

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 117 of 2019

Vivek Shukla

.....Petitioner

Vs.

Muni Chidanand and others

.....Respondents

Present:-

Mr. Vivek Shukla, Petitioner-in person.

Mr. Aditya Singh, learned counsel for respondent No.1.

Mr. C.S. Rawat, learned Additional Chief Standing Counsel for the State of Uttarakhand/respondent Nos.1, 2, 4, 5 and 7.

Mr. Aditya Pratap Singh, learned counsel for respondent No.6.

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Alok Kumar Verma, J.

Ramesh Ranganathan, C.J. (Oral)

We had, by our order dated 22.11.2019, directed both the District Magistrate, Pauri Garhwal and the Member Secretary, Uttarakhand Environment Protection and Pollution Control Board to submit their reports by 02.12.2019. Since no report was submitted by the District Magistrate, Pauri Garhwal on 02.12.2019, and he did not even choose to file an application seeking extension of time to do so, he was directed to be present before this Court on 16.12.2019 and show cause why proceedings should not be initiated against him for what appeared to us to be a violation of the order passed by us on 22.11.2019.

2. Today, the District Magistrate, Pauri Garhwal is present in Court. Mr. C.S. Rawat, learned Additional Chief Standing Counsel appearing on his behalf, states that the officer was on leave from 23.11.2019 to 30.11.2019; he joined duty only on 01.12.2019; and though he had already ordered an inquiry by a Committee of nine members, he was unable to file his report within time in the light of his being on leave. Accepting the affidavit, filed by the District Magistrate in this regard, we refrain from taking any further action against him.

3. The dispute in this Writ Petition (PIL) relates to the illegal constructions, allegedly raised by the first-respondent, at the public Ganga Ghat of the river Ganges, and at places adjacent thereto, located opposite the Parmarth Niketan Ashram. The petitioner alleges that platforms, barricades and other buildings were constructed thereupon, including a huge building containing more than 1000 rooms. On service of notice on the first-respondent, an affidavit is now filed on his behalf through Mr. Aditya Singh, learned counsel.

4. The District Magistrate, Pauri Garhwal, in his affidavit dated 12.12.2019, states that the report submitted by the Committee shows that an area of 2.3912 acres or 521 feet x 200 feet = 104200 sq. ft. (0.968 hectare) was allotted to the first-respondent for the purposes of a Snanghat and Pujan for a period of five years; the said land had been earmarked by the forest department, on a map, with red dot ink; the land at the spot is within the river Ganges in some parts, and in others is situated on the banks of the River Ganges; in the settlement of 1959-60, the said land, building, ghats, temple, baggar, stairs have been mentioned in the revenue records; in the subject land in-question, a house, temple, and sewerage treatment plant have been constructed on the banks of the River Ganges in front of the Parmarth Niketan Ashram; the total area is 4080 sq.mtr. (0.408 hectares), wherein, on 0.119 hectares of land, a house, a temple and a sewerage treatment plant has been constructed; 0.289 hectares of land has been left open for public utility purposes; on the remaining 0.110 hectares of land, a platform and a bridge have been constructed by the Irrigation Division, Dugadda with the help of the Tourism Department; and, on the rest of the lease land, the river Ganges is smoothly flowing.

5. Along with the said affidavit is enclosed a letter dated 23.02.1957 wherein it is stated that an extent of 2.3912 acres was given on lease for a period of five years from January, 1957; and the said land belongs to the Forest

Department. This letter discloses that the land was given on lease for the construction of a bathing ghat. The proceedings dated 23.02.1957 also records that the bathing ghats shall remain open to the general public for their bath and worship, and no impediment should be caused thereto by the first-respondent. The period of lease of five years, as stipulated in the proceedings dated 23.02.1957, expired in January, 1962. However, for a period of 13 years thereafter till 1975, neither was the lease extended nor was any action taken by the Government to resume possession of the subject land. Subsequently, by letter dated 13.11.1975, the lease granted earlier was extended for a further period of 15 years from 01.01.1964 for the purpose of construction of a bathing ghat, a library, and a reading room. Even in terms of this letter dated 13.11.1975, the lease granted in favour of the first-respondent expired on 31.12.1978. Thereafter, for the past more than four decades (nearly 42 years) neither has the lease been extended nor has the State Government taken action any to take back possession of the subject land.

6. The submission of Mr. C.S. Rawat, learned Additional Chief Standing Counsel, is that, in view of the provisions of the Forest (Conservation) Act, 1980, approval of the Government of India is required; and, pending receipt of approval from the Central Government, no further action has been taken in this regard.

7. From the affidavit of the District Magistrate, Pauri Garhwal, it appears that a house, a temple and a sewerage treatment plant has been constructed on this land, hitherto granted on lease to the first-respondent. The conditions stipulated in the proceedings dated 23.02.1957, whereby the subject land was allotted to the first respondent for a period of five years, and the subsequent proceedings 13.11.1975

whereby lease was extended till 31.12.1978, do not permit him to construct the sewerage treatment plant or raise any other construction, except a bathing ghat, a library, and a reading room. While the affidavit of the District Magistrate refers only to a house, and not a library or a reading room, Mr. Aditya Singh, learned counsel for the first-respondent, states that this house is in fact a library. This submission, urged on behalf of the first-respondent by Mr. Aditya Singh, learned counsel, does not find support from the contents of the affidavit of the District Magistrate.

8. Mr. Vivek Shukla, petitioner in-person, would draw our attention to the fact that an iron-grilled gate has been erected by the first-respondent on the path leading to the bridge constructed across the river Ganges, which is under his lock and key, and the general public does not have free access thereto. Mr. Aditya Singh, learned counsel for the first-respondent, would contend that the grilled gate has been erected not on the bridge, but on the path leading to the bathing ghat. When we asked him how the first-respondent could have put a grilled gate, much less keep it under lock and key, even if it is on the on the path leading to the bathing ghats since these bathing ghats were required, in terms of the proceedings dated 23.02.1957, to be kept open to the public at large, learned counsel would submit that the gate is locked merely for half an hour each day to enable the passage to the ghat to be cleaned. Public ghats are to kept open to the public at large, and since it is not the first-respondent's private property, there appears to be no justification in the first-respondent erecting either an iron-grilled gate, or in placing it under lock and key. Such an act also appears to run contrary to the proceedings dated 23.02.1957 which required the first-respondent not to cause any impediment to the general public

entering the ghat both for the purposes of bathing and worship.

9. Mr. Aditya Singh, learned counsel for the first-respondent, assured this Court that no lock would henceforth be placed on the gate leading to the ghats, and no impediment would be caused to the general public taking a dip in the river Ganges from the subject path.

10. The report of the District Magistrate also discloses that a sewerage treatment plant has been constructed by the first-respondent on this land, even without the prior approval of the State Government. Mr. Aditya Singh, learned counsel for the petitioner, claims that it is a portable sewerage treatment plant and can be removed at any time. Even if it be temporary, the allotment letters, referred to hereinabove, do not confer any right whatsoever on the first-respondent to make any such construction. These are matters which we shall examine in detail on the next date of hearing.

11. In the light of the allegations made by the petitioner, that several other constructions have been raised by the first-respondent on this land of 2.39 acres, we direct the District Magistrate, Pauri Garhwal to have the land of 2.39 acres surveyed, mark its boundaries, prepare a detailed map in this regard, and place it before this Court by the next date of hearing. He shall specify, in the report to be submitted by him, whether the house, he has referred to in his affidavit, consists only of a library or is being used for any other purpose. He shall also inform this Court as to how land, which belonged to the forest department, was granted on lease to the first-respondent; whether these lands were re-classified in the revenue records, and if so when; and whether any other piece of land in the occupation of the first-respondent, adjacent or

nearby to this extent of 2.39 acres of land, belongs to the State Government. The respondent State Government shall not extend the lease of this extent of 2.39 acres, or confer any right thereupon, in favour of the first respondent, without prior approval of this Court.

12. Mr. Aditya Singh, learned counsel appearing on behalf of the first-respondent, undertakes that no further construction shall be raised on the subject land pending further orders from this Court.

13. Mr. Vivek Shukla, learned counsel for the petitioner, seeks permission to file a rejoinder affidavit both to the counter affidavit filed on behalf of the first respondent, and the affidavit filed by the District Magistrate, Pauri Garhwal.

14. Post immediately after “fresh admission matters” in the daily list on 06.01.2020, on or before which date the District Magistrate, Pauri Garhwal shall submit his report to this Court.

15. The presence of the District Magistrate, Pauri is dispensed with for the present.

(Alok Kumar Verma, J.) **(Ramesh Ranganathan, C.J.)**
16.12.2019