

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 1305 (MS) of 2024

Rahul Chaudhary.Petitioner

-Versus-

State of Uttarakhand
and others.Respondents.

Present:

Mr. M.S. Tyagi, learned Sr. Advocate assisted by Mr. Rajendra Tamta, learned counsel for the petitioner.

Mr. Yogesh Chandra Tiwari, learned Standing Counsel for the State.

Mr. V.D. Bisen, learned counsel for the respondent no. 2.

Mr. Parikshit Saini, learned counsel for the respondent no. 4.

Hon'ble Mr. Rakesh Thapliyal, J.

1. A piece of land was transferred to the petitioner by one Dheer Singh by virtue of lease deed dated 19.12.2018. Petitioner applied for a retail outlet of petrol pump in the said land for which letter of intent (LOI) dated 26.06.2023 was issued and thereafter, land was declared as non agricultural land by order dated 27.09.2023 under Section 143 of the U.P. Z.A. & L.R. Act. Thereafter, respondents no. 3 and 4 made complaints to the Collector on 28.09.2023 and 16.11.2023. A writ petition was filed also by respondent no. 4 being WPMS No. 3262 of 2023 which was finally disposed of by this Court on 24.11.2023 wherein this Court directed the Collector to take decision on the complaint of the petitioner of WPMS No. 3262 of 2023, who is respondent no. 4 herein, within a period of one month, after taking into consideration the inspection report which has been forwarded by the Joint Magistrate, Roorkee. Thereafter, in compliance of the direction issued by this Court by order dated 24.11.2023, complaints of the respondents no. 3 and 4 were rejected by the Collector by order dated 11.03.2024 and while rejecting the complaints, the Collector observed that complaints dated 28.09.2023 and 16.11.2023 are not maintainable under Section 166

read with Section 167 of the U.P.Z.A. & L.R. Act. Against the order of the Collector dated 11.03.2024, both the respondents no. 3 and 4 preferred a Revision No. 98 / 2023-24 under Section 333 of the U.P. Z.A. & L.R. Act before the Board of Revenue and the same was allowed by the Revisional Court by order dated 02.05.2024 whereby order dated 11.03.2024 passed by the Collector was set aside and the matter was remanded back to the Collector to proceed under Section 166 read with Section 167 of the U.P.Z.A. & L. R. Act.

2. Mr. M.S. Tyagi, learned Sr. Advocate for the petitioner submits that respondents no. 3 and 4 have no locus to make complaints and that was the reason, the Collector has rejected their complaints as not maintainable. Apart from this, he further submits that after order of remand by the Revisional Court dated 02.05.2024, a direction was issued to the Collector to proceed under Section 166 read with Section 167 of the U.P.Z.A. & L.R. Act, which are being reproduced here as under:

“166. Transfer made in contravention of this Act to be void – Every transfer made in contravention of the provisions of this Act shall be void.

167. Consequences of void transfers. - (1) The following consequences shall ensue in respect of every transfer which is void by virtue of Section 166, namely-

(a) the subject-matter of transfer shall, with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing on the land on the date of transfer shall, with effect from the said date, be

deemed to have vested in the State Government free from all encumbrances; and

(c) the transferee may remove other movable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed.

(2). Where any land or other property has vested in the State Government under sub-section (1), it shall be lawful for the Collector to take over possession over such land or other property and to direct that any person occupying such land or property be evicted therefrom. For the purposes of taking over such possession or evicting such unauthorised occupants, the Collector may use or cause to be used such force as may be necessary."

3. Learned Sr. Advocate for the petitioner submits that the Revisional Court has exceeded its power by the remanding the matter back to the Collector and directing him to decide the matter under Section 166 read with Section 167 of the U.P.Z.A. & L.R. Act by ignoring the fact that firstly, respondents no. 3 and 4 have no locus to make complaints and secondly, while remanding the matter, he has directed to decide the matter under Section 166 and 167 of U.P.Z.A. & L.R. Act, therefore, the whole purpose for which lease was granted by Mr. Dheer Singh to the petitioner dated 19.12.2018 would frustrate particularly when the use of the land, which was leased out by Mr. Dheer Singh was changed under Section 143 (1) of U.P.Z.A. & L.R. Act. He further submits that order dated 27.09.2023 whereby declaration was made in respect of the land which was leased out by virtue of lease deed dated 19.12.2018 was never been challenged either by Mr. Dheer Singh or respondents no. 3 and 4.

4. Mr. Parikshit Saini, learned counsel for the respondent no. 4 submits that after passing of order under Section 143 of U.P.Z.A. & L.R. dated 27.09.2023, Mr. Dheer Singh had executed another lease deed in favour of the petitioner. He further submits that the earlier lease deed dated 19.12.2018 was executed prior to declaration made under Section 143, which was in complete violation of Section 157 of the U.P.Z.A. L.R. Act, and therefore, the revisional court was right in remanding the matter with a direction to decide as per Section 166 and 167 of the U.P.Z.A. & L.R. Act. Apart from this, he further submits that since after order dated 27.09.2023 whereby declaration was made under Section 143 of the U.P.Z.A. & L.R., another land is leased out by Mr. Dheer Singh in favour of the petitioner, who wants to establish petrol pump, may establish the petrol pump in that land, which was subsequently leased out by Mr. Dheer Singh after passing of order dated 27.09.2023.

5. I am not convinced with the arguments of Mr. Parikshit Saini on two aspects. First, for all purposes, the respondents to whom Mr. Parikshit Saini represents are completely stranger, since they have no locus to intervene in the matter as the land, in question, was not leased out by Mr. Dheer Singh to the said respondent. Secondly, Revisional Court while remanding the matter directed to proceed as per Section 166 and 167 of the U.P.Z.A. & L.R. Act, which is beyond the scope of revision.

6. Mr. Yogesh Chandra Tiwari, learned Standing Counsel for the State accepts notice on behalf of respondent no. 1.

7. Mr. V.D. Bisen, learned counsel accepts notice on behalf of respondent no. 2.

8. Issue notice to respondent no. 3. Learned counsel for the petitioner shall take steps within a week to serve notice upon respondent no. 3 by registered post acknowledgement due returnable at an early date.
9. Mr. Parikshit Saini, learned counsel accepts notice on behalf of respondent no. 4.
10. At this stage, there is no need to issue notice to respondent no. 5, as he is proforma respondent.
11. List on 11.06.2024.
12. In the meantime, respondents may file their counter affidavits.
13. Till next date of listing, effect and operation of the order dated 02.05.2024 passed by Board of Revenue in Revision No. 98 / 2023 - 24 (Gopi Agarwal Vs. Dheer Singh and others) shall remain stayed.

Rakesh Thapliyal, J.

24.05.2024
SKS