IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION (MS) NO. 665 of 2020

M/s Jeewan Das Kundan Lal and others. ……..Petitioners.

Vs.

Krishi Utpadan Mandi Samiti, Rishikesh and others.

...Respondents

Sri V.K. Kaparuwan & Sri Mukesh Kumar Kaparuwan, learned counsel for the petitioners.
Sri Yogesh Pandey, learned Standing Counsel for respondent nos. 1 & 2.
Sri B.S. Parihar, learned Standing Counsel for the State Government.

Dated: 18th March, 2020

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble R.C. Khulbe, J.

Ramesh Ranganathan, C.J. (Oral)

Heard Sri V.K. Kaparuwan, learned counsel for the petitioners, Sri Yogesh Pandey, learned Standing Counsel for respondent nos. 1 & 2, and Sri B.S. Parihar, learned Standing Counsel for the State Government, and, with their consent, the writ petition is disposed of at the stage of admission.

2. The petitioners have invoked the jurisdiction of this Court questioning the proceedings dated 03.02.2020 whereby they were directed to remove the encroachments made in the allotted shops; and for a writ of mandamus directing the respondents not to take any coercive action pursuant to the order dated 03.02.2020.

3. The petitioners are all allottees of shops in the Mandi Samiti, Rishkesh. A Division Bench of this Court had, in its order in Writ Petition (PIL) No. 26 of 2010 dated 24.08.2018, issued several directions, including a direction to the respondents 2 to 5 to remove the unauthorized constructions / encroachments from public land and pavements in Rishikesh town; a direction to the fifth respondent to seal commercial buildings / property constructed in the residential area against the master plan; and a direction to respondents 2 to 5 to issue notices to persons who had encroached

upon Government land / pavements / roads within a period of three weeks permitting them to file a reply within two weeks, and to pass necessary orders of demolition thereafter.

4. It is pursuant to this order of the Division Bench that action appears to have been initiated by respondents 1 and 2 to demolish the unauthorized constructions made by the allottees of shops in the Mandi Samiti, Rishikesh.

5. The impugned order dated 03.02.2020 itself refers to notices having been issued earlier, and to the fact that the petitioners had chosen not to submit their reply thereto. This specific assertion, in the order dated 03.02.2020, has not been denied by the petitioners in the affidavit filed in support of the writ petition. It is evident, therefore, that, despite receipt of notices, the petitioners have chosen not to submit their reply thereto resulting in respondents 1 and 2 having to issue proceedings dated 03.02.2020.

6. A feeble attempt is made by Sri V.K. Kaparuwan, learned counsel for the petitioners, to submit that the shops allotted to the petitioners are located within the precincts of the Mandi Samiti; and do not, therefore, fall within the ambit of “public land”.

7. The Mandi Samiti is a local body, and lands belonging to the Samiti are, undoubtedly, public lands. They cannot, by any stretch of imagination, be construed as private lands.

8. We are satisfied, therefore, that the subject lands fall within the scope of the order of the Division Bench necessitating compliance, since the said order of the Division Bench has attained finality.

9. While the petitioners have no doubt failed to respond to the earlier notices, the submission urged on their behalf by Sri V.K. Kaparuwan, learned counsel for the petitioners, is that they have not encroached upon public lands and have constructed shops strictly in

accordance with the agreement. The question whether or not the petitioners have encroached upon public lands is a question of fact and are not matters which this Court would, ordinarily, examine in proceedings under Article 226 of the Constitution of India.

10. Suffice it, with a view to give the petitioners a final opportunity to put forth their objections to the proposed action of the Mandi Samiti to demolish the existing structure, to treat the impugned proceedings dated 03.02.2020 as a show cause notice. The petitioners shall file their reply thereto within one week from today. Respondents 1 and 2 shall pass a reasoned order taking into consideration the objections raised by the petitioners in their reply to the notices; and pass orders thereupon in accordance with law. Respondents 1 and 2 shall communicate the said order passed by them to the petitioners and thereafter, if need be, initiate proceedings for demolition of the illegal construction and removal of the encroachments.

11. Needless to state that, in case the petitioners fail to submit their reply to the show cause notice within the period afore-stipulated, it would be open to respondents 1 and 2 to proceed with the exercise of demolition of unauthorized constructions, and removal of encroachments, thereafter without awaiting the petitioners' reply to the notice.

12. The Writ Petition is disposed of accordingly. No costs.

(R.C. Khulbe, J.) 18.03.2020

(Ramesh Ranganathan, C.J.) 18.03.2020

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