

File No.
940/FC-AP

Date of Institution
22.03.2021

Date of Decision
23.12.21.

In the case of:

1. Mst Fareeda W/o Nisar Ahmad Shah
D/O Abdul Ahad Bhat
2. Mohamad Ramzan Shah
3. Gulam Mohamad Shah. Ss/O Khazir Mohamad Shah R/o Khrew Pampore,
District Pulwama. **....Appellants**

Versus

1. District Magistrate, Pulwama
2. Pushkar Nath Rawal (Bhat). S/o Balbahadar Nath Rawal (Bhat) R/o Khrew
Pampore A/P House No. 195 Sarwal, Jammu.
(Contesting Respondents)
3. Gh. Hassan Wani S/o Rahman Wani R/o Khrew Pampore.
4. Moma Wani S/o Gani Wani R/o Khrew Pampore.
5. Nisar Ahmad Shah S/o Gh. Qadir Shah (Khana Damad of Ab Ahad Shah)
R/o Khrew Pampore.
6. Mohd. Akram Chowkidar Khrew **...Proforma Respondents**

In the matter of:-

Appeal against the order dated 27/02/2021 passed by District Magistrate Pulwama in case titled Pushkar Nath Rawal (Bhat) versus Gulam Hassan Wani and others.

ORDER

This is an appeal under the J&K Migrant Immovable Property (Reservation, Protection and Restraint on Distress Sales) Act, 1997 (herein after Act of 1997) wherein it has been claimed that the Act does not apply to the entire land (23K 6M) for which the order has been passed by the District Magistrate Pulwama, since part of it (3K 7M) is ancestral proprietary land and some part (2K 18M) has been acquired through a registered sale deed.

2. Making preliminary submissions, the counsel for the appellant stated that he has not surrendered the possession since the land is not migrant land at all. He further

stated that he is concerned only with respondents 3, 4 and 5 before District Magistrate who have interest in the land measuring 08 kanals 07 marlas which is part of the appeal. The counsel specifically brought out the non application of mind on part of the Court below, as according to him, the prayer was with regard to 20 kanals 6 marlas of land while the order has been given for 23 kanals 6 marlas; in the Court below, the petitioners (respondents herein) have themselves stated that 2 kanals 18 marlas of land have been sold by them in 1984. Further, according to him, the court below has itself made observations with regard to compromise under Agrarian Reforms Act and actions there upon. It was also pleaded by the Ld. Counsel that the District Magistrate has blindly relied upon the false and fabricated report of Tehsildar who neither visited the spot nor conducted any demarcation. He further submitted that the appeal may be accepted and the order impugned set aside.

3. This court has condoned the delay in filing the appeal on 06.04.2021 on the grounds that the appellants have applied for the certified copy of the impugned order on 27.02.2021 but have been given the same on 13.03.2021.
4. A notice has been issued to the respondents which however, has not been served. In ordinary course further action is required to cause presence of respondents before this Court, however, there is, indeed, a grave error apparent on the face of impugned order where the petitioners (respondents herein) themselves admit that they have sold land measuring 2 kanals 18 marlas and sought action only on 20 kanals 06 marlas of land but the court below has directed eviction from entire 23 kanals 06 marlas of land. This is a grievous flaw in the court order and is alone sufficient to remand the matter back to court below for a *denovo* enquiry.
5. Further, the order of the court below brings out *prima facie* that the preparation of ROR in 2006-07 has been made in a most perfunctory and casual manner. It is an unfortunate reality that those having any right/interest in the land in the UT of

J&K did not have easy access to revenue records; the revenue records were always shrouded in mystery. The usual procedure which requires disclosure of revenue records in public gatherings, though existing on paper, has been followed only sparingly. The recently launched portal "**Apni Zameen Apni Nigrani**" is the first time when the revenue records have been placed in public domain for examination, without any restrictions. Because of non disclosure of revenue records in public gatherings, it is not surprising that in the present case application for correction may not have been filed yet.


6. It is noteworthy that the court below has prefaced its conclusion, after recording the transactions related to some part of the land in question with the words; "**Be these pre-Settlement records as they are,.....**" It needs to be emphasized that determination of matters pertaining to land cannot be handled in a manner that disregards the changes in the revenue records since each step leading to any change in the record has legal sanctity. Failure to properly reflect in the revenue records at the time of Settlement cannot negate the legal sanctity of a transaction that has already taken place. The Deputy Commissioner Pulwama is directed to immediately conduct an enquiry and point out the errors that have accrued while preparing ROR 2006-2007 of estate Khrew alongwith those responsible for negligence and dereliction of duty, with due regard to documents available and furnish a report within 15 days.
7. While in the ordinary course, this court should have waited for the presence of other side but there being such flaws in the order of court below as pointed out at foregoing paras 4 & 6, no option is left with this court but to have the matter enquired afresh.
8. Accordingly, the appeal is accepted, the order impugned is set aside and the matter is remanded back to District Magistrate for a *denovo enquiry*. District Magistrate

shall ensure that the principle of natural justice is met with and both sides are provided adequate opportunity to plead their cause.

9. Further in exercise of the delegated powers of Financial Commissioner (Rev) vide SRO 517 dated 13.12.2013, *suo moto* proceedings shall commence separately to rectify the errors that have crept in ROR of estate Khrew Pamore prepared during 2006-2007.
10. Interim orders, if any issued by this court are vacated.

Announced

23.12.21


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

No:- 2201-02/FC-AP

Dated:- 20-12-2021

Copy to the:-

1. District Magistrate, Pulwama
for information and n/a.
2. Tehsildar Pamore for information
and n/a.