
(1970) 05 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : First Appeal No. 79 of 1968

Maqbool Shah

APPELLANT

Vs

Sitara and Others

RESPONDENT

Date of Decision : 01-05-1970

Acts Referred:

Jammu and Kashmir Big Landed Estates Abolition Act, 2007 — Section 20B, 4(2)

Citation : AIR 1970 J&K 152

Hon'ble Judges : Syed Murtaza Fazl Ali, C.J.; Raja Jaswant Singh, J; Janki Nath Bhat, J

Bench : Full Bench

Advocate : Avatar Singh, for the Appellant; I.K. Kotwal and Amar Chand, for the Respondent

Judgement

S. Murtaza Fazl Ali, C.J.—This is a miscellaneous first appeal by the defendant against the judgment of the District Judge, Poonch framing

an additional issue in the case and remanding the same for a fresh trial to the trial court. The appeal arises in the following circumstances.

2. The plaintiff respondent brought a suit for pre-emption by exercising his right of prior purchase under the Right of Prior Purchase Act on the land

in dispute which was sold by Noor Hussain to the defendant-appellant Maqbool Shah for a sum of Rs. 800 by a registered sale deed dated 17-1-

64. Noor Hussain was the owner and proprietor of Khasra No. 567 consisting of 29 Kanals and 9 marks which was entered in the revenue

papers as Kap land. By virtue of the sale deed (supra) half of the land was sold to the defendant-appellant. The plaintiff claimed that he was a co-

sharer in the land sold and was therefore entitled to purchase it in preference to the purchaser.

3. The suit was resisted by the defendant firstly on the ground that the plaintiff was not a co-sharer and secondly on the ground that the plaintiff had

been offered sale of the land, but having refused to accept the same it was sold to the defendant. During the course of arguments before the trial

court, an additional issue to the following effect was raised--

Whether the plaintiffs suit was not maintainable as the sale was hit by Section 20-B of the Big Landed Estates Abolition Act?

The trial court after deciding this issue against the plaintiff held that the sale was void and the plaintiff was not entitled to any relief. The trial court

accordingly dismissed the suit. The appellate court did not agree with the finding of the trial court and held that only such kap land as is not

culturable would fall within the mischief of Section 20B of the Big Landed Estates Abolition Act (hereinafter to be referred to as the Act), and as

there was no issue on the point whether or not the land sold in the present case was culturable, it framed an issue on the point and remitted it to the

trial court. Against this order, the defendant has come up in appeal before us.

4. The case was heard in the first instance by a Division Bench, but in view of the fact that a substantial question of law was involved which had

far-reaching consequences, the case was referred to the Full Bench.

5. In this case we are called upon to interpret the true ambit and scope of Section 20B. The point raised is no doubt one of first impression,

because there is no decided case on the point. Even the provision contained in Section 20B of the Act is peculiar to this State and therefore no

assistance can be drawn from the authorities of other High Courts. It has been argued by the appellant that the learned District Judge was wrong in

interpreting Section 20B and holding that it contemplated only those types of Kap lands which were unculturable. The learned Counsel submitted

that the learned District Judge had done violence to the language of Section 20B and had grossly misconstrued it. The counsel for the respondents,

however, submitted that the interpretation of Section 20B by the learned District Judge was right and should be adopted by this court. Section 20B

of the Act runs thus:

Transfer of Kah Krisham Land, Araks, Kaps and such lands including those used for raising fuel or fodder as are unculturable or any interest

therein shall be prohibited and no documents relating to the transfer of such land

shall be admitted to the Registration.

6. Reading this section, it is manifest that it contemplates two categories of lands: (1) Those that are described in the first part of the Section,

namely, Kah Krisham, Araks and Kaps (2) those lands which are unculturable or are being used for raising fuel and fodder. The contention of the

counsel for the respondents is that the words 'such lands' qualify not only the nature of the lands that follow but also the nature of the lands that

precede, viz. 'Kah Krisham, Araks and Kaps'. We find it difficult to accede to this contention. The phrase 'and such lands as are unculturable',

admits only of one construction and that is that the word 'such' qualifies the land description of which follows the words such lands including those

used for raising fuel or fodder which are unculturable. Section 20B cannot be interpreted in isolation but certain previous provisions of the Act

where the description of these lands is mentioned have also to be taken into consideration. In this connection reference may be made to Section

4(2) of the Act which runs thus:

Extinction of the right of ownership under Sub-section (1) shall not apply to

(a) unit of land not exceeding 182 kanals including residential sites, Bedzars and Safedzars

(b) Kah-Krisham areas, Araks, Kaps and (such lands including those used for raising fuel or fodder as are unculturable.)

7. It would thus appear that the lands mentioned in Section 20B are also mentioned in Section 4(2)(b) and have been exempted from the operation

of the Act. It would further appear that previously Section 4(2)(b) contained the words "'Kah-Krisham, Araks and Kaps' but by an amendment

that is to say by Act XV of 2008 the words and such lands 'including those used for raising fuel or fodder as are unculturable' were added. This

clearly shows that the legislature intended to treat kaps and other unculturable lands as two different categories one of which was previously

exempted from the operation of the Act and the second which was added to it some time later. Indeed if the intention was to exempt such Kap

lands as were unculturable, then in the previous Act prior to the amendment of 2008 we should have expected the legislature to say so by

qualifying Kaps as being unculturable. This, however, does not appear to have been done. It would thus appear that 'Kaps' in Section 4(2)(b) has

been used in the same sense as in Section 20B of the Act. While the legislature intended to exempt these lands from the operation of the Act, yet

by virtue of Section 20 it prohibited transfer of these lands. The reason for doing so is found in the proviso to Section 4(2) which runs thus:

Provided that the Government may dispose of the land mentioned in Clause (b) in such manner as may be recommended by the committee that shall be set up for this purpose.

A perusal of this proviso shows that the Government reserved to itself the right to dispose of Lands mentioned in Section 4(2)(b), and therefore

their sale by the owners was completely prohibited by Section 20B of the Act. This proviso clearly shows that the legislature intended two

separate types of lands, one of the nature of Kaps and the other such lands as are unculturable including those used for raising fuel or fodder. For

these reasons we are satisfied that the correct interpretation of Section 20B of the Act would be that it contemplates two separate categories of

lands the transfer of which is completely prohibited. In other words the position is that transfer of Kah-Krisham, Araks and Kaps is prohibited as

also transfer of lands which are unculturable including such lands as are used for raising fuel or fodder. Any land which answers either of the

descriptions mentioned above cannot be sold by the owner but only by the Government under the circumstances mentioned in the proviso to

Section 4(2)(b) of the Act. We are therefore of the opinion that the learned District Judge committed an error of law in holding that Section 20B

contemplates only unculturable Kaps and not Kaps as such. In this view the very basis for remanding the suit to the trial Court by the District Judge

disappears. According to our decision transfer of Kap Land was prohibited whether it was culturable or not. In the present case it is not disputed

that the land sold to the defendant-appellant was a Kap Land and was regarded as such. In these circumstances it is manifest that the sale by Noor

Hussain to the defendant appellant was void. The plaintiff could have a right of pre-emption only if there was a valid sale, but if the sale itself was

void the plaintiff had no right to pre-empt.

8. For these reasons the appeal is allowed, the judgment and order of the learned District Judge is set aside and that of the trial Court is restored.

The suit is dismissed, but in the circumstances of the case there will be no order

as to costs in this Court as also in the Court of the District Judge.

J.N. Bhat, J.

9. I agree.

Jaswant Singh, J.

10. I agree.