

(2006) 12 J&K CK 0016
In the Jammu And Kashmir High Court

Gani War and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Citation : (2007) 2 JKJ 71

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Judgement

Mansoor Ahmad Mir, J.—By this writ petition, petitioners have invoked writ jurisdiction of this court for quashing the orders dated 11-8-

1987 passed by respondent No. 2 -- J&K Special Tribunal in Revision Petition No. 479 of 1987 titled Gani War v. Ahad Mir and the order

dated 19-08-1983 passed by Jt. Agrarian Reforms Commissioner Srinagar in file No. 143 of 1982-83 and order dated 20-07-1982 passed by

Collector Agrarian Reforms, Sopore, in file No. 77/SDM and also for commanding the respondents not to eject them from the suit property on

the; grounds taken in the writ petition.

2. It appears that Ahad Mir, respondent No. 5 filed an application against the petitioners herein for ejectment on 26-12-1967 before Deputy

Commissioner, Baramulla, who transferred/ assigned the same to Assistant Commissioner, Baramulla. Parties contested the said application and

ultimately, Assistant Commissioner, granted the said application vide order dated 4-5-1971. Feeling aggrieved of the said order dated 4-5-1971,

the petitioners herein filed an appeal before Divisional Commissioner, Kashmir. The said appeal remained on the dockets of Divisional

Commissioner, Kashmir, till 6-9-1978. In the meanwhile, J&K Agrarian Reforms

Act, came into force and accordingly vide order dated 6-9-

1978, the Divisional Commissioner, Kashmir held that the appeal along with impugned order had abated. Before proceeding further, it is necessary

to notice on what grounds Ahad Mir had sought ejectment of the petitioners i.e. Gani War S/O Ramzan War and Gani Dar S/O Gaffar Dar R/O

Nowpora Kalan, tehsil Sopore.

3. It appears that Ahad Mir, respondent No. 4 had sought ejectment of petitioners herein on the ground that they were not protected tenants but

were tenants at will -- they were not good tenants because had not paid the rent -- share of produce and had accordingly sought remedy in terms

of Section 46 read with Section 47(1)(b) and 48 of the Tenancy Act. During pendency of the lis, Gaffar Dar died and his legal heir filed this writ

petition along with one Gani War. During pendency of the writ petition, Ahad Dar, respondent No. 4 died and his legal representatives came to be

brought on record vide order dated 17-4-2002.

4. It seems that after Divisional Commissioner passed the order dated 6-9-1978, the record was sent back to Assistant Commissioner Baramulla

and on 30-9-1978, following order came to be recorded by Assistant Commissioner, Baramulla:

5. There-after file remained on the dockets of Assistant Commissioner, Baramulla, till 2-9-1980. It appears that the file came to be transferred by

Assistant Commissioner -- Collector Baramulla to Collector Agrarian Reforms, SDM Sopore and accordingly file came up before the said court

on 2-9-1980. It seems that the file again remained on the dockets of the said court till collector, SDM Sopore, passed the order dated 20-7-1982

and directed that the petitioners herein respondents in that application be ejected. Feeling aggrieved by the said order, petitioners filed the appeal

before Joint Agrarian Reforms Commissioner -- respondent No. 3 which came to be dismissed. Not satisfied with the said order, petitioners filed

a revision petition before respondent No. 2 which came to be dismissed and ultimately, the petitioners were constrained to file this writ petition and

sought intervention of this court.

6. Learned Counsel for the parties raised important questions of law and the case was heard at-least for 2/3 days. Following questions came up

for consideration:

(1) Whether order of ejectment dated 4-5-1971 came to be passed by Assistant Commissioner, Baramulla u/s 84 or 85 of the Tenancy Act?

(2) Whether appeal was competent before Divisional Commissioner, Kashmir against the order of Assistant Commissioner, Baramulla dated 4-5-1971?

(3) What was the effect of order dated 6-9-1978 passed by Divisional Commissioner?

(4) Whether the order passed by Assistant Commissioner, Baramulla dated 4-5-1971 had attained finality?

(5) Whether the order dated 4-5-1971 of Assistant Commissioner, Baramulla had abated and was inconsistent with the provisions of the Agrarian Reforms Act?

(6) Whether in terms of mandate of Section 42 of the Agrarian Reforms Act, order dated 4-5-1971 lost its efficacy.

(7) Whether in view of the operation of Agrarian Reforms Act, order of ejectment could be enforced / executed by a revenue court/officer?

(8) Whether Agrarian Reforms Act provides for ejectment of a tenant?

(9) Whether the petitioners are prospective owners in terms of Section 4 of the Agrarian Reforms Act read with Agrarian Reforms Rules?

7. I deem it proper to refrain from offering my comments for the reason that the writ petition could be decided without discussing and returning any

finding on these issues, for the following reasons:

8. Question is how Collector Agrarian Reforms -- SDM Sopore passed order dated 20-7-1982 when the proceedings before the Assistant

Commissioner, Baramulla had come to an end by passing the order dated 4-5-1971 and there-after appeal came to be filed wherein Divisional

Commissioner -- appellant court held that the appeal as well as order dated 4-5-1971 had abated and the record was sent back. How and under

what circumstances, file was kept on board when it was already finally decided vide order dated 4-5-1971. No application has been moved by

the parties for any relief, but by the mistake of Registry, order dated 30-9-1978 came to be recorded and in terms of that order, file remained on

the board of Assistant Commissioner, Baramulla, till it came to be transferred to SDM -- Collector, Agrarian Reforms, Sopore and there-after

remained on the board of that court from 2-9-1980 till passing of the impugned

order dated 20-7-1982. Question is how this order came to be passed when no case or proceeding was pending. Only record was sent back, thus the order passed by the Collector -- SDM Sopore is without jurisdiction, power and is abuse of process of law. Virtually the same application which came to be presented on 26-12-1967 and decided on 4-5-1971 came to be decided again by Collector (SDM), Sopore, on 20-7-1982. How two decisions can be given in one proceeding and how a file could be taken on record after passing final orders. The Joint Agrarian Reforms Commissioner and the Special Tribunal have lost sight of this important aspect of the case and thereby have fallen in an error.

9. It is pertinent to mention herein that this important fact came to be detected when Registry of this court in terms of order dated 9-11-2006 passed by this court sent for the file No. 59 of 1968 and 77/SDM of 1980. When the record was produced, no such case was instituted on 2-9-1980 -- file No. 77-SDM. But what has happened is that application presented on 26-12-1967 came to be diarized by Assistant Commissioner, Baramulla as file No. 59/1968 and when it was received back from the court of Divisional Commissioner, it was kept on board as discussed above and came up before Assistant Commissioner Collector Agrarian Reforms, Sopore and the Registry of that court diarized it as file No. 77/SDM of 1980. It is thus crystal clear from the said record that its date of institution has been shown as 26-12-1967 and date of decision has been shown as 20-7-1982, when the fact of the matter is that the application dated 26-12-1967 came to be decided on 4-5-1971.

10. In the given circumstances, I am of the considered view that the orders passed by respondents 2 to 4 are without jurisdiction and have been passed in abuse of process of law.

11. For the foregoing reasons, this petition is allowed and the impugned orders are quashed. However, parties are at liberty to seek appropriate remedy before appropriate forum, if available.