

(2021) 08 UK CK 0092

Uttarakhand High Court

Case No: Writ Petition (M/S) No. 1432 Of 2021

Fakir Mohammad

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision: Aug. 3, 2021**Acts Referred:**

- Municipalities Act, 1916 - Section 211

Hon'ble Judges: Raghvendra Singh Chauhan, CJ; Alok Kumar Verma, J**Bench:** Division Bench**Advocate:** Aditya Singh, K.N. Joshi, A.M. Saklani**Final Decision:** Disposed Of

Judgement

Raghvendra Singh Chauhan, CJ

1. The petitioner has challenged the validity of the notice dated 19.07.2021 passed by the Municipality, Jaspur, District Udham Singh Nagar, the

respondent no. 2, whereby the Municipality has directed the petitioner to remove the encroachment within a period of one week, failing which, while

invoking its powers under Section 211 of the Municipalities Act, 1916, the Municipality would demolish the encroachment.

2. Briefly, the facts of the case are that according to the petitioner, the respondent no. 2 had constructed certain shops on a Nala (culvert), which

were auctioned by the respondent no. 2 in the year 1998. On 24.03.1998, the petitioner was declared as the highest bidder. Subsequently, the

Municipality, the respondent no. 2, and the petitioner entered into an agreement dated 24.03.1998. According to the said agreement, the petitioner was

required to pay a monthly rent of Rs. 160/- for the shop to the respondent no. 2. According to the petitioner, he continues to do so even today.

3. However, in Writ Petition (PIL) No. 85 of 2021, by order dated 30.06.2021, this Court had directed the Sub-Divisional Magistrate, Jaspur, District

Udham Singh Nagar, and the Chairman of the Nagar Palika Parishad, Jaspur, District Udham Singh Nagar, the respondent nos. 3 and 4 therein, to

inspect the subject property i.e. the Nala; in case they were to find any encroachment, which has been made on the Nala, then action was to be taken

against the encroachers, but strictly in accordance with law.

4. Consequently, on 19.07.2021, the impugned notice was issued to the petitioner, wherein it is claimed that the Sub-Divisional Magistrate, Jaspur, the

Naib Tehsildar, and the Chairman of the Municipality had inspected the Nala. They had discovered that the petitioner had encroached upon the Nala.

Thus, the petitioner, as mentioned above, was granted one week's time to remove the encroachment, failing which the shop would be demolished.

5. Mr. Aditya Singh, the learned counsel for the petitioner, submits that since the shop was constructed by the Municipality itself, since the shop was

auctioned by the Municipality itself, since the Municipality had entered into an agreement with the petitioner, and since the petitioner continues to pay

the monthly rental amount to the Municipality even as on date, by no stretch of imagination, can the petitioner be declared to be an encroacher.

6. The learned counsel further submits that, in fact, the petitioner has been following all the conditions stated in the agreement dated 24.03.1998.

Therefore, the Municipality is unjustified in taking any action against the petitioner as a knee jerk reaction to the order dated 30.06.2021, passed by this

Court in Writ Petition (PIL) No. 85 of 2021.

7. Moreover, Mr. A.M. Saklani, the learned counsel for the Municipality, the respondent no. 2, admits that, indeed, the shop was constructed by the

Municipality, and was auctioned by it to the petitioner. However, according to the learned counsel, the agreement was subsequently cancelled by the

respondent no. 2. Therefore, the petitioner happens to be a trespasser. Subsequently, the Municipality had issued notices for evicting the petitioner and

others like him. Since the petitioner and others were aggrieved by the said notices, they challenged the same before a learned Single Judge in Writ

Petition (M/S) No. 991 of 2011, Writ Petition (M/S) No. 992 of 2011 and Writ Petition (M/S) No. 993 of 2011. By separate orders, all dated

25.05.2011, the learned Single Judge disposed of all the three writ petitions, and directed the Municipality to give personal hearing to the petitioners,

and only thereafter to take any action against them. The learned counsel for the Municipality, the respondent no. 2, further submits that despite the

directions given by the learned Single Judge, neither any notice was issued to the petitioner and others, nor any opportunity of hearing was given to

them. But nonetheless, as the agreement between the Municipality and the petitioner was cancelled in the year 2009, the petitioner continues to be a

trespasser on the property. Thus, according to the learned counsel, the impugned notice is legally sustainable.

8. Heard the learned counsel for the parties.

9. Admittedly, the shop was constructed by the Municipality, the respondent no. 2. Admittedly, the shop was assigned to the petitioner as far back as

1998. Even if the contention of the learned counsel for the respondent no.2 were to be accepted, for the sake of argument, that the agreement was

subsequently cancelled, even then the petitioner is merely a trespasser. But, he cannot be declared to be a person, who has encroached upon any

property. Surprisingly, despite the fact that the Municipality has not taken any action against the petitioner under the Public Premises (Eviction of

Unauthorised Occupants) Act, 1971, the Municipality threatens to demolish its own shop. Therefore, the impugned notice dated 19.07.2021 is clearly

unsustainable.

10. Further, in the notice dated 19.07.2021, no opportunity of hearing has been provided to the petitioner. Needless to say no adverse action can be

taken against the petitioner until and unless an opportunity of personal hearing is provided to the petitioner. Therefore, the impugned notice dated

19.07.2021 is also in violation of the principles of natural justice.

11. For the reasons stated above, the impugned notice dated 19.07.2021 is set-aside by this Court.

12. However, the Municipality, the respondent no. 2, shall be free to take action against the petitioner, but only in accordance with law. Thus, the

respondent no. 2 is required to state the provision of law, under which the notice is being issued to the petitioner, and is required to give sufficient time

to reply to the notice. The Municipality shall also give an opportunity of personal hearing to the petitioner before taking any adverse action against him.

13. Needless to say, in case the petitioner continues to be aggrieved by any order passed by the respondent no. 2, the petitioner shall be free to

challenge the same in accordance with law by invoking the legal remedies available to the petitioner.

14. With these directions, the Writ Petition stands disposed of.