

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2941 of 2024 (M/S)

Sujeet Ray and others

.....Petitioners

Versus

State of Uttarakhand and others

.....Respondents

Present:-

Mr. S.K. Mandal, Advocate for the petitioners.

Mr. C.S. Rawat, Chief Standing Counsel for the State.

Judgment

Hon'ble Ravindra Maithani, J. (Oral)

The instant writ petition has been filed by the petitioners
with the following reliefs:-

- "I. Issue a writ, order or direction in the nature of mandamus, directing and commanding the respondents not to evict the petitioners forcefully and without adopting any legal proceeding from the Khata No. 3, Khasra No. 50 and Khata No. 2, Khasra No. 49/2 (min) area 8.855 hect. situated in Village Majra Prahalad Palasiya Gram Sabha Kalyanpur, Tehsil Sitarganj, District Udham Singh Nagar.
- II. Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to regularize/grant lease in the name of the petitioners in Khata No. 2, Khasra No. 49/2 (min) area 8.855 hect. situated in Village Majra Prahalad Palasiya Gram Sabha Kalyanpur, Tehsil Sitarganj, District Udham Singh Nagar on the basis of the recommendation made by the Sub Divisional Magistrate on 29.08.2016 and 23.07.2021 (contained in Annexure No. 7 & 8 to the writ petition).
- III. Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to exclude the area 8.855 hect. of Khata No. 3, Khasra No. 50 and Khata No. 2, Khasra No. 49/2 of order dated 13.04.2023 passed by respondent no. 1 and shall not use the agricultural land for non-agricultural purpose i.e. the construction of Integrated Aqua Park (Fish Processing Unit, Wholesale Fish Market, Fish

Landing Centre) situated in Village Majra Prahalad Palasiya, Gram Sabha Kalyanpur, Tehsil Sitarganj, District Udham Singh Nagar.

- IV. Issue a writ, order or direction in the nature of certiorari calling the record, quashing and set-aside the order dated 13.04.2023 passed by the respondent no. 1 (only to the extent of plot khasra no. 49/2 may be excluded up to (min) area 8.855 hect.) and order dated 18.10.2024 passed by Tehsildar Sitarganj, District Udham Singh Nagar (contained in Annexure No. 11 & 16 to the writ petition).
- V. Issue a suitable writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- V. Award the cost of the petition in favour of the petitioners."

2. Heard learned counsel for the parties and perused the record.

3. It is the case of the petitioners that they are in physical and cultivatory possession of the land over Khasra No. 50, Khata No. 3 total area 1.983 hect. and Khasra No. 49/2 (min) area 8.855 hect. situated at Majra Village Prahaladh Palasiya, Gram Sabha Kalyanpur, Pargana Kilpuri, Tehsil Sitarganj, District Nainital (now District Udham Singh Nagar) ("the land in question"); they have been in possession of the land in question since 1980; they have been provided with water connection; electricity connection; they have also obtained other identity documents on that address; they have also grown crops, raised their houses and trees on their property.

4. It is the case of the petitioners that on 13.04.2023, the respondent no. 1 State of Uttarakhand, through its Secretary, Revenue issued Government Order, by which land in Khata No. 2, Khasra No. 49/2 area 13.500 hect., Khasra no. 48/2 area 0.398 hect., Khasra No. 50/1 area 2.799 hect., total area 16.598 hect. has been transferred to

the Fisheries Department so as to develop a State level Integrated Aqua Park and pursuant to it, the respondent no. 6/Tehsildar, Sitarganj, District Udham Singh Nagar has made a communication to all the concerned officers on 18.10.2024 that the land that has been allotted to be Fisheries Department has to be vacated, so that necessary action may be taken for taking possession. These both communications have been challenged in the instant petition. In addition to it, the petitioners also seek direction that the land in question be regularized in their favour.

5. The Respondent no. 7 as well as the respondent nos. 3, 4, 5 & 6 has filed their separate counter affidavit. The Respondent no. 7 has nothing to say in the matter. The respondent nos. 3, 4, 5 & 6 in their counter affidavit have averred that the land in question is a Government land and land Khasra No. 48/2, 49/2 and 50/1 measuring 16.598 hect. has already been recorded in the name of Fisheries Department, out of which possession of 14.500 hect. land has already been given and the rest 2.098 hect. of land has not been handed over to the Fisheries Department because of the standing crop of paddy and pulses. According to the respondent nos. 3, 4, 5 & 6, as soon as the crop is harvested, the possession of the rest of the land will also be handed over to the Fisheries Department.

6. In fact, it has been the apprehension of the petitioners that they are in possession of the land in question for more than four decades now, but without recourse to the law, the respondents are proposing to evict them; no proceedings under the provisions of the UP Zamindari Abolition of Land Reforms Act, 1950 and the UP Tenancy Act, 1939 have been initiated by the respondents for eviction of the petitioners. Reference has been made to the averments made in para

28 of the writ petition, which has been replied in para 28 of the counter affidavit filed by the respondent nos. 3, 4, 5 & 6, wherein it has been stated that these averments are not admitted. According to the respondent nos. 3, 4, 5 & 6, the writ petition is devoid of merit and is liable to be dismissed.

7. Learned counsel for the petitioners submits that the petitioners have already applied for regularization of land in their favour, as they are landless labourers belonging to weaker sections; recommendation has also been made in their favour, but the lease has not been executed in favour of the petitioners on the land in question.

8. Learned counsel for the petitioners submits that the petitioners have been in possession of the land in dispute for more than four decades now, since the time of their ancestors; they have their houses, they have their electricity connection, they have their water connection, over the land in question; the petitioners have cultivated the land on which they are growing crops; but, the respondent authorities without due process of law, wants to evict them. Learned counsel for the petitioner also submits that, in fact, the petitioners have already given their application for regularization of the land in their favour, on which the respondent no. 5/Sub Divisional Magistrate, Sitarganj has made a recommendation on 29.08.2016 as well as on 23.07.2021 to the respondent no.4/District Magistrate, Udham Singh Nagar, but it has not yet been acted upon. Reference has been made to Annexure Nos. 7 and 8 to the writ petition, which are recommendation dated 29.08.2016 and 23.07.2021 of the respondent no. 5/Sub Divisional Magistrate, Sitarganj with regard to lease of the land in question in favour of the petitioners.

9. It is argued on behalf of the petitioners that the respondent authorities may be directed to take a decision on the application for regularization of the land in question in their favour and the respondent authorities may be directed not to evict the petitioners from their possession over the land in question, without having recourse to law.

10. Learned Chief Standing Counsel submits that the land in question has already been transferred in the name of the Fisheries Department for a purpose, for which funds have also been received from the Central Government. He submits that the petitioners shall be evicted only in accordance with law.

11. When the Court posed a question to the learned Chief Standing Counsel as to whether the application submitted by the petitioner seeking regularization/grant of *patta* of the land in question in their favour, on which recommendation was made by the respondent no. 5/Sub Divisional Magistrate, Sitarganj, has been decided by the respondent no. 4/District Magistrate, Udham Singh Nagar prior to any proceeding for evicting the petitioners, learned Chief Standing Counsel submits that proceeding for eviction of the petitioner shall only be taken after a decision is taken on the application of the petitioners for regularization/grant of *patta*, if not already decided.

12. The Court takes on record the statement made by the learned Chief Standing Counsel.

13. In view thereof, the writ petition is disposed of with the following directions:-

(a) The respondent authorities shall not proceed to evict the petitioners without due process of law.

(b) The respondent no. 4/District Magistrate, Udham Singh Nagar shall take a decision on the application of the petitioners for regularization/grant of *patta* of the land in question, in favour of the petitioners, before proceeding to evict the petitioners, if decision on it has not already been taken.

(Ravindra Maithani, J)
11.07.2025

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