

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

File No.
17/FC-AP

Date of Institution
27.11.2020

Date of Decision
06.12.2021

In the case of:

1. Abdul Rashid
2. Abdul Majeed Sons of Khalil Bhat Residents of Watapora Bandipora
....Appellants.

Versus

1. Kuldeep Koul.
2. Opendar Koul Sons of Dhanwati and Shri Dhar Koul Residents of Kaloosa Bandipora.
...Respondents

In the matter of:-

Appeal against the order dated 28/01/2020 of Deputy Commissioner/ District Magistrate Bandipora passed on an application filed by the respondents to the extent of land measuring 4 kanals and 01 Marla under Survey No 218 of Village Kaloosa Bandipora.

Present: 1. Adv. Momin Salati for appellants.

2. Adv. Altaf Mehraj for respondents.

ORDER

Briefly stated facts of the case are that District Magistrate Bandipora Vide order dated 28.01.2020 directed eviction of the unauthorized occupants from land covered under Khasra no's 218 (4K-1M) and 259 (3K-4M) of estate Kaloosa Tehsil Bandipora by holding it as migrant land. The illegal occupants of Kahcharaie land under Khasra no 260 (05K-02M) have also been directed to be evicted as per the report of field staff.

2. The appellants whose concern is with regard to *Shamilat* land covered under Khasra no 218 only have preferred the instant appeal by holding that the land in question is not the migrant property as same continued to be in their possession even prior to the enforcement of J&K Migrant Immovable Property (Reservation, Protection and Restraint on distress

Sales) Act, 1997 (herein after Act of 1997). Respondents were also summoned who caused presence through their counsel and the matter was argued by both the sides.

3. Ld. Counsel for appellants vehemently argued that District Magistrate has wrongly exercised jurisdiction by invoking powers under the Act of 1997 which at all was not applicable to the case in hand.
4. Ld. Counsel for the appellants justifies the belated submission of the appeal (beyond prescribed period of 15 days) on account of COVID-19 pandemic. It is also said that the impugned order has been passed at their back and even without summoning the appellants. Ld. Counsel has relied upon the judgment of **Hon'ble. Apex Court titled Collector Land Acquisition Anantnag versus Mst. Khatiji - 1987 AIR (SC) Page 1353** to plead his cause of having preferred the appeal within time. The judgment of Hon'ble High Court of J&K titled **Punjab National Bank Versus Farooq Ahmed Malik & Ors dated 06.06.2006** has also been relied upon to plead that court can exercise inherent powers in order to do justice. The land in dispute is said to be "**Shamilat, Rule 5**" in the possession and occupation of appellant's forefathers. The proceedings before the court of District Magistrate are said to have been held by the clerk and even notices and bailable warrants stand issued by the orders of the clerk. Appellants counsel rejects the application of Act of 1997 to the instant case by pleading that the land is *Shamilat* land and both the parties are co-sharers, among whom the Act has no applicability. (**Pushkar Nath Koul Versus State of J&K and Ors OWP No. 640/2025, C. M. P Nos 858/2005 & 53/2006, Date of Decision 29.10.2008**). Again relying upon the judgment of **2010 (2) SLJ759** titled **Rajeev Verma & Anr Versus State & Ors**, (LPA No. 179/2005 Dated 04.03.2010) Ld. Counsel questions the legality of the impugned order alleged to have been passed without any enquiry with regard to possession claimed by the appellants from the year 1976. Ld. Counsel in his memo of appeal has stated that as per the mandate of Migrant Act and a prerequisite for filing of the appeal, the appellants have handed over the possession of the land to the concerned authorities. The impugned order is alleged to have been passed without participation of the appellants in the proceedings before the District Magistrate. A prayer has been made to remand the matter back to District Magistrate for a *denovo* enquiry.
5. Respondent Counsel on the other hand in his written objections has questioned the maintainability of the appeal on two grounds:-
 - i) Appeal not having been filed within the prescribed period of 15 days and;
 - ii) Possession of suit land not having been surrendered before the competent authority.

The argument of the Ld. Counsel for the appellants that proceedings have been held by the clerk has been resisted by the other side by arguing that the appellants at no point of time have objected to the proceedings, which now have lost relevance as final order has been passed. It is also said that the appellants on one hand argue that the respondents are the co-sharers of appellants and as such Act of 1997 shall not apply but in their memo of appeal, it is pleaded that the respondents are strangers having at all no concern whatsoever with the land in question, thus a contradictory stand of appellants. It is also argued that the unauthorized occupation of the appellants was ascertained after proper enquiry and demarcation and ample opportunity was provided to the appellants to produce any document before the District Magistrate. Respondents lay their claim to the suit land by pleading that they are the legal heirs of Late Dhanwati who was the owner in possession of the land falling under Khasra no 218. It is also said that corrections in the revenue records have also been made by removing the illegal entry of the father of the appellants from the revenue records and entry made in the name of the respondents. The applicability of Act of 1997 in the instant case is admitted by the appellants once they have chosen to prefer the appeal u/s-7 of the said Act. Ld Counsel also said that appellants were present before the District Magistrate and even their statement has been recorded.

7. In rebuttal, Ld Counsel for appellants argued that there is a Status quo order issued by the Hon'ble High Court and as such possession cannot be disturbed and with regard to limitation, it is said that the appellants were condemned unheard by the District Magistrate and as such limitation will not apply. It is also said that the impugned order has been passed by District Magistrate by wrongly applying the Act of 1997, so there was no remedy available for the appellants but to prefer the instant appeal.
8. Heard.
9. The argument of Ld. Counsel for appellants that the District Magistrate has wrongly exercised his jurisdiction as the Act of 1997 is not applicable in the instant case, is not a reasoned argument, as the respondents (who are migrants) are the legal heirs of Late Dhanwati who was the owner in possession of land falling under Khasra No. 218 and District Magistrate in the impugned order has categorically held after demarcation that the land under Khasra No. 218 is under the illegal occupation of the appellants herein who have failed to show the documentary proof in terms of consent/sale deed on behalf of migrants.
10. The aspect of the proceedings in the lower court being held not by the presiding officer but by his clerk has been highlighted by counsel for appellant to argue that the proceedings have been vitiated. The respondent counsel on the other hand has stated that the fact of participation of the

appellants in the proceedings throughout, right upto the final order makes this objection of appellant inconsequential. The examination of records indicate that the appellants have participated in the proceedings before the presiding officer, their statement recorded and matter also argued through the counsel. The principle of natural justice has been fulfilled, therefore, such objections have only technical relevance and it is held that the impugned order does not suffer from infirmity on grounds of procedural deficiencies.

11. The provision for preferring an appeal under the Act of 1997 is contained in section - 7 of the Act, which reads as-

1. "Any person aggrieved of an order passed under this Act, may file an appeal before the Financial Commissioner, Revenue:

Provided that no such appeal shall be entertained against-

(a) an interlocutory order;

(b) an order of eviction unless possession of the property is surrendered to the competent authority;

(c) an order of payment of compensation determined under this Act unless the amount of compensation is deposited with the appellate authority.

2. The period of limitation for filing of an appeal under sub-section (1) shall be 15 days from the date of order appealed against."

12. In the instant case, the impugned order is dated 28.01.2020 and the appeal has been preferred on 27.11.2020 i.e. much after the prescribed period of 15 days. However, Ld. Counsel has cited COVID-19 restrictions and the impugned order having been passed at his back, the reasons for not preferring the appeal within the prescribed period. Ld. Counsel has also relied on the judgment of Hon'ble Supreme Court - **Suo Moto Writ Petition (Civil) No (3) of 2020- In RE: COGNIZANCE FOR EXTENSION OF LIMITATION**) to justify the belated submission of the appeal. While going through the said judgment, it is said that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. In the present case, the order impugned is dated 28.01.2020 and obviously the judgment referred to above is not applicable. However, as held by **Hon'ble High Court of J&K Vide order dated 30.04.2000--- in case Jagar Nath Bhan and Ors. Vs State of J&K and Ors - 2006 (3) JKJ 407 [HC]**, the District Magistrate is required that -

"At the time of announcement of orders, he must in case of anybody's eviction give or cause to be given a certified copy of his order to the evicted person on the day of passing the order"

13. In the present case nothing like that is coming to fore from the records and accordingly, the delay in preferring the appeal is condoned in the interest of

justice. This decision is also supported by 1987AIR(SC)1353 in case titled "**Collector, Land Acquisition, Anantnag Vs Katiji**", the relevant para of which is reproduced as under:-

"When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay".

14. With regard to the other statutory requirement viz; surrender of possession (impugned order being of eviction), Ld. Counsel for the Appellants in his memo of appeal at Para 17 categorically states that possession of land in question has been handed over to the concerned authorities. The Appeal before this court has been filed on 27.11.2020, and thereafter the appellants have approached the Hon'ble High Court with respect to same land by way of writ petition titled "**Ab. Rashid and Ors V/S UT of J&K and Ors**" on 23.04.2021 and pleading therein that they are in possession of *Shamilat* land right from 1971 falling under Khasra No. 218, have prayed for a writ of mandamus commanding upon the respondents not to dispossess the petitioners (appellants herein) in light of the order dated 15.04.2021 issued by the ACR Bandipora from the land falling under above said Khasra no. It is to mention here that ACR Bandipora vide Order referred to above had directed the illegal occupants (Appellants herein) to vacate the residential houses constructed on the disputed land. All this clearly shows that the Appellants have not surrendered the possession of suit land before the competent authority.
15. Thus, having failed to comply with the mandatory statutory requirement provided under Sec 7(b) of the Act of 1997, the appeal being not maintainable, is dismissed. However, since the matter is pending before the Hon'ble High Court by way of writ petition referred to above and a Status quo order has been issued, further proceedings shall be subject to outcome of the said writ petition.
16. Disposed off accordingly.

Announced

06.12.2021



Shaleen Kabra (IAS)
Financial Commissioner, Revenue
J&K

NO:-2169-70/FC-AP

Dated:- 07-12-2021

Copy to the:-

1. District Magistrate, Bandipora for information alongwith his original case file. Page 5 of 5
2. Assistant Commissioner (Revenue) Bandip for information.
3. Tehsildar Bandipora for information.