

(2016) 09 UK CK 0018

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2439 of 2016.

Sunder Singh - Petitioner @HASH State of Uttarakhand and Others

Date of Decision : 17-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 120 ALR 539 : (2017) 1 ARC 125 : (2016) 133 RD 381

Hon'ble Judges : V.K. Bist, J.

Bench : Single Bench

Advocate : Mr. Siddhartha Singh and Mr. P.S. Bisht, Advocates, for the Petitioner; Mr. V.B.S. Negi, learned Advocate General with Mr. R.C. Arya, Standing Counsel, for the State of Uttarakhand/Respondent No. 1; Mr. Siddhartha Sah, Advocate, for the Respondent No. 3;

Final Decision : Dismissed

Judgement

V.K. Bist, J. - Petitioner has approached this Court seeking the following relief:

"(a) Issue a writ, order or direction in the nature of certiorari calling the record of the case and to quash the order dated 06.04.2016 (Annexure No.1) passed by the Assistant Collector 1st Class in Case No. 03 of 2008 Gaje Singh through LR's v. State of Uttarakhand and judgment dated 26.08.2016 (Annexure No. 2) passed by Additional Commissioner, Garhwal Division in Revision No. 33 of 2015-16 Sunder Singh v. State of Uttarakhand and others and further to allow the application for temporary injunction application."

2. Briefly put, the case of the petitioner is as follows:

The father of the petitioner, as plaintiff, filed Suit No. 03 of 2008 Gaje Singh v. State of Uttarakhand and others in the Court of Assistant Collector, 1st Class, Haridwar under Section 229-B of UPZA & LR Act for declaration, inter alia, on the ground that khasra no. 49, admeasuring 0.1380 H. was recorded in the name of plaintiff (now deceased) and the same was being cultivated. Subsequently, name of Bharat Heavy Electrical Limited was incorporated and then, name of defendant no. 3 was incorporated in the records. Defendant no. 2, Gram Sabha, filed its

written statement, admitting the title of father of petitioner over khasra no. 49 and further admitting the possession. Katauni pertaining to 1368 Fasli was filed, so as to show the mutation of name of Sri Gaje Singh over khasra no. 49, admeasuring 13 Biswa 10 Biswanis Pukhta, as Sirdar then. The Gram Pradhan filed her affidavit in support of plaintiff and his possession and further clarifying the existence of constructed room and 20 trees on the land. Possession of any other person, including Government and its department, has been denied. Evidence of Area Lekhpal was recorded in the suit, wherein the possession of plaintiff, in regard to showing the land, has been admitted. An application under Section 229(D) of U.P.Z.A. & L.R. Act was filed on 15.05.2015 for restraining the defendants not to interfere in the possession of plaintiff. According to the petitioner, information was sought by the plaintiff from the Public Information Officer/Special Land Acquisition Officer in regard to acquisition of khasra no. 49, the area and the compensation paid. It is alleged that information was provided to the fact that land of khasra no. 49, situated in village Jamalpurkhurd, was neither acquired nor any compensation was paid. The Assistant Collector, Ist Class, Haridwar rejected the temporary injunction application filed by the petitioner on the ground that the land was acquired and the compensation was paid to Sri Kabool Singh, Om Singh, Meer Singh, Dhyan Prakash etc. Feeling aggrieved, petitioner filed Revision no. 33 of 2015-16 under Section 333 of U.P.Z.A. & L.R. Act before the Court of Additional Commissioner, Garhwal Division, Camp Dehradun, inter alia, on the ground that the order of learned Assistant Collector, Ist Class, Haridwar is perverse and he had wrongly relied upon the information dated 09.07.2016, which has no concern with the facts, and the factum of possession has not been considered. The Revisional Court, vide order dated 26.08.2016, rejected the said revision filed against the rejection of the temporary injunction application, inter alia, on the ground that the land of khasra no. 49 was acquired on 08.02.1962 and the land vests in the Government, unless the acquisition is cancelled. Hence, this writ petition.

3. It is the contention of the learned counsel for the petitioner that though, allegedly, the land in question was acquired in the year 1962; but, no compensation has been paid to the father of the petitioner at that time and, therefore, in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the said proceedings shall be deemed to have lapsed. Learned counsel for the petitioner also referred to the plaint, in order to show that the petitioner is the resident of Jamalpurkhurd, Pargana Jwalapur, District Haridwar and the land in question is also in Jamalpurkhurd, Pargana Jwalapur, District Haridwar. He also referred to the document, which is annexed as Annexure No. 5 to the writ petition, in which the names of the tenure holders are mentioned, who took the compensation. He submitted that, in fact, the compensation of the said land has been given to some other person, whose father's name is Sri Radhe Singh.

4. On the other hand, learned counsel for the respondents submitted that the father of the petitioner Sri Gaje Singh received the payment of compensation

awarded against the acquisition of his land under notification no. 506-IEP/XVIII-B-293-H-61 dated 08.02.1962 [Khasra Nos. 273, 269, 260 (min.) and 259 min. with new khasra no. 49] without any protest. The copy of Form AA (Appendix of F.H.B. Vol V, Part 1) maintained in the Office of Special Land Acquisition Officer, Haridwar is also annexed as Annexure No. C.A.-7 to the counter affidavit filed on behalf of respondent no. 5. It is also submitted by the learned counsel for the respondents that in the khatauni, shown by the petitioner for the Fasli Year 1368, the name of the grandfather of the petitioner is shown as Sri Raghu Singh.

5. I have heard the learned counsel for the parties and have perused the papers available on record.

6. Since the original suit is pending consideration before the Assistant Collector, Ist Class, Haridwar, I am not going into this factual controversy. Moreover, I also find that the said suit was instituted in the year, 2008 and about eight years have passed and there has been no interim order in favour of the petitioner during these eight years. I do not think that, at this stage, any interim injunction should be granted in favour of the petitioner. Therefore, prayer made by the petitioner for allowing the application for temporary injunction is rejected. The writ petition is dismissed. However, since the suit is pending for last eight years, I direct the Assistant Collector, Ist Class, Haridwar to decide the Suit No.03 of 2008, pending before him, within a period of one month from the date of production of a certified copy of this judgment. It will be open for the parties to file additional documents, on which they want to rely on or refer to before the Assistant Collector, Ist Class, Haridwar and the parties will be at liberty to raise all the pleas, which they wish to raise, before the Court concerned.

7. There will be no order as to costs.