

Abdul Majid Dar and anr. Vs. State of J and K and ors.

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Court : Jammu and Kashmir

Decided On : Jul-19-2003

Reported in : 2004(1)JKJ106

Judge : Muzaffar Jan, J.

Acts : [Constitution of India](#) - Articles 14 and 226

Appeal No. : OWP No. 124/1993

Appellant : Abdul Majid Dar and anr.

Respondent : State of J and K and ors.

Advocate for Def. : M.A. Beigh, DAG for Official Resp.,; Z.A. Shah, Adv. for Private Resp./Intervenors

Advocate for Pet/Ap. : G.A. Lone, Adv.

Disposition : Petition dismissed

Judgement :

Muzaffar Jan, J.

1. The Writ Petition has been submitted praying for quashing the impugned Government Order No. 63-TMS of 1992 dated 1.7.1992 and order No. TSM/DD42/GD-PPO dated 3.12.1992 and also for direction, to the respondents to

pay compensation to the Petitioners for land measuring 6 Kanals 4 Marias situated at Nunwan Pahalgam for Plot Nos. 2 and 5 situated at Lal Kothi Pahalgam. The petitioners have also prayed that the respondents be directed not to evict the petitioners from plots 1,3,4 and 6 situated at Lal Kothi Pahalgam or demolish the structure existing thereon, and to allot petitioners the land measuring one and a half marlas each at an appropriate place.

2. It seems that for development of Pahalgam Master Plan, land measuring 6 Kanals and 4 Marias under Survey No. 63,330/63 situated at Nunwan, of the petitioners was acquired and in exchange petitioners were allotted one and a half Kanals of land each vide Government Order No. 63-TMS of 92 dated 1.7.1992 near the location known as Lal Kothi at Pahalgam. In the order dated 1.7.1992, the allotment of land was made without identifying the Serial numbers of file plots and, accordingly, an addendum was issued under No. TSM/DD-42/GD-PPO dated 3.12.1992 and the land was allotted indicating the Serial numbers of the plots as under:--

Kanya Lal and Smt. Uma Devi Plot No. 1 Abdul Majid Dar Plot No. 3 Abdul Gaffar Dar Plot No. 4 Abdul Rouf Mir Plot No. 5 Mohammad Shafi, & Ab. Rehman Dar Plot No. 6

3. Aggrieved by the allotment of plot Nos. 1, 5, and 6 to the private respondents, the petitioners filed writ petition on the main submissions that their 6 Kanals and 4 Marias of land under Survey No. 63, 330/63 situated at Nunwan was acquired by the Government for implementation of the Pahalgam Master Plan and one and a half Kanals of land was allotted in exchange to each petitioner near Lal Kothi, vide order No. 63-ISM of 92 dated 1.7.1992. In the said order, the allotted land was not identified either by survey numbers or with sufficient details to locate the exact plots of land. Accordingly, an addendum under No. TSM-UD 42/BO-PPO dated 3.12.1992 was issued in which the plot numbers of the land allotted to each of the petitioners was also given. Vide this addendum petitioner No. 1 was allotted plot No. 3 near Lal Kthi Pahalgam and the petitioner No. 2 was allotted plot No. 4 near Lal Kothi Pahalgam.

4. The core submission of the petitioners is that although 6 Kanals and 4 Marias of land of the petitioners situated at Nunwan Pahalgam was acquired without payment, of any compensation, the respondents are bound to pay compensation and since the petitioners are shown in possession of Plot Nos. 1 and 6, since more than sixty years in the revenue record and have constructed structures over the land, therefore, the allotment of Plot No. 1 to Kanya Lal and Uma Devi be quashed and similarly, the allotment of Plot No. 6 to Mohammad Shafi and Abdul Rehman be also quashed. In short, the prayer of the petitioners is that they be given compensation for the land measuring 6 Kanals and 4 Marias which has been acquired by the State and the land under Plot Nos. land 6 be also permitted to remain in their possession, besides the plots 3 and 4 which have been otherwise allotted on exchange to the petitioners. On these grounds, it is submitted that the Government Order of addendum No. TSM-UD-42/BO-PPO dated 3.12.1992 be quashed and the petitioners be held entitled to retain the possession of the allotted land in terms of Government order No. 63-TSM of 92 read with the letter of Deputy Commissioner, Anantnag No. IA(198)903-07 dated 23.9.1986.

5. While admitting acquisition of land of the petitioners, the stand and submission taken by the official respondents is that on acquisition of 6 Kanals and 4 Marias of the land of the petitioners situated at Nunwan, allotment of alternate land in exchange was made in favour of the petitioners vide Government Order No. 63-TSM of 92 dated 1.7.1992 and by virtue of this order, the petitioner No. 1 was allotted one and a half Kanals of land near Lal Kothi and the petitioner No. 2 was also allotted one and a half Kanals of land near Lal Kothi. It is further submitted that since the description of the land was not given in the order of allotment, therefore, in order to facilitate the identification of the land allotted to the petitioners, an addendum was issued on 3.12.1992 and the plots of land were identified. By this addendum, petitioner No. 1 was allotted Plot No. 3 and petitioner No. 2 was allotted plot No. 4. It is further submitted that the order of allotment and addendum has been passed by the competent authority.

6. The stand taken by the private respondents (intervenors), Kanya Lal and Uma Devi in whose favour Plot No. 1 has been allotted, is that after receiving the possession of plot No. 1, they have sold that the plot vide sale deed dated 06-06-

2000 registered on 07-06-2000 in favour of Haji Ghulam Ahmad Badroo and the purchaser is in possession of the said plot. It is further submitted that mutation of Haji Gh. Mohammad Badroo has also been entered in the revenue department since long,

7. The stand taken by private respondents Mohammad Shafi and Abdul Rehman is that initially the petitioners encroached upon plots 3 and 4 and the same plots 3 and 4 were allotted to the petitioners in the allotment orders No. 63-TSM of 92 dated 01-07-1992. The petitioner have no right to seek allotment of plot No. 6 which has been validly allotted to respondents (intervenors) Abdul Rehman and Mohammad Shafi, who are in continuous possession after the date of allotment.

8. Heard learned counsel for the parties and also the intervenors at length.

9. Learned counsel for the petitioner has placed reliance on the letter of Deputy Commissioner dated 23.9.1998 and submitted that since it is admitted in official record that Plot Nos.1 and 6 are in physical possession of petitioners since last sixty years, therefore, the said plots could not have been allotted to respondents Kanya Lal, Uma Devi, Mohammad Shafi and Abdul Rehman.

10. The submission, though attractive, cannot be accepted for multiple reasons. On the admitted facts, it is shown that under the Pahalgam Master Plan, 6 Kanals and 4 Marias of land of the petitioners situated at Nunwan Pahalgam was acquired and vide Government order No. 63 TSM of 92 dated 1.7.1992 followed by addendum order No. 68-UD-42/GO-PPO dated 3.12.1992. It is also admitted that plots 3 and 4 measuring one and a half Kanals each, was allotted to the petitioners. The petitioners, on the one hand, ask for compensation for acquisition of their 6 Kanals and 4 Marias of land and on the other hand, feel contended with the exchange arrangement of allotment of one and a half kanals of land under Plot No. 3 and one and a half Kanals under Plot No. 4, without challenging the initial order of allotment No. 63-TSM of 92 dated 1.7.1992. This conflicting submission made by the petitioners is neither legally permissible nor can be granted in the facts of the present Case.

11. The petitioners have based their claim to plot Nos. 1 and 6 on the basis of continuous possession of sixty years. There is no authentic Revenue record to show the continuous possession of the petitioners over Plot Nos.1 and 6 for last sixty years. The observation made by Deputy, Commissioner Anantnag in his letter dated 23.9.1986 cannot be made basis to create proprietary rights in Government land in favour of the petitioners in the present proceedings. The factual aspect 'whether the petitioners are in actual physical and continuous possession of State land Since sixty years' is a matter of fact which can be ascertained wily after the evidence in this regard is established in the proper forum. In any case, the writ jurisdiction cannot be converted into a suit for declaration to establish ownership rights in the State land. Moreover, Perusal of the official communication dated 23.9.1986, it is clear that the Deputy Commissioner has framed his opinion of possession on plots No. 1 and 6, of petitioners on the basis of some report of Tehsildar regarding which report is not on the file to indicate the grounds on which the Tehsildar gave his report. Merely because Tehsildar reported certain facts to the Deputy Commissioner and the Deputy Commissioner without perusal of the supporting documents, reflected the same in the communication dated 23.9.1986, cannot be taken as, established facts to persume proprietary rights in the State land in favour of the petitioners. In any case, the recommendation made by Deputy Commissioner vide his letter dated 23.9.1986 looses its significance in view of the subsequent decision of the Government taken vide order dated 63-TSM of 92 dated 01-07-1992 vide which order Plot Nos. 1 and 6 were allotted to the private respondents, because it can safely be inferred that the recommendation made by the Deputy Commissioner in the year 1986 was taken to Consideration by the Government while passing the order dated 1.7.1992, and the stand of the possession of the petitioners over the State land for the last sixty years, was not accepted

12. It is a settled position of law that in the matters of allotment, the Government cannot discriminate while making allotments amongst the persons similarly situated. There is no law, statute or constitutional guarantees to allot a specific plot to a specific person and as it is not required to be adjudicate that a particular plot should have been allotted to the petitioner on preferential basis, therefore, the same cannot be judicially reviewed. The petitioners having agreed to the nature

and process involved in the allotment of land, the discretion to allot the plots has to be left entirely to the Government, subject only to the one limitation that the allotment is made to all persons of equal land who are similarly situated. The writ petitioners have also been allotted plots 3 and 4 near Lal Kothi in the same manner in which the private respondents have been allotted near Lal Kothi. That being so, a judicial review is not possible to ascertain the advantages of the location of a particular plot over the other plot. The court cannot sit as an allottee of plots in the writ jurisdiction. It is pertinent to observe that although the writ petitioners assert that they are in possession of the plot Nos. 1 and 6, for more than sixty years, they want creation of rights and declaration of ownership by adverse possession, without using the words adverse possession in the writ jurisdiction, which cannot be done by determine the title on the basis of alleged adverse possession.

13. Learned counsel while making submissions has stated that he does not press for quashing the order No. 63-TSM of 92 dated 1.7.1992. The submission is- taken on record and permitted. In view of the fact that the relief to quash the initial order of allotment is not pressed, which means, that the initial Government Order No. 63-TSM of 92 dated 01-07-2003 remains intact, the subsequent order in the form of addendum No. 68-UD-,42/GO-PPO dated 3.12.1992 which is an outcome of the order dated 01-07-1992 merely indicating the the location of the plots, cannot be quashed, for the simple reason that having accepted the alternate land in exchange, the petitioner cannot dictate to the Government and claim a Specific plot at a place of the choice and to their liking.

14. The petitioners, in relief Clause B and C, have prayed that compensation be paid for plots 2 and 5 and they may not be evicted from plot Nos. 1,3,4 and 6. In short, the petitioners want that besides the plots given to the petitioners in exchange under Plots 3 and 4, the entire land under Plots 1,2 5 and 6 be given to the petitioners, which prayer cannot be permitted on the facts and circumstances and for the reasons given above.

15. In view, of the above, the writ petition is without any merit and is, accordingly, dismissed alongwith connected CMPS.

