
(2023) 07 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1370 Of 2011, IA No. 1893 Of 2011

Altaf Hussain And Ors

APPELLANT

Vs

J&K Special Tribunal And Ors

RESPONDENT

Date of Decision : 21-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 145
Jammu And Kashmir Agrarian Reforms Act, 1976 — Section 4, 8

Citation : (2023) 07 J&K CK 0031

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : R. Koul, P. N. Raina, J. A. Hamal

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. Being aggrieved of the order dated 02.08.2011 (for short 'the order impugned') passed by the Jammu and Kashmir Special Tribunal, Jammu (hereinafter referred to as 'the Tribunal'), dismissing the revision petition filed by the petitioners against the order dated 29.08.2002 passed by Additional Deputy Commissioner Doda, the petitioners have filed the present petition for quashing of the order impugned, on the following grounds:

a) That the petitioners had raised the specific pleas in respect of the locus of respondent No.2 to maintain the appeal and also the maintainability of the appeal being barred by limitation having been filed after more than 18 years, without seeking the condonation of delay, but the same have not been considered by the learned Tribunal while passing the order impugned.

b) That in the proceedings under section 145 of Criminal Procedure Code, the respondent No.2 had been staking claim in respect of the land comprising survey number 2179 at Village Matta and did not lay any claim in respect of the land

comprising survey No. 1523 at village Kishtwar but subsequently the respondent No.2 changed his stand and started laying claim over the land comprising survey number 1523 situated at Village Kishtwar, which has been taken note of by the Executive Magistrate First Class Thathri in its order dated 20.09.2000.

2. The respondent No. 2 has filed the response wherein it has been stated that both the mutations under Sections 4 and 8 of the Agrarian Reforms Act, were attested exp-parte without any notice to the respondent No.2 or his predecessor-in-interest. Neither the respondent No.2 nor his father was having any knowledge about the same. It is further stated that the land comprising survey No.1523 situated in patwar village kishtwar originally belonged to the recorded owners Natha and other Co-sharers. As the family members of the respondent No.2 were Purohits by profession, the said land had been given by way of Sankalp to the great grandfather of the respondent No. 2. The land always continued to be in actual physical possession of the respondent No. 2's forefathers, father and respondent No. 2 till the land was embroiled in the proceedings under section 145 of the Criminal Procedure Code primarily because one Khursheed Ahmed Dev wanted to grab both the lands of the respondent No. 2 covered by survey number 1523 of the Village Kishtwar and survey number 2179 of the Village Matta. The petitioners managed and manipulated mutations under section 4 and 8 of the Agrarian Reforms Act, without any notice or without the knowledge of the respondent No. 2 or his father. It is further stated that the order being only a remand order and the rights of the parties are yet to be decided by the competent authority, the present petition deserves to be dismissed on this ground only.

3. Mr. R Koul, the learned counsel for the petitioners argued that the appeal filed by the predecessor in interest of the respondent No.2 was hopelessly barred by limitation and that the predecessor in interest of the respondent No.2 and also the respondent No.2 had been changing their stand time and again, as in the proceedings under section 145 of the Criminal Procedure Code, the predecessor in interest of the respondent No. 2 had raised the dispute in respect of the land comprising under survey number 2179 at village Matta and subsequently the stand was changed and claim was made in respect of land comprising survey number 1523 of the Village Kishtwar. Mr Koul further argued that the appeal was decided by the Additional Deputy Commissioner Doda without serving the petitioners particularly when the respondent No.2 or his father had no locus to maintain the appeal as neither they were the owners nor in cultivating possession of the land in question.

4. Per Contra, Mr. P.N Raina, the learned senior counsel for the respondent No. 2 submitted that in the Jamabandi for the year 196-263, the father of the respondent No. 2 has been shown in possession of the land comprising survey number 1523 of village Kishtwar and further in Jamabandi for the Kahrif 1970 and Rabi 1971, the land was shown to be in possession of Vidya Lal i.e. the father of the respondent No.2 and one Khalil, the predecessor-in-interest of the

petitioners. He further argued that the petitioners were given due opportunity to object the appeal filed by the father of the respondent No.2 but the petitioners deliberately did not appear before the Additional Deputy Commissioner Doda and as such the Additional Deputy Commissioner Doda was left with no other option but to decide the appeal on the basis of record.

5. Heard and produced the record.

6. The dispute in the present petition pertains to the land comprising survey No. 1523 of Patwar village Kishtwar. The mutation under Section 4 of the Agrarian Reforms Act, bearing number 3856 dated 06.12. 1983 was attested in favour of Khalil, who was declared as prospective owner. Subsequently, the mutation under Section 8 of the Act (supra) dated 19.03.1985 was attested in favour of Aziz Mohd. and Ghulam Mohd, thereby conferring ownership rights upon them. The dispute arose in respect of the land comprising survey number 2179 of Village Matta, which led to the proceedings under section 145 CRPC. The Executive Magistrate, Thathri decided the proceedings under section 145 Cr.P.C vide order dated 20.09.2000. Thereafter the father of the respondent No.2 filed an appeal against both the mutations i.e. mutation bearing No. 3856 dated 06.12.1983 under Section 4 of the Act (supra) and the mutation bearing No. 4132 dated 19.03.1985 under Section 8 of the Act (supra) in respect of the land comprising survey no. 1523 of Patwar village Kishtwar. The appeal was also accompanied by an application seeking condonation of delay. The father of the respondent No.2 died during the pendency of the appeal and Ghulam Mohd., the second respondent in the appeal also died. Notices were issued to the legal representatives of the deceased Ghulam Mohd. i.e. the petitioners. One notice issued for the service of the respondents in the appeal bears the thumb impression of the petitioner No.3. One notice was also fixed on the residential address of the petitioners. After taking note of the absence of the petitioners, the Additional Deputy Commissioner Doda vide its order dated 12.10.2002 condoned the delay and accepted the appeal thereby setting aside both the mutations bearing nos. 3856 under Section-4 and 4132 under Section- 8 of the Act (supra). in respect of the land measuring 1 Kanal and 14 Marlas comprising survey number 1523 of Patwar village Kishtwar and remanded the matter back to Tehsildar, Kishtwar for de-novo inquiry.

7. The order dated 12.10.2002 passed by the Additional Deputy Commissioner Doda, was impugned by the petitioners before the learned Tribunal through the medium of revision petition and the learned Tribunal vide order impugned dismissed the revision petition. It was urged by the petitioners before the learned Tribunal that the appeal was hopelessly barred by limitation and it was decided without condoning the delay. It was also urged that the appeal was decided at the back of the petitioners and the father of the respondent No.2 had no locus to maintain the appeal as neither he was the owner nor in the cultivating possession of the land in question. The perusal of the order impugned reveals that the learned Tribunal rejected the revision petition filed by the

petitioners as not maintainable but also took note of the fact that the mutations were attested without providing an opportunity of hearing to the appellant/predecessor-in-interest of the respondent No.2.

8. The first issue that has been raised by the petitioners is that the appeal was hopelessly time barred and the same was required to be dismissed on that ground alone. In the writ petition, it is pleaded that the appeal was not maintainable without seeking the condonation of delay. The record of the Appellate Authority depicts that along with the appeal, the predecessor-in-interest of the respondent No. 2 had also filed an application seeking condonation of delay. The Additional Deputy Commissioner Doda vide order dated 12.10.2002 not only condoned the delay but also accepted the appeal filed by the appellant therein, after taking note of the fact that both the mutations were attested without hearing the appellant therein and further that the land remained embroiled in the proceedings under section 145 of Criminal Procedure Code. This court while exercising the writ jurisdiction is not supposed to act as a court of appeal or revision against the order passed by the Authorities under the Agrarian Reforms Act. Once the satisfaction was recorded by the Additional Deputy Commissioner, Doda for condoning the delay in filing the appeal, this Court in exercise of jurisdiction under article 226 of the Constitution of India is not supposed to interfere with the finding of the fact recorded by the Additional Deputy Commissioner, Doda, more particularly when the same gets support from the record. In "Rengali Hydro Electric Project v. Giridhari Sahu" (2019) 10 SCC 695, the Hon'ble Apex Court has held as under:

28. On the conspectus of the decisions and material, we would hold as follows: the jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of certiorari will not don the cap of an appellate court. It will not reappreciate evidence. The writ of certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a writ of certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter "off bounds" for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of certiorari must also be one which is apparent on the face of the record. As held by this Court in Hari Vishnu Kamath [Hari Vishnu Kamath v.

Ahmad Ishaque, AIR 1955 SC 233] , as to what constitutes an error apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amenable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down (see Parry & Co. Ltd).

(Emphasis Added)

Thus, there is no force in the contention of the petitioners, as such the same is rejected.

9. The second issue that has been raised by the petitioners is that no opportunity of being heard was afforded to the petitioners by the Appellate Authority while passing the order impugned. From the record of the Appellate Authority, it is evident that the petitioners were duly served and even one copy of the notice was affixed on the residential address of the petitioners but despite that the petitioners did not choose to appear before the Appellate Authority and the Appellate Authority vide its order dated 12.10.2002 accepted the appeal of the respondent No.2. For the sake of the arguments, even if the contention of the petitioners is accepted that they were not heard by the Appellate Authority and the matter is remanded back still the result would be the same, as in the Jamabandi for the year 1962- 63 and Kharif 1970-Rabi 71, the name of the father of the respondent No.2 has been reflected as protected tenant. The petitioners can demonstrate before the Tehsildar concerned during the course of the enquiry that their predecessors-in-interest(s) was/were in cultivating possession of the land in the year Kharif 1971 and the predecessor-in-interest of the respondent No.2 was not in cultivating possession of the land in question in Kharif 1971. It would be profitable to take note of the judgment of Apex Court in 'State of Uttar Pradesh v Sudhir Kumar Singh' 2020 SCC Online, wherein Apex Court considered the scope of audi alteram partem and has observed as under:

"39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can

happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.”

10. The third issue raised by the petitioners is that in the proceedings under section 145 of the Cr.P.C, the father of the respondent No.2 changed his stand, as he initially laid the claim over the land comprising survey number 2179 of village Matta and subsequently shifted the claim over the land comprising survey number 1523 of Patwar village Kishtwar. It needs to be noted that in order to be eligible for vesting with the ownership rights under sections- 4 and 8 of the Agrarian Reforms Act, one must be in cultivating possession of the land in kharif 1971 and the proper mechanism has been in place under the Act (supra) and the rules made thereunder for the purpose determining and adjudicating the conflicting claims of the rival parties and as such the proceedings under section 145 of the Criminal Procedure Code cannot override the statutory requirements under the Act and the rules framed thereunder, for the purpose of conferring the ownership rights under section-8 of the Agrarian Reforms Act. Therefore, this contention of the petitioner also fails.

11. In view of what has been said and discussed above, this Court does not find any illegality in the order impugned and any reason to show any indulgence. The writ petition is found to be without any merit and the same is dismissed. The interim direction stand vacated.

12. Record of the Tribunal and Addl. Deputy Commissioner, Doda be sent back.