

(2021) 08 UK CK 0094

In the Uttarakhand High Court

Case No : Contempt Petition No. 104 Of 2021

Trilok Singh And Others

APPELLANT

Vs

Vineet Tomar

RESPONDENT

Date of Decision : 05-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 08 UK CK 0094

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : K.S. Bora, Mohit Kumar, J.S. Bisht

Final Decision : Disposed Of

Judgement

Manoj Kumar Tiwari, J

1. Petitioners are residents of Village Ghaindakhali No.3, Tehsil Poornagiri, Tanakpur, District Champawat. They filed WPMS No. 181 of 2019

seeking the following reliefs:-

(i) Issue a writ, order or direction in the nature of certiorari quashing/setting aside the ex-parte survey report dated 15.04.2018 made by respondent no.

5 (Annexure No. 7)

(ii) Issue a writ, order or direction in the nature of mandamus directing the Respondents to make a joint survey of the land of the petitioners together

under both Forest and Revenue Departments according to the circular dated 31.08.2012 and order dated 21.02.2018 passed by respondent no. 1 and

only then take the decision on the matter.

(iii) Issue a writ, order or direction restraining the respondent forest department from interfering in the land of the bhumidhari of the petitioners.

2. It was the contention of the petitioners before the writ court that they are residing in a revenue village, however, the forest authorities are treating

the said village to be situate within forest area without there being any notification to that effect. The said writ petition was disposed of with a direction

to District Magistrate, Champawat to make a formal request to Director General, Survey of India to nominate a team of experts for the purpose of

survey of the village and necessary direction was also issued to the Director General, Survey of India.

3. In this contempt petition, it is alleged that the direction issued by writ court in WPMS No. 181 of 2019 has not been complied with.

4. A compliance affidavit has been filed by Mr. Vineet Tomar, District Magistrate, Champawat. In para-6 of the said affidavit, it has been stated that

the Director, Uttarakhand and West U.P, Geology Spatial Data Center, Dehradun, Survey of India has informed vide letter dated 07.04.2021 that a

Surveyor was sent, who visited the spot for inspection, but found that in the absence of boundary pillars, survey of the area is not possible.

5. Learned Standing Counsel submits that the direction issued by writ court has been complied with, inasmuch as, pursuant to the request made by

District Magistrate, a Surveyor was sent by Survey of India, who opined that, in the absence of boundary pillars, survey is not possible. Thus,

according to him, order passed by writ court stands complied with.

6. Shri K.S. Bora, learned counsel for the petitioner, on the other hand, submits that compliance of the order has not been made and the matter

remains where it was, before filing of the writ petition. He further submits that boundary pillars exist on the spot, but the Surveyor from Survey of

India has wrongly stated that there are no boundary pillars. He further submits that neither petitioners nor other villagers were informed about the visit

of Surveyor, or else they would have shown the boundary pillars to the Surveyor. He further submits that when there was a direction to the Survey of

India to get the land surveyed, then the matter could not have been closed based on a solitary report issued by a Surveyor that survey is not possible.

He further submits that today there are other scientific methods of survey available with Survey of India, therefore, Survey could not have been

refused only on the ground that there are no boundary pillars.

7. Be that as it may, the fact remains that District Magistrate had requested the

Survey of India to make survey of the village and the competent

authority in Survey of India had sent some official to the village. The dispute whether the report submitted by the official, who was sent for survey, is

reliable/correct and can be relied upon or not, cannot be resolved under contempt jurisdiction.

8. In such view of the matter, this Court is of the considered opinion that since substantial compliance of the order is made, therefore it would be

unjust to proceed against the respondents under Contempt of Courts Act, 1972.

9. Accordingly, the contempt petition is closed. Contempt notice issued to the respondent is hereby discharged. However, petitioners shall be at liberty

to file writ petition under Article 226 of Constitution of India for redressal of their grievances, if any.