
(2019) 04 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 300 Of 2016, IA No. 01 Of 2016, 01 Of 2017

Harpal Singh And Another

APPELLANT

Vs

State And Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Jammu And Kashmir Agrarian Reforms Act, 1976 — Section 7

Citation : (2019) 04 J&K CK 0039

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : M. K. Raina, S. S. Nanda

Final Decision : Disposed Off

Judgement

1. The present writ petition has been filed by the petitioner for quashing of order dated 26.10.2015, passed by the Chairperson, Jammu and Kashmir Special Tribunal, Srinagar by virtue of which contempt petition filed by the petitioners has been dismissed.

2. The case of the petitioners is that due to eruption of militancy in the valley, they were forced to leave their home and hearth for their safety so they migrated from the valley in the year 1990; that the petitioners are recorded owners in possession of land measuring 36 kanal 14 marlas in various khasra numbers at Balhama Thakanpora, Tehsil Rohama, District Baramulla Kashmir. Out of said land 11 kanals and 4 marlas falling under Khasra No.32 (5 kanal 11 marla), Khasra No.21 (9 marla), Khasra No.33 (3 kanal 16 marla), Khasra No.27 (13marla), Khasra No.25 (15 marla) was under the tenancy of Seda Malik S/o Yousuf Malik and thereafter the said land is presently under illegal occupation of Hashmatullah S/o Sher Ahmad; that besides this the petitioners owned 25 Kanals 10 marlas out of which land measuring 13 kanal 5 marlas under Khasra No.1201 (4 kanal 7 marla), Khasra No.1283 (7 kanal 15 marla), & Khasra No.1284 (1 kanal 3 marla) situated at village Balhama Thakanpora, Tehsil Rafiabab presently

Tehsil Rohama was initially under the tenancy of Habib Dar son of Wahab Dar and presently is under the illegal occupation of Nazir Ahmad Dar, Ali Dar, Bashir Ahmad Dar sons of Habib Dar and land measuring 12 kanal 5 marla under Khasra No.1211 (1 kanal 2 marla), Khasra No.1214 (5 kanal 4 marla) and Khasra No.1274 (5 kanal 19 marla) was initially under tenancy of Rajab Dar S/o Wahab Dar and now is under illegal occupation of Mushtaq Ahmad Dar, Mohd. Sidiq Dar sons of Rajab Dar all residents of Gundbal Panzla Takia Tehsil Rohama District Baramulla ; that because of the unfortunate turmoil in the valley, the above said persons/tenants in connivance with the revenue officials took advantage of absences of the petitioners from the valley and Tehsildar, Sopore without adhering Section 7 of Agrarian Reforms Act attested mutation no.55 with respect to land measuring 11 kanal 4 marlas and mutation no.259 with respect to land measuring 25 kanal 10 marla fraudulently; that as soon as the petitioners came to know regarding this fact they filed an appeal before Commissioner, Agrarian Reforms Baramulla, who after hearing both the sides, set aside both the mutations i.e. Mutation no.55 & 259 vide order dated 18.7.2002; that while setting aside the mutations the Commissioner Agrarian Reforms directed the Tehsildar concerned for making denovo enquiry in the matter and decide the same after providing opportunity of being heard to all the parties; that feeling aggrieved of the aforementioned order of Commissioner Agrarian Baramulla, the tenant Hashmatullah and Mst. Fazi filed a revision petition before court of Jammu & Kashmir Special Tribunal Srinagar and the said revision was dismissed by Special Tribunal Srinagar vide order dated 30.5.2006; that after dismissal of revision petition, Mst Fazi filed an application for transferring the case from Tehsil Rafiabad District Baramulla and the said application was filed with mala fide intention only to cause delay in deciding the right of the petitioners; that Additional Commissioner, Kashmir did not agree with the applicant and accordingly dismissed the application vide order dated 26.12.2009; that the tenants again filed another application of transfer before Additional Commissioner Kashmir and the said application was also dismissed on 28.5.2008; that tenants again did not stop here and filed one more application for recalling the case from the Tehsildar concerned before Financial Commissioner Revenue Srinagar and the said application was also dismissed by the said court on 21.8.2012; that despite directions of the higher authorities the Tehsildar concerned failed to decide the matter expeditiously, so the petitioners approached the Additional Deputy Commissioner Baramulla by way of an application requesting therein that they are being deprived from their property illegally and the Tehsildar Rohama be directed to decide their case expeditiously and on that application Additional Deputy Commissioner directed the Tehsildar Rohama to furnish report on or before 30th May, 2011, but despite the directions Tehsildar failed to implement the orders of the higher authorities, so the petitioners filed a contempt petition before Jammu and Kashmir Special Tribunal Srinagar which came to be dismissed vide order dated 26.10.2015, thereby staying the proceedings.

3. Petitioners have challenged the impugned order dated 26.10.2015 on the ground that the said order is against the facts and law, and the Chairperson, Jammu and Kashmir Special Tribunal, Srinagar was not competent to stay its own order.

4. Objections have been filed by the respondents, in which they have admitted the factual matrix of the case, but have supported the impugned order.

5. I have heard counsel for both sides and gone through the law on the subject.

6. The impugned order reads as under;-

"This is a Contempt Petition arising out of the Judgment passed by this Court in File No.STS/1347/2004 date of institution 07.10.2004 date of decision 20.05.2006.

As per the status report filed by the Tehsildar concerned, the ex-owners have been declared as migrants. Accordingly, the proceedings shall remain stayed in accordance with the provisions of J&K Migrant Property (Prevention, Protection & Restraint of Distress Sales) Act, 1997."

7. From bare perusal of impugned order, it is evident that court below has stayed the proceeding in the matter as per the status report filed by the Tehsildar concerned. So proceedings shall remain stayed in accordance with the provisions of J&K Migrant Property (Prevention, Protection & Restraint of Distress Sales) Act, 1997. This finding of Tribunal is quite illegal and against the well known principles of law; because in contempt proceedings, court has only to see as to whether the order already passed by court has been executed/implemented in its letter and spirit or not. Court cannot appreciate the merits of order, for which contempt proceeding has been initiated. Court has no power to set at naught the order, violation of which, contempt proceeding has been initiated. The only remedy available to aggrieved party against which contempt proceeding has been initiated is to approach higher forum. Under the garb of contempt proceeding, order cannot be set aside.

8. Further, the provisions of J&K Migrant Property (Prevention, Protection & Restraint of Distress Sales) Act, 1997 are not applicable in the present set of circumstances, because petitioners had challenged Mutation No.259 dated 26.12.1989 & Mutation No.55 dated 30.07.1993, which were later on set aside by the Commissioner Agrarian Reforms.

9. In view of above, the order impugned is set aside. Case is remanded back to court below to pass appropriate orders in contempt petition filed by the petitioners.

10. Writ Petition stands disposed of.