
(2019) 07 UK CK 0030

In the Uttarakhand High Court

Case No : Writ Petition No. 2171 Of 2007 (M/S)

Union Of India

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Government Of India Act, 1935 — Section 172(1)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 07 UK CK 0030

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Rakesh Thapliyal, Sanjay Bhatt, Suhaas R. Joshi, Vipul Sharma

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. This writ petition, under Article 226/227 of The Constitution of India, has been filed seeking the following reliefs:-

i) Issue a writ, order or direction in the nature of certiorari for quashing of order dated 15.10.2007 issued by respondent no.2.

ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere in any manner in peaceful possession of the petitioner over the property in dispute.

iii) Issue a writ, order or direction in the nature of certiorari quashing the order dated 08.11.2010 passed by District Magistrate, Nainital.

2. The matter pertains to a Military Camping Ground in District Nainital known as Khairna Bridge Camping Ground, District Nainital. The Defence Department, New Delhi, issued a judicial notice dated 01.04.1937 being Notification No.235 indicating that for the purposes of clause (a) of sub-section (1) of Section 172 of the Government of India Act, 1935, the Governor General in Council is pleased to

certify that the lands specified in the Schedule hereto annexed, together with the Buildings situated thereon, have been retained by the Government General in Council for future use for purposes which will hereafter be purpose of the Federal Government. As per the said Notification, a part of 1.57 acres of land was owned and possessed by Defence Department. In revenue records, the land is recorded as "Kaisar-E-Hind". In another part of land, as per prevalent policies, lessees were inducted by granting lease deed. In plot no.185 measuring 0.75 acres, plot no.188 measuring 0.05 acre and plot no.189 measuring 8.75 acres, total area 1.50 acre, which was popularly known as Khairna Bridge Camping ground Sri Kishori Lal Sah and Sri Brij Lal Sah were inducted as lessees by executing registered lease deed for period of four years w.e.f. 1.6.1951. The land was allotted to these lessees for agricultural purpose. These lease deeds were extended from time to time and the lessees continued to remain in possession of the land in dispute during the period of continuance of the lease. However, by notice dated 6.10.1986, lease of Brij Lal Sah came to an end and he was directed to return the possession. Basant Lal Sah S/o Kishori Lal Sah filed a suit for permanent injunction against the petitioners in the court of Munsif, Nainital (now known as Civil Judge, Junior Division), thereby praying that he may not be evicted except due process of law. Said suit was dismissed. Thereafter, petitioner started proceedings against Basant Lal Sah for eviction under the Public Premises Act, 1971. On coming to know that aforesaid Khasra numbers, which is the property of Ministry of Defence, Union of India, is recorded as 'Banzar' land in the name of State Government in the revenue records, petitioner no.2 moved an application before the Sub Divisional Magistrate, Nainital on 23.02.1994, to record the name of Defence Department, Union of India, instead of State. On 28.03.1995, again an application was moved before the S.D.M., Nainital, stating that the name of Government of Uttar Pradesh has wrongly been entered in the revenue records against the relevant Khasra numbers and that the same be corrected in the name of Defence Department, Union of India. S.D.M., Nainital, in reply to the letter dated 28.3.1995, wrote a letter dated 20.05.1995 stating that the land other than khasra nos.430, 429 and 418 is in the possession of lessee Basant Lal Sah and a suit is pending disposal in the court of Munsif Magistrate, Nainital.

3. The Commissioner, Kumaun Division, Nainital, by order dated 14.12.2004, transferred 22 Nali 6 Muthi 'Banzar' land situated in Village Chhara, Patii Majera, Tehsil and District Nainital, which was in the possession of Defence, to the Mandi Samiti with immediate effect, subject to the approval of the State Government. On the selfsame day, by order of Sub Divisional Magistrate, Nainital, name of Mandi Samiti was mutated in the revenue records. Thereafter, on 22.09.2007, S.D.M., Nainital wrote a letter to the Commanding Officer, Kumaun Regiment, Ranikhet, requesting him to direct any competent officer to appear on 01.10.2007 along with the relevant records. In reference to the letter dated 22.09.2007, petitioner no.2 wrote a letter to S.D.M., Nainital on 12.10.2007, stating that the land in dispute is under the possession and is in use of Army

Station Headquarter Ranikhet. In past, one individual Shri Basant Lal Shah has claimed a portion of this land as his own but the same has been rejected by Civil Court Nainital. Now, Krishi Utpadan Mandi Samiti Haldwani has claimed ownership over this piece of land and they are keen to take possession from the Army. Thus, petitioner no.2 requested the S.D.M. to look into the matter personally so that the Army Camping Ground land cannot be handed over to the Mandi Samiti without verifying the records of Defence Department. Thereafter, on 15.10.2007, respondent no.2 issued a notice to the Subedar Kumaun Regiment, Ranikhet to produce the documents relating to title of the property, showing ownership of the Government of India, by 30.10.2007, failing which the sign board of Defence will be removed and the land will be demarcated in the name of Mandi Samiti Garampani. Feeling aggrieved by letter/notice dated 15.10.2007, petitioners approached this Court by filing the present writ petition. During the pendency of present writ petition, the matter was referred to the District Magistrate for settlement of dispute. District Magistrate, by its order dated 08.11.2010, rejected the claim of the petitioners. Subsequent thereto, petitioners got amended the writ petition by challenging the order dated 08.11.2010; Director, Mandi Samiti, Haldwani, District Nainital was also impleaded as respondent no.3 in the array of parties.

4. Counter affidavit has been filed on behalf of respondent nos.1 and 2 stating that the petitioners had been granted time till 30.10.2007 to produce relevant documents/records of the land in dispute but the petitioners did not make available any records pertaining to Khasra Nos.418, 421, 423, 424, 425, 428, 429, 430 of Village Chara, Tehsil Koshya Kutoli, District Nainital in order to prove that the said land is recorded in favour of the petitioners. As against the averment made in the writ petition that Village Chara was in the name of Kaisar-E-Hind since 1937, the respondent nos.1 and 2 stated in the counter affidavit that in revenue records in place of Village Chara the Khasra nos. 418, 422, 423, 421, 424, 425, 429, 430, 426 of Khairna Bridge are recorded in the name of State Government in class 9 (3)M in class 10(2) as well, and it does not belong to Defence of India as per revenue records. It is also stated that Khasra no.185, 186, 188, 189 measuring 30.12 Nali of land lying with Khairna Bridge which is known as Camping Ground cannot be treated to be the land of Defence of India as the said land is not recorded in the name of Defence in revenue records.

5. After the writ petition was amended, supplementary counter affidavit was also filed on behalf of the respondent nos.1 and 2 wherein it is inter-alia stated as follows:-

"3. That the Commissioner, Kumaun Mandal, Nainital by his order dated 14.12.2004 transferred 0.414 hectare land to the Mandi Samiti subject to the approval of the State Government and the name of Mandi Samiti was recorded in the revenue record. After transferring the land in the name of Mandi Samiti, Mandi Samiti tried to demarcate the land and they have found Board of Army, the Mandi Samiti on 22.9.2007 requested to give possession of the land to the

Mandi Samiti. In these circumstances, the then Sub Divisional Magistrate, Koshya Kutoli, District Nainital by his letter no.80/ST/2007 (land demarcation) dated 22nd September, 2007 directed to the Commanding Officer, Kumaun Regiment, Ranikhet, District Almora to come in his office on 01.10.2007 with all the relevant record.

4. That the Subedar Shri Shankar Dutt Joshi, Kumaun Regiment, Ranikhet, District Almora submitted an application on 05.10.2007 before the Sub Divisional Magistrate, Koshya Kutoli, District Nainital and that he will produce the original record relating to the Army land and further requested till 15.10.2007 the possession of the land not to give anybody.

5. That the Subedar Shri Shankar Dutt Joshi, Kumaun Regiment, Ranikhet, District Almora again submitted an application on 15.10.2007 and stated that he will produce those documents related to the Army land till 30.10.2007 and requested not to give possession to anybody.

6. That the aforesaid circumstances, the then Sub Divisional Magistrate, Koshya Kutoli, District Nainital issued a letter on 15.10.2007 to the Subedar Shri Shankar Dutt Joshi, Kumaun Regiment, Ranikhet, District Almora if he has not filed the related record till 30.10.2007 the board established by the Army will be removed.

6. Vide order dated 05.07.2018, Director, Mandi Samiti, Haldwani, District Nainital was added as respondent no.3 in the writ petition. Mr. Vipul Sharma, Advocate appeared on behalf of respondent no.3 but no counter affidavit has been filed by respondent no.3.

7. During the course of hearing on 03.01.2019, the Court noticed that the Commissioner, Kumaun Division, Nainital by his order dated 14.12.2004 has transferred 22 Nali 6 Muthi land situated in Village Chhara, Patii Majera, Tehsil and District Nainital in favour of the Mandi Samiti with immediate effect, subject to the approval of the State Government. Thus, this Court granted time to the Government Pleader to seek instructions from the Government as to whether the State Government has accorded its sanction to transfer the land in favour of Mandi Samiti. Pursuant to order of this Court, a supplementary affidavit was filed on behalf of the State/respondents, stating that in pursuance of the order dated 14.10.2004 no sanction has been granted by the State Government. There is no whisper on record so as to show that ever possession was delivered to the Mandi Samiti on the said land.

8. I have heard learned counsel for the parties and have carefully perused the entire material.

9. Mr. Rakesh Thapliyal, learned Assistant Solicitor General for the Union of India-petitioners would submit that the land in dispute was allotted to Defence Department, Union of India vide Notification No.235 dated 01.04.1937. He would further submit that it is an admitted fact to the parties that this land is recorded

as "Kesar-e-hind" in the revenue records. Learned counsel would further submit that the land in dispute never vested in the State. It is contended that the revenue authorities i.e. respondent nos.1 and 2, after showing the land in dispute as Banzar land, have illegally changed the entries of Union of India. It is contended that even if the land is recorded as Banzar land it would remain in the name of its tenure holder. Banzar land does not mean that it is vested in the State. Banzar land means a land which is unfit for cultivation.

It is further contended that respondent nos.1 and 2 are not the owner of the land in dispute therefore the transfer order dated 14.12.2004 passed by the Commissioner, Kumaun Division, transferring the land in favour of Mandi Samiti, is null and void.

10. Learned Assistant S.G. would further contend that by order dated 14.12.2004 the Commissioner, Kumaun Division, Nainital, has transferred the land which was in the possession of Defence, to the Mandi Samiti Garam Pani with immediate effect, subject to the approval of the State Government, however, neither approval was ever granted by the State Government in the matter nor possession was given to Mandi Samiti. The Mandi Samiti without any authority took the possession over the petitioners' land and raised construction of shops thereon. On this ground also, order dated 14.12.2004 is unsustainable in the eyes of law.

11. He would further contend that the Commissioner or his subordinate revenue authorities have no authority to transfer the Defence Land to Mandi Samiti because they do not have better right over the said land. According to him, impugned orders have been passed without any authority of law. It is contended that pursuant to order dated 14.12.2004 respondent no.3 has raised construction over some part of the land in dispute without there being any title or sanction by the State Government.

12. Lastly, learned counsel for the petitioners would further contend that the order dated 14.12.2004 was not informed to the petitioners and the petitioners could know about the same at a very belated stage when the order dated 08.11.2010 was passed by the District Magistrate in compliance of this Court's order.

13. Per contra, learned Standing Counsel would fairly admit that the order dated 14.12.2004 was passed by the Commissioner subject to approval of the State, whereas the State Government has not accorded its sanction for transfer of land in favour of respondent no.3. It is admitted that there is no whisper on record that ever possession was handed over to the Mandi Samiti. However, he would contend that the petitioners have a remedy to file a suit for eviction against the respondent no.3 in the civil court.

14. Mr. Vipul Sharma, learned counsel appearing for the respondent no.3 would submit that the land in dispute belongs to the State Government as the same is recorded in the revenue records as Banzar land and the State Government has

the authority to transfer the said land in favour of Mandi Samiti. It is submitted that pursuant to said transfer order, some shops have been constructed by respondent no.3, which have been allotted to respective shopkeepers. It is contended that since rights have been accrued in favour of respondent no.3 pursuant to order dated 14.12.2004 and thereafter respondent no.3 has constructed some shops and has allotted them to shopkeeper, it would not be just and proper, at this stage, to disturb the possession of respondent no.3. On a query posed by the Court, learned counsel for the respondent no.3 is unable to reply as to when the possession was delivered by respondent nos.1 and 2 to the respondent no.3 Mandi Samiti.

15. Learned counsel for respondent no.3 would further submit that the order dated 14.12.2004 was also challenged by the petitioners before this Court in WPMS No.2362 of 2017. Writ petition was dismissed by the Court vide its order dated 18.09.2017, where-against special appeal was preferred before the Division Bench of this Court, which has also been dismissed. Thus, the order dated 14.12.2004 has attained finality.

16. On a perusal of the record, it emerges out that the respondent nos.1 and 2 did not inform the petitioners with regard to the order dated 14.12.2004 that the land has been transferred to respondent no.3 however, there was a series of correspondence between the functionaries in regard to the land in dispute. Pursuant to order dated 14.12.2004, name of Mandi Samiti was mutated in the revenue records. Before passing the order dated 14.12.2004, neither any notice nor any opportunity of hearing was given to the petitioners. It was, on 22.09.2007, when the petitioners first time received the letter from S.D.M., Nainital requesting them to produce the relevant records regarding title and possession over the land in dispute but even then also they were not informed about the order dated 14.12.2004. Petitioners came to know about the order dated 14.12.2004 when reference of order dated 14.12.2004 was made by the District Magistrate, in its order dated 08.11.2010, which was passed in compliance of this Court's order 30.10.2007. It appears to this Court that the respondent nos.1 and 2 deliberately concealed this fact. Thus, this Court is of the considered view that the order dated 14.12.2004 does not effect the title of the petitioners in any manner.

17. This Court further finds that the Commissioner, Kumaun Division, Nainital, by order dated 14.12.2004, has transferred 22 Nali 6 Muthi 'Banzar' land situated in Village Chhara, Patii Majera, Tehsil and District Nainital, which was in the possession of Defence, to the Mandi Samiti Garam Pani with immediate effect, subject to the approval of the State Government. However, it has been brought on record by way of supplementary affidavit filed on behalf of respondent nos.1 and 2 that no approval, whatsoever, has been granted by the State Government in this regard. In such circumstances also, the entire exercise carried out by the respondent nos.1 and 2 in regard to transfer of land in favour of respondent no.3 is void ab initio.

18. As regards the argument advanced by learned counsel for respondent no.3 that the order dated 14.12.2004 passed by the Commissioner, Kumaun Division, has attained finality, inasmuch as, the writ petition challenging the same has been dismissed and thereafter special appeal no.971 of 2017 has also been dismissed, a perusal of order dated 18.09.2017 would reveal that the writ petition has not been decided on merit rather the writ petition was dismissed on the ground of laches. Furthermore, as observed aforesaid, the order dated 14.12.2004 transferring the land in favour of respondent no.3 was a conditional order, depending upon the approval of the State Government, and as the State Government has not granted its approval for the same, the order dated 14.12.2004 is a nullity and non-est in the eyes of law and no rights accrue in favour of the respondent no.3.

19. In the light of aforesaid, this Court arrives to the conclusion that the land in dispute was vested with the Union of India vide Notification No.235 dated 1.04.1937. In revenue records, this land is recorded as "Kaisar-E-Hind". Land belonging to different departments of Central Government including Defence department (Ministry of Defence) is categorized in revenue records as Kaiser-e-Hind. Kaiser-e-Hind properties are regarded as properties of the Crown (now Central Government). Land in dispute never vested with the State of Uttarakhand. "Nemo dat quod non habet" is the settled principle of law which means no one can transfer a better title than he himself has. By order dated 14.12.2004, the land has been transferred to respondent no.3 by the Commissioner, Kumaun Division, which was not available with him (State Government) in the very first place. Neither the State Government was the owner nor there was any possession of the State Government over the said land. As such, under no circumstances, the said transfer could have been made. In the case at hand, firstly the Officials of the Government of Uttarakhand, without any authority of law, transferred the land and granted undue favour to respondent no.3, for the reasons best known to them; and secondly the respondent no.3, without any approval by the State Government for transfer in its favour, and more particularly, during the pendency of present writ petition, raised the construction over the land in dispute and constructed some shops and allotted them to the shopkeepers. It is also the settled principle of law that those who come by back-door have to go by the same door. Thus, the argument of the counsel for the respondents that the petitioners have a remedy to file a suit for eviction against the respondent no.3 in the civil court has no legs to stand on.

20. For the reasons as recorded above, writ petition stands allowed. Order/Notice dated 15.10.2007 issued by respondent no.2 and the order dated 8.11.2010 passed by District Magistrate, Nainital, are hereby quashed and set aside. Consequently, a mandamus is hereby issued to the respondent nos.1 and 2 to restore the possession of the petitioners over the land in dispute and to record the name of the petitioners in revenue records within six months. Respondent no.3 is also directed to remove the construction from the land in dispute, within six months.

21. No order as to costs.