

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/S) No. 3055 of 2023

Narendra Singh

... Petitioner

Vs.

State of Uttarakhand and others

....Respondents

And

Writ Petition (M/S) No. 3068 of 2023

Beer Singh Rawat

... Petitioner

Vs.

State of Uttarakhand and others

....Respondents

Advocate: Mr. Kurban Ali, Advocate, for the petitioner
Mr. Yogesh Chandra Tiwari, Standing Counsel, for the State

Hon'ble Sharad Kumar Sharma, J.

These two writ petitions, except for certain minor factual disputes they are based upon almost the same principles of law, which were factually required to be considered, at the stage when the proceedings were initiated under the provisions contained under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

2. The precise fact in both the writ petitions are that the petitioners contends that they are occupying a partial piece of land as detailed in the khatauni pertaining to *fasli* year 1428 to 1433 of village Kasana Palla, Tehsil Dhumakot, District Pauri Garhwal. The khasra numbers which have been given therein in the said khatauni in its column No. 4, doesn't find any reference with regard to khasra No. 515. Hence, based on the said document, the learned counsel for the petitioner contends that over the khasra numbers, which have been shown in the khatauni of 1428 to 1433

fasli, they stand recorded as shreni 1 kastkar of the aforesaid land and that their possession cannot be interfered into by the respondents by drawing the proceedings under Section 4/5 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

3. The petitioners contend that the proceeding, which was drawn against the present petitioner was based upon the challani report which was submitted by the Lekhpal, the proceeding was drawn against them in relation to the khasra No. 515, having an area of 1.209 hectares, which, according to the notice under Section 4/5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as issued to the respective petitioner had described the land as to be a land lying in shreni 9Ga, which is a land recorded as Gochar and being a non z.a. land, it was alleged with, that the petitioners have been illegally occupying the same, consequently, the proceedings for eviction have been drawn against them, which has been decided by the learned Prescribed Authority by the respective case No. 12 of 2017, State Vs. Unauthorised Occupant Narendra Singh and Case No. 10 of 2017, State Vs. Unauthorised Occupant Jai Veer Singh against the petitioners.

4. The said judgment, as rendered in a proceeding under Section 4/5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, ultimately, it was held that the land described in khasra No. 515, over which it was alleged that the petitioners have been illegally and unauthorisedly occupying the same, was put to challenge in an Appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the same too was

decided by the learned Appellate Authority by the judgment dated 29.09.2023, as respectively involved consideration in Miscellaneous Civil Appeal No. 40 of 2022 in Writ Petition (M/S) No. 3055 of 2023 and Miscellaneous Civil Appeal No. 39 of 2022, as involved consideration in Writ Petition (M/S) No. 3068 of 2023.

5. The finding pertaining to the unauthorised occupancy of the petitioner over khasra No. 515, is concurrent in nature. But the learned counsel for the petitioner argues that in fact, they are not in occupation of any part of the land lying in khasra No. 515. But rather the respondent taking an advantage of the fact that the land as covered in the khatauni, which they have placed on record since it lies adjacent to the disputed khasra No. 515, under the garb of drawing the proceedings under Section 4/5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the respondents are interfering and are attempting to evict the petitioner from the said land which he contends that the land is recorded as shreni 1ka which the respondents otherwise claimed as to be a land lying in shreni 9Ga.

6. Since it is the consistent case of the petitioners that they are not occupying any part of the land which is lying in khasra No. 515, the apprehension expressed by the petitioner is overruled and while dismissing these writ petitions, it is clarified that if the petitioners are occupying the land as recorded owner against their names as shreni 1, according to the khatauni annexed with the writ petition, the respondents will not interfere in their possession of the land recording them over the land lying in shreni 1 under the

garb of the impugned orders passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

7. Subject to the aforesaid, the writ petitions are declined to be ventured into on merits.

8. Let a copy of this judgment be kept in the connected writ petition.

(Sharad Kumar Sharma, J.)

02.11.2023

Mahinder/