

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1457 of 2013 (M/S)

Surendra Singh S/o Sri Bachan Singh - Petitioner.

Versus

State of Uttarakhand through Collector Chamoli
District Chamoli and another - Respondents

Sri N.S. Negi, Advocate for the petitioner.
Sri H.M. Raturi, Standing Counsel for the State.

Hon'ble B.S. Verma, J. (Oral).

Heard Sri N.S. Negi, Advocate appearing on behalf of the petitioner and Sri H.M. Raturi, Standing Counsel appearing on behalf of the State.

By means of this petition the petitioner has sought the following relief:-

- 1- To set aside the notice dated 26-11-2008 and order dated 25-08-2011 passed by the Prescribed Authority Gairsain, District Chamoli in Case No. 4 of 2008, (Annexure Nos. 1 and 2), as well as the judgment and order dated 23-4-2013 passed by the District Judge Chamoli passed in Misc. Civil Appeal No. 08 of 2011, Baldev Singh Vs. State of Uttarakhand (Annexure No.4 to the writ petition).
- 2- To issue a writ, order or direction, directing the respondents not to interfere in the peaceful possession of the petitioner over the land in dispute situated in Village Marora (Diwalikhal) Tehsil Gairsain, District Chamoli.
- 3- To issue a writ, order or direction, directing the respondents to regularize the land in dispute in favour of the petitioner and the application of the petitioner for regularization may be considered in pursuance of the Government Order dated 16-02-1981 and 14.09.1995.
- 4- To issue a suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- 5- To award the cost of the petition in favour of the petitioner.

The brief facts of the case, are that on the challani report dated 24.10.2008, submitted by Patwari Gairsain, the Prescribed Authority, Gairsain initiated eviction proceedings against the petitioner U/S 4/5 of U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972. According to challani report the petitioner Surendra Singh was found in unauthorized occupation of 0.200 hectare land of compartment No.1 situated in Tehsil Gairsain, belonging to Van Panchayat. The Prescribed Authority issued show cause notice U/S 4(1) of the Act to the petitioner. In reply thereto the petitioner filed W.S. and alleged that the land in dispute is in his possession since 1960.

The concerned Patwari made on oath statement before the Prescribed Authority and stated that the land belongs to Van Panchayat and is in unauthorized occupation of the petitioner since 12 years. The Revenue Inspector Sri Keshava Nand Joshi P.W.2 has made on oath statement that Surendra Singh has constructed Gaushala and prepared fields on the disputed land and his unauthorized occupation is 25-30 years old. The learned Prescribed Authority after hearing parties and considering the entire evidence on record, found that the petitioner is in unauthorized occupation of land in dispute and accordingly eviction order has been passed against him. Feeling aggrieved the petitioner preferred appeal before the District Judge Chamoli, and appeal was also dismissed vide judgment and order dated 23-4-2013.

Now this writ petition has been filed.

This fact is not in dispute that the petitioner is in unauthorized occupation of the land in dispute belonging to the Van Panchayat. The petition in his W.S. has alleged that his possession over the land in dispute is since 1960 whereas the Patwari had given a categorical statement that the unauthorized occupation is 12 years old. This fact has also come in the statements of witnesses that the disputed land is at a distance of 40-50 meters from Bharadisain Motor Road and contiguous to it is Kimoli motor road. Thus on the basis of statement of petitioner it cannot be concluded that the land is not of any public utility and his possession over the land had been without any interruption. No rights accrue to any person on the State land. I

find no illegality in the impugned orders passed by the Prescribed Authority as well as the appellate court since the petitioner is in unauthorized occupation of the land in dispute.

During the course of argument, learned counsel for the petitioner has submitted during eviction proceedings the petitioner has moved application for regularization of the land in his favour which is still pending.

The writ petition being devoid of merit is dismissed.

However, if the application of the petitioner for the regularization of the land in dispute in his favour, is pending, the Collector concerned shall take a decision on the said application at the earliest.

ISB

(B.S. Verma, J.)
28-06-2013