

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No(s). 19433/2017

STATE OF U.P. (NOW UTTARAKHAND)

...Appellant(s)

VERSUS

KEWAL RAM (DEAD) THR. LRS

...Respondent(s)

O R D E R

1. The present appeal has been preferred by the State of U.P. (now Uttarakhand) aggrieved by the impugned order passed by the High Court of Uttarakhand at Nainital, dated 14.12.2011 in WP Misc. Single No. 3092 of 1993 which was subsequently re-numbered as 5865 of 2001.
2. It would be appropriate to note the facts in brief necessary for the disposal of this case. The respondents who claimed to be in unauthorized occupation of Plot No.49 Kha, having an area of 0.170 hectare, for several years. According to the learned counsel for respondents/claimants, they are in possession of the said Plot since 1950 and they have planted certain fruit bearing trees in

same plot. Thereafter, the State of UP extended the benefit of regularization to the unauthorized occupant through the G.O. No. 104/1/831/86/Rev.-6, dated 20.07.1989 and the cut-off date was determined to be 31.12.1989, which was later extended up-till 30.06.1990. In pursuance of the aforesaid Scheme, the respondents herein filed an application in the year 09.01.1990.

3. In the meantime, while the Respondent's application was still pending, the proceedings under the U.P. Public Premises Eviction of Unauthorized Occupants Act, 1972 was initiated by filing an application at the instance of the Panch of Gram Sabha and on the basis of chalani report of Lekhpal stating that, the respondent has taken illegal possession over public premises. The present application was decided against the Respondent, wherein the prescribed authority while holding the Respondent to be in illegal possession of the suit property, directed him to remove his possession from the disputed land within 30 days. Aggrieved by the same, the Petitioner preferred an

appeal being Misc. Civil Appeal No. 36/1992, which was dismissed vide order dated 18.11.1992.

4. Aggrieved by the same the appellant approached the High Court in W.P. Misc. Single No.3092/1993 which was subsequently renumbered as WP No. 5865 of 2001. The High Court by order dated 14.12.2011, after taking into consideration the fact that, the State failed to file any counter affidavit and no material was placed before the Court to show that the State has considered the application for regularization; it was to be presumed that the averments made in the affidavit were admitted by the State. Hence, the Court below allowed the above Writ Petition, and set aside the eviction order passed against the respondents and also directed the State Authorities to regularize the possession of the respondents on the plot in question in accordance with the aforesaid Government Order.
5. Aggrieved by the said impugned order of the High Court, the present appeal is filed by the State.

6. We have heard the learned counsel appearing for the appellant – State of U.P. (now Uttarakhand) and the learned counsel appearing for the respondents.
7. It is contended by the learned counsel for the State that the High Court has erred in passing the said impugned order. It was further stated that, the application for regularization filed by the respondents was considered by the State Government on 13.7.2004 and the same was rejected on the ground that the respondents had not paid the requisite 'Najrana' as prescribed under the Regularization Scheme. It was further contended that the respondent had failed to show any material to prove his possession over the property and the eviction order against the respondent had attained finality as he has not challenged the aforesaid order. According to him, the High Court has erred in directing the regularization of the land.
8. On the other hand, the learned counsel for Respondent submits that, on 9.1.1990, they have

filed application seeking regularization and at no point of time, were they informed about the rejection of the said application. On the other hand, the High Court in the year 2011, while allowing the Writ Petition, found that the State has not contested the matter, admitted the averments made in the affidavit, hence, there is no reason to interfere with the order.

9. Having heard the learned counsels for both the parties and perusing the material available on record, we noted that the respondents' application dated 9.1.1990 was received by the State Government and it was considered and disposed of in the year 2004. But, before disposal of the aforesaid application in 1992 itself, the respondents were evicted from the land in possession and at that time, the Writ Petition was filed before the High Court. Further, during the pendency of the Writ Petition, there is no indication that the said order of rejection was communicated to the respondents.

10. Taking into consideration the facts and circumstances of the case and the material placed before us, it appears that the respondents have not been informed about the rejection of the aforesaid application for regularization. We may note that the High Court while allowing the Writ Petition quashed the eviction order and directed the regularization of the possession of the land of the respondents in accordance with law. In our considered opinion such direction for regularization was unwarranted and accordingly, set aside.
11. However, we grant liberty to the respondents to challenge the order passed by the State Government dated 13.7.2004 before the appropriate authorities or the concerned Court and in the meanwhile, the appellant-State is directed to maintain *status-quo* as regards possession of land till the application of the respondents is disposed of.

12. The impugned order of the High Court is set aside to the above extent. The appeal is disposed of in the afore-stated terms.

.....J
(N.V. RAMANA)

.....J
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;
9TH AUGUST, 2018.

ITEM NO.110

COURT NO.7

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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STATE OF U.P.(NOW UTTARAKHAND) .

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Date : 09-08-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s)

Mr. Jatinder Kumar Bhatia, AOR

Ms. Tanmaya Agarwal, Adv.

For Respondent(s)

Mr. T. V. S. Raghavendra Sreyas, AOR

Mr. Dhananjay Baijal, Adv.

Mr. Ayush Negi, Adv.

Mr. Himanshu Tyagi, Adv.

Mr. Yash Pal Dhingra, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order.

(VISHAL ANAND)
COURT MASTER (SH)(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)