

(2022) 07 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1200 Of 2012, IA No. 1659 Of 2012 In
CPOWP No. 89 Of 2012

Kaku Ram

APPELLANT

Vs

State Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 04-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 136, 142, 226, 300A

Constitution Of Jammu And Kashmir, 1956 — Section 4, 103</l>

Citation : (2022) 07 J&K CK 0005

Hon'ble Judges : Mohan Lal, J

Bench : Single Bench

Advocate : Jagpaal Singh, Raman Sharma

Final Decision : Allowed/Disposed Of

Judgement

Mohan Lal, J

1. Petitioner has invoked the jurisdiction of this Court in terms of Article 226 of the constitution of India r/w Section 103 of the constitution of the Jammu & Kashmir for the issuance of the appropriate writ, order or direction of the following nature:-

(a) Mandamus, commanding the respondents to forebear from causing any interference or impediment to the petitioner into the possession, occupation and enjoyment of the land measuring 12 kanals covered under Khasra no. 2195 and 2196, khewat no. 15 and khata no. 397 situated at Sunjwan, Tehsil and District Jammu;

(b) Mandamus, commanding the respondents not to undertake forcible eviction of the petitioner from the land in question measuring 12 kanals covered under Khasra no. 2195 and 2196, khewat no. 15 and khata no. 397 situated at Sunjwan, Tehsil and District Jammu except in due course of law;

(c) Prohibition, the respondents be directed to refrain from installing the police

post over the land covered under the sale deeds annexed with the writ petition and in the event, same is installed remove the same forthwith;

(d) Any other writ, order or direction which this Hon'ble Court deems fit and proper under the facts and circumstances of the present case may kindly be issued in favour of the petitioner and against the respondents.

2. Petitioner in his writ petition has averred, that he is a citizen of India and a permanent resident of the state of Jammu and Kashmir and is entitled to the protection of all the constitutional, statutory, legal rights guaranteed by the constitution of India and by the other laws applicable to the state of Jammu and Kashmir; petitioner purchased land measuring 12 kanals falling under Khasra no. 2195 and 2196, khewat no. 15 and khata no. 397 situated at Sunjwan, Tehsil and District Jammu from Sh. Jagdev Singh, Sukdev Singh, Kamal Dev Singh sons of Lt. Amir Singh and Sh. Varinder Singh, Karan Singh sons of Baldev Singh all residents of Sunjwan Tehsil and District Jammu through their power of attorney holder Sh. Deepak Sharma S/o Sh. Ram Sharma R/o H.No. 95-P Sector 1-A Trikuta Nagar, Jammu vide two different sale deeds dated 24.12.2009 and the same were duly registered by the Learned Sub Registrar (Sub-Judge) Jammu on 29.12.2009; that on the purchase of the aforesaid land by the petitioner in terms of the aforesaid sale deeds and on obtaining the possession of the said land, petitioner became the absolute owner of the said land with all its rights to own, occupy, possess and enjoy the same exclusively, therefore, necessary mutations too were attested in respect of the land in question covered under the aforesaid sale deeds in favour of the petitioner by the concerned revenue authorities; that few days back, respondents came on the site of the land and without even informing the petitioner through their employees and agents started leveling the aforesaid land, petitioner on enquiry came to know that the respondents are going to install a police post on the aforesaid land, immediately thereafter petitioner approached the respondents and told them that he is the owner in possession of the said land and all the relevant documents pertaining to the said land were shown to them, but they did not pay any heed towards the petitioner's claim; that the respondents cannot by any sense of imagination cause any interference to the petitioner in his possession, occupation and enjoyment of the land covered under Khasra no. 2195 and 2196 for the reasons that the petitioner is the absolute owner in possession of the land having been validly and legally purchased by him in terms of the aforesaid sale deeds, however, respondents are harassing and threatening the petitioner of eviction of the land in question without any power and authority, petitioner was further told by the respondents that they would divest him of the land in question as he has no right and authority to hold and possess the said land; petitioner even approached the Deputy Commissioner Jammu for the redressal of his grievances but all in vain and the respondents instead of protecting the person and property of the public, are involved in dispossessing the petitioner of his immovable property by adopting all the possible illegal and unlawful methods, the arbitrariness and mala-fide on the part of the respondents results in violation of the fundamental, legal

or constitutional rights of the petitioner/public, petitioner has no other alternative efficacious remedy available, but to approach this Court through the medium of the present writ petition.

3. Respondents 02 to 06 by filing objections have objected the claim of the petitioner on the grounds, that a piece of land measuring 2 kanals and 3 marlas falling under Khasra no. 2195 situated at Sunjwan was donated verbally by one Sain Ditta S/o Feroz Din R/o Chatta in the year 2008 in favour of Police Department for setting up of a Police Post over the same in presence of Senior Police Officers and villagers on the spot as the said Sain Ditta had been in possession of the said land for many years. It is contended, that in pursuance to the donation of the said land to the police department, a police post came to be established at Chatta prior to the year 2009 and since then, said police post is operational in the area to protect the life, liberty and property of the inhabitants of the area and to prevent and detect the commission of crime; police post Chatta was established and was in operational much prior to the purchase of the land comprising in Khasra No. 2195 and 2196 by the petitioner, therefore, it has been wrongly averred by the petitioner that he had remained in possession of the said land at any point of time, and the contentions of the petitioner that respondents have trespassed into the said land and are harassing him are totally false and frivolous. It is further contended that the respondents have never harassed nor caused any inconvenience to the petitioner, they have performed their duties in a legitimate and fair manner as per the mandate of law without violating any of the fundamental, legal or constitutional rights of the petitioner, the petitioner has got no right to invoke the writ jurisdiction of the Court as such, the petition deserves to be dismissed. Lastly, respondents have sought the dismissal of petition on the grounds, that the petition is not legally maintainable as none of the fundamental, legal or statutory rights of the petitioner have been infringed or violated.

4. Mr. Jagpaal Singh, learned counsel while supporting the claim of petitioner has vehemently argued, that the petitioner is owner in possession of 12 kanals of land covered under Khasra no. 2195 and 2196, khewat no. 15 and khata no. 397 situated at Sunjwan, Tehsil and District Jammu, as the same was purchased by the petitioner vide two different sale deeds dated 24.12.2009 registered with Learned Sub Registrar (Sub-Judge) Jammu on 29.12.2009, whereafter, even necessary mutations too were attested in favour of the petitioner, thereby, petitioner became the absolute owner of the aforesaid land with all its rights to own, occupy, possess and enjoy exclusively. It is argued, that the respondents have no right/interest in respect to the land of the petitioner, and even the claim projected by the respondents that a piece of land measuring 2 kanals and 3 marlas falling under Khasra no. 2195 situated at Sunjwan donated verbally by one Sain Ditta S/o Feroz Din R/o Chatta in the year 2008 in favour of Police Department has not been substantiated by the respondents by any revenue extract/documents, the respondents without any right, power and authority are interfering in the proprietary land of the petitioner illegally and unlawfully and

are harassing and threatening the petitioner for eviction from the aforesaid land, thereby, violating the fundamental, legal and constitutional right of the petitioner, therefore, the respondents be commanded to forebear from causing any interference in the propriety land of the petitioner. To support his arguments, Id. counsel for the petitioner has relied upon the judgments reported in, (i) 2006 (3) JKJ(HC) 377 [State of J & K & Ors. versus Khazri & Ors.] (ii) (2002) 4 SCC 134 [State of W.B. & Ors. Versus Vishnunarayan & Associates (P) Ltd. & Anr.] & (iii) 2022 SCC Online SC 410 [Sukh Dutt Ratra & Anr. versus State of Himachal Pradesh & Ors.].

5. Mr. Raman Sharma, Ld. AAG has strenuously argued, that out of land measuring 12 kanals covered under Khasra no. 2195, a piece of land measuring 2 kanals and 3 marlas falling under Khasra no. 2195 situated at Sunjwan has been donated verbally by Sain Ditta S/o Feroz Din R/o Chatta in the year 2008 in favour of Police Department for setting up of a Police Post and since then Police Post is operational in the area to protect the life, liberty and property of the inhabitants of the area and to prevent and detect the commission of crime. It is argued, that the respondents have not trespassed into the land of the petitioner, but are operating the police post on the said land donated by on Sain Ditta and as the disputed facts regarding the ownership and possession of the land emerges out in the petition, therefore, the petitioner has no right to invoke the writ jurisdiction of this Court for settlement of his claim and the disputed facts have to be decided/adjudicated by the Civil Court. To support his arguments, Ld. AAG has relied upon the judgment of Hon'ble Supreme Court reported in, AIR 2003 (SC) 4531 [General Manager, Kisan Sahkari Chini Mills Limited, Sultanpur, U.P. versus Satrugan Nishad.]

6. I have heard Ld. Counsel for the parties and have gone through the record meticulously. As per the averments of the petition, it is evident, that petitioner has purchased land measuring 12 kanals covered under Khasra no. 2195 and 2196, khewat no. 15 and khata no. 397 situated at Sunjwan, Tehsil and District Jammu from it's erstwhile owners namely Jagdev Singh, Sukdev Singh, Kamal Dev Singh sons of Lt. Amir Singh and Sh. Varinder Singh, Karan Singh sons of Baldev Singh all residents of Sunjwan Tehsil and District Jammu through their power of attorney holder Sh. Deepak Sharma S/o Sh. Ram Sharma R/o H. No. 95-P Sector 1-A Trikuta Nagar Jammu in terms of two sale deeds executed on 24.12.2009 and registered with learned Sub Registrar (Sub-Judge) Jammu on 29.12.2009, whereafter, mutations were attested in favour of the petitioner. From the record it is evident, that after the purchase of aforesaid land and mutations attested in favour of the petitioner, the petitioner came in possession of the aforesaid land as absolute owner with all his rights to own, occupy and enjoy the same without any interference. It is apt to mention here, that the respondents/state in their objections have claimed that land measuring 2 kanals and 3 marlas falling under Khasra no. 2195 situated at Sunjwan was donated verbally by one Sain Ditta S/o Feroz Din R/o Chatta in the year 2008 in favour of Police Department for setting up of a Police Post and since then police post has

been set in operational on the said piece of land to protect the life, liberty and property of the inhabitants of the area and to prevent and detect the commission of crime. Alongwith the objections, respondents/state has placed on record Annexure-I which is the report of Patwari Halqa and clearly depicts, that the Patwari Halqa alongwith Naib Tehsildar Bahu went on spot and found that Police Post is lying on spot in Khasra no. 2195 situated at Sunjwan measuring 2 kanals and 3 marlas, however, in revenue record there is no mention of the Police Post, but after enquiry from the people of the area, it was found that police post is on spot even before 2009. The report of Patwari Halqa dated 20.10.2021 (Annexure-I) on which the respondents/state has heavily relied, does not demonstrate/establish/prove the claim of respondents that out of land measuring 12 kanals covered under Khasra no. 2195, a piece of land measuring 2 kanals and 3 marlas falling under Khasra no. 2195 situated at Sunjwan has been donated verbally by one Sain Ditta S/o Feroz Din R/o Chatta in the year 2008 in favour of police department. Except the report of Patwari Halqa (Annexure-I) to the objections, nothing has been placed on record by the respondents much less any scrap of revenue extract/documentary evidence which could prove that the said Sain Ditta was the erstwhile owner of the land measuring 2 kanals and 3 marlas falling under Khasra no. 2195 situated at Sunjwan and donated the said land to the respondents.

7. Mr. Jagpaal Singh, Ld. Counsel for the petitioner has strenuously argued and reiterated his arguments, that the land in question measuring 12 kanals covered under Khasra no. 2195 and 2196, khewat no. 15 and khata no. 397 situated at Sunjwan, Tehsil and District Jammu since the registration of sale deeds dated 29-12-2009 & attestation of mutations in favour of the petitioner, is in exclusive ownership and possession of the petitioner, therefore, the respondents have no right, power or authority to interfere in the proprietary land of the petitioner.

In 2006 (3) JKJ(HC) 377 (State of J & K & Ors. versus Khazri & Ors) Hon'ble Division Bench of J & K High Court while allowing the writ petition of respondents for restoring the possession of II floor of their building forcibly occupied by the state functionaries of J & K Police Department and observing that the State has been provided with mode and procedure prescribed by the laws in force for acquiring the public premises, and it is the duty of the state to protect the legal, fundamental and statutory rights of the citizens of the state in para 15, 17, 19, 20, 23 and 24 held as under:-

...15...No one, particularly those, whose duty, it is to protect the fundamental, legal and statutory rights of the citizens of the State, can be permitted to take law into its own hands, thereby depriving the citizens of the enjoyment of the rights guaranteed to them under the Constitution.

...17...The State has been provided the mode and procedure prescribed by the laws in force in the State for continuing their occupation in any premises which may be required by it for public purpose. Their action of perpetuating their unauthorized and forcible possession of the second floor of the house of the writ

petitioners is, therefore, unwarranted besides being unconstitutional. Writ petitioners have been deprived of their right to hold, enjoy and use the second floor of the premises. Continuance of State forces in the residential premises of the writ petitioners may even otherwise be a source of annoyance to the occupiers of the building, who may not otherwise be able to enjoy the full use and usufruct of their property. We do not appreciate the conduct of the State authorities in perpetuating their forcible, unauthorised and illegal stay in the second floor of the house of the writ petitioners without paying any thing therefore to them particularly when the writ petitioners had been crying hoarse for restoration of possession since 1997.

...19...More than one year has passed since the passing of aforesaid order and till date nothing has been paid to the appellants even in terms of the aforesaid order of this Court.

The conduct of the functionaries of the State is reprehensible. How can a welfare State behave in such a fashion with its spree of perpetuating their unauthorised and unwarranted occupation of the second floor of the house of the writ petitioners? We are of the view that what is left in the title and ownership of the petitioners in their house, is a mere husk sans power, authority and occasion to assign, let, sub-let and/or enjoy the use and usufruct of the property.

...20...For all what has been said above, we are of the view that in the peculiar facts and circumstances of the case, it would be apt to allow the writ petition of the writ petitioners by commanding the respondents to restore the possession of the second floor of the house of the writ petitioners situated at Qamarwari Chowk Srinagar, within a period of two weeks from the date of receipt of this order. Divisional Commissioner Kashmir, is directed to assess the market rate of rent of the premises in occupation of the State forces prevalent in the locality, in which the building is located. The State-appellants shall pay the assessed market rate of rent to the writ petitioners for all those years, they have remained in occupation of the premises by way of compensation. Should the writ petitioners feel dissatisfied with the market rate of rent assessed by the Divisional Commissioner, Kashmir, they shall be at liberty to approach the Court or any other Forum available to them under law for recovery of appropriate compensation for use and occupation of the premises, to which they may be entitled under law.

...23...Before parting with this case, we would like to observe that nothing said in this judgment shall debar the State-respondents to resort to laws in force in the State to re-occupy the premises in case the circumstances so warrant. They will be at liberty to proceed in this direction but of course alter following the mandate of laws in force in the State.

...24...In the result, appeal filed by the State as also cross-appeal of the writ petitioners are disposed of, accordingly, on the terms indicated above.

In (2002) 4 SCC 134 [State of W.B. & Ors. versus Vishnunarayan & Associates

(P) Ltd. & Anr.] Hon'ble Supreme Court of India held, that it is settled position of law that the State or its executive officers cannot interfere with rights of others unless they can point to some specific provision of law.

In 2022 SCC Online SC 410 [Sukh Dutt Ratra & Anr. vs. State of Himachal Pradesh & Ors.] Hon'ble Supreme Court of India while observing that the forcible dispossession of a person/persons of his/their private property without following due process of law, is violative of both their human rights and constitutional rights guaranteed under Article 300-A, in paras 2, 21, 23, 25, 26 & 27 observed as under:-

...2...Sukh Dutt Ratra and Bhagat Ram (hereafter 'appellants') claim to be owners of land situated at Mauzal Sarol Basach, Tehsil Pachhad, District Sirmaour, Himachal Pradesh (hereafter 'subject land'). The Respondent-State utilised the subject land and adjoining lands for the construction of the 'Narag Fagla Road' in 1972-73, but allegedly no land acquisition proceedings were initiated, nor compensation given to the appellants or owners of the adjoining land

...21...Having considered the pleadings filed, this court finds that the contentions raised by the State, do not inspire confidence and deserve to be rejected. The State has merely averred to the appellants' alleged verbal consent or the lack of objection, but has not placed any material on record to substantiate this plea. Further, the State was unable to produce any evidence indicating that the land of the appellants had been taken over or acquired in the manner known to law, or that they had ever paid any compensation. It is pertinent to note that this was the State's position and subsequent findings of the High Court in 2007 as well, in the other writ proceedings.

...23...This court, in Vidya Devi (supra) facing an almost identical set of facts and circumstances – rejected the contention of 'oral' consent to be baseless and outlined the responsibility of the State:

"12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi v. MIDC* [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353: (2013) 1 SCC (Civ) 491] wherein it was held that the State Ratios of the judgments (supra) relied by Ld. Counsel for the petitioner, make the legal proposition manifestly clear, that a person cannot be deprived/forcible dispossessed from his property by the state functionaries without following the due process of law, and the forcible dispossession of a person is violative of his right to must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in *State of Haryana v. Mukesh Kumar* [State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404: (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right,

but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.? ...25...Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative—22- of both their human right, and constitutional right under Article 300-A, this court allowed the appeal. We find that the approach taken by this court in Vidya Devi (supra) is squarely applicable to the nearly identical facts before us in the present case.

...26...In view of the above discussion, in view of this court's extraordinary jurisdiction under Article 136 and 142 of the Constitution, the State is hereby directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the order of the reference court dated 04.10.2005 in Land Ref. Petition No. 10-LAC/4 of 2004 (and consolidated matters). The Respondent-State is directed, consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the appellants, within four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f 16.10.2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the impugned judgment, i.e. 12.09.2013.

...27...For the above reasons, the appeal is allowed and the impugned order of the High Court is hereby set aside. Given the disregard for the appellants' fundamental rights which has caused them to approach this court and receive remedy decades after the act of dispossession, we also deem it appropriate to direct the Respondent-State to pay legal costs and expenses of ₹ 50,000 to the appellants. Pending applications, if any, are hereby disposed of. property which is a human right & constitutional right guaranteed under article 300-A. Ratios of the judgments (supra) squarely apply to the facts of the case in hand. In the case in hand, in terms of two sale deeds dated 29.12.2009 registered with the Learned Sub Registrar (Sub-Judge) Jammu and consequent upon attestation of mutations in favour of the petitioner, the petitioner has become absolute owner in exclusive possession of the said land measuring 12 kanals falling under Khasra Nos. 2195 and 2196 Khewat No. 15 and Khata No. 397 situated at Sunjwan Tehsil & District Jammu, and is, therefore, entitled to his rights to own, occupy, possess and enjoy the said property exclusively without any hindrance or interference whatsoever from any quarter. The claim of respondents/state that a piece of land measuring 2 kanals and 3 marlas falling under Khasra no. 2195 situated at Sunjwan was donated verbally by one Sain Ditta S/o Feroz Din R/o Chatta in the year 2008 in favour of Police Department for setting up of a Police Post has not been substantiated by any revenue extract/ documentary evidence. Annexure-I with the objections is the report of Patwari Halqa which clearly demonstrates that on spot in 2 kanals and 3 marlas in land of the petitioner, police post is existing. The arguments of Id. AAG that the question/claim between the parties is the disputed one and can be settled by the Civil Court is

unsustainable in the eyes of law for the reasons that no documentary evidence/ revenue extract has been placed on record by the respondents to establish their claim regarding the said piece of land measuring 2 kanals and 3 marlas falling under Khasra no. 2195 situated at Sunjwan, Jammu. In the judgment relied by Ld. AAG reported in AIR 2003 (SC) 4531 [General Manager, Kisan Sahkari Chini Mills Limited, Sultanpur, U.P. versus Satrughan Nishad], Hon'ble Supreme Court while dismissing the writ petition in regard to Kisan Sahkari Chini Mills Limited Sultanpur U.P, held, "that the disputed question of fact that the contesting respondents alleged that they worked in the mill for more than 240 days, whereas stand of the Mill was that from the day the contesting respondents joined, in not a single year, the Mill was functional for a period of 240 days and during the years in question, the functioning of the Mill was between 45 days to 199 days, cannot be decided in the writ petition but by the Civil Court?. Ratio of the judgment (supra) relied by Ld. AAG is distinguishable and inapplicable to the facts of the case in hand. In the case in hand, there are no disputed facts between the parties, as the petitioner has substantiated his claim that he is absolute owner of the land measuring 12 kanals covered under Khasra no. 2195 and 2196, khewat no. 15 and khata no. 397 situated at Sunjwan Tehsil and District Jammu. Nothing has been placed on record by the respondents which could demonstrate/prove that they also have the right or interest in regard to 2 kanals and 3 marlas falling under Khasra no. 2195 situated at Sunjwan. The report of Patwari Halqa (Annexure-I) to the objections filed by the respondents even does not depict/establish that land measuring 2 kanals and 3 marlas falling under Khasra no. 2195 situated at Sunjwan was in ownership of one Sain Ditta who donated it in favour of the respondents. So in my considered view, no disputed question arises between the parties, and therefore, the argument urged by Ld. Counsel for respondent is unsustainable under law, repelled, rejected and discarded.

8. Respondents without any reasonable cause/right or interest are interfering in the propriety land of the petitioner, and there is nothing on record which could even demonstrate the consent of the petitioner to such act of interference by the respondents. Writ petitioner has heavily suffered at the hands of the respondents/ state functionaries, which has rendered the fundamental right of the writ petitioner to own, enjoy and have the usufruct of his landed property, meaningless. Writ petitioner in his pleadings has exhibited a stark violation of his fundamental right to the property and occupation of the said land in question by the respondents/ state/police force since 2008/2009 and it is in continuation till date which is based on no official record. Writ petitioner has been clamouring hard for restoration of his possession, as the portion of the premises of the writ petitioner has been forcibly occupied by state/respondents. No one, particularly the state functionaries/ respondents whose duty it is to protect the fundamental, legal and statutory rights of the citizen of the state, can be permitted to take the law into their own hands and thereby depriving the citizens to enjoy their rights guaranteed under the constitution. State has been provided the mode and

procedure prescribed by the laws in force in the State for acquiring/continuation of the land/premise of any private person required by it for public purpose. Action of perpetuating the unauthorized and forcible possession of portion of the property of the petitioner is unwarranted, besides unconstitutional. Court cannot appreciate the conduct of the state/ respondents authorities in the case in hand in perpetuating their forcible, unauthorized and illegal stay in the premises of the petitioner. In view of the aforesaid matter, the writ petition is allowed. Accordingly, "a direction in the nature of mandamus commanding the respondents to forebear from causing any interference or impediment to the petitioner into the possession, occupation and enjoyment of the land measuring 12 kanals covered under Khasra no. 2195 and 2196, khewat no. 15 and khata no. 397 situated at Sunjwan, Tehsil and District Jammu and not to undertake forcible eviction of the petitioner from the land in question, with the direction in the nature of prohibition whereby respondents are directed to refrain from installing police post over the land in question, is passed in favour of the petitioner as against the respondents/state?. However, the respondents/state are at liberty to acquire the land of the petitioner if needed by them following due process of law for acquisition of the land in question.

9. The writ petition is allowed and disposed of, accordingly.

10. In view of the writ petition disposed of, nothing survives in the contempt petition arising out of the present writ petition. Accordingly, contempt proceedings in CPOWP 89/2012 shall also stands closed.