

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Writ Petition (M/S) No. 93 of 2024

Yukti Construction Pvt. Ltd. ... Petitioner

Versus

State of Uttarakhand & Others ... Respondents

Mr. Deepak Dhingra, Mr. Aditya Singh & Mr. B.S. Kathayat,
Advocates for the petitioner.

Mr. Pradeep Hariya, Additional Chief Standing Counsel with Mr.
Sushil Vashistha, Standing Counsel for the State of Uttarakhand.

Mr. Sandeep Kothari, Advocate for respondent no.4.

ORDER

Hon'ble Manoj Kumar Tiwari, J.

Miscellaneous Application (IA No. 19662 of 2025)

This application has been filed by petitioner seeking injunction prohibiting the respondents from selling or parting with possession of the land in question or otherwise encumbering the land, which is subject matter of the writ petition.

2. Learned counsel for the respondents submit that similar prayer for interim relief, made by petitioner was considered and rejected by learned Single Judge of this Court, vide order dated 24.09.2014, and Special Appeal No. 571 of 2014 filed by appellant against the said order was also dismissed, therefore, subsequent application for identical relief would not be maintainable.

3. Learned State counsel refers to the relief clause of the writ petition for contending that

petitioner has challenged the notification dated 21.09.1987, issued under Section 4 of Land Acquisition Act, 1894 and also the notification dated 30.01.1988, issued under Section 6 of the said Act and the Special Land Acquisition Officer, Dehradun gave his award on 19.02.1990, as mentioned in paragraph no. 3 of the writ petition, therefore, there is no good ground for granting the interim protection, as claimed by the petitioner. The reliefs sought in the writ petition are extracted below, for ready reference:-

“(i) issue a suitable writ, order or direction in the nature of certiorari quashing the notifications under Sections 4 and 6 of the Land Acquisition Act were issued on 21.09.1987 and 30.01.1988 (Annexure P-1)

(ii) issue a suitable writ, order or direction in the nature of certiorari quashing the orders of the Collector/District Magistrate, Dehradun, dated 11.03.2013 and 22.04.2013 (Annexure nos. 17 & 16 respectively, to this writ petition);

(ii) Issue a suitable writ, order or direction in the nature of mandamus directing the respondents not to dispossess the petitioner from plots bearing Khewat No.1 and Khasras included in it situated in village Rikholi, Pargana Pachwadun, Tehsil and District Dehradun, having total area of 187.4890 hectares equivalent to 491 Acres.”

4. Learned State Counsel, by referring to the averment made in paragraph no. 6 of the writ petition submits that petitioner claims to have purchased 491 acres land at Rikholi Village in Mussoorie, District Dehradun by means of separate sale deeds between 2007-2010. He submits that since the land is vested in the State Government as per provisions of Land Acquisition Act, 1894, therefore, the sale deeds executed in favour of

petitioner on subsequent dates, as mentioned in paragraph no. 6 of the writ petition, would not convey any title to the petitioner.

5. This Court finds substance in the contention raised by learned counsel for the respondents. Since similar prayer made by petitioner earlier was rejected by this Court on 24.09.2014 and the rejection order was affirmed in appeal by Division Bench of this Court, vide order dated 10.03.2015, therefore, petitioner is not entitled to any protection, as sought in this application.

6. Learned counsel for the petitioner could not point out any imminent threat to the property in question, which may warrant passing of interim order for protecting it. Petitioner has challenged the notifications issued under Sections 4 & 6 of Land Acquisition Act, 1894, which indicates that the land in dispute was subjected to acquisition proceedings. The acquisition proceedings concluded in the year 1990 as per pleading made in the writ petition and the acquired land came to be vested in the State Government, which is now continuing in possession over the land in question, as held by this Court in its order dated 24.09.2014. It is well settled that injunction cannot be granted against the true owner of property (*Premji Ratansey Shah v. Union of India*, reported as (1994) 5 SCC 547). Petitioner is yet to prove his right or title over the land in question, therefore, at his instance, State Authorities cannot be prevented from using the land for a public purpose.

7. For the aforesaid reasons, Misc. Application, seeking injunction filed by petitioner, is rejected.

Delay Condonation Application (IA No. 19661 of 2025)

Review Application (IA No. 19663 of 2025)

8. As per office report, there is delay of 6 years, 8 months and 13 days in filing application seeking review of orders dated 05.12.2018 and 06.12.2018.

9. For the reasons indicated and in the interest of justice, delay condonation application is allowed and delay in filing the review application is condoned.

10. Operative portion of the order dated 05.12.2018 is reproduced below:-

“11. Mr. S.S. Yadav shall also explain why he has filed such false affidavit and Mr. Deepak Dhingra, Advocate shall explain why he has clandestinely drafted the applications and projected Mr. Bharose Lal as retired Judge of the High Court.”

11. Operative portion of the order dated 06.12.2018 is reproduced below:-

“The report submitted by Mr. Bharose Lal, Advocate Commissioner, who had been appointed at the instance of the petitioner, cannot be considered as an independent Advocate Commissioner. Learned counsel for the petitioner company would submit that he is not willing to place reliance on the report of Mr. Bharose Lal, Advocate Commissioner and the same may be rejected. With the consent of the parties, the report dated 19.08.2017 of Mr. Bharose Lal, Advocate Commissioner, is hereby rejected.”

12. Perusal of the order dated 05.12.2018 reveals that there is neither any finding nor observation made by the Court, which would prejudice claim of the petitioner/review applicant for title over the land in question. By the said order,

representatives of the petitioner were asked to give an explanation as to why they misrepresented facts before coordinate Bench, which led to passing of order dated 28.03.2016.

13. Careful perusal of the order dated 06.12.2018 would reveal that the report submitted by Mr. Bharose Lal was rejected by this Court, in view of submission made by learned counsel for the petitioner that he is not willing to place reliance on that report. Perusal of order dated 06.12.2018 further reveals that report submitted by Mr. Bharose Lal was rejected with the consent of parties.

14. Learned counsel for the respondents are therefore right in submitting that an order passed with consent of parties cannot be reviewed on the asking of a party, which had consented to passing of that order.

15. Learned counsel for the review applicant contends that petitioner's counsel never consented for setting aside the report submitted by Mr. Bharose Lal, therefore, the order dated 06.12.2018 is liable to be reviewed.

16. Learned counsel for the respondents, however, submit that the application seeking review is filed after nearly seven years and if what the petitioner/review applicant states is correct, then he should have filed application seeking review of the order dated 06.12.2018 in the year 2018, but this application is filed in 2025.

17. Learned counsel appearing for respondent no. 4 refers to paragraph no. 11 of the Misc. Application No. 19659 of 2018 filed by petitioner, where it is mentioned that this Court while rejecting the report submitted by Mr. Bharose Lal, made observation regarding appointment of fresh Advocate Commissioner. Learned counsel for respondent no. 4 points out that by that application, petitioner prayed for appointing any person as the Hon'ble Court finds suitable as Advocate Commissioner for submitting a report concerning the issues as mentioned in paragraph no. 9 of the application.

18. Learned State Counsel points out that Misc. Application No. 19659 of 2018 was filed by the petitioner in the Registry of this Court on 18.12.2018. Thus, he submits that petitioner had no grievance against rejection of report of Mr. Bharose Lal, consequently, instead of seeking recall/review of the order dated 06.12.2018, petitioner chose to file application for appointing another Advocate Commissioner. Thus, it is contended that petitioner cannot now be permitted to resile from the stand, which he took earlier, by his conduct.

19. Learned counsel for respondent no. 4 submits that filing of another application for appointing other Advocate Commissioner, after rejection of report submitted by Mr. Bharose Lal, vide order dated 06.12.2018, reveals that petitioner had no grievance against the order dated 06.12.2018; instead of seeking review of order dated 06.12.2018,

petitioner chose to file application for appointing another Advocate Commissioner, therefore, petitioner/review applicant cannot now contend that the order dated 06.12.2018 is erroneous, therefore, deserves to be reviewed. He submits that petitioner cannot be permitted to approbate and reprobate at the same time. Learned counsel for respondent no. 4 further submits that there is no error apparent in the orders dated 05.12.2018 and 06.12.2018, which may warrant invocation of review jurisdiction by this Court.

20. This Court finds substance in the submission made on behalf of the respondents. The order dated 06.12.2018 indicates that petitioner's counsel stated that he is not willing to place reliance on the report of Mr. Bharose Lal. The said order reveals that the report submitted by Mr. Bharose Lal was rejected with the consent of parties. If petitioner's concession was wrongly recorded in the order dated 06.12.2018, then remedy for petitioner was to immediately seek review of that order, but instead of doing so, he filed application praying for appointment of some other Advocate Commissioner. Petitioner's conduct corroborates the submission made on behalf of the respondents that petitioner consented to rejection of report submitted by Mr. Bharose Lal.

21. Review of an order can be made only when there is an error apparent on the face of record, but this Court do not find any error, which may warrant

invocation of review jurisdiction. Moreover, the order dated 06.12.2018 was passed with the consent given on behalf of the petitioner, therefore, this Court does not find any reason to review the said order.

22. For the aforesaid reasons, this Court does not find any scope to review the order dated 06.12.2018. Review Application (IA No. 19663 of 2025) is rejected.

Misc. Application (I.A. No. 19665 of 2025

23. Miscellaneous Application (IA No. 19665 of 2025) stands disposed of accordingly.

Misc. Application (CLMA No. 19659 of 2018)

24. This application was filed on 18.12.2018 with the following prayer:-

“A. Pass necessary orders appointing any person as this Hon’ble Court may find suitable as Advocate Commissioner for the purpose of submitting with this Hon’ble Court a report concerning the issues as detailed in paragraph no. 9 above or such other issues which the Hon’ble Court may deem fit and proper.”

25. Learned counsel for the petitioner submits that petitioner purchased 187.489 hectare land comprised in Khasra No. 1298-1331 in Village Rikholi, District Dehradun by means of different sale deeds executed between 2007-2010. He submits that since the purchased land is fragmented, therefore, Advocate Commissioner deserves to be appointed, for identifying the land purchased by the petitioner.

26. Learned State Counsel, however, submits that courts cannot use their authority, such as

appointing Commissioners to collect evidence for a party or to bridge-gaps in a case. He submits that courts' agency is intended to resolve disputes, based on material on record and not for phishing expeditions to gather evidence on behalf of a party. He submits that Court Commissioners can be appointed in appropriate cases where there is ambiguity on a specific aspect and the purpose of Commissions is not to replace the evidence that should be collected by the parties. He further submits that law is well settled that Court Commissioner cannot be appointed to fill-up lacuna, which might have been left in the evidence and since petitioner has not been able to bring any evidence on record in support of his case, therefore, he has made this prayer for appointing Advocate Commissioner. Learned State Counsel further submits that petitioner has challenged the notifications issued by the State Government under Section 4 & 6 of the Land Acquisition Act, therefore, there is no factual dispute to be resolved, for which report from Advocate Commissioner would be needed. He further submits that if Advocate Commissioner is appointed and his report is taken on record, then respondents will agitate their right of filing objection to the report and thereafter oral testimony of the witnesses will also have to be recorded. He submits that challenge thrown by petitioner to the notifications issued under Land Acquisition Act can be decided without going

into the factual disputes, which petitioner is trying to bring in through Advocate Commissioner's report.

27. Learned State Counsel further submits that petitioner has challenged the notifications issued under Land Acquisition Act, 1894, whereby proceedings for acquisition of land were set in motion. He submits that from the relief claimed by the petitioner, it is apparent that petitioner is clear about identity of the land purchased by him, as no one would challenge notifications issued under Section 4 & 6 of Land Acquisition Act in respect of land belonging to some other person. He further submits that every litigant approaching Court for relief has to stand on his own feet, therefore, the prayer made by petitioner deserves to be rejected. Learned State Counsel further submits that petitioner cannot be permitted to enlarge scope of writ petition by bringing in unnecessary factual disputes. Learned State Counsel further submits that petitioner is trying to convert this writ petition to a title suit, as he wants to establish his title over a land, which was acquired by the State Government between 1987-1990. Learned State Counsel further submits that if petitioner wants declaration of his title over the land in question, then, the only remedy available to him, is by way of approaching a civil court.

28. Learned counsel for the petitioner, per contra, submits that the land in question was purchased by petitioner after demarcation under Section 41 of the Land Revenue Act and petitioner's

name is mutated in revenue record, therefore, State Government cannot now claim any right or title over that land. He further submits that in reply to an application under Right to Information Act, Land Record Officer has informed that land comprised in Khasra No. 1298-1331 in Village Rikholi is outside the limits of Municipality Mussoorie and there is no notification issued under Municipalities Act, bringing village Rikholi or part thereof within limits of Nagar Palika Parishad, Mussoorie. He further submits that respondent no. 4 has stated in his reply that the property purchased by petitioner was not the subject matter of land acquisition.

29. Per contra, learned counsel for respondents submit that the locality where Khasra No. 1298-1331 are situate, is part of Park-Estate, which is within limits of Nagar Palika Parishad, Mussoorie ever since it was constituted in the year 1933. He further submits that District Magistrate informed the petitioner, vide order dated 22.04.2013 that the land in question was acquired by the State for a public purpose and that land has been recorded in revenue record in the name of Tourism Department of State Government. Thus, it is contended by learned counsel for respondents that the prayer for appointing Advocate Commissioner is misconceived and having regard to the issue involved in the writ petition, appointment of Advocate Commissioner would be unwarranted.

30. This Court is of the considered opinion that having regard to the issues raised and relief claimed in the writ petition, appointment of Advocate Commissioner would be unwarranted. Petitioner claims to have purchased land comprised in different khasra numbers by separate sale deeds; the description of the khasra numbers and sale deeds is given in paragraph no. 6 of the writ petition. Since there is no confusion or ambiguity in the mind of the petitioner regarding identity of the land purchased by him, therefore, issuing Commission to get a report would not be warranted. For deciding the issues raised in the writ petition, report of the Advocate Commissioner would not be needed.

31. Learned counsel for the respondents are right in submitting that Advocate Commissioner cannot be appointed in order to collect evidence. Since there is no ambiguity regarding identity of the land in question and other issues can be decided by this Court based on documentary evidence available on record, therefore, the prayer for appointing Advocate Commissioner is liable to be rejected and is hereby rejected. Miscellaneous Application (IA No. 19659 of 2018) is rejected.

32. List on 28.05.2026.

(Manoj Kumar Tiwari, J.)
20.04.2026

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