

(1971) 01 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeals No's. 7 and 8 of 1970

Deputy Commissioner (Collector) Jammu and another

APPELLANT

Vs

Thakur Lal Singh and others

RESPONDENT

Date of Decision : 05-01-1971

Acts Referred:

Jammu and Kashmir Common Lands (Regulation) Act, 1956 — Section 16, 3, 4

Citation : (1971) 01 J&K CK 0006

Hon'ble Judges : Syed Murtaza Fazl Ali, C.J.;Janki Nath Bhat, J

Bench : Division Bench

Advocate : Amarchand and V.B. Sudan, for the Appellant; D.D. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

S. Murtaza Fazl Ali, C.J.—This judgment will dispose of two Letters Patent Appeals, Nos. 7 and 8 of 1970 as the point for consideration is

the same in the both.

2. These two appeals are against the order passed by Justice Jaswant Singh, sitting singly allowing a writ petition and Quashing the order of the

Collector and directing the respondents before him to remove the obstruction and allow free use of the path to the applicants before the Tehsildar.

3. One Chandiram on behalf of himself and others filed an application before the Tehsildar Samba that the respondent Lal Singh had closed a path

which was being used by the applicants for a long time. The Tehsildar after making an enquiry came to the conclusion that the Path no doubt

belonged to the respondent Lal Singh but had been used by the applicants and his ancestors for a pretty long time. He accordingly directed Lal

Singh to allow the use of the path, acting under the provisions of Section 4 of the

Jammu and Kashmir Common Lands (Regulation) Act, 1853

(hereinafter referred to as "the Act"). As writ petition was moved in this Court which was heard by Mr. Justice Jaswant Singh who relying on a

Division Bench decision of this Court in Letters Patent Appeal No. 7 of 1968 (J. and K.), Re: Vishwanath v. Bishan Pass, decided on 18-3-1969

quashed the order of the Collector and Tehsildar directing the respondent Lal Singh to allow the applicants free use of the path. The learned Judge

held that as the provisions of the Act apply only to public paths or lands no order u/s 4 of the Act could have been passed by the Tehsildar

because the present path was a private one belonging to Lal Singh but used by the applicants.

4. The Additional Advocate General appearing in support of the appeal tried to persuade us to reconsider the Division Bench decision given by us

In the Letters Patent Appeal referred to above and to make a reference to the Full Bench in this regard. We however, do not, think it is necessary

in this particular case to reconsider the Division Bench decision or to make a reference to the Full Bench. The language of the various provisions of

the Act lead to an irresistible conclusion that the Act applies only to common or public lands or at any rate to the user of such land. Section 3 of

the Act runs as under:-

3. Exercise of right over pathways and places used for common or public purposes:- (1) Notwithstanding anything to the contrary contained in any

other law for the time being in force, and notwithstanding any agreement custom or usage or any decree or order of any Court or other authority,

every Inhabitant of a village shall exercise the right of user in respect of any road, street lane, path, channel, drain, well, tank, or any source of

water-supply in a village including the village of which he is not an Inhabitant:

Provided that such right was exercised by such Inhabitant or any of his predecessors-in-title for one year, continuously at any time prior to the

commencement of the Jammu and Kashmir Common Lands (Regulation) Ordinance, 1956 (VII of 1956).

(2) The right of user permitted by sub-section (1) shall not be deemed to include or otherwise confer, create or assign any right of encroachment,

whether by means of construction, including fencing, walling or putting any barrier or by breaking up of land, diversion or otherwise.

The head-note of Section 3 clearly shows that the dominant intention of the legislature was to restrict the provisions of the Act to user of public and common lands only. In these circumstances therefore the words, lane, path, street, channel, etc., have to be read with reference to the dominant intention expressed by the legislature in the headnote. Furthermore u/s 16 of the Act the Jurisdiction of the Civil Court is completely barred and it could not have been intended by the legislature that by applying the Act to private lands the right of a citizen to move a Civil Court would be completely barred if it was determined in a summary fashion under the provisions of the Act. Section 6 of the Act runs as under:-

6. Assignment of land for village abadi:-

(1) Where in any village no land is recorded for extension of the village Abadi, or if the land so reserved is inadequate, a Collector may, notwithstanding anything contained in any law for the time being in force, by an order in writing assign, in the manner prescribed, other land for such purpose from either of the following categories of land, namely:-

(a) land owned by the State in the village:

Provided it is not required for any State purpose:

(b) waste land in the village Shamilat;

(c) waste land in any proprietary holding in the village:

(d) cultivated land in the village:

Provided that unless land included in any preceding category be not available or be not suitable, no land from the next category shall be assigned:

(2) The land assigned under sub-section (1) shall, subject to the other provisions of this Act, be apportioned for building purposes amongst the inhabitants of the village in such manner as may be prescribed.

(3) Where the land is assigned out of the land owned by the State, the inhabitants of the village in whose favour it is apportioned, shall subject to the payment of a premium equal to ten times the letting value of such land, be granted the right of ownership in such land.

(4) (i) Where the land is assigned out of the land held in ownership right, all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of the land-owner shall, notwithstanding anything to the contrary contained in

any law, custom or usage for the time being in force, except as otherwise provided in this Act, be extinguished and such rights, title and interest

shall be vested in the inhabitants of the village in whose favour it is apportioned free from all encumbrances.

(ii) The inhabitants of the village in whose favour such land is apportioned shall be liable to pay and the landowner concerned shall be entitled to

receive and be paid such compensation as may be determined under this Act.

The analysis of this section shows that the dominant intention of the legislature in passing this Act was that it should be used only for public

purposes, Section 12 of the Act, which refers to the determination of vacant land for building and other purposes runs as under:-

(1) The Government shall determine the extent of the vacant land as defined in clause (b) of Section 11 and may grant it for building and other

purposes in such manner and on such conditions as may be prescribed.

(2) In the matter of such determination, the Government; may consider:-

(a) any general scheme of rural housing or development already sanctioned by it: and

(b) the requirements of land for any public purpose:

(3) Where any vacant land is granted to any person for building purposes all rights, title and interests in such land shall after the building is erected

thereon, vest in such person.

This section limits the determination of the vacant land only if it is to be used for public purpose. A perusal of this provision therefore reinforces the

decision of the Division Bench in Letters Patent Appeal referred to above that the Act was meant to apply only to common or public land and not

to private land. The Division Bench while considering this point observed as follows:-

.....The Act itself governs only common lands and the fact that the scope of the Act extends only to common lands or public places is clear by

the use of the various places described by the statute in Section 3 namely, street, path, channel, well, tank etc. The Act was not meant to cover any

private dispute between two individuals or any right of easement claimed by one inhabitant over the land of another which will only be decided by a

civil court.....

We find ourselves in complete agreement with the observations made by the Division Bench referred to above. In view of the finding of the

Collector and the Tehsildar that in the present case the path was a private one belonging to Lal Singh, it is obvious that the provisions of the Act

would have no application to this case, and the learned Single Judge was right in quashing the order of the Collector and there is no merit in these

appeals which are dismissed with costs assessed at Rs. 100/- in each appeal.

J.N. Bhat, J.

5. I agree.