

(2018) 11 J&K CK 0131

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 2091 Of 2018, IA No. 01 Of 2018

Assadullah Parray

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Constitution Of Jammu And Kashmir, 1956 — Section 103
Constitution Of India, 1950 — Article 226

Citation : (2018) 11 J&K CK 0131

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Aijaz Ahmad Chesti, N. H. Shah

Final Decision : Disposed Off

Judgement

Ali Mohammad Magrey, J

1. In this petition, filed under Article 226 of the Constitution of India read with Section 103 of the State Constitution, the petitioner is seeking quashment of the notice dated 29th of October, 2018, issued by the Naib Tehsildar, to the extent it restrains him from raising construction of his residential house on his own ancestral land covered under Khasra No. 558, situate at Village Brinal, Lamer, Kulgam. A writ of mandamus is also sought commanding the official respondents to allow the petitioner to proceed ahead with the construction of his residential house falling under Khasra No. 558 and not to cause any sort of interference in respect thereto.

2. The petitioner claims that he is owner in possession of proprietary land recorded as Shamilat "Hassab-e-Rassad" (Section 5 land), measuring 1 Kanal and 16 Marlas covered under Khasra No. 558, situate at Village Brinal, Lamer, Kulgam. It is stated that the petitioner is raising construction of a residential house on the aforesaid proprietary land, however, the private respondent (respondent No.6 herein), being his neighbor and out of jealousy,

misrepresented the facts before the revenue authorities by stating that the petitioner is constructing the residential house on a Kachcharai land falling under Khasra No. 663/2. In pursuance of the misrepresentation of facts made by the private respondent, it is pleaded that the Naib Tehsildar, Devsar, has issued the impugned notice restraining the petitioner from raising construction of his residential house on his own proprietary land.

3. The grouse of the petitioner, as agitated herein this petition, is that he is not raising construction of his residential house on the Kachcharai land falling under Khasra No. 663/2, as mentioned in the impugned notice, but, he is raising the same on his proprietary land covered under Khasra No. 558.

4. Mr Shah, the learned Additional Advocate General, available in the Court, when asked, submits that in view of the averments made by the petitioner, in this petition, the claim of the petitioner can be settled by directing the Naib Tehsildar concerned to ensure removal of encroachments on the Kachcharai land falling under Khasra No. 663/2, with a further stipulation that in the event, it is found that the petitioner is not constructing his residential house on the Kachcharai land, as claimed by him, no interference be caused in the said construction by the concerned revenue authorities.

5. In view of the specific claim made by the petitioner and with the consensus of the learned counsel for the parties, this writ petition is disposed of in the following manner:

I. The Naib Tehsildar, Devsar, shall take every possible step, as admissible in law, so as to ensure that any sort of encroachment made in the Kachcharai land falling under Khasra No. 663/2 is removed forthwith; and

II. Before proceeding any further/ passing any order in the matter, the Naib Tehsildar, Devsar, shall, within a period of one week from the date of receipt of copy of this order, give a proper hearing to the petitioner and, thereafter, in the event it is found that the petitioner is not raising any construction on the Kachcharai land falling under Khasra No. 663/2, but is raising the same on his proprietary land, then, in such eventuality, no interference shall be caused in such construction;

6. Writ petition, alongwith connected IA(s), disposed of as above.