

Jagdish Raj and ors. Vs. Additional District Magistrate and ors.

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Court : Jammu and Kashmir

Decided On : Mar-25-1997

Reported in : 1998CriLJ792

Judge : G.D. Sharma, J.

Acts : Jammu and Kashmir Agrarian Reforms Act, 1976 - Sections 2, 2(9) and 3;
;Jammu and Kashmir Code of Criminal Procedure (CrPC) Smvt., 1989 - Section 145

Appeal No. : Criminal Revn. Petn. No. 63 of 1994

Appellant : Jagdish Raj and ors.

Respondent : Additional District Magistrate and ors.

Advocate for Def. : Joginder Singh, Adv.

Advocate for Pet/Ap. : J.S. Kotwal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

G.D. Sharma, J.

1. Through the medium of this revision petition, order dated 8-8-94, passed by the Additional District Magistrate, Jammu in revision petition (No. 18 Misc. titled State through Police Station, Bishnah v. Jagdish Raj and Ors.) is challenged. On 6-6-89, S.H.O. Police Station, Bishnah took cognizance of the complaint regarding the apprehension of imminent breach of peace in respect of the possession of land measuring 5 kanals 13 marlas comprising of Khasra No. 355 min situate in village Kharian, Tehsil R. S. Pura. The said S.H.O. on the same day, laid report before the Tehsildar Executive Magistrate 1st Class, R. S. Pura, who under Sub-clause (4) of Section 145, Cr. P. C. attached the above stated land along with structure standing thereon and kept the same on the 'sapurdari' of the S.H.O. The Magistrate directed the parties to file the objections on 20-6-89.

2. The petitioners herein challenged the said order of attachment by filing revision petition before the learned Additional Sessions Judge, Jammu, who vide his order dated 7-3-90, transferred the same to the Addl. District Magistrate, Jammu for disposal, as according to him, the dispute was regarding the agricultural land and the District Magistrate or the concerned Magistrate had the competency to adjudicate upon the dispute. The Addl. District Magistrate, Jammu vide his order dated 8-8-94 held the respondents therein namely, Sham Kaur and Puran Singh in actual possession of the said land prior to two months from the date of passing of the preliminary order and as such confirmed the order impugned before him. This revision has been filed against that order of the Additional District Magistrate. It is pleaded that the disputed land is not land as defined under the J. and K. Agrarian Reforms Act, 1976 (hereinafter to be referred as Act) and neither the Tehsildar Executive Magistrate 1st Class, R. S. Pura or the Addl. District Magistrate, Jammu had any jurisdiction to pass the orders concerning its possession under Section 145, Cr. P. C. The entry made by the Patwari in the year 1986 was collusive and made without any authority of law. The order of 'supardari' passed by the Tehsildar Executive Magistrate ran contrary to the circular issued by the Divisional Commissioner, Jammu and is not operative.

3. Heard the arguments.

4. The counsel for the petitioners has contended that the land in dispute was the state land and in-terms of the mandate of Government Order No. 578-C it was allotted to the petitioners who were the displaced persons from the POK occupied area of the state. That the genesis of the dispute is the fictitious entry made by the concerned Patwari in 1986 who was not competent to make such entry which could create some right or interest in favour of a person to the detriment of another. The Tehsildar, Executive Magistrate 1st Class, R. S. Pura as well as Addl. District Magistrate, Jammu have passed the impugned orders without any jurisdiction.

5. The learned counsel for the respondents has controverted these submissions by urging that neither before the concerned Tehsildar Executive Magistrate nor before the Additional District Magistrate, Jammu, any such plea was raised that the land was not agricultural. According to the learned counsel, the respondents are in possession of the land and the same was never allotted to the petitioners. In the absence of any record, it cannot be held that the land is agricultural land. For proper appreciation of the controversy, the requisitioning of the whole record is warranted.

6. After considering the respective contentions of the counsel for the parties, the point which arises at the threshold for determination is whether the land in dispute is governed by the provisions of the Act. In order to arrive at any conclusion, the meaning of the term. 'land' has to be understood which has been defined in Sub-section (9) of Section 2 of the Act and means :

land' means land which was occupied, or was let, for agricultural purposes or for purposes subservient to agriculture or for pasture in kharif, 1971 and includes :-

(a) structures on such land used for purposes or connected with agriculture;

(b) areas covered by, or fields floating over, water;

(c) forest lands and wooded wastes;

(d) trees standing on land; and

(e) ().

2. (but does not include an orchard or) site of a building or a structure within municipal area, town area, notified area or village abadi or any land appurtenant to such building or structure.

7. Section 3 of the Act states that the provisions of the Act except those specified in column 2 of the sub-joint table, shall not apply to the category of land specified in column 1 thereon. Under subhead II of Clause B of column 1; 'land' described in Schedule II falls within the category of exempted land, Schedule II states that 'state land' including that allotted to a displaced person and subsequently transferred to him in ownership under Govt. Order No. 254 of 1965 held under any of the orders specified therein from category A to K is of this type of land which stands exempted from the operation of the Act. The land in question undoubtedly is State land and was allotted to the petitioners under Govt. Order No. 578/ C of 1954.

8. The revenue record produced herein established that the land in question was allotted to the petitioners as per order of the Provincial Rehabilitation Officer and in terms of his endorsement 'No. 496/LC dated 16-12-61, and the petitioners herein were put in possession thereof on the spot. After 1961, they have been in continuous possession thereof and even in Kharif 1971, they were in possession. Thus, there is sufficient record which evinces their possession over the land in question.

9. Proviso to Section 145, Cr. P. C. prescribes that where the dispute likely to cause breach of peace concerns any land as defined in the J. and K. Agrarian Reforms Act, 1976 the powers Under Section 145, Cr. P. C. shall be only by the District Magistrate or Executive Magistrate 1st Class.

10. From the above made discussion, it is found that the dispute likely to cause breach of peace was concerning that land which was not defined as land but was kept exempted from the operation of the provisions of the Act. The factual position being so, no Executive Magistrate including the District Magistrate had any jurisdiction to initiate the proceedings by invoking the powers vested under Section

145, Cr. P. C. Rather, the dispute was concerning 'any land' which fell within the purview of Sub-clause (1) of Section 145, Cr. P. C. and the concerned Chief Judicial Magistrate or any other such Judicial Magistrate of the first class had the vested jurisdiction to initiate the proceeding. From this, it further follows that the orders passed by the Tehsildar Executive Magistrate, R. S. Pura which was confirmed by the Additional District Magistrate, Jammu was without any jurisdiction and as such non est in the eye of law.

11. In this view of the matter, the revision petition is accepted and the orders of the Tehsildar, Executive Magistrate First Class, R. S. Pura as well as impugned order of the Additional District Magistrate, Jammu, are set aside.

12. The S.H.O., Police Station, Bishnah is directed to handover the possession of the disputed land and structure standing thereon in favour of the petitioners.

13. The revision petition is accordingly disposed of. The Deputy Commissioner, Jammu is directed to take suitable administrative action against the concerned Patwari, who has made this unauthorised entry in the revenue record.