# IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE MR. MANOJ KUMAR TIWARI
AND
HON'BLE MR. VIVEK BHARTI SHARMA, J.

## WRIT PETITION (M/S) No.685 of 2022

Vijay Pal Singh and others ..Petitioners

Versus

State of Uttarakhand and others ..Respondents

With

## WRIT PETITION (M/S) No.801 of 2022

Abhid Hussain & others ..Petitioners

Versus

State of Uttarakhand and others ..Respondents

With

## WRIT PETITION (M/S) No.803 of 2022

Manoj Kumar Sahu and others ..Petitioners

Versus

State of Uttarakhand and others ..Respondents

With

## WRIT PETITION (M/S) No.806 of 2022

Arun Kumar ..Petitioner

Versus

State of Uttarakhand and others ..Respondents

With

## WRIT PETITION (M/S) No.846 of 2022

Asha Pal ..Petitioner

Versus

State of Uttarakhand and others ..Respondents

With

## WRIT PETITION (M/S) No.850 of 2022

Sanjay Sonkar and others ..Petitioners

Versus

State of Uttarakhand and others ..Respondents

With

## WRIT PETITION (M/S) No.1004 of 2022

Hemant Singh Bisht and others ..Petitioners

Versus

State of Uttarakhand and others ..Respondents

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| Counsel for the petitioners | : | Mr. T.A. Khan, learned senior counsel, assisted by Mr. Mohd. Shafy, learned counsel. |
| Counsel for petitioner in WPMS Nos.846 of 2022 and 850 of 2022 | | Mr. Yogesh Upadhyay, learned counsel, holding brief of Mr. Lalit Sharma, learned counsel. |
| Counsel for State of Uttarakhand | | Mr. B.S. Parihar, learned Standing Counsel, with Mr. Gajendra Tripathi, learned Brief Holder. |
| Counsel for respondent no.7 | | Mr. Ashish Joshi, learned counsel. |

JUDGMENT : (per Mr. Manoj Kumar Tiwari, A.C.J.)

Since common question of facts and law are involved in these writ petitions, therefore, these petitions are being heard and decided together. However, for the sake of brevity and convenience, facts of WPMS No.685 of 2022 are being considered and discussed.

2. By means of this writ petition, petitioners have sought the following reliefs:-

> It is, therefore, most respectfully prayed that this Hon'ble Court may very graciously be pleased:-
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> I. To issue a writ order or direction in the nature of mandamus commanding the respondents not to evict the petitioners from their respective shops situated near Ghasmandi, behind Police Outpost, Mangal Parao, Haldwani, till the respondents construct a meat market for carrying on the business of selling the mutton and chicken in retail.
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> II. To issue a writ order or direction in the nature of mandamus commanding the respondents to

provide the accommodation for the purpose of meat market for carrying on the business of selling the mutton of Jhatka/Halali Category as well as for the purpose of selling the Chicken.

III. To issue a writ order or direction in the nature of certiorari quashing the notice dated 31-03-2022, issued by Nagar Nigam, Haldwani, which has been affixed on the shop of the petitioners on 01-04-2022 (contained as Annexure no. 1 to this petition)

"III-A. To issue a writ, order or direction in the nature of mandamus commanding the respondents to restore the possession of the petitioners on the same place where the shops of the petitioners were in existence till 04-04-2022 at Near Ghasmandi Behind Mangal Parao Police Outpost, Haldwani District Nainital.

III-B. To issue a writ, order or direction in the nature of mandamus commanding the respondents to regularize the possession of the petitioners at the spot where the shops of the petitioners were in existence till 04-04-2022, on the same terms and conditions on which the possession of other persons whose shops are adjacent to the shops of the petitioners, has been regularized.

IV. Any other relief which this Hon'ble Court may deem fit and proper, may kindly be awarded in favour of the petitioner and against the respondents.

V. Award the cost of the petition in favour of the petitioner and against the respondents.

3. Petitioners were running meat shops in Ghasmandi, near Fish Market at Haldwani, District Nainital, after obtaining licence from Nagar Palika and other concerned authorities. According to them, they had constructed kiosks over the foot path near Junior High School, known as Balvidya Niketan. In WPMS No.1004 of 2022, petitioner no.1 is running a restaurant

and petitioner nos.2 to 4 were running tyre repairing shops at Tikonia Road, at Haldwani, District Nainital.

4. Petitioners are aggrieved by the eviction notice issued to them by Municipal Commissioner, Haldwani on 31.03.2022. In the said notice, it was alleged that petitioners have constructed kiosks in violation of provisions contained in the Uttarakhand Municipal Corporation Act, 1959, as applicable in the State of Uttarakhand, and due to the constructions so raised by them, movement of traffic is obstructed and filth is also strewn all around the place and petitioners were asked to remove their structures before 04.04.2022, failing which, the same was to be removed at the cost and expense of the petitioners.

5. Learned Senior Counsel for the petitioners submits that writ petitions were mentioned and filed before this Court on 04.04.2022, and the matter was heard on the same day after lunch, however, before the matter could be heard, municipal authorities demolished the construction raised by the petitioners. Thus, he submits that it was an act of high-handedness on the part of the authorities.

6. Learned counsel for the respondent/Municipal Corporation Mr. Ashish Joshi, has drawn our attention to the contents of notice dated 31.03.2022. A perusal thereof indicates that petitioners were asked to remove their constructions before 04.04.2022. Thus, he submits that there was nothing wrong in removing the

constructions raised by petitioners on 04.04.2022, as the deadline had expired on 03.04.2022.

7. Learned Senior Counsel for the petitioners submits that the act of municipal authorities is violative of sub-section (3) of Section 3 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, which reads as under:-

> "3. Survey of street vendors and protection from eviction or relocation. –
> (1)....
> (2)....
> (3) No street vendor shall be evicted or, as the case may be, relocated till the survey specified under sub-section (1) has been completed and the certificate of vending is issued to all street vendors."

8. Learned Senior Counsel for the petitioners also relies upon the provisions contained in Section 18 (3) of the aforesaid Act, which reads as under:-

> "18. Relocation or eviction of street vendors. -
> (1)....
> (2)....
> (3) No street vendor shall be relocated or evicted by the local authority from the place specified in the certificate of vending unless he has been given thirty days' notice for the same in such manner as may be specified in the scheme.

9. The expression "street vendor" is defined in Section 2 (l) of the aforesaid Act, which reads as under:-

> (l) "street vendor" means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving

> from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific; and the words "street vending" with their grammatical variations and cognate expressions, shall be construed accordingly;

10. By referring to the said definition, learned counsel for the Municipal Corporation submits that a person engaged in vending of articles, goods in the street lane side walk or from a temporary built up structure alone qualifies to become a street vendor. He submits that since petitioners raised permanent cement structures by using brick and mortar, for running business, therefore, they do not fall within the definition of street vendors, therefore the protection given to street vendors by Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 is not available to them.

11. Learned counsel appearing for the Municipal Corporation further submits that survey was made by the Street Vending Committee in the year 2016, however, petitioners did not register themselves as street vendors for reasons best known to them, and in the list of street vendors containing 1015 names, which was prepared, names of the petitioners do not figure.

12. Learned Senior Counsel for the petitioners, however, submits that neither any applications were invited nor any notice was given to petitioners regarding the survey made by the Street Vending Committee, therefore, petitioners cannot be blamed for not getting themselves registered; he further submits that

Ghasmandi area, near Fish Market at Haldwani, District Nainital, where the shops run by the petitioners were situate was not included in the vending zone, therefore, the name of the petitioners were not included in the list, as they were not found eligible.

13. Learned Senior Counsel for the petitioners further submits that petitioners were subjected to step motherly treatment inasmuch as shops adjacent to petitioners shops were left undisturbed and the shops belonging to petitioners alone were demolished. Answer to this submission given by learned counsel appearing for the Municipal Corporation is that there are three shops belonging to the Municipality which were given on rent to the meat sellers, those shops were not disturbed during the demolition drive, as those were legally constructed, while petitioners are tresspassers who have encroached upon public footpath by constructing the kiosks, which is obstructing movement of public on the road.

14. Be that as it may. It is not in dispute that the structures from which the petitioners were running their shops have been removed. There is nothing on record to substantiate the claim regarding title of the petitioners over the land in question. The land belongs to the State Government. Now relief of rehabilitation alone can be granted to the petitioners.

15. Mr. Ashish Joshi, learned counsel appearing for the Municipal Corporation submits that the Street Vending Committee has undertaken the exercise of

identifying vending zones and the petitioners' case for rehabilitation shall be considered as per law.

16. We, therefore, dispose of the writ petitions with direction to the concerned authorities in the Municipal Corporation, Haldwani - Kathgodam to examine claim of the petitioners' for rehabilitation as per law.

17. We hope and expect that decision shall be taken by the competent authority within a period of four months from the date of production of certified copy of this order.

MANOJ KUMAR TIWARI, A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 05th November, 2024
NR/

NITESH RAWAT

Digitally signed by NITESH RAWAT
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