

**BEFORE DR. M.S. SOOD, IAS; JOINT FINANCIAL COMMISSIONER
JAMMU AND KASHMIR AT JAMMU.**

File No: 249/JFC/AP

Date of Institution: 10.04.2006

Date of Decision: 24.06.2014

In the case of: Bashir Ahmad S/O Khan Mir Gujjar R/O Narsoon
Tehsil and District Udhampur.
(Petitioner)

V E R S U S

State through Tehsildar Udhampur.

(Respondents)

In the matter of: Reference dated 22.03.2006 made by Id. Settlement Commissioner, J&K in a revision petition against the order dated 11.03.2005 passed by Addl. Deputy Commissioner, Udhampur.

Appearing Counsels: 1) Mr. Ashok Gupta & Associates, for Petitioner.
2) ARA for State.

O R D E R

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This is a reference dated 22.03.2006 made by Id. Settlement Commissioner, J&K in a revision petition filed against the order of Addl. Deputy Commissioner, Udhampur who by virtue of his order dated 11.03.2005 has upheld the order of Tehsildar, Udhampur for eviction of the petitioner from the State land measuring 1 ½ Marlas in possession of the petitioner over which he has constructed a residential house and a shop more than a decade before. The Id. Settlement Commissioner has after hearing the matter made a reference with the recommendation that the order of Id. Addl. Deputy Commissioner, Udhampur be set aside as also the order of Tehsildar, Udhampur.

2) After receiving the reference, the parties were summoned to appear in the court. Petitioner was represented by a counsel while

Asstt. Revenue Attorney appeared on behalf of the State. However, inspite of causing presence, both sides did not participate in substantive proceedings of the case. It was, therefore, resolved that case be decided on its merits.

3) I have gone through the record on the file and have perused the order under reference. The land in question is admittedly a State land and the possession of the petitioner over the said land is unauthorized and the revenue agencies are duty bound to safeguard the State interests and remove all encroachments made on State land by any person whosoever. However, there is a set procedure under Land Revenue Act in the form of Section 133 Clause 2 Sub-clause (c) which has to be adhered to while removing the encroachments. Two important points are to be taken care of, one being due notice to the said encroacher regarding the intention of the revenue officer and other being providing the encroacher who has raised any structure of the State land, an option to exchange 10 Marlas of land brought under structures with self owned land situated in the area. Both provisions have not been adhered to and Id. Addl. Commissioner without looking into these aspects and without taking the legal position into account has passed the impugned order duly confirming the action of the Tehsildar, Udhampur. Both these orders are, therefore, liable to be set aside.

4) In this backdrop, the reference is accepted and the impugned orders of Addl. Deputy Commissioner and Tehsildar, Udhampur are set aside. The matter is remanded to Tehsildar, Udhampur who shall abide by the relevant provisions of J&K Land Revenue Act, 1939 AD and pass the appropriate orders in the matter after providing opportunity of being heard to the petitioner and in case the petitioner has no self owned land, the land in question be allotted to him under relevant provisions of law for being landless. Interim order, if any, passed is vacated. Subordinate court file is returned back and original file of this court consigned to records after due completion.

Announced:
24.06.2014

Sd/-
(Dr. M.S. Sood) IAS
Joint Financial Commissioner