

(2022) 12 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1818 Of 2014 (O&M)

Garoo And Others

APPELLANT

Vs

Member, J&K Special Tribunal Jammu And Others

RESPONDENT

Date of Decision : 05-12-2022

Acts Referred:

Agrarian Reforms Act, 1976 — Section 2(6), 2(12), 2(17), 2(18), 4, 12
Tenancy Act, 1980 — Section 67

Citation : (2022) 12 J&K CK 0008

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Rohit Verma, Surinder Singh

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. Brief facts of the present petition are that Jalla Ram was having four sons, namely, Milkhi Ram, Prithi, Bhagoo and Bittan. In the year, 1981 Mutation No. 355 under section 4 of the Agrarian Reforms Act 1976 (for short the Act) was attested in favour of Jalla Ram, declaring him as prospective owner of land measuring 7 kanals 9 marlas comprising khasra Nos. 330, 357 and 368 situated in Village, Tarlokpur, Tehsil and District Jammu. Thereafter, in the year, 1988, a mutation bearing No. 442 was attested by the Tehsildar Jammu under section 12 of the Act in favour of the predecessor-in-interest of the petitioners i.e. Bittan with regard to land mentioned above, excluding two other sons and one Devi Ditta s/o Bhagoo, as Bhagoo s/o of Jalla Ram had already expired. Thereafter, the predecessor-in-interest of respondent Nos. 3 to 5 i.e. Milkhi Ram, Prithi, Devi Ditta son of Bhagoo Ram i.e. respondent Nos. 6&7 respectively filed an appeal against the order passed by Tehsildar Jammu dated 12.02.1988 thereby attesting the mutation of the abovementioned land in favour of the predecessor-in-interest of the petitioners under section 12 of the Act. The said appeal was accompanied by an application for seeking condonation of delay. The appellate authority i.e.

Joint Agrarian Reforms Commissioner (with the powers of Commissioner Agrarian Reforms, Jammu) vide order dated 03.04.2002 dismissed the said appeal. The said order was impugned by the respondent Nos. 3 to 7 before the Jammu and Kashmir Special Tribunal, Jammu i.e. respondent No. 1. The learned Tribunal accepted the said revision and vide order dated 24.06.2014, set aside the order dated 03.04.2002. Both mutations attested under sections 4 and 12 of the Act (supra) bearing Nos. 355 and 442 respectively were set aside and matter was remanded back to the Tehsildar concerned for appropriate action.

2. The petitioners being aggrieved of the order dated 24.06.2014 have filed the instant petition inter alia on the grounds that the learned Tribunal has not considered the issue of limitation at all and further that the learned Tribunal has not considered the fact that Bittan S/o Jalla Ram i.e. the predecessor-in-interest of the petitioners constituted the joint family with late Jalla Ram and respondent Nos. 3 to 7 constituted an entirely separate family.

3. Response stands filed by the respondent Nos. 3 to 7, wherein the answering respondents have supported the order passed by the learned Tribunal, respondent No. 1 and have categorically pleaded that Bittan, Milkhi Ram, Prithi and Devi Ditta being his sons and grandson as the case may be, were successors-in-interest of Jalla Ram and they were/are entitled to hold the land in equal shares under the provisions of Agrarian Reforms Act and section 67 of the Tenancy Act. It is also stated that the learned Tribunal was correct in setting aside the Mutation No. 355 as the same was based upon factual inaccuracy.

4. Mr. Rohit Verma, learned counsel for the petitioner vehemently argued that the learned Tribunal has not considered the issue of limitation and further that other sons of Jalla Ram i.e. Milkhi Ram, Prithi and grandson Devi Ditta S/o. Bhagoo constituted a separate family whereas the predecessor-in-interest i.e. Bittan constituted a joint family with Jalla Ram.

5. Mr. Surinder Singh, learned counsel for the respondents 3 to 7 vehemently argued that the petitioners have no cause to raise any grievance as the matter has been simply remanded for fresh enquiry.

6. Heard and perused the record.

7. The perusal of the order impugned reveals that the learned Tribunal has returned a finding that Mutation No. 355 was attested in favour of Jalla Ram in the year, 1981 whereas Jalla Ram had already expired on 04.12.1976. The petitioners have not disputed the said finding returned by the Tribunal that at the time of attestation of Mutation under section 4 in favour of Jalla Ram, the said Jalla Ram was dead.

8. The contention raised by the petitioners is that the learned Tribunal has not considered the issue of limitation. This is apparent from the order impugned that the learned Tribunal has not considered the issue of limitation but the appellate authority also without assigning any reason held the appeal as time barred. In

the application seeking condonation of delay, it was pleaded by the deceased Milkhi Ram (predecessor-in-interest of respondent Nos. 3-5) and respondent Nos. 6&7 that the said mutation has been attested at their back, as such they were not having the knowledge of the same and rather it came to their knowledge only when the written statement was filed by Bittan in the court of Forest Magistrate Jammu. It was also pleaded that after getting the certified copy of the mutation on 19-4-2001, the appeal was filed by them. Had the learned Tribunal considered the issue of limitation, the result would have been the same as the mutation No. 442 was got attested by the predecessor-in-interest of the petitioners i.e. Bittan in his favour to the exclusion of respondent Nos. 3 to 7 at their back. There was also the patent illegality in the attestation of mutation No. 355 in favour of late Jalla Ram and on the basis of said mutation only, the subsequent mutation bearing No.442 under section 12 of the Act (supra) was attested in favour of the predecessor-in-interest of the petitioners i.e. Bittan, pursuant to agreement made between him and the erstwhile owner.

9. The Tribunal has dealt in detail the issue with regard to the rights of inheritance of the other sons and grandson of Jalla Ram and this Court does not find any illegality in the same as the petitioners have nowhere disputed that Milkhi Ram, Prithi, and Bhagoo Ram were not the sons of Jalla Ram. The issue raised by the petitioners that respondent Nos. 3 to 7 constituted a separate family and as such, no rights would devolve upon other sons of Jalla Ram, is misconceived in view of section 2(6), 2(12) and 2(17) of the Act which defines 'family', 'personal cultivation' and 'tiller'. Further, section 67 of the Tenancy Act, 1980 provides that when a tenant having a right of occupancy in any land dies, the right shall devolve upon on his male lineal descendants, if any, in the male line of descent. Also as per section 2(18) of the Act, the words and expressions not defined in the Agrarian Reforms Act have been assigned the same meaning as in the Jammu and Kashmir Majority Act, Jammu and Kashmir Tenancy Act, Jammu and Kashmir Land Revenue Act, Jammu and Kashmir Displaced Persons Act.

10. The Learned Tribunal has also made observation that Mutation No. 355 has been considered as sacrosanct by all the parties though the respondent Nos. 3-7 have challenged the same and rightly so because in the title of the memo of appeal, the challenge has been thrown to mutation No. 355 though the facts have been pleaded with regard to Mutation No. 442 whereby the Mutation under section 12 was attested in favour of predecessor-in-interest of the petitioners.

11. In view of the above, I do not find any illegality in the order impugned rather the order impugned is well reasoned and has taken note of all the relevant provisions governing the controversy at hand as such, the present petition is found to be without any merit, the same is dismissed.

12. Interim directions, if any shall stand vacated.