

(2004) 02 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 276 of 2001

Gh. Nabi Gowhar

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Jammu and Kashmir Land Revenue Act, 1996 — Section 133

Citation : AIR 2004 J&K 104 : (2004) 2 JKJ 70

Hon'ble Judges : Bashir-Ud-Din, J

Bench : Single Bench

Advocate : S.H. Thoker, for the Appellant; N.H. Shah and J. Iqbal, for the Respondent

Final Decision : Dismissed

Judgement

Syed Bashir-Ud-Din, J.—Heard. Petitioner land owner at Dharambugh chadoora alleges that he is in possession of about 3 kanals of

Shamilat/Gas-chari land, adjacent to his land covered by survey Nos. 1428/187. Regarding this land Tehsildar Chadoora Collector issued notice

u/s 133 Land Revenue Act requiring the petitioner either to pay compensation for the piece of land or hand over the possession of this land. This is

so done by notice dated 31-08-2000 (Annexure-C). This show cause notice is under challenge in this petition on grounds stated in the writ

petition. The otherside has also filed objections. Mr. N.H. Shah who is representing the State Govt. and the Revenue Official Tehsildar Chadoora

submits that only notice issued to petitioner's son Shahnawaz as an encroacher is u/s 133 of the Land Revenue Act. The officer is empowered by

provision of Section 133 Land Revenue Act to take such measure within the ambit of Section 133 of the Land Revenue Act. The section

statutorily provides that notice is to be given to remove the encroachment or pay the compensation or- offer some suitable equalvent alternate land.

This is what has been done. After the notice is served and the otherside has opportunity to show cause and do what he is required to do under law

in accordance with the procedure prescribed therefore by the very provision of law, Tehsildar Collector is to pass the final order in the case. The

final order has not been yet passed. Matter is at mediate stage and is yet to reach the final stage. By issuance of the show cause notice, no rights of the petitioner are violated.

2. In the facts and circumstances of the case it is not a case where fundamental or legal rights are violated or that there is a failure or breach to

discharge the legal obligation cast on the competent authority. It is not even a case of discrimination or colourable exercise of powers. No

malafides are shown. Therefore the petition in its present form is pre-mature and not maintainable and no case is made out at this stage for

admission. However, it is made clear that the petitioner or the concerned person is/are free to approach the concerned competent authority in the

matter under law, if by passing an order any right of petitioner is violated or breached or the competent authority fails to discharge its duties which

such authority is legally obligated to discharge. In the event petitioner has a cause of action, then the option to pursue the remedy available to him

under law is open to him.

3. It also hardly needs to be stated that the petitioner can be dispossessed and encroachment removed after following due procedure prescribed

by law. Disposed of as dismissed at thresh hold.