

(2011) 08 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1399 of 2010, CMP No. 1886 of 2010

Gouri-D-Bajju (Dr.)

APPELLANT

Vs

Deputy Commissioner, Jammu and Others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Ranbir Penal Code, 1989 — Section 193, 219, 228

Citation : (2011) 3 JKJ 194

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Mr. Justice J.P. Singh, J.—The petitioner's Civil Suit for mandatory injunction directing defendants to remove Crates and Plantation

thereby opening 25 feet road towards Southern Side of the land belonging to the plaintiff and 20 feet Nallah, was decreed by learned Sub-ordinate

Judge, Jammu on 24.09.2009 providing that the Decree, though binding on the parties, would be subject to the existing legal provisions.

2. During the process of execution of the Decree, Tehsildar, Jammu appears to have issued Notices to the petitioner requiring her response to the

position existing on spot in terms whereof she was found to have unauthorisedly raised construction of her house in land comprised in Khasra No.

1, Mumkin Khad"" in the Revenue records resulting in obstruction of free flow of water from the Nallah.

3. The Tehsildar had not yet concluded his proceedings on the Notices when the petitioner approached this Court by her Writ Petition seeking

quashing of the proceedings initiated by the Tehsildar, besides a Command to the Deputy Commissioner, Jammu and Assistant Commissioner,

Jammu to implement the Decree passed by the Civil Court. The petitioner seeks further directions for registration of FIR against respondent No. 3,

the Tehsildar, Jammu and respondent No. 4, the IAS Probationer under Sections 193, 219, 228 RPC.

4. The petitioner's learned counsel submitted that the Tehsildar had no jurisdiction to proceed in the matter because the land in question, being

Gair Mumkin Khad", the provisions of the Jammu and Kashmir Agrarian Reforms Act, 1976 would not apply to it and the action initiated by the

Tehsildar requiring petitioner's response to the Notices issued by him, was without jurisdiction and even otherwise unwarranted as the execution of

the Decree passed by the Civil Court could not be thwarted by illegal action of the Tehsildar.

5. Considered the submissions of the petitioner's learned counsel and those made by the learned Additional Advocate General and the learned

counsel appearing for respondent No. 6.

6. Perusal of the provisions of Section 3 of the Jammu and Kashmir Agrarian Reforms Act, 1976 reveals that the Act would have no application to

such categories of land as were specified in Column No. 1 of the Table appearing in the Section. It is, however, indicated that those Sections

which appear in Column 2 of the subjoined Table in the Section, would apply to the categories of land specified in Column 1 thereof.

7. Section 13 finds place in Column 2 of the sub-joined Table appearing in Section 3 of the Act and the land in question in Section 3 (f) in Column

1 thereof. Section 13 of the Act contemplates restriction on utilization of land appearing in Column 1 of the sub-joined Table except for the

purposes mentioned therein. In this view of the matter, the land recorded as "Gair Mumkin Khad", cannot be used for construction purposes, in

that, such a course would offend the provisions of Section 13 of the Act.

8. Section 13 having been specifically made applicable to "Gair Mumkin Khads", the Tehsildar Agrarian Reforms, cannot, therefore, be said to

have acted without jurisdiction in requiring petitioner's response regarding her raising unauthorised construction over 'Gair Mumkin Khad' which

had resulted in restricting the flow of water in Khad/Nallah.

9. Even otherwise, the Tehsildar having not yet passed any final orders in the matter, the petitioner's grievance, as projected in the Writ Petition,

cannot be entertained by this Court at this stage in exercise of its Extra Ordinary Writ Jurisdiction particularly when equally efficacious remedies,

against the Orders, if any, passed by the Authorities under the Act, were available under the provisions of the Jammu and Kashmir Agrarian

Reforms Act, which creates Forums of Appeals and Revisions against the Orders passed by the Sub- ordinate Forums.

10. Petitioner's next contention that the Tehsildar and other functionaries of the State-respondents had thwarted the execution proceedings of the

Civil Court and were, therefore, required to be proceeded against, appears to be utterly misconceived, in that, the Decree sought to be executed

by the petitioner, specifically makes it subject to the existing provisions of law additionally providing that it would be binding only on the parties to

the Suit. In this view of the matter, the proceedings initiated by the Tehsildar under the provisions of the Jammu and Kashmir Agrarian Reforms

Act cannot be construed as his act of thwarting the execution of Decree.

11. Even otherwise, all matters pertaining to the Execution, Discharge and Satisfaction of the Decree, are required to be resolved and settled by

the Court executing the Decree and not in other proceedings and in this view of the matter, the petitioner is not entitled to consideration of her case

for issuance of directions to the State-functionaries.

12. For all what has been said above, no case for issuance of directions, as prayed for in the Writ Petition, has been made out by the petitioner.

13. This Writ Petition, therefore, lacks substance. It is, accordingly, dismissed.