

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

**File No.**  
33/FC-AP

**Date of Institution**  
01.06.2021

**Date of Decision**  
17.11.2021

In the case of :

1. Anjil Zahid (Age 28 years) S/o Zahid Hussain Jan R/o Chrari-Sharief, District Budgam Kashmir at present Room No. 323 Old Block MLA Hostel, Jammu  
..... **Appellant.**

Versus

1. District Magistrate Budgam.
2. Zahoor Ahmad Mir S/o Ghulam Mohi-ud-din Mir R/o Chrari-Sharief District Budgam Kashmir.
3. Mushtaq Ahamad Dar S/o Manzoor Ahmad Dar R/o Zaloosa Charari-Sharief District Budgam Kashmir.

.....**Respondents.**

**In the matter of:-**

Appeal against the order bearing No. DCB/SQ/2021/20 dated 04-05-2021 passed by the District Magistrate Budgam under J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997.

- Present:-** 1. Advocate Aamir Latoo and associates for the appellant  
2. Advocate Javed M. Hubi for respondents 2 and 3.

**ORDER**

This order will dispose of the Appeal preferred by the Appellant against the Order dated 04.05.2021 of the District Magistrate Budgam pertaining to land measuring 2 kanal 9 marlas covered under survey no: 5945/3006 (wrongly mentioned as 5942/3600 in the memo of appeal) of estate Chari-Sharief, District Budgam.

2. The summarised facts of the case are that the suit land has been mutated in the name of the appellant through attestation of mutation no 5539/1 dated 22.03.2008 based on 'oral gift'. The Appellant who is a registered migrant approached the District Magistrate under J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997 (herein after Act of 1997) for protection of the suit land alleging its encroachment by the Private Respondents herein. The matter came to be referred to the Tehsildar concerned, but when no action was taken, the appellant approached the Hon'ble High Court by way of writ petition, WP(C) No1711/2020, which came to be disposed of vide order



dated 05.11.2020 with the direction to the Deputy Commissioner, Budgam to consider and decide the application claimed to have been made by the petitioner (Appellant herein) in accordance with laws and rules governing the field.

3. Complying with the above said direction of the Hon'ble High Court, District Magistrate, Budgam vide order dated 04.05.2021 (impugned order) dismissed the plea of the Appellant by holding that the suit land having been acquired by him in the year 2008 does not fall under the category of "**Migrant Property**" and as such no action can be taken under section 5 of the Act.
4. Aggrieved, the Appellant has preferred the instant appeal against this order of District Magistrate, Budgam on various grounds.
5. The parties were summoned who caused presence through their respective counsel and the matter was orally argued at length by both the sides. Both the parties were also given the opportunity to file written statements and the same have been filed by them. Ld. Counsel for the Appellant at the outset cited COVID-19 pandemic as the reason for belated filing of the Appeal beyond the prescribed period of 15 days and relied upon the judgements of the Apex Court dated 08.03.2021 and 27.04.2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020- '**In Re: cognizance For Extension of Limitation**'. It is also said that on one hand the status of Appellant as migrant is admitted but on the other hand the suit land owned by the appellant is not held as migrant property, and that the Act applies to any property owned by a migrant on or after 1989. Relying upon the judgement of the Hon'ble High Court titled '**Manzoor Ahmad and Ors V/s State and Ors**', 2003, **Supreme (J&K) 93 2004 Kash LJ:2003 Sri LJ 367**. Ld. Counsel has also argued that the District Magistrate is required to ascertain:- (i) whether the property is of migrant and (ii) whether it is under illegal occupation. Both the requirements are fulfilled in the instant case but despite that action required to be taken under the Act has been denied.
6. Ld. Counsel for the Private Respondents on the other hand, without resisting the appeal on the issue of limitation, straightway questioned the legality of the mutation (based on oral gift) attested in favour of the Appellant by arguing that such a mutation can be attested by the Deputy Commissioner alone. It has been also pleaded that the property in hand is not the one left over in 1989 and as such, as rightly held by the District Magistrate, the Act is not applicable to such properties. Ld. Counsel also referred to the pendency of same subject matter before the Court of Munsif Chadoora where the appellant has approached by way of a "suit for declaration, restoration of possession with consequential relief of injunction" without disclosing his status as migrant but on the other hand has approached District Magistrate for protection of his property in the capacity of being a registered migrant. It is also said that the Appellant earlier had approached District Magistrate Budgam in 2018 for



protection of his some other properties under section 4,5 and 6 of the Act of 1997 but his plea came to be dismissed by District Magistrate by holding that the appellant has been recorded as a political migrant by Relief Commissioner only for purpose of relief and cannot seek cover of the Migrant Act for possession of the property. The affidavit dated 15.07.2017 making mention of some consideration amount having been received by the appellant from Respondent No. 3 has also been referred to by the Ld. Counsel in his arguments besides questioning the status of appellant as Migrant who is alleged to have never migrated from the Kashmir Valley and in this behalf referred to documents like School Certificate, Ration Card etc of the appellant and also quoted judgements of the Hon'ble High Court titled Hotel Eloora Vs Shambu Nath Sapoori-2009(1) JKJ234; Mohan Lal Sahni and others Vs Satpal Sahni and others-2004(3) JKJ183; and Ghulam Nabi Bhat Vs Pran Nath and others-2008 (1) JKJ508.

7. In rebuttal, Ld. Counsel for the appellant argued that the Respondent only pleads that appellant is not a migrant but has neither raised this issue before District Magistrate nor can be taken up in the instant appeal to which Ld. Counsel for the respondents said that appeal is a continuation of proceedings and the status of the appellant as migrant even though not questioned before District Magistrate can be taken up in this appeal. Ld. Counsel for the appellant, however, stated that the status of the appellant being migrant has not been denied by the District Magistrate and the respondent instead of challenging the said order cannot agitate the same issue in appeal which has been presented by him. It is also said that the District Magistrate after proper enquiry and getting a report from Relief Organization (M), Jammu has come to the conclusion that the appellant is a registered Migrant.
8. Heard and records placed on file alongwith written statements of both the parties perused thoroughly.
9. Although Section-7 of the Act of 1997 prescribes a period of 15 days for preferring an appeal and there is no enabling provision in the Act with regard to limitation, in view of the judgements of the Hon'ble Apex Court referred to above, the issue of limitation has become immaterial and the appeal is treated as having been preferred within time.
10. The argument of the Ld. Counsel for the respondents that the appellant has simultaneously approached the Civil Court without disclosing his status as migrant while also approaching the District Magistrate for invoking the provisions of Migrant Act has to be seen in context of Section 8(b) of the Act of 1997 which bars the jurisdiction of Civil Court to settle, decide or deal with any question or to determine any matter arising under this Act or the Rules made thereunder and a Civil Court has to be made aware of such status by the parties



which has not happened in the instant case. However, this is not the matter before this court and therefore no further opinion is expressed on this issue.

11. Again, the appellant has got the mutation attested in his favour on 22.03.2008 and simultaneously mortgaged the same with J&K Bank in 2016. The Appellant has also approached the court of Ld. Munsiff Chadoora in year 2017 reflecting there his residence as of estate Chari Sharief without any disclosure of his migration. However, questioning the status of appellant as migrant cannot be dealt with by this Court and can be agitated by the aggrieved party before the competent forum.

12. It is an accepted canon of construction of statute that a statute must be read as a whole and one provision of the Act should be constructed with reference to other provisions of the same Act so as to make a consistent harmonious enactment of the whole Statute. In 2018 ACR 919, Supreme Court of India in **"Godawat Pan Masala Products I.P V/S Union Of India and Ors"**, it has been held as under:-

**"Clauses in a statute not to be seen in isolation and is to be read with reference to other clauses and scheme of Statute overall".**

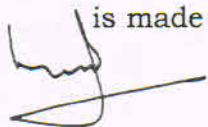
13. In the Act under reference, the words 'Migrant' and 'Immoveable Property' are defined as under:

*2-(d) "Immovable property" shall also include tenancy rights or interest created under any law for the time being in force;*

*(e) "Migrant" means any person who has migrated from Kashmir Valley after 1st November, 1989 and is registered as such with the Relief Commissioner and includes a person who has not been so registered on the ground of his being in service of the Govt. in any moving office, or having left the Valley in pursuit of occupation or vocation or otherwise, and is possessed of immovable property in the Valley, but is unable to ordinarily reside there due to the disturbed condition.*

*The object of the Act is to provide for the preservation, protection and restraint on distress sales of the immovable property of the migrants.*

A conjoint reading of the above provisions of the Act of 1997 makes it amply clear that the Act takes care of the properties held by the migrants and any tenancy or other subsequent interest in the said property which they possessed at the place from where they migrated, the reference year being 1989. The voluntary acquisitions made by the migrants after the migration definitely do not fall within the ambit of the Act as the same is made with free will and volition and not under coercion.




14. Again, Sec 5 of the Act casts a duty upon the District Magistrate to take possession of the immovable property of migrants within 30 days from the commencement of the Act falling within his territorial jurisdiction and shall on the expiry of said period of 30 days, be deemed to have custody of such immovable property. The Act of 1997, has come into force on 02.06.1997 while the property in dispute has been acquired in 2008, with obvious inference that the provisions of the Act cannot be made applicable to such property which was not in existence at the time of enforcement of the Act and covered under the provisions of the Act.

15. Thus, for the aforesaid reasons, the impugned order having been passed by the District Magistrate after right appreciation of law need not to be interfered with. The appeal, therefore, being without any merit, is dismissed. Further, in view of the serious issues raised by defendant counsel, a copy of this order be placed in the Administrative side of Financial Commissioner, Office to take appropriate action with respect to migrant status of the appellant.

16. Interim orders, if any, issued are vacated. File shall go to records after due completion.

**Announced**  
17.11.2021



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

No:-2139-40/Fc-AP

Dated:- 22-11-2021

Copy to the:-

1. District Magistrate, Budgam for information.
2. Tehsildar Chhori-Sharief Distt. Budgam for information and necessary action.