
(2012) 07 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1229 of 2011

Ghulam Hassan Bhat and Others

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Citation : AIR 2013 J&K 26

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : Ayoub Bhat, for the Appellant; N.H. Shan, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—By the medium of this writ petition, petitioners have sought a writ of mandamus commanding the respondents not

to change the present status and nature of Kahcharai land falling under Survey No. 1240 (old), new Survey Nos. 1897-Min and 1911-Min,

measuring 84 kanals & 5 marlas, situated at Village Kadalbal Pampore and have also sought a writ of prohibition restraining the respondents from

raising any construction over the said land, on the grounds taken in the writ petition. Petitioners have filed this writ petition not in representative but

in individual capacity. In para 3 of the petition, it has been averred that they have planted trees including fruit trees on the said land and are

preserving and maintaining the present status of the said land, therefore, respondents be restrained from transferring the same to the Agriculture

Department for raising construction.

2. Respondents have filed reply and resisted the petition on the grounds taken

therein.

3. Respondents while challenging the maintainability of the writ petition have questioned the locus and rights of the petitioners over the land in

question. It is averred that the Government of India has approved National Mission on Saffron for Economic Revival of J.&K. Saffron Sector vide

No. 7-6/2010- RKVY dated 19-8-2010 at a total cost of Rs. 372.18 crores with central share of Rs. 288.06 crores. The aim and object of the

mission is to improve technology, increase productivity and quality in the area under saffron crop for being adopted by the farmers. In order to

implement various components of the said scheme, revenue agency identified the land, subject matter of the writ petition. It is averred that the

petitioners have illegally encroached upon the said land by planting certain fruit bearing trees. It is apt to reproduce para-2 of the reply filed by

respondent No. 5.

That in reply to paras 3 & 4 of the petition, it is submitted that the old survey No. 1240 and New Survey No. 1897-min and 1911-min is recorded

as Mehfooz Kacharie in the revenue record originally measuring 327 kanals and 12 marlas. This patch of land has time and again been encroached

by the nearby land owners and others. The petitioners have also resorted to illegal encroachment of the said land and have planted certain fruit

bearing trees on this patch of land. It is pertinent to mention that the Hon'ble High Court in OWP No. 257/2003 in the case titled Ab. Ahad Bhat

and others v. State and others had set aside all exchange orders regarding this survey number and had directed the revenue officers to enter upon

the possession of the land. Thereafter in LPA No. 286/2006 pertaining to same case the Hon'ble Court was pleased to pass the following order:

We find that the petitioners are bent upon to encroach upon the protected shamlat. The Deputy Commissioner in the circumstances as indicated by

him in his affidavit is directed to take all measures to prevent any encroachment on the land.

In compliance, the Kacharie land comprising Survey No. 1240 was demarcated on spot and encroachments were removed under personal

supervision of the then Deputy Commissioner, Pulwama. However, the petitioners time and again encroach the said piece of land and have

succeeded in getting a temporary injunction in their favour from the Munsiff

Court in ex parte by putting forth the mala fide and misleading facts.

4. Admittedly, the land in question is a kahcharai land and is reserved only for grazing purposes, therefore, petitioners have no right over the said

land. They have encroached upon the said land by planting certain fruit bearing trees and under the garb of this writ petition are trying to protect encroachment.

5. Respondents in their reply have specifically stated the reasons for transferring the said land in favour of Agriculture Department, which is in the

interest of public at large and is a noble cause. No doubt grazing land cannot be acquired if alternative land is available. There is a big chunk of

land for grazing purposes measuring 327 kanals and 12 marlas, falling under Survey No. 1240 (old), new Survey No. 1897-Min and 1911 Min,

out of which only 84 kanals & 5 marlas are to be transferred, cannot in any way affect the purpose of grazing land. As discussed hereinabove,

transferring of the land in question is for the interest of public at large and for economic revival of J.&K. Saffron Sector.

6. It is settled position of law that Kahcharai Land is the property of the Government; therefore, the petitioners have no individual rights or interest

on the said land. The Government is within its powers to acquire it, when the same is for the public purpose, more so, when the amount of

compensation on account of the land in question will be utilized by transferring the same to the village Panchayat in terms of Cabinet Decision No.

355 dated 27-3-1979 read with Government Order No. Rev. (LAK) 275 of 1979 dated 28-9-1979. A plain reading of the provisions of the

Land Acquisition Act and the Government order aforementioned, clearly establishes that the Kahcharai Land can be utilized for the public

purpose, when alternate and suitable land is not available.

7. This Court in case Habibullah Sheikh and Others Vs. State of Jammu & Kashmir and Others, , incidentally of which I am the author, has held

that Kahcharai Land can be acquired for public purpose and the amount of compensation in lieu thereof is payable to the concerned Panchayat, in

whose jurisdiction land falls, to be spent for welfare of the community of the area in question. It would be apposite to reproduce the paragraphs 5

and 6 of the judgment, which read as follows:

5.....The petitioners have no right or interest over the said land. It is virtually a

property of the government but meant for grazing purposes. If

Kahcharai land is to be acquired for any public purpose the amount is to be spent for welfare of the community. Division Bench of this Court in

case titled Ghulam Mohammad Bhat & others v. State and Anr. reported as 1981 SLJ JK 254 has held that if Kahcharai land is acquired, the

compensation is payable to the concerned Panchayat in whose jurisdiction land falls. It is the property of the community.

6. If Kahcharai land is acquired, the petitioners have no right to challenge the same. However, the compensation amount is to be ' utilized for the

benefit of the villagers. The villagers are not before the Court. The writ petitioners have filed writ petition in individual capacity. The electric

department has specifically averred that land came to be acquired for the purposes of construction of Grid Station for public purpose. The

petitioners cannot seek any relief against the respondents-Electric Department...

8. Testing the case at hand on the touchstone of the aforesaid settled position of law, what crystallizes from the above discussion is that the official

respondents are within their power to acquire the land for economic revival of J. & K. Saffron Sector. Viewed thus, I find no merit in this writ

petition. Accordingly, it is dismissed along with CMPs. Interim direction, if any, shall stand vacated. There shall, however, be no order as to costs.