
(2018) 06 UK CK 0140

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1854 of 2018

Suresh Virmani & others

APPELLANT

Vs

Chief Engineer, Public Works Department, Dehradun & others

RESPONDENT

Date of Decision : 29-06-2018

Acts Referred:

Indian Penal Code 1860 — Section 193, 228

Citation : (2018) 06 UK CK 0140

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : Parikshit Saini, Sudhir Singh, Sachin Veer Singh, Ashish Joshi, Rahul Consul

Final Decision : Dismissed

Judgement

SUDHANSHU DHULIA, J. (ORAL)

The petitioners are aggrieved by the removal of an alleged encroachment. This drive against the removal of unauthorized construction and

encroachment has been jointly undertaken by the Nagar Nigam, Dehradun, Public Works Department and Musoorrie Dehradun Development

Authority in Dehradun. According to the petitioners, this is being done in compliance with the directions of a Division Bench of this Court in a public

interest litigation being WPPIL No. 47 of 2013 where the respondent authorities were asked to remove the entire encroachment at various other

places in Dehradun city. The petitioners are aggrieved by the notices being given to them for removal of the encroachment. They claim that they have

their shops on the land, from the Irrigation Department on lease, though it lapsed, nearly 10 years before.

2. Admittedly, the area comes under the development authority which is

Musoorrie Dehradun Development Authority (MDDA) and therefore the provisions of the Uttar Pradesh Urban Planning and Development Act, 1973 are applicable in the present case. The relevant Sections applicable in the present case are 26-A, 26-B and 26-C which read as under:-

(1) "26- A. Encroachment or obstruction on public land." (1) Whoever makes any encroachment on any land not being private property, whether

such land belongs to or vests in the authority or not in a development area, except steps over drain in any public street, shall be punishable with simple

imprisonment for a term which may extend to one year and with fine which may extend to twenty thousand rupees.

(2) Any offence punishable under sub-section (1) shall be cognizable.

(3) Whoever by placing or depositing building material or any other thing whatsoever, or otherwise makes any obstruction in any street or land not

being private property, whether such street or land belongs to or vests in the Authority or not in a development area, except steps over drain in any

public street, or placing of building material during such period as may be permitted on payment of stacking fees on a public street of public place, shall

be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to two thousand rupees or with

both.

(4) If there are grounds to believe that a person has made any encroachment or obstruction on a land in a development area which is not a private

property the Authority or an officer authorised by it in this behalf may serve upon the person making encroachment or obstruction, a notice requiring

him to show cause why he shall not be required to remove the encroachment or obstruction within such period not being less than fifteen days as may

be specified in the notice, and after considering the cause, if any, shown by such person, may order removal of such encroachment or obstruction for

reason to be recorded in writing:

Provided that any encroachment made on public land by a person belonging to weaker section on or before the date of commencement of the Uttar

Pradesh Urban Planning and Development (Amendment) Act, 1997 shall not be removed until alternative land or accommodation is offered to

rehabilitate him in such manner and on such terms and conditions as maybe prescribed.

Explanation.â?" For the purposes of this section, the expressionâ?

(1) â??a person belonging to weaker sectionâ?? means a personâ?

(a) whose family on the date of commencement of the Uttar Pradesh Urban Planning and Development (Amendment) Act, 1997 does not hold any

immovable property in any city as defined in the Uttar Pradesh Municipal Corporation Act, 1959 or any Municipal Area defined in the Uttar Pradesh

Municipalities Act, 1916, and

(b) whose principal source of livelihood is manual labour, including the practice of any craft, either by himself or by the members of his family and

includes a rickshaw-puller or scavenger, but does not include a person who has been assessed to income tax under the Income Tax Act, 1961 or trade

tax under the Uttar Pradesh Trade Tax Act, 1948 or Sales Tax under the Central Sales Tax Act, 1956.

(2) â??familyâ?? in relation to a person belonging to weaker section, means the husband or wife, as the case may be, and unmarried minor children

either or both of them.

(5) Notwithstanding anything contained in the forgoing provisions the Authority of the officer authorised by it in this behalf shall, in addition to the

action taken as provided in this section, also have power to seize or attach any property found on the land referred to in this section or, as the case

may be, attached to such land or permanently fastened to anything attached to such land.

(6) Where any property is seized or attached by an officer authorised by the Authority he shall immediately made in a report of such seizure or

attachment to the Authority.

(7) The Authority may make such orders as it thinks fit for proper custody of the property seized or attached, pending the conclusion of confiscation

proceedings, and if the property is subject to speedy and natural decay, or it is otherwise expedient so to do the Authority may order it to be sold or

otherwise disposed of.

(8) Where any property is sold as aforesaid, the sale proceeds after deducting the expenses, if any, of such sale and other incidental expenses relating

thereto, shall

(a) where no order of confiscation is ultimately passed by the Authority, or

(b) where an order in appeal so requires, be paid to the owner thereof or the person from whom it is seized or attached.

(9) Where any property is seized under sub-section (5), the Authority may order confiscation of such property.

(10) No order for confiscation of any property shall be made under sub-section (9) unless the owner of such property or the person from whom it is seized or attached is given—

(a) a notice in writing, informing him of the grounds on which it is proposed to confiscate the property;

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) a reasonable opportunity of being heard in the matter.

(11) Any order of confiscation under this section shall not prevent the infliction of any punishment to which the person affected thereby may be liable under the Act.

(12) Any person aggrieved by an order made under sub-section (9) may within one month from the date of the communication to him of such order, appeal against it to the District Judge.

(13) On such appeal, the District Judge may, after giving an opportunity to the appellant and the respondent of being heard, pass such order as he may think fit confirming, modifying or setting aside the order appealed against, and pending appeal, may stay the operation of such order on such terms, if any, as he thinks fit.

26-B. Claim for compensation for removal under Section 26-A.- (1) Any person aggrieved by the removal of obstruction or encroachment under sub-section (4) of Section 26-A may within thirty days from the date of such removal prefer a claim for compensation or restitution or both before the Tribunal against either the Authority, or the officer ordering the removal or against both, and for making such officer personally liable for the loss caused to him due to such removal.

(2) The District Judge having territorial jurisdiction over the area in which the removal of encroachment or obstruction as provided in sub-section (4) of Section 26-A has taken place shall be the Tribunal for the purposes of this

section.

(3) Every order of the Tribunal for payment of any compensation or for the restitution of any immovable property shall be deemed to be a decree of

the Civil Court and shall be executable as such:

Provided that if the Tribunal awards any compensation against any officer personally, it shall be the duty of the Authority to realise the amount from

the salary or other dues of the officer concerned and to pay it to the claimant.

(4) The proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal

Code.

(5) The Tribunal shall for the purpose of deciding a claim under this section, have the same powers as are vested in a Civil Court under the Code of

Civil Procedure, 1908 while trying a suit in respect of the following matters, namelyâ?

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Receiving evidence on affidavits;

(c) Inspecting any immovable property or its locality, or issuing commission for the examination of witnesses or documents or local investigation;

(d) Requiring the discovery and production of documents;

(e) â??Recording a lawful agreement, compromise of satisfaction and making an order in accordance therewith;

(f) Any other matter which may be prescribed.

(6) The decision of the Tribunal shall be final.

26-C. Authority may without notice remove anything erected, or deposited in contraventions of Act.â?" The Authority or an officer authorised by it in

this behalf may, without notice, cause to be removedâ?

(a) Any wall, fence, rail, post, step, booth or other structure whether fixed or movable and whether of a permanent or a temporary nature or any

fixture which shall be erected, or set up in or upon or over any street or upon or over any open channel, drain, well or tank contrary to the provisions

of this Act.

(b) Any stall, chair bench, box, ladder, bale, board or shelf of any other thing whether placed, deposited, projected, attached or suspended in, upon,

from or to any place in contravention of this Act.â??

3. Since this drive itself is being undertaken in pursuance of the directions given by the Division Bench of this Court in the aforesaid public interest

litigation and since the petitioners also have a remedy under the law referred above, no interference is being called for by this Court in the matter. The

writ petition stands dismissed in limine.

4. Let a certified copy of this order be given within a period of twenty-four hours on payment of usual charges.