

Masroor Ahmed Khan Vs State of Uttarakhand and Others

Court: Uttarakhand High Court

Date of Decision: Dec. 22, 2014

Acts Referred: Constitution of India, 1950 " Article 14, 226

Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 " Section 7

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Advocate: Tapan Singh, Advocates for the Appellant; Anil Kumar Joshi, Addl. Chief Standing Counsel, Advocates for the Respondent

Judgement

Alok Singh, J.

Undisputedly, Quarter No. 6, Waberly Compound, Gopala Sadan, Mallital, Nainital was never allotted to the petitioner,

who is an practicing Advocate as well as Deputy Advocate General, State of Uttarakhand; in the year 1990, he has taken illegal possession of

Quarter No. 6 and since then, he is enjoying the illegal possession of quarter No. 6; his request to give him free hold rights of quarter, in question,

was turned down vide impugned order; feeling aggrieved, petitioner has approached this Court by way of filing present writ petition. State

Government or Municipality can allot the property by inviting applications from general public and not by private negotiation.

2. It is settled position of law that no property can be declared free hold in favour of any trespasser. Otherwise, anybody may illegally occupy the

government property and thereafter, same shall be regularized or declared free hold in favour of the trespasser, which would certainly be in

violation of Article 14 of the Constitution of India.

3. This Court while exercising the writ jurisdiction under Article 226 of the Constitution of India can invoke suo moto jurisdiction to do complete

justice.

4. In the present case, petitioner, a practicing Advocate, now, Deputy Advocate General of the State of Uttarakhand is found in illegal possession

of the public (municipal) property. This Court cannot keep its eyes shut and must come forward to do complete justice.

5. In view of the above, petition fails and is hereby dismissed. However, petitioner is directed to vacate the Quarter No. 6, Waberly Compound,

Gopala Sadan, Mallital, Nainital and hand over the peaceful vacant possession to the Municipality within thirty days from today positively.

Municipality shall be at liberty to move to the Prescribed Authority under Section 7 of the U.P. Public Premises Act for determination of the

damages and penal rent for the illegal occupation of the petitioner and to recover the same as fixed by the Prescribed Authority. If petitioner fails to

hand over the peaceful vacant possession within thirty days from today, Municipality shall be at liberty to get the petitioner evicted with the help of

police force. Compliance of this order shall be reported to this Court by affidavit of Executive Officer within 45 days from today.