(2025) 10 UK CK 0001

Uttarakhand HC

Case No: Writ Petition Miscellaneous Single No. 2056 Of 2023

Karnail Singh & Others	APPELLANT
Vs	
State Of Uttarakhand And Others	RESPONDENT

Date of Decision: Oct. 8, 2025

Acts Referred:

- Zamindari Abolition & Land Reforms Act, 1950 — Section 132
- Constitution Of India, 1950 — Article 226

Hon'ble Judges: Manoj Kumar Tiwari, J

Bench: Single Bench

Advocate: Siddhartha Singh, Ganesh Dutt Kandpal

Final Decision: Dismissed

Judgement

Manoj Kumar Tiwari, J

1. A Government Order was issued by the State Government on 18.07.2016, declaring its policy for regularization of certain category of unauthorized occupation over public land, recorded in revenue records as Class-IV. It also provided for grant of bhumidhari rights to eligible persons over such land.

2. Petitioners applied in terms of the Government Order for regularization of their unauthorized occupation over land comprised in Khasra No. 448/1/1 and Khasra No. 448/3, admeasuring 4.018 hectare, situate in Village Khairna, Tehsil Sitarganj, Nanakmatta, Udham Singh Nagar. The District Magistrate called a report from concerned Sub Divisional Magistrate. In his report, the Sub Divisional Magistrate stated that the land in question, sought to be regularized by petitioners, is a water body, therefore, benefit of the policy decision contained in Government Order dated 18.07.2016 cannot be given to them in view of Section 132 of Zamindari Abolition & Land Reforms Act, 1950.

3. Section 132 of Zamindari Abolition and Land Reforms Act, 1950 is reproduced below:-

***"132. Land in which bhumidhari rights shall not accrue**.- Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, bhumidhari rights shall not accrue in-*

(a) pasture lands or lands covered by water and used for the purpose of growing singkara or other produce or land in the bed of a river and used for casual or occasional cultivation;

(b) such tracts of shifting or unstable cultivation as the State Government may specify by notification in the Gazette; and

(c) lands declared by the Slate Government by notification in the Official Gazette, to be intended or set apart for taunghya plantation or grove lands of a Gaon Sabha or a Local Authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause-

(i) lands set apart for military encamping grounds;

(ii) lands included within railway or canal boundaries;

(iii) lands situate within the limits of any cantonment;

(iv) lands included in suliage farms or trenching grounds belonging as such to a local authority;

(v) lands acquired by a town improvement trust in accordance with a scheme sanctioned under Section 42 of the U.P. Town Improvement Act, 1919 (U.P. Act V11 of 1919), or by a municipality for a purpose mentioned in Clause (a) or Clause (c) of Section 8 of the U.P. Municipalities Act, 1916 (U.P. Act VII of 1916); and

(vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act V of 1954).”

4. Petitioners are aggrieved by acceptance of the aforesaid report by District Magistrate by an endorsement made on the report, and consequent rejection of petitioners application.

5. Learned counsel for the petitioners submits that since petitioners meet all conditions of eligibility as per Government Order dated 18.07.2016 and they also deposited Rs. 3,23,500/- in the office of Sub Divisional Magistrate, Sitarganj well within time, therefore, petitioners are entitled for regularization of their possession as per the Government Policy and the reason assigned for rejecting their request for regularization is unjust and legally unsustainable.

6. Per contra, learned State Counsel submits that there is no statutory or legal right vested in the petitioners to get their unauthorized occupation over public land regularized; policy to regularize unauthorized occupation over Class-IV land is meant for the benefit of landless labourers or persons belonging to weaker sections of society, while petitioners are affluent farmers with good amount of land holding, therefore regularizing their illegal occupation will be counter-productive to the goal of achieving an egalitarian society. Learned State Counsel submits that District Magistrate called report from revenue authorities, who after spot inspection, mentioned in their report that land in question is riverbed/water body land, over which bhumidhari right cannot be granted to any person

7. Perusal of the report dated 12.07.2021 (Annexure-1 to the writ petition) reveals that Sub Divisional Magistrate, Khatima (Udham Singh Nagar) in his earlier report dated 07.12.2019 mentioned that the land in question is not fit for agriculture due to sand/ silt deposit. This report was accepted by the District Magistrate on 12.07.2021 and application made by petitioners for regularization was rejected. Petitioners thereafter made request to District Magistrate to get the land re-inspected. On their request, District Magistrate again asked the Sub Divisional Magistrate to submit a report. The Sub Divisional Magistrate in his report reiterated that the land sought to be regularized is riverbed land, recorded as Category-15 (4) in revenue record, therefore, it cannot be regularized in view of prohibition contained in Section 132 of Zamindari Abolition and Land Reforms Act.

8. Learned State Counsel refers to the Government Order dated 18.07.2016, which is on record as Annexure-6 to the writ petition. In paragraph no. 3(1) of the Government Order, it is provided that possession over public utility land covered by Section 132, like chak road, irrigation canal, barn land, graveyard/cremation ground, pasture etc shall not be regularized.

9. Learned State Counsel submits that in view of provision contained in Section 132 of Zamindari Abolition and Land Reforms Act and also in view of the law declared by Hon'ble Supreme Court in catena of judgments, bhumidhari right cannot be given to anybody over riverbed/water body land. He further submits that petitioners have not indicated the extent/size of their land holding in the writ petition; unless they meet the eligibility conditions, they cannot claim regularization of their unauthorized occupation. Learned State Counsel by referring to the first report submitted by Sub Divisional Magistrate contained in Annexure-1 submits that earlier also, petitioners had applied in the year 2019 for regularization of their possession and the said application was also rejected by District Magistrate on 04.01.2020.

10. Learned State Counsel supports the rejection order by contending that in view of statutory bar, District Magistrate was justified in not acceding to the request made by petitioners for regularization of their illegal possession. He submits that Government policy contemplates grant of bhumidhari rights, after regularization of possession over Class-IV land, but due to statutory mandate contained in Section 132 of Zamindari Abolition and Land Reforms Act, bhumidhari right cannot be granted in respect of land meant for use by the general public, including water body. Learned State Counsel referred to the reports contained as Annexure nos. 1 & 2 to the writ petition, for contending that the land in question is covered by sand and not fit for cultivation and only muskmelon, cucumber, watermelon can be grown thereupon. Learned State Counsel further submits that Government policy contemplates regularization of possession over certain category of land, and the application made by petitioners for regularization was rightly rejected, as land sought to be regularized by them, did not fall in that category. He further submits that anyone, who has encroached upon Government land do not have vested or statutory right of regularization of his possession and regularization is at the sole discretion of State Government. He further submits that in the absence of any statutory provision providing right to be considered for regularization, said right cannot be enforced by filing a writ petition.

11. This Court finds substance in the submission made by learned State Counsel.

12. Bhumidhari right cannot be given over water body land, as held by Hon'ble Supreme Court in the case of *Hinch Lal Tiwari v. Kamala Devi and others, reported as (2001) 6 SCC 496*. Paragraph nos. 13 & 14 of the said judgment is reproduced below:

"13. *It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.*

14. *For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride."*

13. There is no pleading in the writ petition regarding extent of petitioners' land holding within Uttarakhand State, therefore the oral submission that petitioners belong to weaker section of society cannot be accepted. The request made by petitioners for regularization of their possession was rejected thrice by the Competent Authority, based on reports submitted by concerned Sub Divisional Magistrate. The earlier orders passed by

District Magistrate have attained finality.

14. Petitioners question correctness of the report submitted by Sub Divisional Magistrate, however this Court do not find any inconsistency in the reports submitted by Sub Divisional Magistrate from time to time. Even otherwise also, issue of correctness of reports, cannot be gone into in proceedings under Article 226 of the Constitution.

15. This Court while exercising writ jurisdiction does not act as Court of Appeal. Scope of judicial review of administrative action is limited to examining the legality and fairness of the decision making process. In the case of *Punjab State Power Corporation Limited and another v. Emta Coal Limited*, reported as *(2022) 2 SCC 1*, Hon'ble Supreme Court has summarized the legal position on scope of judicial review in paragraph nos. 33 to 37, which are reproduced below:-

"33. *It could thus be seen that while exercising powers of judicial review, the Court is not concerned with the ultimate decision but the decision-making process. The limited areas in which the Court can enquire are as to whether a decision-making authority has exceeded its powers, committed an error of law or committed breach of principle of natural justice. It can examine as to whether an authority has reached a decision which no reasonable tribunal would have reached or has abused its powers. It is not for the Court to determine whether a particular policy or a particular decision taken in the fulfilment of that policy is fair. The Court will examine as to whether the decision of an authority is vitiated by illegality, irrationality or procedural impropriety. While examining the question of irrationality, the Court will be guided by the principle of Wednesbury. While applying the Wednesbury principle, the Court will examine as to whether the decision of an authority is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.*

34. *Applying the aforesaid principle, it can clearly be seen that the decision of PSPCL dated 6-4-2018, cannot be questioned on the ground of illegality or procedural impropriety. The decision is taken in accordance with Section 11 of the said Act and after following the principle of natural justice. The limited area that would be available for attack is as to whether the decision is hit by the Wednesbury principle. Can it be said that the decision taken by the authority is such that no reasonable person would have taken it? No doubt, that the authority has also relied on Clause 12.4.1 of the Allotment Agreement, however, that is not the only ground on which the representation of EMTA is rejected. No doubt, that while considering EMTA's representation, PSPCL has referred to Clause 12.4.1 of the Allotment Agreement which requires the coal mines to be developed through contractors who were selected through a competitive bidding process, however, that is not the only ground on which the representation of EMTA is rejected. It will be relevant to refer to the following observations in the order passed by PSPCL dated 6-4-2018:*

"Moreover, there is no reason why competitive bidding process for the purposes of eliciting the best operator be not preferred. Needless to mention that as the composition with respect to capital/revenue investment is altogether different, hence the bidding parameters have entirely changed."

35. *It could thus be seen that PSPCL has decided to go in for competitive bidding process for the purpose of eliciting the best operator. It has further noticed that the composition with respect to capital/revenue investment is altogether different. Hence, the bidding parameters have entirely changed. It has further referred to the decision of this Court wherein it has been held that the allotment should be through competitive bidding process. We ask a question to ourselves, as to whether the said reasoning can be said to be irrational or arbitrary. A policy decision to get the best operator at the best price, cannot be said to be a decision which no reasonable person would take in his affairs. In that view of the matter, the attack on the order/letter dated 6-4-2018, is without merit.*

36. *Insofar as the contention of Shri Rohatgi with regard to the huge investment being made by EMTA is concerned, the said Act itself provides remedy for seeking compensation apart from the other remedies that are available in law. In that view of the matter, we are not impressed with the arguments advanced in that behalf.*

37. *In the result, the impugned judgment and order passed by the High Court of Punjab and Haryana is unsustainable in law. The appeals are therefore allowed and the judgment and order passed by the High Court of Punjab and Haryana dated 25-1-2019, is quashed and set aside. Pending IA(s), if any, shall stand disposed of accordingly."*

16. In view of the aforesaid legal position, this Court do not find any reason to interfere with the decision taken by District Magistrate on the request made by petitioners for regularization of their unauthorized occupation over public land. In view of provision contained in Section 132 of Zamindari Abolition & Land Reforms Act, 1950, bhumidhari right in respect of public utility land/water body cannot be conferred upon any person. The decision taken by the District Magistrate is based on factual reports submitted by Sub Divisional Magistrate and correctness of the report cannot be gone in writ proceedings.

17. Accordingly, the writ petition fails and is dismissed.