(2025) 10 J&K CK 1169

In the Jammu And Kashmir High Court

Case No : WP (C) No. 2892 Of 2023

Abdul Latief	APPELLANT
Vs	
Union Territory of Jammu and Kashmir	RESPONDENT

Date of Decision : 31-10-2025

Acts Referred:

Jammu and Kashmir Agrarian Reforms Act, 1976 — Section 4, 8
Waqf Act, 1995 — Section 45

Citation : (2025) 10 J&K CK 1169

Hon'ble Judges : Moksha Khajuria Kazmi, J

Bench : Single Bench

Advocate : N. D Qazi, Monika Kohli, Ayjaz Lone

Final Decision : Disposed Of

Judgement

Moksha Khajuria Kazmi, J

1. By this petition, petitioner herein is seeking a direction upon the respondents not to cause any interference into his proprietary land falling under khasra Nos. 124 (12 marlas), 125 (01 kanal 16 marlas), 123 (05 kanal 03 marla), 122 (01 kanal 08 marlas), 94 (02 kanal 09 marlas), 95 (05 marlas), 98 (01 kanal 05 marlas), 151 (08 marlas) situated at Village Changa, Tehsil Gandoh, District Doda, with a further direction upon respondents not to dispossess the petitioner from the land in question under the garb that the land pertains to Khanka Sharif (shrine).

Factual Matters:

2. Petitioner is claimed to be the co-sharer in the land falling under khasra Nos. 124, 125, 123, 122, 94, 95, 98 and 151 situated at Village Changa, Tehsil Gandoh, District Doda. It has been pleaded that the grandfather of the petitioner, namely Mohammadu, has been reflected as owner in possession of half of the share of the land, reflected in the possession of shrine ‘Khanka Sharif’ against which the respondents have put forth the claim, which, as per the respondents,

is a Waqf land.

3. The petitioner is aggrieved of the action of the respondents by virtue of which they are dispossessing the petitioner from his proprietary land under the garb that the said land has been kept reserved for Khanka Sharif, without following due procedure of law. It is stated that revenue entries also reflect that the petitioner is in peaceful possession of the land in question and in absence of any notification issued by the competent authority, respondents cannot declare the petitioner’s land as Waqf property. It has been further stated that the claim of Waqf Land, made on the basis of mere entry the extent that property recorded as Khanka Sharief in the revenue record when petitioner, too, has been shown in possession of the Khanka Sharief land, is not justified.

Reply:

4. Per contra, in the reply filed by respondent Nos. 3 and 5, it is stated that the petitioner is neither a co-owner nor an absolute owner of the land mentioned in the petition, except Khasra Nos. 124 measuring (12 marlas) and 125 (1 Kanal 16 marlas), the ownership of which was entrusted upon Sadiq S/o Mahammadu under Sections 4 and 8 of the J&K Agrarian Reforms Act, 1976. After the death of Sadiq mutation of inheritance was attested in favour of his legal heirs including the petitioner vide mutation No.472. It is further stated that all other khasra numbers mentioned in the petition belongs to Khanka Shah Gayas-ud-din Sahib under the maintenance of Ahle-Islam as per detail below:

“The land bearing Khasra no. 94 (measuring 2K-9M), Khasra no. 95 (measuring 5 M), Khasra no. 96 (measuring 14 M), Khasra no. 97 (measuring 18 M), Khasra no. 98 (measuring 1K-5M) total land measuring 5 kanals 11 Marlas is recorded under the ownership of Khanka Shah Gayas-Ud-Sahib.”

5. In the objection filed by respondent no. 4, it is stated that the land comprised in Khasra Nos. 123 (05 Kanal 03 Marlas), 122 (01 Kanal 08 Marlas), 94 (02 Kanal 09 Marlas), 95 (05 Marlas), 98 (01 Kanal 05 Marlas) and 151 (08 Marlas) situated at Village Changa Tehsil Bhalessa (Gandoh), District Doda is owned by, and in possession of, the shrine (Khanka) of Saint Shah Giyasuddin Sahib. It is further stated that the name of the said Mohammadu was entered in the capacity of Majawar, who was only managing Khankah (Shrine). In the latest revenue record, even the name of said Majawar has been removed. Respondent no. 4 has denied that he is neither interfering nor is trying to dispossess petitioner from his proprietary land.

6. It is also stated that petitioner cannot claim any right or possession over the waqf land in question against or adverse to the Khanka by virtue of a successor of the said Majawar of the Khanka.

7. Heard, learned counsel for the parties and perused the record.

8. Learned counsel for the petitioner has vehemently, argued that since he is a co-sharer of the land in question, as such, it was obligatory on the part of

respondent no. 4, to notify the land of the petitioner as Waqf property in terms of Section 45 of the Waqf Act, 1995, which for facility of reference is set out below:-

"45. Preparation of budget of 1[auqaf] under direct management of the Board.-- (1) The Chief Executive Officer shall prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure for each of the [auqaf] under the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.

(2) While submitting the budget under sub-section (1), the Chief Executive Officer shall also prepare statement giving details of the increase, if any, in the income of each [waqf] under the direct management of the Board and the steps which have been taken for its better management and the results accruing therefrom during the year.

(3) The Chief Executive Officer shall keep regular accounts and be responsible for the proper management of every [waqf] under the direct management of the Board.

(4) Every budget submitted by the Chief Executive Officer under sub-section (1) shall comply with the requirements of section 46 and, for this purpose, references therein to the mutawalli of the [waqf] shall be construed as references to the Chief Executive Officer.

(5) The audit of accounts of every [waqf] under the direct management of the Board shall be undertaken by the State Examiner of Local funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the [waqf].

(6) The provisions of sub-sections (2) and (3) of section 47 and the provisions of sections 48 and 49 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

(7) Where any [waqf] is under the direct management of the Board, such administrative charges as may be specified by the Chief Executive Officer shall be payable by the 2[waqf] to the Board: Provided that the Chief Executive Officer shall not collect more than ten per cent of the gross annual income of the [waqf] under the direct management of the Board as administrative charges."

9. On the other hand, Learned counsel for the respondents have relied upon the judgment passed by this Court in WP (C) No. 1044/2023 in case title, "Intizamiya Committee Dargah vs Union Territory of J&K and Ors, decided on 06.09.203., relevant portion whereof reads thus:-:

"A bare perusal of the aforesaid provisions of the Act of 1978 would suggest that the scheme of Sections supra make it clear that initially there has to be a survey by a Special Officer followed by a decision in the shape of a report under sub

Section 3 of Section 4 by such Special Officer as to whether a particular property is or is not a Wakaf property followed by the decision of such Special Officer under Section 5 as to whether any property is or is not a Wakaf property being a final decision thereof though subject to an appeal by an aggrieved person to the Government. The arrangement of Section 6 of publication of the lists of Wakaf's on a bare perusal thereof would reveal that the said arrangement have had only an evidentiary value to notify the public and all concerned that a decision has been rendered qua a property being Wakaf property under the Act of 1978. A distinction has to be drawn here between aotification required to be published in the Government Gazette that creates or extinguishes a right or liability and the one requiring furnishing of an information to the public about an existing fact, while in the former case the publication of a notification in the Government Gazette may be mandatory, whereas in the later case it can safely said to be directory in nature. In the instant case publication of a notification in the Government Gazette had not by itself created or extinguished a right or liability but only would have to be stated and narrated an existing fact that a particular property has been declared as Wakaf property by the Special Officer and failure to publish such a notification in the Government Gazette would not thus said to be denuding or changing the nature, status and character of the property declared as a Wakaf property by the Special Officer under Section 5 of the Act of 1978.

10. A bare perusal of the SRO 510 supra tends to show that the Special Officer has given his declaration/decision about the status of the Ziyarat and its allied properties in question being a Wakaf property only and thus an inescapable inference of the fact that can be drawn therefrom is that the Ziyarat and its allied properties had been declared as a Wakaf property in terms of the Act of 1978 and report in this regard had been accepted by the Government without there-being any person aggrieved thereof including the petitioner herein. It being so the respondent Board can rightly be said to have resorted to the provisions of the Waqf Act of 1995 having regard to Section112(3) supra of the said Act. The issue supra raised by the petitioner thus in view of above analysis is misconceived and not legally tenable.

11. Furthermore Since SRO 510 dated 11.12.1985 as also the decision of the Special Officer having declared the Ziyarat and its allied properties as a Wakaf property under the Act of 1978 is not under challenge, as such, this Court is refraining from expressing any opinion thereto.

12. For what has been observed, considered and analyzed hereinabove, the petition fails and accordingly is dismissed, as a corollary whereof, the contempt notices are recalled, proceedings dropped and petition disposed of."

10. It is further stated that the petitioner in WP (C) No. 1044/2023 has challenged the aforesaid judgment before the Division Bench of this Court by way of LPA No. 187/2023 titled Intizamiya Committee Dargah vs Union Territory of J&K and others, which came to be dismissed vide judgment dated 05.06.2025.

The operative portion of the judgment is set out below:

17. Since the property claimably owned and possessed by the appellants, which falls in Khasra No. 323 of Village Rayil, is not notified as Wakafs, as such, the appellants have no legal authority to challenge either the publication/notification of the Ziarat as "Wakaf", as is done in terms of SRO 510 of 1985 dated 11-12-1985, or taking over of the management of the Ziarat by the Wakaf Board.

18. For all these reasons as also for the reasons given by the writ Court in support of the impugned judgment. We find no merit in this appeal and the same is, accordingly, dismissed. The appellant No.2, who claims to be owner of land measuring 5 Kanals in Khasra No. 323, which, admittedly, is not notified as Wakaf, shall be well within his rights to take appropriate remedies to protect his proprietary land in accordance with law and nothing said hereinabove shall come in his way to agitate his rights qua the land owned by the appellant No.2."

11. Learned counsel for the petitioner has stated that this Court on 22.11.2023, had issued the following direction as under:

"Meanwhile, subject to objections from other side and till next date of hearing before the Bench, the petitioner shall not be evicted from the land falling under Khasra No. 124(12 Marlas), 125 (1Kanal 16 Marlas), 123(5Kanal 3Marlas), 122(1Kanal 8Marlas), 94(2Kanal 9Marlas), 95(5 Marlas), 98(1Kanal 8Marlas) & 151(8 Marlas) situated at Village Chang Tehsil Gandoh, District Doda, without following due procedure of law."

12. Respondents, in their reply have admitted that on the basis of the revenue record the land falling under khasra no. 124(12 Marlas) and 125 (1Kanal 16 Marlas), belongs to the petitioner. It is also stated that respondent no. 4 is neither interfering nor trying to dispossess the petitioner from his proprietary land comprising at khasra Nos.124 (12 Marlas) and 125 (1Kanal 16 Marlas).

13. At this stage, learned counsel for the petitioner states that he would feel satisfied if the instant petition is disposed of with a direction to the respondents not to dispossess the petitioner from his proprietary land, without adhering to the law in vogue.

14. In view of the above, this petition is disposed of, with a direction to the respondents not to evict/interfere in the proprietary land of the petitioner, falling under khasra nos. 124(12 Marlas) and 125 (1Kanal 16 Marlas), without following the due procedure of law.