

(2022) 12 UK CK 0035

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3133 Of 2022

Vishana Bisht

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 08-12-2022

Acts Referred:

Uttar Pradesh Special Area Development Authorities Act, 1986 — Section 27

Citation : (2022) 12 UK CK 0035

Hon'ble Judges : Vipin Sanghi, CJ;R.C. Khulbe, J

Bench : Division Bench

Advocate : B.D. Pande, Harshit Sanwal, Puja Banga, Sandeep Kothari

Final Decision : Dismissed

Judgement

Vipin Sanghi, CJ

1. The petitioner has preferred the present Writ Petition seeking the following reliefs :-

"i. To, issue a writ order or direction in the nature of certiorari for quashing the demolition notice dated 02.12.2022, (Annexure No. 9) and further the letter dated 24.02.2020, (Annexure No. 7) issued by the respondent no.2;

ii. To issue a writ order or direction in the nature of mandamus to not in any manner interfere with the peaceful possession of the suit property;

iii. To issue any other writ order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

iv. Award the cost of the writ petition in favour of the petitioners."

2. The case of the petitioner is that she is the owner of the plot admeasuring 92.93 sq. meters, which she purchased, vide registered Sale Deed dated 14.05.2012, from Kundan Lal Sah Religious and Charitable Trust, who are stated to be the original owners of the said land. A copy of the Sale Deed has been

placed on record. The same, however, does not disclose the description of the land, except to mention its boundaries as "A, B, C, D".

3. The case of the petitioner is that the respondents issued a notice in the name of the petitioner's husband – Late Shri Nain Singh, alleging raising of unauthorized construction, on the land. The further case of the petitioner is that the respondents came out with a scheme for one time regularization/compounding of unauthorized construction on 29.11.2014. She states that she applied for compounding/ regularization under the said scheme, on 27.02.2015, in her own name. It appears from the record that the demolition order was passed in the proceedings initiated by the respondents on 13.04.2015. The petitioner states that the said demolition order was challenged by her husband in a statutory appeal, under Section 27 of the Special Area Development Authority Act. The said Appeal was also dismissed. Thereafter, the petitioner, or her husband, did not take any further steps in the matter.

4. The petitioner states that the respondents issued notice dated 24.02.2020, in the name of the petitioner's husband – Late Shri Nain Singh. Shri Nain Singh passed away on 04.05.2021. The respondents have once again issued a notice on 02.12.2022, stating that in case demolition is not carried out of the unauthorized construction, they would do so in pursuance of the aforesaid demolition notice. In this background, the present Writ Petition has been preferred by the petitioner.

5. The submission of the learned counsel for the petitioner is that the entire proceedings are vitiated by the fact that the notice was issued to Shri Nain Singh, and not to the petitioner, who is the registered owner of the property in question. The petitioner has also availed of the scheme brought out by the respondents for one time regularization/ compounding, by making her application on 27.02.2015, which has still not been decided.

6. In this regard, reliance is placed on the judgment of the Delhi High Court in Mahinder Singh and Ors. v. Municipal Corporation of Delhi; 34 (1988) DLT 118, as also on the judgment of the Supreme Court in Municipal Corporation, Ludhiana v. Inderjit Singh & Anr.; (Civil Appeal No. 5948 of 2008), decided on 01.10.2008.

7. We have heard the learned counsel for the petitioner.

8. First and foremost, we find that the petitioner has suppressed pertinent and relevant documents from the Court. The demolition order dated 13.04.2015, which finds mention in the notice dated 24.02.2020, has not been placed on record. Even the order dismissing the appeal has not been filed. On this short ground alone, the Writ Petition is liable to be dismissed.

9. Secondly, even on merits, we do not find that the petitioner has made out a case. Admittedly, the construction of the property was undertaken without any prior sanction, and it is not even the case of the petitioner, that she and her

husband were living separately. The notice was issued in the name of the petitioner's husband-Nain Singh, as he was the head of the family, and was occupying the property, in respect whereof, the notice was issued. Apparently, Nain Singh never claimed before the respondent authorities that he is not the owner, or that the petitioner, i.e. his wife, is the owner. It appears that he participated in the proceedings, leading to the passing of the demolition order dated 13.04.2015, and, thereafter, proceeded to file a statutory appeal against the demolition order in his own name. Even at that stage, the petitioner did not stand up to say that she is the owner, and the demolition order has been passed against her, without putting her to notice. Even after the appeal was dismissed, the petitioner did not initiate any proceedings.

10. Reliance placed on the judgment of the Delhi High Court in Mahinder Singh (supra) is misplaced. That was a case, where the notice had been issued by the Corporation in the name of Shri Khem Chand, the father of the owners, who were the writ petitioners before the Court. In response to the said notice, the father of the writ petitioners – Khem Chand, gave a specific reply that he was not the owner. He disclosed that his sons were the real owners. He also disclosed that the construction was carried out by his sons. Despite the said reply, the Corporation proceeded to finalize the show-cause notice, and proceeded to pass the demolition order. It was in these circumstances that the Court held that the show-cause notice should have been issued to the owners, since their identity had been disclosed.

11. The decision of the Supreme Court in Inderjit Singh (supra) is also premised on very different facts. That was a case, where one Hira Devi was the owner of the property, whereon she constructed a Marriage Hall. She had a grandson, who was respondent no. 1 before the Supreme Court. The grandson had filed a suit for permanent injunction in a Civil Court, and obtained an interim order on 26.03.2001, against the demolition of the property of the plaintiff, as far as it was in consonance with the sanctioned construction. In spite of the said order, the Municipal Corporation of Ludhiana issued a notice on 14.12.2001, calling upon the respondent no. 1, i.e. the grandson, to demolish the unauthorized construction, failing which the Corporation would do so. The Corporation, then, proceeded to carry out the demolition. In the appeal preferred against the demolition order, the Court directed restoration of the construction, since it was undertaken in breach of the order of injunction, earlier passed by the Court. That order was assailed by the Corporation by filing a Writ Petition. The Writ Petition was dismissed. The Corporation then preferred a SLP before the Supreme Court, which was registered as Civil Appeal No. 5948 of 2008. It was in the aforesaid background that the Supreme Court did not find any merit in the appeal preferred by the Corporation. In our view, therefore, the said decision is not attracted in the facts of the present case.

12. Reliance placed on the scheme for one time regularization/ compounding of unauthorized construction dated 29.11.2014, and the fact that the petitioner had

applied under the said scheme on 27.02.2015, loses its significance, since the demolition order was passed after the aforesaid developments have taken place, i.e. on 13.04.2015.

13. As aforesaid, the demolition order dated 13.04.2015 has not been placed before us and, therefore, there is no way that we can accept the petitioner's submission that her application for compounding/ regularization has not been actioned.

14. Since statutory proceedings have been undertaken in respect of the property in question, and it has been found to be unauthorizedly constructed, as early as on 13.04.2015, we are not inclined to entertain the present Writ Petition. The same is, accordingly, dismissed.

15. Consequently, pending applications, if any, also stand disposed of.