

# State Of Uttarakhand vs Sri Kashmiri Lal Narang & Ors on 6 July, 2022

**Author: S.K. Mishra**

**Bench: S.K. Mishra**

IN THE HIGH COURT OF UTTARAKHAND  
AT NAINITAL

Writ Petition No. 260 of 2007 (M/S)

|                                |        |                  |
|--------------------------------|--------|------------------|
| State of Uttarakhand           |        | ..... Petitioner |
|                                | Versus |                  |
| Sri Kashmiri Lal Narang & Ors. |        | .....Respondents |

Present:

Mr. R.C. Arya, the learned counsel for the petitioner/State.  
Mr. Vijay Bhatt and Mr. D. Pant, the learned counsel for the  
private respondents.

With

Writ Petition No. 259 of 2007 (M/S)

|                        |        |                  |
|------------------------|--------|------------------|
| State of Uttarakhand   |        | ..... Petitioner |
|                        | Versus |                  |
| Sri Jawahar Lal & Ors. |        | .....Respondents |

Present:

Mr. R.C. Arya, the learned counsel for the petitioner/State.  
Non appearance for the respondents.

Date of hearing and judgement : 06.07.2022

Sri S.K. Mishra, J.

(Upon hearing the learned counsel for the parties, this Court made the following judgment:

By filing these writ applications under Article 227 read with Article 226 of the Constitution of India, the petitioner i.e. State of Uttarakhand has prayed for writ in the nature of certiorari quashing the judgment and order dated 01.03.2006, annexure no. 1 to the writ petition, passed by the Commissioner, Kumaon Mandal, Nainital and to uphold the order dated 19.07.2003, passed by the Prescribed Authority (Ceiling)/Additional Collector (F & R) Udham Singh Nagar.

2. The respondent late Kashmiri Lal was a tenure holder. Against him, ceiling proceedings under the Imposition of Ceiling and Land Holdings Act, 1960 (hereinafter referred to as the Act for brevity) was initiated, bearing Ceiling Case No. 51/27 in the year 1993-94 to adjudicate why the area of 11.722 hectare of lands, out of the total land i.e. 23.022 hectare, owned by said late Kashmiri Lal

shall not be determined as surplus land under the provisions of aforesaid Act. On 26.09.1995, the Prescribed Authority declared land of late Kashmiri Lal, measuring 11.722 hectare of irrigated land, as surplus. The said order was put to challenge by late Kashmiri Lal in Ceiling Appeal No. 8/8 of 1996-97 before the Commissioner, Kumaon Mandal, Nainital which was disposed of by the Additional Commissioner (Judicial), Kumaon Mandal, Nainital on 28.11.1997 remanding the matter to the Prescribed Authority to decide the matter on merits. Thereafter, the Prescribed Authority (Ceiling)/Additional Collector, Udham Singh Nagar, disposed of the matter declaring 11.722 hectares of irrigated land as surplus. The order dated 24.02.1999 was challenged before the learned Commissioner, Kumaon Mandal, Nainital in Appeal Nos. 3/4 of 1998-99, 4/2 of 1998-99 and 5/8 of 1998-99, which was initially disposed of on 30.12.1999 and the impugned order dated 24.02.1999 was set aside directing the Prescribed Authority to re-consider the matter after issuing fresh notice to late Kashmiri Lal and others. The Prescribed Authority took up the matter, issued fresh notices and after affording reasonable opportunity of hearing to the parties, passed same order declaring 11.722 hectare irrigated land of late Kashmiri Lal as surplus on 19.07.2003. Aggrieved by the said order, deceased/respondent no. 1 filed appeal no. 5/2002-2003. A separate appeal bearing Ceiling Appeal No. 7/2002-03 was preferred by Jawahar Lal and two appeals were preferred by other persons before the Commissioner, Kumaon Mandal, Nainital. It is, however, borne out from the record that since the land in question were same, the learned Commissioner took up hearing of Ceiling Appeal No. 5/2002-2003 and 7/2002-2003 (out of which present writ petition arise) and by virtue of order dated 11.07.2005 disposed of the same, allowing all the appeals except 5/2002-2003. The appeal No. 5/2002-03 was allowed in part. The learned Commissioner passed the following order:

"vijksDr foospuk ds vk/kkj ij uouhr dqekj ,oa vfer dqekj }kjk izLrqr vihy la[k&4@2002&2003 ,oa vfuy dqekj }kjk izLrqr vihy la[k&6@2002&2003 Lohdkj dh tkrh gS rFkk d'ehjhyky }kjk izLrqr vihy la[k&5@2002&2003 dks vkaf'ke :i ls bl lhek rd Lohdkj fd;k tkrk gS fd vfuy dqekj rFkk uouhr dqekj ,oa vfer dqekj dh vihyksa esa vUrZfufgr iz'uxr Hkwfe dks ewy [kkrsnkj d'ehjhyky dh tksr ls i`Fkd djrs gq, voj U;k;ky; }kjk ljdkj cuke d'ehjhyky esa ikfjr iz'uxr vkns'k fnukad 19-7-2003 dks dsoy bl lhek rd gh fujLr djrs gq, la'kksf/kr fd;k tkrk gSA tokgjyky vkfn cuke ljdkj vkfn vihy la[k&7@2002&2003 ,oa d'ehjhyky ukjax cuke ljdkj vkfn lhfyax vihy la[k&5@2002&2003 esa mijksDr foospuk ds vk/kkj ij O;fFkr i{kksa dks viuk i{k izLrqr djus gsrq volj fn;k tkrk gSA mDr nksuksa vihyksa dh lquokbZ gsrq fnukad 25-7-2005 dh frfFk fu;r dh tkrh gSA

3. Thereafter, the appeal was again taken up for final disposal by the learned Commissioner, Kumaon Mandal, Nainital, and by virtue of the judgment dated 01.03.2006, allowed the appeal along with appeal no. 7/2002-03 holding that late Kashmiri Lal does not have any ceiling surplus land.

4. During course of the hearing of appeals the question about the adult son of late Kashmiri Lal, being entitled to a separate holding was upheld by the learned Commissioner, Kumaon Mandal in the judgment dated 11.07.2005. That judgment has not been challenged by the State in this writ application. Secondly, in that said

appeal, the learned Commissioner, Kumaon Mandal, also came to the conclusion that auction made in favour of Anil Kumar and others are also not illegal and that those lands cannot be included to this ceiling land of late Kashmiri Lal. Unfortunately, the State has not preferred any appeal against the judgment passed by the learned Commissioner, Kumaon Mandal and those orders has attained its finality, having not been challenged by any of the parties.

5. Now, at this stage, the learned Standing Counsel for the State would vehemently argue and point out that the learned Commissioner's order is illegal as far as it pertains to the findings recorded by him on 11.07.2005, which is not under challenge.

6. Secondly, as this is a proceeding for issuance of writ of certiorari and exercise of superintending jurisdiction of the Court, this Court is not inclined to go into the facts. In an application for issuance of certiorari or for correcting an error of jurisdiction committed by the lower tribunal, the High Court in exercise of jurisdiction under Article 226 of the Constitution of India can correct gross error of jurisdiction, i.e., when subordinate court is found to have acted (i) without jurisdiction; (ii) by assuming the jurisdiction which it does not have, or in excess of its jurisdiction by overstepping the limits of jurisdiction; or

(iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice. The supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have, or failed to exercise the jurisdiction which it does have or the jurisdiction, though available, is being exercised by a court in a manner not permitted by law and a failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere error of fact or of law unless the following requirements are satisfied viz., (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. A patent error is an error which is self evident i.e., which can be perceived or demonstrated without involvement without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent. (The above principles are so settled that it is not necessary to quote any precedents).

7. In that view of the matter, this Court is of the opinion that the case of the State of Uttarakhand does not come within the purview of the parameters that guide a proceeding for issuance of writ of certiorari under Article 226 or the supervisory jurisdiction as envisaged under Article 227 of the Constitution of India.

8. In that view of the matter, this Court is of the opinion that as there is no question of lack of jurisdiction or improper use of jurisdiction or over stepping of jurisdiction, there is no need to devolve into the question of factual aspect involve in a certiorari proceedings. There is also no pleading raised by the State of Uttarakhand that if the order is allowed to stand it will cause grave injustice to any of the parties.

9. In that view of the matter, the writ petitions sans merit, and, therefore, dismissed. There shall be no order as to costs.

10. Urgent certified copy of the judgment be provided as per rules.

(Sanjaya Kumar Mishra, J.) PV