

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No.178 of 2013

Ravi Shankar Joshi

..... **Petitioner**

Versus

State of Uttarakhand & others

... **Respondents**

None is present for the petitioner.

*Mr. V.B.S. Negi, Advocate General with Mr. Paresh Tripathi, C.S.C.,
for the State of Uttarakhand.*

*Mr. V.K. Kohli, Sr. Advocate assisted by Mr. Gopal K. Verma,
Advocate, for the Railways.*

Dated: January 10, 2017

Coram: Hon'ble Rajiv Sharma , J.

Hon'ble Alok Singh, J.

Delay Condn. Appln. (CLMA 154/17)

In view of the grounds taken in the affidavit and in the interest of justice, delay of 9 days in filing the review application is condoned. Delay condonation application stands allowed.

Review Application (MCC 16/2017)

The State Government has filed the present review application seeking review of the order dated 9.11.2016 passed by this Court. According to the averments made in the application, no demarcation of the property of railways has been undertaken. Thus, removal of the encroachers could not be undertaken. The land on which the houses have been constructed is the Abadi land. There is a reference to few sale deeds in the application.

It is evident from the contents of this affidavit that the State Government has tried to espouse the cause of the persons who are occupying the railway land

unauthorisedly. The land belongs to the railways and it is the bounden duty of the railway authorities to evict the encroachers from the government land.

Learned Advocate General for the State Government has argued that the period for eviction of encroachers may be enlarged due to ensuing Board examinations. According to him, there are three examination centres in the locality. He vehemently argued that six weeks' time may be granted to evict the encroachers from the property of the railways.

The review application, filed on behalf of the State Government, is wholly misconceived. There is no error apparent on the face of the order dated 9.11.2016 passed by this Court. The State Government, instead of filing this application, ought to have provided necessary assistance to the railways to evict the encroachers from the railway land. The State Government should support the honest persons and not the dishonest persons who encroach on the government land.

Accordingly, there is no merit in the review application filed by the State Government and the same is hereby dismissed.

Misc. Application (CLMA 243/2017)

A startling revelation has been made in the contents of this application moved on behalf of the Railways whereby the State machinery has repeatedly failed to provide necessary police force to the railways to undertake the demarcation and evict the encroachers from the government land.

It is stated in the application that the first meeting was convened on 09.11.2016 at Haldwani. This meeting was attended by the Senior Superintendent of Police. He was requested to provide necessary police for demarcation and carrying out the eviction proceedings. The District Magistrate, Nainital and the Senior Superintendent of Police, Nainital were requested by the Estate Officer and Sr. DEN/I/IZN vide letter dated 14.11.2016 to deploy adequate police force. On 17.11.2016, the railway deployed 105 personnel from R.P.F. for undertaking the demarcation and fixing of pillars. Notices were also served on the encroachers. The police authorities failed to provide adequate police force on 17.11.2016.

Only five encroachers filed reply to the notices. The eviction orders were passed on 20.12.2016 by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The encroachers were granted fifteen days' time to vacate the premises. The District Magistrate, Nainital and Senior Superintendent of Police, Nainital were requested by the Estate Officer to fix another date i.e. 30.11.2016 for further demarcation of railway land beyond km. 82/4.

Shockingly, the Senior Superintendent of Police, Nainital, vide his letter dated 29.11.2016, intimated the railway authorities that in view of V.I.P. movement and political rallies, the State Government was not in a position to deploy the force.

The Railways re-fixed the next date for demarcation/serving the notices on 5.12.2016. The

District Magistrate, Nainital held a meeting on 4.12.2016 to discuss the issues. He also apprised the railway authorities that civil administration was not able to provide police force on 5.12.2016. The railway authorities have informed the District Magistrate that the demarcation had already been undertaken as per the land plan certified by the Revenue Department of the State. The demarcation beyond km 82/4 could not be started on the prescribed day. The police force did not appear in sufficient numbers to maintain the law and order. The railway administration was constrained to lodge a. F.I.R. against the unknown persons for obstructing the demarcation.

The Railways is requesting the civil authorities to provide the adequate police force at the regular intervals. The police force provided on 17.11.2016 and 8.12.2016 was inadequate.

The Senior Superintendent of Police, Nainital in another shocking observation, vide letter dated 14.12.2016, refused to provide the State police on the pretext that the Railways should produce the original documents related to acquisition of land.

The Senior Superintendent of Police, Nainital had no authority to write such a letter to the railways. He has over-reached his brief. His duty was only to maintain the law and order which he has miserably failed to do so. He is not capable of handling sensitive/delicate issues regarding the maintenance of rule of law. He should have taken independent decision instead of surrendering his authority.

The railway authorities have apprised the Senior Superintendent of Police, Nainital that the demarcation was being done in accordance with law and as per the revenue records. The senior officers of the railways have met the Chief Secretary of the State to apprise him about the situation prevailing on the spot.

The Senior Superintendent of Police, Nainital again refused to provide the adequate police force on 26.12.2016. The Senior Superintendent of Police, Nainital has definitely worked under the pressure of outside authorities. He has failed to discharge his duties diligently in accordance with law. He has also indirectly taken side with the encroachers. He has made every effort that the orders passed by this Court are not implemented. He has obstructed the cause of justice. It is in these circumstances the present application has been filed by the Railways seeking police protection for demarcation and serving the notices under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 qua 19 acres of land out of the total 29 acres of the land located near Haldwani Railway Station.

Through this application, the Railways have also sought the assistance from this Court to direct the District Magistrate, Nainital asking him to provide necessary assistance as and when sought by the railways to evict the encroachers from the land on which the proceedings are already culminated.

It is the sovereign/regal responsibility of the State Government to maintain the law and order.

In normal circumstances, we would have ordered the shifting of Senior Superintendent of Police, Nainital as well District Magistrate, Nainital but we give them a last opportunity to prove their mettle.

It is also made clear by way of abundant precaution that in case, now, the State Government fails to provide adequate police force, it shall be open to the railway authorities to send requisition to the Central Government, for providing the CRPF/ITBP/BSF, to maintain the law and order on the spot.

Accordingly, the present application (CLMA 243/2017) moved by the Railways is allowed.

The material annexed with the application is taken on record. The Chief Secretary as well as the Director General of Police of the State of Uttarakhand are directed to provide necessary police force to evict the encroachers from the land which has already been demarcated and eviction orders have been passed and also to undertake demarcation of remaining land and serving of notices within two weeks. The police force should be adequate to meet every exigency on the spot at Haldwani. It is made clear that in case the adequate police force, as directed, is not provided to the railway authorities at Haldwani to implement the order dated 9.11.2016 passed by this Court in letter and spirit, then it would amount to failure of constitutional machinery and the consequences may ensue.

In view of these developments, now the encroachers, against whom the proceedings have culminated, be evicted on or before 9.2.2017 positively.

The remaining demarcation and other codal formalities be also completed in the meantime for removal of other encroachers from the government land.

The Board of School Education is directed to notify new examination centres, if the need be, for conducting the annual examination to mitigate the hardship faced by the students of the locality.

The Election Commission shall also make necessary arrangements, if need be, to enable the persons to exercise their franchise.

The Court also takes judicial notice of the statements which keep on appearing in daily newspapers about the special drive launched by the railways for removal of encroachments. The public figures are hereby restrained from issuing any statement qua the removal of encroachments from the railways or any other land throughout the State of Uttarakhand in print media, electronic media or radio.

The Chief Secretary and the Director General of Police of the State of Uttarakhand shall be personally responsible to obey the orders punctually, in letter and spirit, failing which they would be dealt with under the contempt proceedings under Article 215 of the Constitution of India.

(Alok Singh, J.)

(Rajiv Sharma, J.)