

Uttarakhand High Court

Urmila Thapa vs State Of Uttarakhand And Others on 31 August, 2022

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE CHIEF JUSTICE SHRI VIPIN SANGHI
AND
JUSTICE SHRI RAMESH CHANDRA KHULBE

Dated- 31st AUGUST, 2022

WPPIIL No.58 OF 2019

Urmila Thapa

.....Petitioner

Vs.

State of Uttarakhand and others

.....Respondents

Presence: -

Mr. Abhijay Negi and Ms. Snigdha Tiwari, learned counsel for the petitioner.

Mr. C.S. Rawat, learned CSC alongwith Mr. Anil Bisht, Additional CSC and Mr. J.C. Pandey, learned S.C. for the State.

Mr. Lalit Sharma, learned counsel for the Union of India.

Mr. Vinay Garg with Mr. Rahul Consul, learned counsels for the MDDA.

JUDGMENT: (Per Shri Vipin Sanghi, C.J.)

The petitioner has preferred the present writ petition in public interest raising the issue of unauthorized encroachments on water bodies and khalas/storm water drains in Rajpur Area of Doon Valley.

The petitioner seeks directions to the State to declare the catchment areas of Khalas of Rispana and Bindal Rivers as 'no construction zones', and a further direction to the Ministry of Environment, Forest and Climate change, Union of India to pro-actively monitor and take necessary action on the changing environmental landscape of Doon Valley that is declared as an 'Eco-Sensitive Zone' by the Government of India in the year 1989.

2. Mr. Abhijay Negi, learned counsel for the petitioner has drawn attention of the Court to the order dated 30.08.2019. By this order, this Court directed the District Magistrate, Dehradun to have an enquiry caused, and to submit a report to this Court furnishing details of the seasonal Nalas in existence in Doon Valley; the extent of encroachment over the said Nalas; and the steps being taken by the District Administration to remove such unauthorized constructions, and encroachments. On 18.09.2019, this Court was informed that the process of identifying encroachments is an elaborate exercise and it would take at least two months. This Court directed the respondents to ensure that no further encroachments take place in the seasonal streams in the Rajpur Area of the Doon Valley.

3. A counter-affidavit has been filed on behalf of respondent no.2 i.e., the District Magistrate, Dehradun on 13.09.2019. Alongwith this affidavit, he has placed on record the enquiry/survey conducted in terms of the order passed by this Court. Four different tabulations have been placed on record relating to Dehradun, Vikasnagar, Rishikesh and Doiwala Tehsils, all falling in district Dehradun. The tabulation contains particulars of the

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nature of the land, Khata number, Khasra number, total area, the area which has not been encroached upon and the area which has been encroached upon. In relation to

Dehradun Tehsil, the Survey found that an area of 37.9305 hectares stands encroached on the river bed falling in different villages, as detailed in the tabulation. Similarly, for Vikasnagar Tehsil, as per the report, 57.4 hectares of river bed land has been encroached upon. In Rishikesh Tehsil, the encroachment is to the tune of 4.8866 hectares, and for Doiwala Tehsil, the encroachment is to the tune of 5.616 hectares.

4. The petitioner has filed rejoinder-affidavit to the counter-affidavit of respondent no.2. Alongwith the same, she has placed on record photographs to show the ongoing construction which, the petitioner claims, is on the river bed. At page no. 18 of the said rejoinder (running page no. 420 of the record), there is a photograph which shows that just behind the board put up by the Authorities, to state that M.D.D.A. has not allowed plotting and development of the land, construction activity is in progress. Mr. Abhijay Negi, further submits that now, the said board has also been removed after the photograph was taken by the petitioner.

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5. We may also take note to the communication of the District Magistrate, Dehradun dated 11.09.2019 addressed to the Municipal Commissioner of the Municipality and all the Sub-Divisional Magistrates

concerned to take action for removal of encroachments from the river beds, which have, however, remained unactioned for the last nearly three years.

6. We are dismayed to see the current state of affairs prevailing in the State with regard to the encroachment on forest land, water ways and public land. It appears that it is a free for all, and anybody can encroach on any part of the land falling within the State - even on forest lands, and get away with it. We are informed that the lands falling in river beds are all classified as forest lands, except those which fall within the municipal limits. Obviously, such activities cannot happen without the tacit approval of the authorities on the ground. It is high-time that the administration wakes-up to the reality, and sets its house in order.

7. We, therefore, direct respondent nos. 1 to 4 to immediately start the process of removal of encroachments on river beds, which have already been identified and placed before the Court vide the counter-affidavit dated 19.03.2019. It shall be the responsibility of

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Secretary (Revenue), Secretary (Urban Development) and Secretary (Forest) to ensure strict and speedy compliance of this order.

8. Insofar as the areas fall within the municipal limits, the Municipal Commissioner, Nagar Nigam, Dehradun shall be personally responsible to ensure that

such encroachments are removed from the river beds.

The Secretary (Revenue), Secretary (Urban Development), Secretary (Forest) and the Municipal Commissioner, Nagar Nigam, Dehradun shall hold meetings regularly to take steps to implement this order.

The meeting shall be convened by the highest ranking officer amongst them, and he/ she shall preside over the meeting. Failure to comply with these directions shall compel this Court to take action against the aforesaid identified Officers.

9. Weekly reports with regard to the actual removal of encroachments undertaken shall be filed before this Court. One report shall be filed on behalf of the Secretary (Revenue), Secretary (Urban Development) and Secretary (Forest), and the other report shall be filed by the Municipal Commissioner, Dehradun.

10. We make it clear that we would not be satisfied with mere paper exercise, and the reports should relate to

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actual action taken on the ground for removal of the encroachments. The photographs of the action taken should also be filed alongwith each of these reports.

11. Copies of the status report shall be shared with the counsel for the petitioner. Before the next date, the petitioner shall file a tabulation of analysis of all such reports.

12. List this case on 11.10.2022.

VIPIN SANGHI, C.J.

RAMESH CHANDRA KHULBE, J.

Dated: 31st August, 2022 SK