

Mohammad Subhan and anr. Vs. State of J and K and ors.

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Court : Jammu and Kashmir

Decided On : Oct-11-2006

Reported in : 2007(1)JKJ529

Judge : Mansoor Ahmad Mir, J.

Appellant : Mohammad Subhan and anr.

Respondent : State of J and K and ors.

Disposition : Petition allowed

Judgement :

Mansoor Ahmad Mir, J.

1. This writ petition is on the board of this Court for the last more than 12 years. A short point is involved in this petition.

2. It appears that Tehsildar (Assistant Collector Agrarian Reforms) Ganderbal, passed a mutation No. 691 in terms of Rule 4 of the Agrarian Reforms Rules, hereinafter for short Rules, whereby the entries in khasra girdawari in respect of land measuring 4 kanals falling under survey No. 60 min situated at Village Shuhama, Tehsil Ganderbal, came to be corrected and the writ petitioner Mohammad Magray came to be recorded in possession of the land as tenant right from kharief 1971 and accordingly came to be declared as prospective owner in

terms of Section 4 of the Agrarian Reforms Act, hereinafter for short the Act. Thereafter, Tehsildar (Assistant Collector Agrarian Reforms) Ganderbal, passed another mutation No. 704 under Section 8 of the Act in favour of Mohammad Magray, writ petitioner. Feeling aggrieved of the mutation orders, respondents, namely, Wali Rather, Ghulam Mohammad Rather, Mst. Zooni and Mst. Khatija had preferred an appeal against the said mutation orders before Financial Commissioner and Agrarian Reforms Commissioner, Jammu & Kashmir State, Srinagar, which came to be dismissed with direction to the Tehsildar concerned to ascertain the factum of possession on spot to the extent of each co-sharers share and also passed a restraint order directing the parties not to interfere with the possession of each other. It is profitable to reproduce operative part of the said order herein, which reads as under:

Under these circumstances, I do not find any reason to interfere with the impugned orders. Hence the appeals are rejected and impugned orders are upheld with the directions that the order under appeal applies to Walis portion only and does not interfere with the portion of Karim co-sharer. The Tehsildar concerned is directed to ascertain the factum of possession on spot to the extent of each co-sharers share and direct the parties not to interfere with each others share. The appeal files shall be consigned to records after due completion.

3. Wali Rather, one of the respondent feeling aggrieved of the order of appellate court preferred a revision petition before the Jammu & Kashmir Special Tribunal, Srinagar, and arrayed Mohammad Magray and other co-sharers, who were respondents in the appeal before the appellate court, as respondents.

4. J&K; Special Tribunal, Srinagar, set-aside the order of appellate court as also the mutation orders with further direction to Collector Land Acquisition to determine the apportionment of the compensation. It is profitable to reproduce the operative part of the order passed by J&K; Special Tribunal, Srinagar, herein, which reads as under:

The impugned order of the learned Financial Commissioner is a fit order to be interfered with by the revisional authority. The order cannot be allowed to remain in tact and the same is set aside. Reasons have already been given. The

observations are sufficient ground that the mutations should also be set aside and are set-aside. This is also necessary because the collector concerned should not get fettered by such mutations which have been attested in disregard of legal provisions and procedure, while deciding the apportionment of the compensation. The authorities have to be most careful while deciding the matters which involve the property rights of the citizens.

5. Respondent No. 1, Mohammad Magray, before Special Tribunal, feeling aggrieved of the order filed this writ petition before this Court in the year 1994.

6. During the pendency of the writ petition Wali Rather, respondent No. 5, passed away and Mst. Jani widow of Wali Rather came to be brought on record as legal representative of Wali Rather and accordingly came to be substituted as respondent No. 5 and Wali Rather came to be deleted from the array of respondents vide order dated 24.07.1998.

7. It also appears that writ petition had also prayed that mistake had crept in while recording the name of respondent No. 6 in the array of respondents and accordingly mistake came to be rectified by way of table amendment and instead of Ghulam Nabi Rather, Ghulam Mohammad Rather came to be recorded as respondent No. 6.

8. Heard.

It appears that Mohammad Magray filed an application before Tehsil-dar Ganderbal (Assistant Collector) for rectifying the entries reflected in khasra Girdawari right from 1971. Accordingly, Tehsildar passed a mutation order No. 691 dated 1st December, 1982 at Headquarter and rectified the entries and recorded Mohammad Magray as tenant in the revenue record and also declared him prospective owner in terms of Section 4 of the Act and thereafter also passed mutation No. 704 under Section 8 of the Act declaring Mohammad Magray as owner of the land measuring 4 kanals.

9. Respondents preferred an appeal before the appellate court and the appellate court held that attesting officer had to conduct spot verification which he had not

done. However, the ex-owner, Wali Rather, had not challenged the impugned orders and the mutation orders had not affected the rights of Karim Rather (co-sharer) in any way and accordingly dismissed the appeal with the observations, referred hereinabove.

10. Thereafter Wali Rather feeling aggrieved of the said order filed a revision petition before the J&K; Special Tribunal and the Special Tribunal set-aside the mutation orders and the appellate court order with the direction to the Collector Land Acquisition to make apportionment of the compensation.

11. It appears that during the pendency of the revision petition it was brought to the notice of the Special Tribunal that land in question came to be acquired in terms of provisions of Jammu & Kashmir Land Acquisition Act and also award came to be passed.

12. The crux of the matter is whether Tehsildar has exercised jurisdiction as per the law and whether the mutation number 691 came to be passed in terms of the mandate of Rule 4. It is profitable to reproduce Rule 4 of J&K; Agrarian Reforms Rules, 1977, herein which reads as under:

4. Disputes relating to girdwari entries:

(1) Where, in the course of attestation of mutations under Chapter IV, any party objects to the correctness of any entry in the khasra girdawari (whether made under the earlier rules or Standing Order No. 22), a Revenue Officer, not below the rank of Tehsildar, shall, subject to the provisions of Sub-rules (2), (3) and (4) and after giving an opportunity of being heard to all the concerned, conduct an enquiry on spot in respect of such mutation and give his finding thereon either confirming the impugned entry or indicating what entry should be made.

(2) Where the impugned entry mentioned in Sub-rule (1) has been made by or under the order of a Tehsildar or a Revenue officer of a higher class, the Tehsildar disposing of a mutation under Chapter IV shall act on the basis of such entry, it being open to the party aggrieved by it to object to the entry in an appeal against the final order passed on such mutation.

(3) Where, in the course of enquiry under the foregoing sub-rules, objection raised against an entry relating to personal cultivation is admitted by the party in whose favour such entry is made, the Revenue Officer shall, before accepting such objection and admission, record his finding and the reasons therefore that such objection and admission are not a device to defeat the provisions relating to restrictions on alienation of land provided by the Act.

(4) Nothing herein contained shall empower any Revenue Officer to pass, or to act upon any order directing an entry relating to rent otherwise than in accordance with the provisions of the Jammu and Kashmir Tenancy Act, Samvat 1984.

13. Rule-4 of the Rules created the obligation on the Revenue Officer not below the rank of Tehsildar, to record finding after providing opportunity to the concerned affected persons and after conducting enquiry on spot. The Tehsildar was bound by the mandate of Rule 4 of the Rules to conduct enquiry on spot. It appears that it came to be passed at the headquarter.

14. Rule 4 of the Rules is the provision under which dispute relating to Girdawari entry could be resolved but Revenue Officer has to follow two prerequisites; firstly the opportunity of being heard is to be afforded to all the concerned; and secondly the enquiry had to be conducted on spot.

15. This provision of law mandates that the power is to be exercised with due care and caution as disputes relating to Girdawari entries of Kharief 1971 have bearing on the vesting of the land in the State and on the rights of land owners which got extinguished in terms of the mandate of the Act. Keeping in view the statutory back drop of the Rule 4 the dispute relating to the Girdawari entries are required to be settled that too by officer not below the rank of Tehsildar.

16. Admittedly Tehsildar had passed mutation at the headquarter and had not conducted enquiry on the spot and had also not recorded evidence. Thus the very foundation of the case fails.

17. In the given circumstances, Tehsildar had failed to exercise jurisdiction vested in him while passing the impugned mutation orders.

18. Appellate court had also fallen in error for the following reasons:

The finding that Wali Rather, ex-owner, had not challenged the mutation orders by the medium of appeal is factually and legally incorrect. Wali Mohammad Rather, ex co-owner was figuring as appellant No. 4 before the appellate Court.

19. Appeal was also time barred on the face of it because appeal came to be filed after more than five years without condoning delay and in breach of Rule 52 of the Rules the appellate court decided the appeal. It was obligatory on the part of the appellate court to dismiss the appeal on the ground of limitation or if the appellate court was of the view that orders under appeal were necessarily to be revised he had to submit the case through proper channel to the revisional authority in terms of Rule 52 of the Rules. It is profitable to reproduce Rule-52 of the Rules, herein which reads as under:

52. Case where appeal fails on ground of limitation.-Where the appeal is dismissed on the ground of limitation, the appellate authority shall, if he be of the opinion that the order appealed from is one which should be revised, submit the case through proper channel to the revisional authority with a report why the order appealed from needs being revised and what the revised order should be. On receipt of this report, the revisional authority shall act as if an application for revision under the Act had been made to him.

20. The Tribunal had also fallen in an error while deciding the revision petition. He had no jurisdiction and power to direct Land Acquisition Collector to decide apportionment of the compensation because award came to be made and payment came to be disbursed and the parties had not invoked the jurisdiction of Land Acquisition Collector in terms of the mandate of Section 18 or 31 of the Land Acquisition Act. Thus, the order of Tribunal to this extent is also illegal and wrong.

21. Keeping in view the above discussion, I am of the considered view that this writ petition merits to be allowed. Accordingly, all the orders i.e. mutation No. 691 and 704, appellate courts order dated 27.07.1993 and revisional courts order dated 25.04.1994 are hereby quashed. However, it is made clear that legal heirs of Mohammad Magray are at liberty to seek appropriate remedy for rectifying the

entries which were recorded in 1971 notwithstanding the fact that land in question came to be acquired. Further, it is also provided that respondents i.e. legal representatives of Wali Rather and Karim Rather are also at liberty to seek appropriate remedy in order to seek the redressal of their grievances, by the medium of appropriate remedy, if any available.

Accordingly, this petition is disposed of.

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