. The seminal decision in such case is Centre for Public Interest Litigation and others v. Union of India and others reported in (2012) 3 SCC 1, of which reference will be given.

14. In the above case, the question before the Hon'ble Apex Court was regarding distribution of 2G telecommunication rights. It is also known as 2G case. The first question before the Hon'ble Apex Court was "whether the Government has the right to alienate, transfer or distribute natural resources/national assets otherwise than by following a fair and transparent method consistent with the

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fundamentals of the equality clause enshrined in the Constitution?"

15. The said question was answered that the "natural resources" is a very wide definition and there is no universally accepted definition of it, but they are generally understood as elements having intrinsic utility to mankind. Government land is definitely a natural resource, which can be utilized for several purposes. These natural resources belong to the people and the State while distributing its natural resources acts on behalf of the people and therefore the action of the State must be fair and equitable. It said in para 75 as under:-

"75. The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of the natural resources. In Article 39(b) of the Constitution it has been provided that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good, but no comprehensive legislation has been enacted to generally define natural resources and a framework for their protection. Of course, environment laws enacted by Parliament and State Legislatures deal with specific natural resources i.e. forest, air, water, costal zones, etc."

16. Thereafter giving reference to a number of catena of judgments of the Apex Court, it finally concluded as follows:-

"89. In conclusion, we hold that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good."

17. Apart from the clear violation of the provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 as well as the Government Orders dated 09.05.1984 and 12.09.1997 while allotting the land in favour of respondent no. 3, both the State Government as well as respondent no. 2 have not followed the principles of equality or the mandate of following the larger public good, as was required by them.

18. In view thereof, writ petition succeeds and is hereby allowed. Order dated 27.05.2016 passed by the Additional Secretary, Government of Uttarakhand and the subsequent order dated 15.07.2016 by which the District Magistrate/ Collector of District Tehri Garhwal has executed a lease deed in favour of private respondent no. 3 are hereby quashed and set aside.

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