
(2018) 08 UK CK 0244

Uttarakhand High Court

Case No: Writ Petition (PIL) No. 79 Of 2018

Raghuvar Dutt

APPELLANT

Vs

State Of Uttarakhand &
Others

RESPONDENT

Date of Decision: Aug. 17, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 38, 39(e), 42, 43, 48

Hon'ble Judges: Rajiv Sharma, J; Manoj Kr. Tiwari, J

Bench: Division Bench

Advocate: S.C. Bhatt, Paresh Tripathi

Final Decision: Allowed

Judgement

Rajiv Sharma, J

1. The affidavit filed today in the Court on behalf of the District Magistrate, Dehradun is permitted to be taken on record.

2. Petitioner is a social worker. He has filed the petition for the welfare of the farmers of the hilly areas of the State of Uttarakhand. According to the

averments made in the petition, the holding of farmers in hilly region is very small. Petitioner has highlighted that the farmers of the hilly region have

been discriminated against and they have not been provided the status of a Bhumidhar with transferable rights despite the fact that the farmers are in

possession of the agricultural land much prior to 1956. The farmers of the plain areas have been continuously provided the benefit of government

orders issued by the respective governments from time to time including by the erstwhile State of Uttar Pradesh as well as the State of Uttarakhand.

The benefits have been extended to the farmers of plain areas as per Government Orders dated 13.3.2015, 26.11.2015 and 16.12.2016.

3. It would be apt to mention that 36401 farmers have migrated from Almora followed by Pauri (35,654), Tehri (33,689), Pithoragarh (22,936),

Dehradun (20,625), Chamoli (18,536), Nainital (15,075), Uttarkashi (11,710), Champawat (11,281), Rudraprayag (10,970) and Bageshwar (10,073).

4. According to the data complied by the Akhil Bhartiya Kisan Mahasabha, in 2016-17, only 20% agricultural land exists in the hilly areas for

cultivation and remaining 80% is either lying barren or has been sold for commercial purposes. A large size of crops is also damaged by wild animals.

The total cultivated area in the State is about 7,84,117 hectares. About 90% of population of the State depends on agriculture for its livelihood. The

irrigated land is only 12% and 64% is fed by rain. The main crops produced in the State are rice, wheat, barely, corn, Mandua, Hangora etc. Petitioner

has also highlighted that the rate of interest charged by the bankers is on the higher side. The farmers who have committed suicide are below 40 years

of age.

5. In State of Uttarakhand, as noticed hereinabove, four (04) Farmers have committed suicide for "bankruptcy or indebtedness". The average land

holding is shrinking in the State of Uttarakhand. The agricultural land is also used for non-agricultural purposes. There is a large scale problem of

migration of farmers. The farmers are not getting proper price for their crops. The farmers have not been told about the importance of MSP. The only

fraction of land is under irrigation. The majority of land in hills is lying barren. The interest charged by the banks is exorbitantly high. The banks and

money lenders use coercive steps forcing the farmers to commit suicides. The sensitivity level of the State machinery is very low while dealing with

the problems faced by the farmers.

6. Article 38 of the Constitution of India stipulates that the State shall strive to promote the welfare of the people by securing and protecting, as

effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. It further provides

that the State shall also strive to minimize the inequalities in income. Article 39(e) of the Constitution provides that the State Government shall in

particular, direct its policy towards securing the health and strength of workers, men and women, and the tender age of children are not abused and

that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. According to Article 42, the State shall make

provisions for securing just and humane conditions of work and for maternity relief. Article 43 provides for living wage for workers. Article 48

provides that the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps

for preserving and improving the breeds, and prohibit the slaughter, of cows and calves and other milch and draught cattle.

7. It is evident from the figures, enumerated hereinabove, that in the State of Uttarakhand, the income from farming is very low while the rate of

indebtedness is very high.

8. According to the Article "Six Puzzles in Indian Agriculture", authored by Shoumitro Chatterjee, historically, India has been seen as a rural

society, with farming the dominant occupation and economic mainstay for the vast majority of the population. In the 1950s, agriculture accounted for

more than half of India's gross domestic product (GDP) and cultivators accounted for half of the workforce. Since then, agriculture's share of

GDP had declined by two-thirds (to about 16 percent), while the percentage of cultivators in the workforce has declined from nearly 50 percent in

1951 to 24 percent in 2011. It is further written that the typical farm size in the 20 richest countries is 34 times greater than that in the 20 poorest

countries. In hectares, the average farm size in rich countries is 54 hectares and in poor countries only 1.6 hectares.

9. The average income of farmers in the State of Uttarakhand is very low from agricultural produce. There is an urgent need to constitute a Farmer

Commission to ameliorate the difficulties faced by the farmers. The farmers must be paid proper price for their crops. There should be timely payment

to the farmers by the government agencies. The families of the farmers, who commit suicide, should be granted minimum compensation/ pension to

enable them to make both ends meet.

10. In a well-documented Article authored by Mr. Madhusudan Ghosh which appeared in the daily Edition of "The Statesman" dated 10th April,

2018, learned Author has discussed the impact of climate change on agriculture for production threatening the food security of millions of farmers.

The relevant portion of the article reads as under:-

"Climate change is a major threat to agriculture, leading to instability in food production and adversely affecting food security and the livelihood of

millions of people in many countries. IPCC has noted that increasing temperature and increased frequency of floods and droughts will have direct and

adverse effects on crops, fisheries, forestry and aquaculture productivity. The yield loss due to climate change could be up to 35 per cent for rice, 20

per cent for wheat, 50 per cent for sorghum, 13 per cent for barley, and 60 per cent for maize. Climate change and climate variability are critical

challenges for global food security, particularly in underdeveloped and developing economies. South Asia, as one of the most densely populated regions

in the world, is among the most vulnerable to climate change and climate variability. Both can have major consequences in terms of food security,

poverty and other developmental goals in the absence of adaptation and mitigation.

India is particularly vulnerable to climate change due to widespread poverty, dependence of about 50 per cent of its population on agriculture for

livelihood, excessive dependence of agriculture on natural resources, and limited strategies to cope with a crisis. Despite the success of Green

Revolution technologies in transforming agriculture, for insecurity, malnutrition, poverty and hunger are persisting unchecked. Among 119 countries,

India ranked 100 and was classified in the "serious category" with a score of 31.4 in the 2017 global hunger index. As per FAO estimates, India

had the largest number of undernourished people in the world – 190.4 million in 2009-11 and 190.7 million in 2014-16, though the proportion of

undernourished persons declined marginally from 15.8 to 14.5 per cent.

Moreover, continued intensive use of the same technologies and the consequent environmental problems such as groundwater depletion with the

declining quality of water due to its over exploitation, deteriorating soil health, etc. are considered responsible for the slowing down to growth in crop

production. The problem is further aggravated due to global climate change and increasing climate variability. The surface air temperature in the South

Asian region was predicted to rise by 0.5-1.2 degrees C by 2020, 0.88-3.16 degrees C by 2050 and 1.56-5.44 degrees C by 2080 depending on the

future development scenarios. The Indian Meteorology Department and the Indian Institute of Tropical Meteorology (Pune) have projected a similar

trend for temperature, precipitation, heat waves, glaciers, drought, floods and rise in the sea level.

The predicted increase in temperature and precipitation is likely to change land and water regimes that have significant implications for agricultural

productivity, and in turn, the food security and livelihood of farming households. There is a probability of 10-40 per cent loss of crop production due to

the increase in temperature by 2080-2100. The India Council of Agricultural Research (ICAR) has indicated that food production could decline by 4.5-

9.0 per cent in the medium term (2010-2039) under the impact of climate change. The Indian Agricultural Research Institute (IARI) has indicated the

possibility of loss amounting to 4-5 million tones in wheat production with every rise of 1 degree C temperature by 2020-2030.

The most challenging task is to adopt appropriate strategies that enhance climate smart agriculture. The Consultative Group on International

Agricultural Research (CGIAR), in its Research Programme on Climate Change, Agriculture and Food Security (CCAFS), has been working with

rural communities in collaboration with national programmes to develop climate-smart villages (CSV) as models of local action that ensure food

security, promote adaptation and build resilience to climatic problems. CSV is a community approach to sustainable agricultural development where

farmers, researchers, local partners and policy makers collaborate to select the most appropriate technological and institutional interventions on the

basis of global knowledge and local conditions to increase productivity and incomes, achieved climate resilience, and enable climate mitigation. It

integrates village development and adaptation plans along with local knowledge and institutions. The major strength of the CSV approach is its

inclusiveness in bringing together farmers, policy makers, researchers and local organizations to work on a set of climate-smart technologies and

practices with a view to adapt agriculture to climate change in order to ensure food and livelihood security of farmers in vulnerable regions.

Considering that climate change and increasing climatic variability are most likely to aggravate the problem of food security by exerting environmental

pressure on agricultural systems, building the resilience of Indian agriculture to cope with the situation is crucial for the food and livelihood security of

farmers in general and small and marginal farmers in particular. CSA assumes special significance in India in view of the World Bank's estimate

that total crop production would increase by 60 per cent by 2050 without climate change, but the increase would be only 12 per cent in the event of

climate change under a 2 degrees C warming by the 2050s.

Moreover, under climate change, the country will have to import twice the amount of food grain to meet per capita calorie demand when compared to

a situation without climate change. Adapting to such climatic changes is critical for ensuring sustainability and stability in crop production in the

country, and food and livelihood security to farming communities.

11. Mr. Yogendra Yadav in his article "What the Finance Minister can do in Budget 2018 if he wants to raise farmers' incomes", has

highlighted that in the last three years, there has been the worsening of agrarian crisis. During this period, on an average, agricultural GDP has grown

at just 2.5 percent (Economic Survey 2017-18). Two years of consecutive drought followed by a crash in prices has brought the farmers to a brink.

The last six months have witnessed a series of farmer protests across Maharashtra, Madhya Pradesh, Rajasthan, Punjab and Chattisgarh.

12. Mr. Pulapre Balakrishnan, Professor, Ashoka University, in his article *Prosperity in the 21st Century*, which was published in the daily

edition of *The Hindu* on April 21, 2018, has highlighted the role of agriculture in reducing the poverty as under: -

“Two processes are likely to have been at play in this. Rural prosperity could have fuelled demand for urban products and, following the significant

decline in rural poverty, migration from the villages, swelling the numbers of the urban poor, may have slowed. The role of agricultural growth in

reducing poverty is apparent in the fact that between 2004-05 and 2009-10 the number of rural poor declined by 15% while the number of urban poor

declined only by 5%. This points to the possibility that economic reforms without a robust agricultural growth may not have made much of a difference

to urban poverty. The faster growth of agriculture itself came due to sector-specific public policy that was not a subset of what has come to be

understood as reforms, defined by liberalization of the policy regime. The relevant policies have been identified as increased public investment, faster

rate of growth of credit for private investment and the launching of the National Horticulture Mission. Strategies for the elimination of poverty are

advisedly based on the historical record rather than the promise of “more reforms”.

13. According to the Economic Survey 2017-18 published by the Govt. of India, Ministry of Finance, following pertinent observations have been made

with regard to overview of agriculture and allied sectors: -

“7.2 The growth rates of agriculture & allied sectors have been fluctuating at 1.5 per cent in 2012-13, 5.6 per cent in 2013-14, (-) 0.2 per cent in

2014-15, 0.7 per cent in 2015-16 and 4.9 per cent in 2016-17 (Table 1). The uncertainties in growth in agriculture are explained by the fact that more

than 50 percent of agriculture in India is rainfall dependent which aggravates the production risks.

PRODUCTION OF CROPS 2016-17 7.4 As per the Fourth Advance Estimates for 2016-17 released by Department of Agriculture, Cooperation and

Farmer's Welfare, the country achieved a record production of food grains estimated at 275.7 million tonnes, which is higher by 10.6 million

tonnes than the previous record production of food grains in 2013-14. The production of rice is estimated at 110.2 million tonnes during 2016-17 which

is also a new record. Similarly, the production of wheat, estimated at 98.4 million tonnes is higher by 2.6 per cent than the previous record production

achieved during 2013-14. Another significant achievement is in the production of pulses which is estimated at 23.0 million tonnes during 2016-17 and

higher by 3.7 million tonnes than the previous record production achieved during 2013-14. The production of oilseeds and cotton registered a growth of

27 per cent and 10.3 per cent respectively in 2016-17. This increase in production of food grains and other crops is mainly on account of very good

rainfall during monsoon 2016-17 and various policy initiatives taken up by the Government. The details of area, production and productivity are

summarized in table 3.

7.16 Agricultural productivity is determined by the appropriate use of critical inputs like irrigation, seeds, fertilisers, credit, machines, technology and

extension services. For instance, the Green Revolution in India which brought about self-sufficiency in food production was driven by the use of high

yielding varieties (HYVs) of seeds, intensive use of fertilisers and irrigation. Managing the inputs in appropriate combinations for specific crops can

improve the productivity in agriculture without losing soil fertility and causing environmental damages. In this context, the significance of extension

services and capacity of farmers to adopt new innovations, technologies and inputs for improving productivity become pertinent.

7.25 Farm mechanization and crop productivity has a direct correlation as farm mechanization saves time and labour, reduces drudgery, cut down

production cost in the long run, reduces post-harvest losses and boosts crop output and farm income. Use of improved implements has potential to

increase productivity up to 30 per cent and reduce the cost of cultivation up to 20 per cent. At present, Indian farmers are adapting farm

mechanization at a faster rate in comparison to recent past. Although, the sale of tractors in India cannot be taken as the only measure of farm

mechanization but to a great extent it reflects the level of mechanization. Indian tractor industries have emerged as the largest in the world and

account for about one-third of total global tractor production.

7.29 The NSSO Report (July 2012 – June 2013) had indicated that a very small share of agricultural households engaged in crop production

activities was insuring their crops. In respect of wheat and paddy, the two most harvested cereals in the country, less than 5 percent of the cultivating

agricultural households insured their crops. The share of households opted for crop insurance in the case of cotton, groundnut and soybean was slightly

higher compared to the other selected crops harvested during the two halves of the agricultural year July 2012- June, 2013.

7.34 Among the agricultural households which experienced crop loss during the two halves of the agricultural year July, 2012-June, 2013, reason for

the crop loss and the average total loss were ascertained with respect to each major crop reported by the households. Inadequate rainfall/ drought was

most reported reason for crop loss for all the selected crops except coconut and urad during the first half of the agricultural year. In respect of

coconut and urad, the highest reported single reason for crop loss during this period was "disease/insect/animal". The highest average total loss

was reported for cotton (Rs. 43046) followed by sugarcane (Rs. 42887) and groundnut (Rs. 28721) during July 2012-December, 2012.

14. In a renowned book "The Wealth of Nations" written by Adam Smith, Classic Edition March, 2003, learned Author has discussed the annual

expenses borne by the cultivators/farmers as under: -

“The cultivators or farmers contribute to the annual produce, by what are in this system called the original and annual expenses (depenses

primitives, et depenses annuelles), which they lay out upon the cultivation of the land.

The original expenses consist in the instruments of husbandry, in

the stock of cattle, in the seed, and in the maintenance of the farmer’s family, servants, and cattle, during at least a great part of the first year of

his occupancy, or till he can receive some return from the land. The annual expenses consist in the seed, in the wear and tear of instruments of

husbandry, and in the annual maintenance of the farmer’s servants and cattle, and of his family too, so far as any part of them can be considered

as servants employed in cultivation. That part of the produce of the land which remains to him after paying the rent, ought to be sufficient, first, to

replace to him, within a reasonable time, at least during the term of his occupancy, the whole of his original expenses, together with the ordinary profits

of stock; and, secondly, to replace to him annually the whole of his annual expenses, together likewise with the ordinary profits of stock. Those two

sorts of expenses are two capitals which the farmer employs in cultivation; and unless they are regularly restored to him, together with a reasonable

profit, he cannot carry on his employment upon a level with other employments; but, from a regard to his own interest, must desert it as soon as

possible, and seek some other. That part of the produce of the land which is thus necessary for enabling the farmer to continue his business, ought to

be considered as a fund sacred to cultivation, which, if the landlord violates, he necessarily reduces the produce of his own land, and, in a few years,

not only disables the farmer from paying this racked rent, but from paying the reasonable rent which he might otherwise have got for his land. The

rent which properly belongs to the landlord, is no more than the neat produce which remains after paying, in the completest manner, all the necessary

expenses which must be previously laid out, in order to raise the gross or the whole produce. It is because the labour of the cultivators, over and above

paying completely all those necessary expenses, affords a neat produce of this kind, that this class of people are in this system peculiarly distinguished

by the honourable appellation of the productive class. Their original and annual expenses are for the same reason called, In this system, productive

expenses, because, over and above replacing their own value, they occasion the annual reproduction of this neat produce.

15. The Government of Uttar Pradesh had issued the Government Order dated 8.3.1985 with the direction to the concerned authorities to grant Patta

under the Govt. Grants Act, 1895 in hilly districts, since even after enforcement of the U.P. Zamindari Abolition and Land Reforms Act, 1960

(hereinafter to be referred as the Act), as many as 54,000 agriculturists families were deprived of Bhumidari rights. However, due to the

mistake of the revenue authorities, the categories of land belonging to hilly areas could not be corrected and continued to be recorded as Non Z.A.

Kham land.

16. The agriculturist families were making continuous representations to the concerned authorities for enforcement of the Government Order dated

8.3.1985. Copy of such notice is 16.5.2018. However, the fact of the matter is that despite the guidelines issued vide Government Order dated

8.3.1985, more than 54,000 agriculturist families could not get benefit. It is these circumstances that the present petition has been filed.

17. Attention of the Court has been drawn to paragraph no.14 of the counter affidavit filed by the respondent no.8. It is specifically averred in the

counter affidavit that the State of Uttar Pradesh firstly issued the G.O. dated 8.3.1985 for granting transferrable rights to the farmers, who are in

possession of Category-4 Z.A. Land and thereafter, the State of Uttarakhand also issued three Government Orders dated 11.3.2015, 18.7.2016 and

19.2.2018. It is further stated that vide Govt. Order dated 19.2.2018, the provisions have been made for regularizing the Category-4, 3 land holders and

the lease holders which comes under the Government Grants Act, 1895, which is applicable in plain and hilly area of the State.

18. The laudable object sought to be achieved by the issuance of Government Order dated 8.3.1985 was to ameliorate the suffering of farmers by

conferring upon them the transferrable rights who are in possession of Category-4 Z.A. land.

19. The Government Order dated 8.3.1985 issued by the erstwhile State of Uttar Pradesh is also applicable to the State of Uttarakhand in view of the

U.P. Reorganization Act, 2000. The purpose of issuance of Government Order dated 8.3.1985 is to protect the rights of farmers. The farmers,

whether they belong to plain areas or the hill areas, constitute a homogenous class. There has to be intelligible differentia so as to distinguish the

persons who have been grouped together and the persons who have been left out. The object of issuing the notification by the State of Uttar Pradesh,

as applicable to the State of Uttarakhand and the government orders issued qua the plain areas, should be uniformly applied to the entire State of

Uttarakhand to avoid invidious discrimination.

20. The Government Order dated 8.3.1985 was specifically issued by the State of Uttar Pradesh taking into consideration the geographical terrain of

the area. The holding of farmers in hilly areas is small. These are prone to landslides and natural calamities. In the State of Uttarakhand, the farmers

resort to terrace farming. The main field is given the status but the land in between is left out, though in continuity as Non Z.A. Land.

21. The farmers are the backbone of the economy of the country. The farmers are suffering immensely due to the low prices paid to them. The

farmers are also hit by the global warming. Since the holdings of farmers are very small. There is no certainty with regard to the tenure holding. The

farmers have left the villages. These villages are called 'ghost villages'. The time has come when the entire process is required to be reversed

by recognizing the rights of the farmers of the State of Uttarakhand by giving them all the benefits accruing to them on the basis of the Government

Order dated 8.3.1985.

22. The State has not denied the issuance of the Government Order dated 8.3.1985 and other notifications issued qua plain areas. Non-implementation

of the Government Order dated 8.3.1985 has adversely affected as many as 54,000 agriculturist families of the hilly regions.

23. Accordingly, the writ petition is allowed. The respondent-State Government is directed to enforce the Government Order dated 8.3.1985 in letter

and spirit qua Non-Z.A. land in all the hilly areas of the State of Uttarakhand by issuing the Pattas to farmers under the Government Grants Act, 1895,

within six months from today.

24. The Secretary (Revenue) to the State of Uttarakhand is directed to constitute a Committee comprising of all the District Magistrates of the Hill

Districts of the State as well as the Director (Agriculture) to implement the Government Order dated 8.3.1985.

25. The Court places on record its appreciation for the assistance rendered to it by learned appearing Advocates.

26. All pending applications stand disposed of accordingly.