

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	29.12.2023		WPMB No. 379 of 2023 <u>Hon'ble Manoj Kumar Tiwari, ACJ.</u> <u>Hon'ble Vivek Bharti Sharma, J.</u> Mr. B. M. Pingal, learned counsel for the petitioners. Mr. S. S. Chaudhary, Brief Holder for the State of Uttarakhand. Mr. Sanjay Bhatt, learned counsel for the respondent no. 3. Mr. I. D. Paliwal, learned Standing Counsel for the State of U.P. 2. By means of this petition, petitioners have sought following reliefs:- i. <i>Issue a writ, order or direction in the nature of Certiorari calling for the record and quashing the impugned Notices dated 25.11.2023 (Annexure No. 1 to the writ petition) issued by the respondent no. 14 to the writ petition, whereby the petitioners have been directed to vacate the land within a period of 7 days from the date of issuance of the Notice.</i> ii. <i>Issue a writ, order or direction in the nature of Mandamus restraining the respondent authorities from taking any coercive steps against the petitioner pursuant to the Notice dated 25.11.2023 (Annexure No. 1 to the writ petition) and permit the petitioners to live peacefully in the area of Khasra No. 25, 27, 30 and 32, which is now fall within the ambit of Ward No. 4, 5 & 6 of Nagar Panchayat Banbasa, District Champawat.</i> iii. <i>Issue a writ, order or direction in the nature of Mandamus directing the respondent authorities to conduct the survey of entire area of Nagar Panchayat Banbasa by constituting a High Level Committee, who may furnish respective Survey Report regarding the encroachment of land falling within the boundary limit of Nagar Panchayat Banbasa, District Champawat before this Hon'ble Court.</i>

			iv. <i>Issue any other suitable writ, order or direction of any nature in favour of the Petitioners, which this Hon'ble Court may deem fit and proper in the present circumstances of the case.</i> 3. Petitioners are aggrieved by a notice dated 25.11.2023, issued by Assistant Engineer, First Sub-Division, Banbasa Head Works Division, Irrigation Department, Sharda Canal, Bareilly (U.P), whereby they have been asked to vacate the land within seven days, failing which, their construction will be removed at their cost and expense. 4. Perusal of notice reveals that the same has been issued pursuant to direction issued by Coordinate Bench in Writ Petition (PIL) No. 175 of 2021, 'Bahadur Singh Patni v. State of Uttarakhand and others'. 5. Learned counsel for petitioners submits that petitioners are not encroachers and their constructions are existing over the land in question for last 40 years; State of Uttarakhand has notified Nagar Panchayat Banbasa on 08.02.2014, in which land in question has also been included and the said land does not belong to Forest Department. 6. Per contra, Mr. I. D. Paliwal, learned Standing Counsel appearing for State of U.P. submits that land over which petitioners are squatting, belongs to Irrigation Department of Uttar Pradesh and said land is adjacent to Sharda Canal, Banbasa, District Champawat. He further submits that unauthorized occupation over public land, howsoever long, will not create any right; the petitioners have occupied the Government land unlawfully and there is no document enclosed by petitioners with the writ petition to prove that petitioners are entitled to remain in possession over the land in question. 7. Per contra, learned counsel for the petitioners submits that the impugned notice, whereby petitioners were directed to vacate is unsustainable in the eyes of law as the same has been issued without giving any
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		opportunity of hearing to them and principles of natural justice have not been followed in the matter. 8. This Court finds some substance in the submission made by learned counsel for the petitioners. Though, Coordinate Bench, in Writ Petition (PIL) No. 175 of 2021, directed for removing all encroachments from public land, however, it was incumbent upon the Competent Authority to at least give an opportunity of hearing to petitioners before passing impugned order. 9. In such view of the matter, we dispose of the writ petition by giving liberty to petitioners to respond to the impugned notice by submitting their objection/reply, within two weeks. Along with their reply, petitioners will also enclose all documents/material in support of their claim, which entitles them to continue in possession over the land in question. 10. Competent Authority is directed to consider and decide the objection/reply, given by petitioners, as per law, within three weeks thereafter, and, if anyone is found in unauthorized occupation over public land, then necessary order for eviction, shall be passed by the Authority concerned within eight weeks. 11. It is provided that <i>status quo qua</i> petitioners' possession, over the land in question, shall be maintained, only till final order is passed by the Competent Authority. (Vivek Bharti Sharma, J.)(Manoj Kumar Tiwari, ACJ.) 29.12.2023 Akash
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