
(2017) 12 J&K CK 0016
In the Jammu And Kashmir High Court
Case No : 1659 of 2012

Mohammad Shafi Naikoo

APPELLANT

Vs

District Magistrate Pulwama & Anr

RESPONDENT

Date of Decision : 19-12-2017

Acts Referred:

Constitution of India, Article 226, Article 227 -
Constitution of Jammu and Kashmir, Section 104, Section 103

Citation : (2017) 12 J&K CK 0016

Hon'ble Judges : Sanjay Kumar Gupta

Bench : SINGLE BENCH

Advocate : M. Ayoub Bhat, J.H. Reshi

Final Decision : Dismissed

Judgement

1. The case of the petitioner is that he entered into an agreement to sell with the various owners including Shmt Kamla Devi for lands falling under

Survey No. 2326/767 min, 2323/767, 2324/768 min, 2325/768, 1823/1325/761- 769, and 1326/761 and 769 min, 1826/1325/761-769, 1249,

1248, 1250 which belongs to Sh. Ved Lal & Ors. The petitioner applied for grant of permission in terms of J&K Migrant Immoveable Properties

(Preservation, protection and restrain on Distress Sales) Act 1977, to the competent authority which enquiry was in progress and in the meantime

Shmt. Kamla Devi one of the shareholders in the properties executed yet another power of attorney in favour of Javaid Ahmad Lone. Sh. Javaid

Ahmad Lone sold the properties to Mr. Gh. Nabi and Rashid Mohammad vide a sale deed executed on 3rd of February 2012 and registered by

Sub-Registrar Tral on 05.03.2012. The execution of the sale deed and transfer of the said properties by Shmt. Kamla Devi through Javaid Ahmad

Lone, Shr Javaid Ahmad Lone filed an application in terms of Sec 5 of the J&K Migrant Immoveable Properties (Preservation, Protection&

Restrain on Distress Sales) Act 1977 before the respondent No. 1 (District Magistrate Pulwama) on 24.05.2012. The District Magistrate served

a show case upon the petitioner, pursuant to which the petitioner raised objections to the very jurisdiction of the District Magistrate Pulwama to

entertain an application, which in law belong to Sh. Gh. Nabi and Rashid Mohammad who are non-migrants. The District Magistrate without any

jurisdiction is proceeding with the application, aggrieved whereof the petitioner has filed the present writ petition.

2. The petitioner has sought the following relief:-

a) By a Certiorari, the proceedings initiated by the respondent No.1 upon the application of respondent No.2 under the J&K Migrant Immoveable

Properties (Preservation, Protection and Restraint on Distress Sales) Act 1977

b) And for issuance of any other appropriate writ, order or direction as may be deemed fit and proper in the facts and circumstances of the present

case. Same would be in consonance with law and justice.

3. Respondent No. 2 filed objections wherein it has been stated that disputed question of facts cannot be adjudicated by this Court and writ

petitioner has not exhausted alternative effective remedy available under law. That Kamla Devi respondent No.2 is owner in possession of land

measuring 13 kanals and 14 marlas falling under Survey No. 2326/726 (1 k. 12 m) 2324/767 (3 k 2.5m.), 1823/761/769 (11.5m), 1826/767/769

(3.05m), 1834/761/769 (2k. 9.5m) 765 94k. 1.5m), 1280/769 (1 k. 13.05m) situated at Lalpora Tral Pulwama. That Kamla Devi has neither

authorized the petitioner to remain in possession nor at any time executed any formal deed in favour of the petitioner with regard to land in

question. That Kamla Devi has executed an irrevocable power of attorney in favour of one Gh. Nabi with prior permission of Divisional

Commissioner Srinagar; that petitioner has encroached upon the immovable property of migrants without her consent.

4. Whereas respondent No.1 has not filed any objections. I have considered the rival contention of the parties.

5. The petitioner in the present writ petition has challenged the proceedings pending before the respondent No.1 initiated by Kamla Devi. From the

perusal of Annexure 4 of writ petition, it is evident that Respondent - Kamal Devi has filed an application for seeking eviction of Petitioner herein

from unauthorized occupants of land measuring 11 k 3-1/2 m situated at Lalipora and for handing over the same to Ghulan Nabi.Zadoo. The

contents of that application reads as under:- In the matter of : An application for seeking the eviction of Mohammad Shafi Naik S/o Abdul Gaffar

Naik R/o Tral -i-Payeen unauthorized occupant and encroacher from the Migrant Land measuring 11 kanals and 3 1/2 Marlas situated at Lalapora

Tehsil Tral and handing over the possession of the land to the alienee namely Gh.Nabi Zaboo S/o Gh.Hassan R/o Tral.

The application is submitted as under:

1. That the applicant is the attorney of Mst. Kamla Devi Khana Nisheen daughter of Raja Ram R/o Diver Tral at present Anand Nangar Jammu

by virtue of power of attorney dated 17.04.2011 to look after, take care and execute sale deed with respect to land measuring 11 kanals and 3

1/2 situated at Tral Lalapora.

2. That the non-applicants has encroached upon and taken the possession of the aforementioned migrant land without any right and justification.

3. That the applicant has already executed a sale deed with prior permission from the Divisional Commissioner and the applicant has to handover

the possession of the land to the alienee the detailed description of which is given in the sanction of alienation of land which can be done by this

Hon"ble Court by virtue of Rule 5 of the Migrant movable protect Preservation, protection and Sale in Distress Rules 1997.

4. That the non-applicant has encroached upon the Migrant land and is liable to be evicted.

It is therefore requested to your goodself that the non-applicant be evicted from the Migrant land falling the detailed description which is given in

the power of attorney duly executed and authenticated before the Sub-Registrar Jammu and the possession of the land, the detailed description

which is also given in the sanction for alienation of land under migrant immoveable property Act, be handover to the alienee Gh. Nabi Zaboo S/o

Gh. Hassan Zaboo R/o Tral -i- Bala in the interest of Justice.

6. On this application Court has not passed any substantial order by virtue of which any final rights of the parties have been decided, therefore, the

petitioner has right to file objections in this application. Petitioner has also option to take all pleas which he has taken in this petition, before the respondent No.1 in his objections.

7. Further bare perusal of the contents of the writ petition and objections filed by the respondent No.2, it is evident that parties have raised dispute

question of facts, which cannot be decided in a writ petition filed under articles 226/227 of constitution of India read with sections 103/104 of

constitution of Jammu and Kashmir. Therefore I do not find any violation of fundamental rights of petitioner in this writ petition, this petition is thus

not maintainable. However, petitioner has remedy to file the objections before the respondent No.1 in that application. Respondent No.1 shall

decide the application according to law, after hearing of the parties. Any interim order passed by this Court shall stand vacated. Already much time

has elapsed, so respondent no. shall expeditiously complete the proceeding.