

(2022) 12 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2778 Of 2021, Civil Miscellaneous No. 8625 Of 2021

Dr. Shabnam Andrabi & Ors

APPELLANT

Vs

UT Of J&K & Ors

RESPONDENT

Date of Decision : 15-12-2022

Acts Referred:

Citation : (2022) 12 J&K CK 0026

Hon'ble Judges : Sanjeev Kumar, J; Moksha Khajuria Kazmi, J

Bench : Division Bench

Advocate : J.H. Reshi, F.A Bhat, Illayas Nazir Laway

Final Decision : Disposed Of

Judgement

1. Petitioners herein claim to be legal heirs of Mst. Saira Sidiqua who was owner of land measuring 3 kanals and 19 marlas comprising of khasra No. 347 Min and 1678/ 349 min situated at Laripora Phalgam. In the year 1986 Mst. Saira Sidiqua, vide government order No. 241-FST of 1986 dated 17.10. 1986, was permitted to exchange her propriety land aforesaid with forest land measuring 3 kanals and 19 marlas falling in compartment No. 36-A Lidder Phalgam. The propriety land of Mst. Saira Sidiqua was utilized by the Government for public purpose namely expansion of Golf Course Pahalgam. With a view to get the land allotted in exchange mutated in her favour, Mst. Saira Sidiqua made an application to the Deputy Commissioner, Anantnag, for attestation of requisite mutation. Accordingly Tehsildar Pahalgam attested mutation No. 452 in respect of the land given to Mst. Saira Sidiqua in exchange of her propriety land and assigned it a new khasra No. 780. Similarly the proprietary land which was given by Mst. Saira Sidiqua to the government for expansion of Pahalgam, Golf Course was also mutated in favour of the Government vide Mutation No. 1140 dated 5th November 1986. It is submitted that Mst Saira Sidiqua, the mother of the petitioners fenced her land with wooden poles and barbed wires as demarcated by the revenue authorities. In the year 2007, it is alleged, Mst. Saira Sidiqua was

informed that some unknown persons having taken the advantage of turmoil in the valley, had removed fencing and polls of the aforesaid land. Accordingly, Tehsildar Pahalgam, was approached for re-demarcation of the said land along with officers of the Forest Department so that the mother of the petitioners was in position to re-fence the land vested in her in terms of Government Order dated 17.10.1986 and duly mutated in the her favour by the Tehsildar Pahalgam. While the application aforesaid was pending consideration, the mother of the petitioners Mst Saira Sidiqua passed away on 25th September 2009. The petitioners claim that they being students and engaged in their respective pursuits, could not pursue the proceedings for demarcation pending before the Tehsildar Pahalgam. It was only in the year 2012 the petitioners who had succeeded to the estate of their mother, came to know that the name of their late mother was missing from the revenue records as having been removed during settlement proceeding undertaken by the revenue authorities in the Pahalgam area. This made the petitioners to move an application before the Settlement Officer on 08.12.2012. The application was allowed and the entry in the name of mother of the petitioners, as it existed prior to settlement proceedings, was restored. Even the land measuring 3 kanals and 19 marlas comprising of Khasra No. 780 (the subject land) was formally mutated in the name of the petitioners in the year 2017 vide Mutation of inheritance bearing No. 276 attested on 23.12.2017. The petitioners also claim that after getting the revenue records corrected and mutation of inheritance attested in their favour, they approached CEO Pahalgam Development Authority (PDA) for seeking permission of the Building Operation and Control Authority, (BOCA) Phalgam for re-fencing the subject land. The petitioners could not get the permission from the BOCA, Pahalgam, though the matter has been pending before the concerned Authority since the year 2019.

2. The grievance of the petitioners, as projected in this petition, is that the subject land which remained unattended for some time, has now been utilized by the Government for construction of Pahalgam SKI LIFT through the Jammu and Kashmir State Cable Car Corporation (Respondent no.8) and that no compensation for the aforesaid land has been paid. The petitioners claim to have approached the respondents for formally acquiring the land and for payment of compensation but no heed is being paid by the respondents to the genuine request of the petitioners.

3. In the aforesaid backdrop, the petitioners have filed the instant petition seeking inter alia the following reliefs:-

1. Direction to the Revenue Authorities to re-demarcate the subject land given to their mother Late Saira Sidiqua in exchange vide Government Order No. 241-FST of 1986;

2. Directing the respondents, in particular respondent no. 8, to remove all super structures, equipments, machinery, transformers and generators etc, from the subject land and hand over peaceful vacant possession thereof to the petitioners;

and

3. In the alternative a direction has been sought to the respondents to provide alternate suitable land of same dimension to the petitioners within the vicinity or acquire their propriety land in accordance with provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4. On being put on notice, the respondent no. 8- Managing Director J&K Cable Car Corporation has filed his objections.

5. It is submitted that in the year 2015 SKI LIFT was decided to be installed at Pahalgam before the onset of winters and accordingly relevant piece of land was identified by the Corporation along with the Department of Tourism. A joint inspection was carried out of proposed site by the engineer of the Corporation along with the Range Officer of Forest Division, Pahalgam, and a proposal in this regard was submitted to the Divisional Forest Officer Lidder Forest Division, Bijbehara on 03.11.2015. The proposal was accepted and on the directions of Principal Chief Conservator of Forest (HOFF) an amount of Rs. 26,32,800/- was deposited with the Forest Department for transfer of forest land measuring 2.40 hectares. On deposition of the requisite sum, the Department of Forest sanctioned the use of 2.40 hectares of forest land for installation of SKI LIFT at Pahalgam, vide Government Order No. 32-FST of 2017 dated 03.03.2017. The Corporation has installed the Pahalgam SKI LIFT on the aforesaid land allotted to it by the Forest Department for consideration.

6. It is submitted by the respondent no. 8 that no land of the petitioners has been acquired and what is taken possession of by the respondent no. 8 is a piece of land handed over to it for use by the Forest Department in lieu of payment of Rs. 26,32,800/-.

7. Having heard learned counsel for the parties and perused the material on record, we are of the view that this writ petition raises complicated disputed questions of fact which cannot be gone into by this Court in exercise of its extraordinary writ jurisdiction. There may not be any dispute that the land which was part of Compartment No. 36-A Lidder, has been transferred in favour of the mother of the petitioners in exchange of her propriety land measuring 3 kanals and 19 marlas comprising of khasra No. 347- min and 1678/349-min situated at Golf Course Pahalgam. The petitioners have placed on record several documents to demonstrate that the forest land transferred in the name of their mother has been duly mutated and entered in the revenue records. What is, however, disputed before us is whether the said land which is now mutated in favour of the petitioners has been handed over by the Forest Department to the respondent no. 8 for installation of SKI LIFT. It is not clear as to whether the subject land now mutated in favour of the petitioners is part of the land measuring 2.40 Hectares of forest land which has been transferred by the Forest Department to the respondent no. 8 for installation of SKI LIFT in terms of Government Order

No. 32-FST of 2017 dated 03.03.2017. It is pertinent to note that when the forest land measuring 3 kanals and 19 marlas from compartment No. 36-A Lidder, was transferred in the name of the mother of the petitioners, the revenue records were corrected and the said land was deleted from the forest land.

8. It is thus difficult for us to accept the contention of Mr. J.H. Reshi, learned counsel appearing for the petitioners that the forest land measuring 2.40 Hectares transferred by the Forest Department to respondent no. 8 vide Government Order No. 32- FST of 2017 dated 03.03.2017 contains the land of the petitioners. Moreso, when the petitioners are themselves not sure about the location of their propriety land. It is the case of the petitioners that in the year 2007, their mother had approached the Tehsildar for seeking re-demarcation of the land. To the similar extent is the prayer made by the petitioners in the petition.

9. Having regard to the facts and circumstances of the case and having heard both the sides, we are of the view that this petition is not maintainable, in view of the involvement of complicated disputed questions of fact for determination. We are not the authority to demarcate the land of the petitioners nor can we say with certainty as to whether the land of the petitioners is part of land transferred by the Forest Department in favour of respondent no.8.

10. This petition is, therefore, held not maintainable and the same is accordingly disposed of with liberty to the petitioners to move a fresh application before Tehsildar, Pahalgam, for seeking demarcation of their land.

11. Should the petitioners file such an application within a period of two (02) weeks, same shall be considered and disposed of by the Tehsildar concerned within a period of eight(08) weeks from the date of copy of this judgment is served upon him. Also before passing appropriate orders on such application, Tehsildar, Pahalgam shall provide an opportunity of being heard to all the stakeholders before propriety land claimed by the petitioners is demarcated and identified. Needless to say that if upon demarcation it is found that the land of petitioners is part of the land transferred by the Forest Department in favour of respondent no 8 vide Government Order No. 32-FST of 2017 dated 03.03.2017, the follow up action shall be taken by the concerned authority to acquire the subject land by following the provision of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

12. Disposed of.