

Shamas Din Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Dec-31-2007

Reported in : 2008(2)JKJ176

Judge : Hakim Imtiyaz Hussain, J.

Appellant : Shamas Din

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

Hakim Imtiyaz Hussain, J.

1. The dispute between the parties is on land measuring 19 kanals and 16 marlas of land falling in Khasra No. 21 min village Rount, Tehsil and District Udhampur. The land is state land. The petitioners allege that the land along with adjacent land was owned by the villagers of Gangera, Tehsil and District Udhampur, but the Maharaja declared it as Rakh.

2. After independence the Government wise cabinet Order No. 751-C of 1950 dated 6.7.1950 ordered that the land (i.e. land in Rakh Rount, Kantli, Sanshu, Badali, Jaganoo and Jhanoa which were private land but declared Rakhs and for which no compensation was paid to the owners) should be restored. Out of the

land which became thus available, land measuring 40 kanals 10 marlas under Survey No. 15, 16 and 21 (Plot No. 1) was allotted in favour of the nine families headed by one Salah Mohd, uncle of the petitioner. After the land was given to these families 7 kanals and 13 marlas were retained by said Salah Mohd while as 7 kanals 13 marlas were allotted to petitioners father namely Ali Akbar. Salah Mohd was issueless and after his death his land came in possession of the petitioner under a will of Salah Mohd. Petitioner's father has also died and his land too has come under the petitioner's possessions?

3. Respondent Jodh Singh has set up an entirely different case in respect of the said land. According to him he originally belongs to village Khari Dharamsala, Tehsil Poonch, the village with this part of the State but is located near LOC area line with zero distance from P.O.K area. Due to disturbances he had to migrate from the area. So he came to and settled in Udhampur, where the disputed land (19 kanals and 16 marlas under Survey No. 21) was allotted to him by the Provincial Rehabilitation Officer, Jammu vide Order No. 2805 dated 31.1.1958 under Govt. Order No. 578-C of 1954. Since then the land, according to him is in his possession.

4. Petitioner refutes the claim of Jodh Singh and states that there is no allotment order in favour of Jodh Singh and that the Govt. Order 578-C of 1954 is inapplicable in the present case.

5. The matter went before various revenue authorities where various orders came to be passed from time to time. It also was heard and decided by a Single judge of this Court. Ultimately the matter came up before Division Bench where the orders passed by the Revenue Officers as also the judgment of the Single Bench of this Court was set aside and the Court directed fresh enquiry in the matter. Learned Division Bench on 29.1.1999 held-

Wo, after roving through the record, find that on these questions of fact, the authorities were at divergence. Therefore, we set aside the order of the learned Smele Bench, as well as of the Tribunal and Commissioner Agrarian Reforms, and all the orders, including mutations, passed by different authorities in this matter and send the matter back to the Deputy Commissioner Udhampur, who will

allocate the same to a competent officer, not below the rank of Tehsildar, for a denovo enquiry. The authority, to whom the Deputy Commissioner refers this matter, will after hearing the parties, return a finding with reasonable dispatch. Parties through their learned Counsel are directed to appear before the Deputy Commissioner Udhampur on 25.2.1999.

6. In compliance to the directions of the Division Bench, Deputy Commissioner concerned appointed Addl. Deputy Commissioner as enquiry officer. The matter has now been examined by him and a detailed report has been given wherein the Commissioner has found Respondent Jodh Singh entitled to hold the land. The petitioner is aggrieved of it, as according to him, the report is against the facts & the law. He filed a revision petition, before the Divisional Commissioner, Jammu challenging the legality of the report of Additional Deputy Commissioner, but the same got dismissed on 23.3.2004.

7. The present petition has now been filed by the petitioner to challenge the order dated 23.3.2004 of the Divisional Commissioner as also the order dated 19.4.2007 of the court below. Various pleas have been taken by the petitioner to assail the orders.

8. Respondents have on the other hand supported the orders impugned in the petition.

9. Heard. Ld. Divisional Commissioner has while dismissing the revision observed as under:

The case came up for arguments on 26.12.2003. The counsel for the petitioner submitted that I will not argue the case as instructed by the petitioner. He left the Court. The court asked petitioner whether he wants to engage some other counsel or he want to argue himself. He replied that he will argue the case himself. The respondent has a piece of land measuring 12 kanals and 12 Marias in village Karmara Tehsil Haveli. This village is part and parcel of the J&K; State and has not gone to POK. As such the respondent is not displaced person and not entitled for any allotment. Me further stated that the allotment if any made in favour of respondent is against law. The PRO has reported that no allotment was made

from his office to the respondent.

The report of the Assistant Commissioner Udhampur clearly reveals that the allotment is factitious. The order of Division Bench of Hon'ble High Court of J&K; has set aside all the orders passed in the case between the parties. The Counsel for the respondent submitted that the order of Additional Deputy Commissioner Udhampur is detailed one and has reported the matter to the Deputy Commissioner Udhampur after discussing all the points raised by the Hon'ble High Court of J&K; in his order dated 21.05.1999. The respondent is a displaced person and has rightly allotted the land in District Udhampur. Relief has also been given to the respondent. The Hon'ble High Court has set aside all the orders and directed the Deputy Commissioner Udhampur to get the matter enquired into the issues framed by the Hon'ble High Court. The Deputy Commissioner got the matter enquired from Additional Deputy Commissioner Udhampur and after receiving the report dated 19.04,2001 from the Additional Deputy Commission Udhampur put his signature and seal on 09.11.2001 in token of acceptance of report being correct. From the previous orders passed by the various courts and the order dated 09.11.2001 it is established that the respondent is a displaced person and entitled for the allotment and land has been allotted in accordance with the provisions of law.

I have gone through the record placed on file as well as the file of lower court and have given due consideration to the arguments put forth by the petitioner himself and counsel for the respondent. The perusal of record reveals that the petitioner has filed the petition without certified copy of the order dated 09.11.2001 passed by the Deputy Commissioner Udhampur. The petitioner was directed on 06.08.2002 to file the certified copy before the Court on or before the next date of hearing i.e. 12.8.2002. The petitioner failed to file the certified copy till date. On this score the petition deserves to be dismissed. The Additional Deputy Commissioner Udhampur in his report which has been accepted by the Deputy Commissioner Udhampur clearly reveals that the respondent under sub Para of Para 3 of order No. 578/c entitled to retain the whole 28 kanals of allotted land. It has also been established that village khari Dharamsal and Karmara had come under de-population scheme and become unfit and unsafe for rehabilitation since

1966. It is also established that the respondent remained in continuous possession of the allotted land from the date of allotment till he was evicted forcibly. The petitioner failed to point out any irregularity, illegality, and any error in the order dated 09.11.2001 of the Deputy Commissioner, Udhampur read with report dated 19.4.2001 of Additional Deputy Commissioner Udhampur. In view of the foregoing reasons the revision petition is hereby dismissed and the decision of Deputy Commissioner, Udhampur is upheld. Status quo if any issued by this Court stands vacated. A copy of order along with the file of lower court be sent to Deputy Commissioner, Udhampur for necessary action. Let the file be consigned to record after its due completion.

10. The Divisional Commissioner has dismissed the revision on two main grounds; firstly that the petitioner failed to file the certified copy of the Deputy Commissioner, Udhampur; secondly that the petitioner failed to point out any irregularity, illegality and any error in the orders. So far the first ground is concerned; I don't find it was proper for the Divisional Commissioner to dispose of the petition on this technical ground. Keeping in view the nature of controversy involved in the matter and the observations of the Division Bench as also the findings of the Additional Deputy Commissioner, the matter should have been heard on merits and should not have been disposed of on technicalities.

11. On the second ground too I found not a proper application of mind by the Divisional Commissioner. In the beginning of the order, he has referred to the grounds raised by the petitioner. He states that the petitioner alleges that the respondent was not a displaced person and thus not entitled for any allotment and that allotment if any made in favour of respondent is against law, but at the end he has, without referring to the objections of the petitioner, observed that he has failed to point out any illegality in the order.

12. From the order impugned, it appears the petitioner counsel has not argued the case and the petitioner himself has made submissions, but even the submissions so made have not been considered and properly appreciated by the Divisional Commissioner. He has accepted the order and upheld it without going to the merits and without considering the case of the petitioner.

13. Certain important issues had been raised by the petitioner like the legality of the order of Additional Deputy Commissioner, legality of allotment of the land in favour of Jodh Singh, issue whether Order No. 578-C of 1954 applied in the case, etc. but these issues have neither been considered nor decided by the Divisional Commissioner at all. He has in a cryptic order upheld the order of the Additional Deputy Commissioner without going to these issues.

14. In the circumstances the petitioner has rightly contended that the Divisional Commissioner has not properly exercised the jurisdiction which vested in him.

15. In the circumstances, this petition is allowed; the order under challenge dated 23.3.2004 passed by the Divisional Commissioner is set aside.

16. The Commissioner is directed to hear the matter afresh and on hearing the parties disposed of the petition as far as possible within a period of three months from the date, this order is served on him.

17. Ordered accordingly.