

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 178 of 2013

With

Review Application No.16 of 2017

Review Application No.94 of 2017

Delay Condonation Application in Review No.154 of 2017

Misc. Application No.243 of 2017

Modification Application No.1118 of 2017

Modification Application No.1121 of 2017

Modification Application No.1126 of 2017

Modification Application No.1127 of 2017

Recall Application No.1128 of 2017

Delay Condonation Application in Recall No.1129 of 2017

Modification Application No.1130 of 2017

Modification Application No.1131 of 2017

Review Application No.1132 of 2017

Review Application No.1146 of 2017

Delay Condonation Application in Review No.1147 of 2017

Review Application No.1150 of 2017

Delay Condonation Application No.1151 of 2017

Review Application No.1152 of 2017

Delay Condonation Application No.1153 of 2017

Modification Application No.1157 of 2017

Modification Application No.1160 of 2017

Intervention Application No.1161 of 2017

Modification Application No.1162 of 2017

Modification Application No.1163 of 2017

Modification Application No.1164 of 2017

Intervention Application No.1165 of 2017

Modification Application No.1167 of 2017

Review Application No.1168 of 2017

Review Application No. 1169 of 2019

Misc. Application No.1170 of 2017

Recall Application No.1235 of 2017

Misc. Application No.2258 of 2017

Modification Application No.7403 of 2019

Ravi Shankar Joshi

.....Petitioner

Versus

State of Uttarakhand & others

.....Respondents

Mr. Rajeev Singh Bisht, Advocate for the petitioner.

Mr. C.S. Rawat, Addl. C.S.C. for the State.

Mr. Gopal K. Verma, Standing Counsel for the Railways.

Mr. T.A. Khan, Senior Advocate assisted by Mr. A.K. Arya, Advocate for the applicant in Modification Application Nos.1118, 1121, 1126, 1127, 1130, 1131, 1157, 1160, 1163, 1167 of 2017.

Coram: Hon'ble Ramesh Ranganathan, C.J.

Hon'ble Alok Singh, J.

The delay in filing these review/recall/modification applications is not opposed, and the delay is therefore condoned. Delay condonation applications stand disposed of.

2. All these recall/review/modification applications are filed in relation to the order passed by a Division Bench of this Court in Writ Petition (PIL) No.178 of 2013 dated 09.11.2016.

3. The petitioner had filed the present Writ Petition in larger public interest seeking a writ of mandamus commanding the respondents to immediately ban mining activities near Gaula Bridge at Haldwani; a mandamus commanding the respondents, or any other independent agency, to enquire into the real reasons for the collapse of the erstwhile Gaula Bridge, calculating the exact loss on public exchequer and also fixing the accountability of persons responsible for the said loss; and a mandamus commanding the respondents to punish persons, who were responsible for the aforesaid public loss, and also to take measures to recover the loss caused on the public exchequer from persons so found responsible.

4. While several orders appear to have been passed, from time to time, eventually the Writ Petition was disposed of by order dated 09.11.2016 wherein the Division Bench observed that it was brought to their notice that the area measuring 1,14,000 sq. meters had been encroached upon by the unscrupulous persons; the land encroached upon was around 29 acres; learned counsel for the Railways had assured the Court on 04.01.2016 that necessary steps would be taken for removal of the encroachments in accordance with law; the Government pleader had undertaken to render necessary assistance as per law to facilitate the removal of encroachments; and till 04.01.2016, no concrete steps were taken for removal of encroachments from the public land. A direction was issued to the Senior Superintendent of Police, Nainital to render all assistance to the Railway Administration for removal of encroachments by providing sufficient force and, if necessary, by deploying armed constables. The Division Bench made it clear that, if the encroachments were not removed, the officer concerned may be put under suspension for non-compliance of the order.

5. Both the Railways (by way of CLMA No.243 of 2017) and the State of Uttarakhand (by way of MCC No.16 of 2017) filed applications seeking review of the order dated 09.11.2016. The Division Bench disposed of the application filed by the Railways, by its order dated 10.01.2017, taking note of the submission of the Railways that the assistance of the Court was sought to direct the District

Magistrate, Nainital to provide necessary assistance as and when sought by the Railways to evict the encroachers from the land on which the proceedings had already culminated. The Division Bench observed that it was the sovereign/regal responsibility of the State Government to maintain law and order; in normal circumstances, they would have ordered the shifting of the Senior Superintendent of Police, Nainital as well the District Magistrate, Nainital, but they chose to give them a last opportunity to prove their mettle; and, in case the State Government failed to provide adequate police force, it would be open to the Railway authorities to send a requisition to the Central Government for providing the CRPF/ITBP/BSF to maintain law and order on the spot. The Chief Secretary and the Director General of Police, State of Uttarakhand were directed to provide necessary police force to evict the encroachers from the land which had already been demarcated, and eviction orders had already been passed; and to undertake demarcation of remaining land after serving of notices within two weeks. The Division Bench opined that the police force should be adequate to meet every exigency on the spot at Haldwani, and in case adequate police force, as directed, was not provided to the Railway authorities at Haldwani, then it would amount to failure of constitutional machinery and the consequences may ensue. The Division Bench directed that the remaining demarcation and other codal formalities be also completed for removal of the encroachment from the Government land. The application filed by the Railways was disposed of accordingly.

6. The review application filed by the State Government was dismissed as wholly misconceived holding that there was no error apparent on the face of the order dated 09.11.2016.

7. Against the orders passed by the Division Bench on 09.11.2016 and 10.01.2017, several Special Leave Petitions were filed before the Supreme Court and, by order dated 18.01.2017, the Supreme Court permitted the petitioners therein to move appropriate applications before the High Court on or before 13.02.2017. All these applications were directed to be taken into consideration by the High Court, and for it to be disposed of within three months from 13.02.2017. The order of the High Court was stayed for a period of three months commencing from 13.02.2017. The Supreme Court made it clear that, in case the applications filed by the petitioners therein were not disposed of within the time stipulated, it

would be open to the petitioners to move appropriate applications before the High Court for extension of the interim order. The Supreme Court clarified that the order dated 10.01.2017 was passed on a review application filed by the State of Uttarakhand, and the State Government was also permitted to file an application of the nature indicated in the order; the appellate proceedings initiated by the concerned occupants, which were allegedly pending before the District Judge, Nainital, should be dealt with uninfluenced by the observations recorded by the High Court in the impugned orders; and the same position would entail in the petitions against the show-cause notices issued to the private parties under the Public Premises Act, as may be pending before the learned Single Judge of the High Court. All the Special Leave Petitions were, accordingly, disposed of.

8. Mr. Gopal K. Verma, learned Standing Counsel appearing for the Railways, would submit that as many as 4,365 applications have been filed, by those to whom notices were issued under Section 4 of the Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 (for short the “1971 Act”), before the Estates Officer; while these applications were no doubt filed three years ago, the sheer volume of the applications, and the nature of inquiry required to be conducted, had resulted in continuation of proceedings for the past several years; and the Estates Officers (the competent authority under the Act) would dispose of the pending applications within a specified time-frame.

9. While the contention in these applications, now filed before us, is that some of those, in possession of the land, have been in long standing possession for more than a half a century, and the 1971 Act would not apply to them; some others claim that they were allotted the land by the State Government; a few others state that they had purchased the land in a public auction; and a few others contend that they were owners of the land, and the land does not belong to the Railways.

10. As noted hereinabove, the relief sought in the Writ Petition was confined to the collapse of a bridge in Haldwani, and the illegal mining activities being carried on thereat. Encroachment of railway land was not put in issue, by the petitioner, in the said Writ Petition. Be that as it may, since proceedings under the 1971 Act are still pending before the Estates Officer, suffice it to dispose of all these applications directing the Estates Officer (the competent authority under the Act) to hear and decide the applications in accordance with law with utmost

expedition and, in any event, before 31.03.2020. It is made clear that we have not expressed any opinion on the genuineness or otherwise of the claim made, by those in possession of the land, in the applications now filed before us, for these are all matters which the competent authority is required to examine in accordance with law.

11. While seeking modification of the order dated 09.11.2016, Mr. Rajeev Singh Bisht, learned counsel for the petitioner, would submit that illegal mining operations continue unabated even till date; mining activities, within one Km. on either side of the bridge, is prohibited; despite the prohibition, illegal mining activities continue, and the authorities are turning a blind eye to these illegal mining activities; such mindless mining operations would endanger this bridge, like that of the bridge which collapsed earlier; unlike the earlier collapse, any future collapse may result in loss of life; the order dated 09.11.2016 should be recalled, and the Writ Petition restored; and this Court should direct the respondents to ensure that no illegal mining activity takes place within the prohibited zone of the bridge.

12. The order, recall of which is sought, is dated 09.11.2016 and was passed more than three years ago. Several subsequent events have taken place. Instead of recalling the earlier order, restoring the Writ Petition to file, and permitting the petitioner to file additional affidavits, we consider it appropriate, instead, to grant the petitioner liberty to file a Writ Petition afresh raising all such contentions as were raised in the earlier Writ Petition, and which were not dealt with in the order under review, besides events subsequent thereto till date.

13. All the applications are accordingly disposed of. No costs.

(Alok Singh, J.)

22.11.2019

NISHANT

(Ramesh Ranganathan, C. J.)

22.11.2019