

Abdul Rahim Dar Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Feb-02-2008

Reported in : 2008(2)JKJ375

Judge : Bashir A. Kirmani, J.

Appellant : Abdul Rahim Dar

Respondent : State and ors.

Judgement :

Bashir A. Kirmani, J.

1. Respondent No. 5 through his attorney appears to have represented before Dy. Commissioner Srinagar and alleging : construction of temporary shed, etc. by present petitioner in the disputed land sought action against him petitioner under Jammu and Kashmir Migrants Immovable Property (Preservation, Protection and Restraint on Distress sales) Act 1997, who vide order No. 1863-66/SQ/Misc. dated 10.08.2000, directed Tehsildar settlement to remove barbed wire/fencing from around the land measuring 1 kanal under survey No. 2102/1589/630 situate in Batmaloo Srinagar, alongwith the shed constructed therein and report after evicting the unauthorized occupants if any there from, if necessary, with assistance of police/demolition squad.

2. Meanwhile the petitioner appears to have agitated the matter also through a civil suit wherein he obtained an interim injunctive direction of status quo from trial court of Additional District Judge Srinagar, which was appealed against by said respondent's-attorney before this Court whereupon vide judgment dated 23rd august 1999 the interim injunction order, passed by trial court was vacated leaving the Dy. Commissioner Srinagar free to exercise his power of keeping the property under reference in his possession. Against aforesaid appellate order of this Court passed in C1MA 65/99, a LPA being No. 147/99 appears to have been instituted by present petitioner which was disposed of by the appeal Bench on 6.3.2000 by directing expeditious disposal of the civil suit and maintenance of status quo regarding land under reference as existing on the date of order. On asking of appellant's counsel however, the bench while clarifying the order further observed as under:

If the Dy. Commissioner has already taken possession of the identified property pursuant to the impugned order of Id. Single Judge that position will be maintained till trial court decides the stay matter pending before it, we clarify our above order accordingly.' With said direction of the DB in tact, the petitioner challenges District Magistrate's above said order of 10.08.2000 through this writ petition on the ground that he passed it without application of mind and on basis of distorted facts, even while the land was under possession of petitioner as admitted by 5 respondent also during different proceedings in various revenue courts and was, protected by appellate order of the Division Bench in the above mentioned LPA. During course of submissions while reiterating contents of writ petition petitioner's counsel also contended that a competent civil court being seized of the matter, the Dy. Commissioner could not assume jurisdiction and should leave it to be decided by the civil court where the matter is admittedly pending.

In reply respondent No. 5 through his above said attorney has pleaded that land under reference was purchased by him vide sale deed executed on 10th august 1981 and after demarcation in consultation with purchasers of other parcels of land from same survey number the site plan was drawn and attested by Tehsildar Srinagar identifying his land which was later encroached upon by petitioner after said respondent's migration from Kashmir and on whose request the concerned

Dy. Commissioner the land was further identified through Tehsildar Agrarian Reforms and handed over to his attorney on 18th July 1998. Where after present petitioner challenged demarcation proceedings and claiming proprietorship of the land under reference instituted a civil suit which 'was however withdrawn by him after challenging the demarcation through a revision petition before Financial Commissioner who directed Assistant Settlement. Officer to conduct a survey of the area for identifying the one kanal of land under reference which was done pursuant whereto Financial Commissioner dismissed petitioner's revision petition on 28th July 1999. The dismissal was challenged by petitioner through a writ petition being owp No. 396/99, and simultaneously he instituted another suit before Additional District Judge Srinagar, who granted an ex-parte interim injunction in his favour which was challenged in the CIMA, and LPA decided as already noticed hereinabove. During course of submissions while petitioner's counsel has reiterated the contents of writ petition, the counsel appearing vice respondents counsel has contended that in the circumstantial back drop cataloged above coupled with other features of the case the Dy. Commissioner's impugned order was not liable to be interfered with. One of the official respondent has also filed reply on whose behalf Mr. N.H. Shah, DY. AG, appearing for other respondents also has adopted the objections taken by private respondent. Since the matter stands already admitted as far back as on 2nd Nov. 2006 and the detailed replies of contesting respondents are already on record, the matter was heard with agreement of counsel for final disposal and comes up accordingly. I have heard learned Counsel and considered the matter. Before anything else it requires to be noticed that the matter has extensively been litigated upon by parties in various civil and revenue courts, and this Court. The basic conflict of interest between them pertains to one kanal of land under survey number aforesaid which while claimed to have been purchased by respondent No. 5 way back in 1981 under registered sale deed from its. lawful owner; appears to be part of a larger parcel of land perhaps owned/possessed by petitioner, who denies the same on basis of his claimed possession over said land. In that view of the matter ordinarily it could better be left to civil court for being decided in accordance with law but for the provisions of Jammu and Kashmir Migrants Immovable Property (Preservation, Protection and Restraint on Distress sales) Act 1997, whereunder

concerned Dy. Commissioner stands vested with power to dispossess the unauthorized occupants of migrant land which by force of said Act vests in him for its preservation etc, and jurisdiction of civil courts to entertain actions in the matter stands barred under Section 8 thereof. Ordinarily therefore, the District Magistrate/Dy. Commissioner concerned had all power to pass the impugned order, which would not be amenable to jurisdiction of a civil court, after the Jammu and Kashmir Migrants Immovable Property (Preservation, Protection and Restraint on Distress sales) Act 1997 came into force. Despite that however the appeal bench of this Court while disposing of the LPA No. 147/99 as aforesaid was pleased to direct the civil court trying the matter to speed up disposal thereof, which is being relied upon by petitioner's to claim ouster of District Magistrate's jurisdiction and persuade this Court -to show indulgence under the migrants Act aforesaid. Accordingly and on a joint reading of the aforesaid direction of appeal bench and provisions of different laws applicable to the matter the petition is disposed of by providing as follows:

(a) The Id. trial court (4th Additional District Judge) Srinagar shall immediately take up the matter for consideration in terms of the DB order aforesaid and proceed ahead only after framing an issue regarding his jurisdiction to try the suit in view of the provisions of Jammu and Kashmir Migrants Immovable Property (Preservation, Protection and Restraint on Distress sales) Act 1997, and pass orders thereupon after hearing the parties.

(b) Should Id. trial Judge find that he did not have the jurisdiction to try the suit in view of aforesaid Act he would pass appropriate orders thereupon to leave the matter to be dealt with by the competent authority under aforesaid Act, otherwise he would deal with the matter speedily.

(c) The whole proceeding on the question of jurisdiction as such be positively concluded within four weeks from now. Till then the order of Division Bench clarified as quoted above shall prevail on spot..:

(d) Parties through their counsel directed to appear before the trial court on 12.3.2008.

Disposed of.

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