

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>WPMS No.2850 of 2021 <u>Hon'ble Sharad Kumar Sharma, J.</u></p> <p>Mr. Siddhartha Singh, Advocate for the petitioner.</p> <p>Mr. Suyash Pant, Standing Counsel for the State of Uttarakhand.</p> <p>Mr. Sandeep Kothari, Advocate for respondent no.2.</p> <p>The petitioner has raised his grievance in the present writ petition as against the appellate order dated 22.12.2021, which was passed by the court of Additional District Judge, Rudraprayag in Misc. Civil Appeal No.- of 2021; by virtue of which by the impugned order of 22.12.2021, the appellate court has stayed the injunction order which was granted in favour of the petitioner on 13.12.2021 in Suit No.95 of 2021 Bharat Sevaashram Sangh Devpura vs. State of Uttarakhand and others.</p> <p>The contention of the counsel for the petitioner is that the petitioner alongwith other co-sharers stands recorded over the land in question in the revenue records, which is a subject matter of the suit as described therein i.e. the land situated at Gauri Kund lying in Khata No.35 Khasra No.721 having an area of 0.0050 hectares, Khata No.43 Khasra No.722 having an area of 0.0050 hectares, Khata No.51 Khasra No.723 having an area of 0.0020 hectares, Khata No.33, Khasra No.724 having an area of 0.0080 hectares i.e. total 0.020 hectares, which has been described in the plaint map by the figures A, B, C, D over which the respondent no.1 herein, who is defendant in the suit are alleged to be raising construction, which is almost complete.</p> <p>The petitioner has submitted, that since he is the recorded owner and the land in question has never been acquired by any Government agency as per law for the purposes of lying down any public project, which is alleged to have been constructed</p>

by the respondents and in the absence of there being any acquisition proceedings, there vesting a private property belonging to a person recorded in Shreni 1 Ka, the action of encroachment of the State agency, by raising construction over it would be in violation of Article 14 to be read with Article 300-A of the Constitution of India, because if at all, the respondent intended to meet out the objective, as it has been sought to be pressed by the counsel for the respondents, in the light of the provisions contained under Section 20-A of Specific Relief Act, though it was inserted with effect from 01.10.2018. But still lying down a project where a restraint is for the grant of injunction, would be only in relation to work being performed under the contract and the injunction would be barred qua the terms and condition of the contract which governed the conditions between contractor and its employer, but it will not bar to protect a right of recorded tenure holder from seeking injunction to protect his personal rights over the property.

In that eventuality, while directing the respondents to file their counter affidavit, the impugned appellate order is modified to the extent, that the respondents would maintain the status quo qua the land, which has been described herein above, which admittedly as per the revenue record stands recorded in the name of the petitioner in the Fasli Year 1419 to 1424.

List this writ petition as soon as the counter affidavit is filed by the respondents

(Sharad Kumar Sharma, J.)

30.12.2021

Arti

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