

Before Shaleen Kabra, IAS, Financial Commissioner (Revenue) J&K
/ Commissioner Agrarian Reforms, J&K,

File No.

699/FC-AP

Date of Institution

24.05.2022

Date of Decision

01.06.2022

1. Kuldeep Raj S/o Sh. Om Parkash R/o Irwan Khetar, District Rajouri. Through attorney holder Sh. Om Parkash S/o Sh. Nialu Chand R/o Irwan Khetar, District Rajouri.
 2. Sh. Om Parkash S/o Sh. Nialu Chand R/o Irwan Khetar, District Rajouri.
- (...Petitioners)

Versus

1. Anil Kumar
 2. Sudhir Gupta
 3. Manmohit Gupta
- All sons of Late Sh. Ramesh Chander All residents of Mohalla Navan, District Rajouri.

(...Respondents)

In the matter of: Application for transfer of appeals titled i) Kuldeep Raj V/s Anil Kumar & Ors, ii) Anil Kumar V/s Kuldeep Raj and iii) Kuleep Raj V/s Anil Kumar & Ors from the court of learned Additional Deputy Commissioner, Collector, (with powers of Commissioner Agrarian Reforms), Rajouri to some other court having jurisdiction in the matter.

Present:

1. Advocate K.S. Puri for petitioners.
2. M/s Danish Butt & Associates for respondents.

ORDER

1. Petitioners, herein, have filed this transfer application for transfer of appeals titled i) Kuldeep Raj V/s Anil Kumar & Ors, ii) Anil Kumar V/s Kuldeep Raj and iii) Kuleep Raj V/s Anil Kumar & Ors from the court of Ld. Additional Deputy Commissioner, Rajouri to some other court having jurisdiction in the matter on the ground that the above said appeals against attestation of mutation nos 134, 163 & 187 of village Irwan Khetar, Tehsil & District Rajouri were pending before the court of Ld. Deputy Commissioner, Rajouri who vide order dated 08.03.2022 had kept all the three appeals pending due to the pending civil litigation between the same parties with regard to the same subject matter of dispute but, in the meantime, the petitioners received a summon from the court of Ld. Additional Deputy Commissioner, Rajouri for appearance on 17.05.2022. Further, on 17.05.2022, when petitioner no. 2, herein, appeared before the court below, the Presiding Officer of the court below neither gave the copy of the cases in which summons were issued nor gave the next date of hearing. Counsel for petitioners further pleaded that when the cases were pending before the superior court, the same could not have been heard before the court of Ld. Additional Deputy Commissioner, Rajouri. Counsel for petitioners reiterated the same in oral arguments, pointing out the strange manner in which proceedings are being conducted, without following the established system.

2. On the other hand, counsel appearing for respondents stated that petitioners appeared before the court below, participated in the proceedings and cannot thus plead ignorance. Counsel for respondents produced copy of order dated 12.04.2022 by virtue of which above said files had been transferred to the court below as also the order sheet of the court below.
3. Parawise reply has been received from the Additional Deputy Commissioner.
4. Heard the arguments put forth by counsel for both the sides and also perused the record appended with the file as well as order sheet of the files pending before the court below.
5. In his parawise reply to the allegations of the petitioner that the court below *"neither gave copy of the cases in which notice was issued nor gave the next date of hearing and simply told the appellant no. 2 that he can come after some days and take the decision of the cases"*, the Presiding Officer has replied as follows:- *"During the court proceedings on 17.05.2022 appellant (petitioner herein) appeared in person and respondent no. 1 herein along with counsel appeared before this court and detailed oral arguments were held by the counsel for respondents. Appellant (petitioner herein) was directed to bring his counsel on any working day before 31.05.2022 for arguing the case and on 23.05.2022 the counsel for petitioner appeared before the court and put forth his oral arguments with regards to the appeals."*
6. The certified copy of the order sheet shows that the arguments were advanced by the counsel for respondent on 17.05.2022 whereafter the matter was reserved for orders while keeping the matter 'open'. Thereafter, on a different date, the petitioners' counsel argued the matter and again the matter was reserved for orders with 'open date.' The above brings out that proceedings are being conducted in a very unusual and slipshod manner, without following the essential Principle of Natural Justice and giving due opportunity to the parties to argue the case in presence of the other party, with opportunity to advance counter-arguments. Not only that, keeping the case open for decision, that too first on hearing only the counsel for respondent and again after hearing only the counsel for petitioner in absence of the respondents, is against the established procedure with respect to conduct of cases in a quasi-judicial forum. In fact, there is no concept of an open date as that leaves the parties to dispute in a perpetual state of suspense and uncertainty, and indeed, the entire matter susceptible to manipulation, apart from the parties not getting to know of the final order at the time of announcement.
7. It is also noticed that while the Deputy Commissioner Rajouri had directed on 08.03.2022 to keep the appeals pending till decision of civil court, after the transfer of file to Additional Deputy Commissioner, Rajouri and appearance of parties on 17.05.2022, the court below seemed to be in a tearing hurry to decide the matter. The Additional Deputy Commissioner, Rajouri was specifically asked to provide copy of order sheet too but he chose not to do so.



8. Prima facie there are many a procedural violations. Also, the possibility of complicity of the officials cannot be ruled out, thus requiring need to inquire into the matter further.
9. In view of the above, this transfer application is allowed and the above said appeals are transferred to the court of Deputy Commissioner, Rajouri for further disposal under law. Both the parties shall present themselves before the Deputy Commissioner, Rajouri on 28.06.2022. No fresh summons shall be issued as both parties are present before this court. File be consigned to records after its due completion.

Announced
01.06.2022


Shaleen Kabra IAS
Financial Commissioner Revenue
J&K