

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 76 of 2010

Samer Chand Neta

...Petitioner

Versus

State of Uttarakhand & another

..... Respondents

.....

Mr. Shashank Pandey, Advocate with Mr. I.P. Kohli
Advocate for the petitioner.

Mr. Vinay Kumar, Standing Counsel for the State / respondents.

Mr. Manoj Tiwari, Senior Advocate with Mr. Bhagwat Mehra,
Advocate for the intervener.

JUDGMENT

Coram: Hon'ble Barin Ghosh, C.J.

Hon'ble U.C. Dhyani, J.

BARIN GHOSH, C.J. (Oral)

We have heard learned counsel for the petitioner as well as the learned counsel for the State.

In the instant case a very significant matter pertaining to the forest areas of the State has been highlighted. It has been highlighted in the writ petition that one Kamrujjama s/o Mohd. Aziz alias Aziz Ahamad r/o Qamar Farm House, village Sikrodha, Haridwar, complained to the Divisional Forest Officer, Haridwar that a portion of the land belonging to him has been encroached by the forest. The Divisional Forest Officer, Haridwar took cognizance of the said complaint and issued certain directions, which having been implemented, it is alleged in the Public Interest Litigation

that the State forest department has lost 14.25 Hectares of forest land to the said Kamrujjama. It has been highlighted in the writ petition that no sooner Kamrujjama took possession on 14.25 Hectares of forest land he removed the trees there from and disposed of the same for his personal gain. It has also been highlighted that he soon thereafter started ploughing the said 14.25 Hectares of land. It is claimed that the petitioner and other villagers brought the aforesaid illegal actions on the part of the persons concerned to the notice of all and sundry including appropriate authorities, who could prevent such an incident to take place or to take steps to put back the things which were illegally done, but to no avail. It is the contention of the writ petitioner that only when the local media took up the case and brought the matter, as above, to the notice of the people through publication or otherwise, appropriate authority woke up from slumber and purported to constitute a Committee to go into to the complaint of the petitioner. The Committee, it is alleged, significantly has done nothing, although two years has since passed. No step has yet been taken to earmark the area of the land to which Kamrujjama is entitled in accordance with the Chakbandi recorded in the revenue records. The Committee has taken no step to measure the land area wrongfully taken possession of by Kamrujjama, nor has taken any step to ensure that the land belonging to the forest is returned to the Forest Department of the State.

What has been highlighted in the writ petition is surprising. A land holder is entitled to hold land in this State on being permitted to do so by the State Government through

its Revenue department. His entitlement to do so and the extend of such entitlement is also recorded by the Revenue department. The records in relation thereto are public documents and certified copies thereof are available. In the event, possession of a person entitled to be in possession of a land recorded in the land records of the Revenue Department in the name of said person is interfered with by any one, including an instrumentality of the State, the Revenue Officers in terms of the law made by the State are fully competent to ensure removal of such interference. In the instant case, allegedly Forest Department was interfering with the possession of land permitted by the Revenue Department to be held by Kamrujjama. It is even more surprising that Kamarujjama did not approach the Revenue Department of the State to stop such interference, instead he approached the Divisional Forest Officer, Haridwar, with the complaint pertaining to such interference. Surprisingly enough without even consulting the Revenue Department of the State, the Divisional Forest Officer, Haridwar, issued certain instructions resulting in the alleged loss of 14.25 Hectares of forest land to a private citizen, who even under the law, is otherwise, not entitled to retain land in excess of 12.5 Acres.

We think that one such incident should open the eyes of the people working in the Government and entrusted to look after and manage the properties of the people in the hands of Government. We accordingly, dispose of this writ petition by directing the Principal Chief Conservator of Forest, Uttarakhand, and the Principal Secretary, Revenue

Department to sit together and to devise an appropriate mechanism to ascertain the land entitlement of Kamaruzzama as well as the Chakbandi of his land, to measure the same and ensure fixation of the boundary of his land from all sides. In the event, it transpires after carrying out the such actions that Shri Kamruzzama came to be in possession of any part of the forest land, they are directed to take such recourse to law, including steps under the Forest Act read with Public Demand Recovery Act, for recovery of penal rent from Shri Kamruzzama for being in occupation of such forest land. At the same time, we direct the State Government to pursue vigorously the criminal proceeding initiated for felling and removing trees belongs to the Forest Department of the State. We want the State Government to engage an appropriate prosecutor to ensure that the perpetrators of such crime do not escape the law. At the same time, we direct Principal Chief Conservator of Forest, Uttarakhand to issue a circular in the strongest of strong words directing all his subordinates to ignore any claim made by any person howsoever influential or big he may be, that Forest Department has encroached any part of the land belonging to such person. At the same time, we make it clear that every resident of the State of Uttarakhand holding land in Uttarakhand shall be entitled to approach the Revenue Department in addition to take the legal recourse in established courts, in respect of encroachment by any of his land. In the event, Revenue Department is of the view upon such an approach being made, that a part of land held by a person has been encroached by forest, the officer concerned of the Revenue

Department shall bring the same to the notice of the Principal Secretary, Revenue Department who shall in turn bring the same to the notice of the Principal Conservator of Forest, Uttarakhand, and they thereupon, they shall settle the matter in accordance with law.

The writ petition is disposed of.

(U.C. Dhyani, J.)
30.11.2011

(Barin Ghosh, C.J.)
30.11.2011

Kaushal

