

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE SRI MANOJ KUMAR TIWARI
AND
HON'BLE SRI JUSTICE VIVEK BHARTI SHARMA

Writ Petition (PIL) No. 9 of 2023

21ST NOVEMBER, 2024

Sagar Giri

--Petitioner

Versus

State of Uttarakhand and others.

--Respondents

Counsel for the petitioner :

Mr. Shobhit Saharia, learned counsel for the petitioner.

Counsel for the Respondent nos. 1 to 5 :

Mr. J.C. Pandey, learned Standing Counsel for the State of Uttarakhand.

Counsel for respondent no. 6:

Mr. Vijay Bhatt, learned counsel.

Counsel of the Intervener :

Mr. Priyanshu Gairola, learned counsel for the applicant.

The Court made the following:

JUDGMENT: (per Hon'ble The Acting Chief Justice Sri Manoj Kumar Tiwari)

This writ petition has been filed in Public

Interest seeking the following relief:-

"a) Issue a writ, order or directions in the nature of mandamus directing the respondent no. 1, 2 and 3 to take immediate remedial and appropriate action for removal of encroachment over the public land, required for development of public utilities for the benefit of public, pursuant to report dated 23.11.2022 (annexed as Annexure no. 5), submitted by the Tehsildar Rishikesh in compliance of Judgment and order dated 04.08.2022 (annexed as Annexure no. 2) passed by the Division Bench of the Hon'ble High Court in WPPIL No. 19 OF 2022."

2. According to the petitioner, land admeasuring 43.59 acres was declared as surplus in the hand of one Mr. Krishna Lal S/o late Hukumat Rai, vide order dated 31.07.1984 passed by Prescribed Authority and the land, so declared surplus, was vested in the

Government.

3. Learned counsel for petitioner submits that the order declaring the aforesaid land as surplus was challenged by various persons, by filing writ petitions, including (i) Mr. Brij Bhushan Sharma @ Brahma Dev (respondent no. 6); (ii) Sri Vrindaban Gaushala Trust; (iii) Mr. Hira Kalyan Das; and (iv) Garui Shankar Mandir Trust, and all such writ petitions were dismissed by learned Single Judge of this Court and the matter was taken up to Hon'ble Supreme Court and the SLP filed by aforesaid persons were also dismissed by Hon'ble Supreme Court.

4. In this writ petition, it is contended that the aforesaid land, which was declared surplus, was allotted to Gram Sabha, and thereafter, a proposal was made to construct an Old Age Home over one acre of land so declared surplus, and financial sanction of the State Government was granted vide order dated 18.10.2021. It is alleged that respondent no. 6, by exercising his influence, stopped the work of construction of Old Age Home. It is also alleged by petitioner that respondent no. 6 to 10 have made extensive encroachment over the land declared surplus, therefore, petitioner has sought appropriate action by

the official respondents, for removal of encroachment from public land.

5. Learned State Counsel has drawn attention of this Court to paragraph nos. 8 and 9 of the counter affidavit dated 03.06.2023, filed by Ms. Amrita Sharma, Tehsildar Rishikesh, District Dehradun, which are extracted below:-

“8. That in reply to the contents of Para No. 6 of the writ petition however it is submitted that the encroachment has been identified and the compliance of this Hon'ble Court as order has duly been complied as per the direction issued in PIL No. 90/2022 dated 4/08/2022. Furthermore the encroachment in the ceiling land has duly been demolished by the district administration by using the machines and takes the help of police for maintaining the law and order. The said ceiling land has been free from encroachment on 25.05.2023 Annexure No. E-1 (Colly) to this affidavit.

9. That in reply to the contents of Para No. 7 of the writ petition it is submitted that the Old Age Home construction work has been started by the Social Welfare Department and the construction agency RWD has been deputed for constructing the said Old Age Home building. The said building has about to be completed. The photocopies of the photographs are annexed as Annexure No. E-2 (Colly) to this affidavit.”

6. Certain photographs have also been enclosed with the said counter affidavit, which indicate that certain permanent structures, alleged to have been raised by encroaching upon public land, were also demolished. He further submits that the Old Age Home has also been constructed, and now, it is ready for use.

7. Learned counsel for petitioner, however, submits that major portion of the land, declared

surplus, is still under encroachment. He submits that, although, encroachment was removed earlier, however, some unscrupulous persons, including respondent no. 6, have again made encroachment by raising boundary wall over the land from where encroachment was removed.

8. Learned counsel for respondent no. 6, however, submits that the alleged encroachments, shown in the photographs referred above, which were demolished, were in fact standing over the bhumidhari land of respondent no. 6. He further submits that this confusion is due to the fact that the land is yet to be demarcated by the Revenue Authorities.

9. The question as to which of the party to writ petition has made encroachment over public land, if at all there is any encroachment, cannot be decided in proceedings under Article 226 of the Constitution of India. This aspect has to be examined by the Revenue Authorities, after spot inspection with the help of survey experts.

10. We, therefore, dispose of the writ petition and direct the District Magistrate, Dehradun to constitute a Committee of officers, headed by an officer not below the rank of Additional District Magistrate. The

Senior Most Sub Divisional Magistrate in the District shall be Member Secretary of the said Committee and third member should be an officer from Survey Department not below the rank of Naib Tehsildar. Such Committee shall be constituted within one week from the date of production of certified copy of this order. The officers of the Committee shall make spot inspection and measure and demarcate the land, after giving 24 hours notice to the parties. The Committee shall submit report indicating the extent of encroachment over public land. It shall be incumbent upon all the parties to extend full co-operation to the Committee during inspection/demarcation. Parties shall be at liberty to produce all documents, including revenue map etc. to substantiate their claim regarding title. Based on the report of the Committee, necessary remedial action shall be taken by District Magistrate to make public land free from all kind of encroachments within ten weeks from date of receipt of report of the Committee.

MANOJ KUMAR TIWARI, A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 21st November, 2024
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