
(2006) 03 J&K CK 0020
In the Jammu And Kashmir High Court

Mohmmad Akram Bhat

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 08-03-2006

Acts Referred:

Jammu and Kashmir Agrarian Reforms Act, 1976 — Section 26

Citation : (2007) 1 JKJ 467

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bashir A. Kirmani, J.—Vide order No. DCP-SQ/Sett/E-44/03/59-60 dated: 15.05.2003 passed by Assistant Commissioner (revenue),

Pulwama the petitioners were given two kanals of state land in village Charsoo Tehsil Tral situated in survey No. 377/min in exchange against their

proprietary land whereafter the order was cancelled by concerned Collector/Dy. Commissioner alongwith other such orders passed by the said

Asstt. Commissioner. While observing that the exchange in question alongwith other such cases had been made by Asstt. Commissioner without

competence and in violation of norms/rules governing the matters, particularly because Tehsil's of Tral and Pampore in Pulwama District were

under settlement operation during which no such exchange could be ordered, the said Dy. Commissioner passed the order No. DEP.EQ/E-

44/03/508-13 dated : 15.7.2003 canceling all exchanges including Addl. Dy. Commissioner, for conducting inquiry into the matter.

2. Aggrieved thereby the petitioners have instituted this writ petition for having the same quashed on the ground that the cancellation orders were

passed by concerned Dy. Commissioner without inquiry whatsoever and was violative of the powers of Assistant Commissioner concerned who

was fully competent to order such exchanges, particularly because petitioners were not given a hearing before passing of the cancellation order etc.

3. In their reply the respondents have among other things pleaded that the petitioners had encroached upon a patch of Kacharai land measuring 2

kanals and 5 marlas under survey No. 568/min of village Charsoo-Tral and only thereafter applied to Tehsildar Tral for exchange offering their

propriety land of 2 kanals and 5 marlas under survey No. 337/rnin on whose report the concerned Asstt. Commissioner ordered the exchange u/s

26 of the J & K Agrarian Reforms Act, (hereinafter to be referred to as "the Act") without having jurisdiction for the same due to which the

exchange was ab-initio invalid and could not have been ordered as such. During course of threshold submissions the petitioner's counsel, besides

reiterating the contents of the petition also contended that the petitioner has already constructed a house in the Kacharai land which they got in

exchange and their eviction therefrom would result in irreparable loss to them while as respondent's counsel relying upon his memo of objections has

argued that the exchange being ab-initio illegal cannot confer any benefit upon the petitioners etc.

4. I have heard learned Counsel and considered the matter. The question of encroachment on state land and land reserved for grazing purposes

and the option to give the same in exchange to the propriety land of encroachers has been dealt with u/s 26 of the Act which provides that where a

person has unauthorized raised an orchard or plantation of trees on state land or land reserved for grazing purposes, the Collector shall by notice

direct such person either to give in exchange for such land equal area held by him as owner or to abandon the possession of State land and as a

result of his failure to do so such orchard or plantation etc. would be attached by Collector after hearing the concerned person. The only exception

provided relates to unauthorized occupants of State land/land reserved for grazing purposes, not exceeding two kanals in area, who do not hold

any other land or dwelling house etc. Instantly, however since the petitioner claims to have given the propriety land in exchange, he cannot take

recourse to the aforementioned exception which covers only landless people/people without dwelling houses. Under the aforesaid Section

Collector has expressly been mentioned and that too only in cases where state land unauthorisedly occupied has been developed into a plantation or orchard. Instantly however the petitioner claims to have constructed residential house on the land which makes it quite debatable as to whether the matter would be covered by Section 26 of the Act at all. However, the power of exchange having been expressly vested in Collector and not in Assistant Commissioner concerned was perhaps not competent as he would not be deemed to be Collector for purposes of the Act. It may however be appropriate to notice that the Agrarian Act does not define the expression ""Collector"", but at the same time provides that any term/phrase not defined thereunder will have the meaning given thereto under the Land Revenue Act and Tenancy Act etc. Now so far as the Land Revenue Act is concerned, the classes of Revenue Officers have been defined u/s 6, according to Sub-section (2) whereof the Dy. Commissioner of the District shall be the Collector thereof and the Assistant Commissioner, an Assistant Collector. Thus ""Collector"" under Agrarian Act would mean the Dy. Commissioner and competence of Assistant Collector for ordering the exchange as claimed by petitioner does not appear to be substantiated, rendering his claim and consequential benefits baseless.

5. In addition thereto since the order impugned herein has been passed by Addl. Dy. Commissioner in his capacity as Collector under the Agrarian Act, the aggrieved party could go in appeal against that before the appellate authority prescribed under the Act. But incidentally without exhausting that remedy the petitioner has run straight into the writ jurisdiction even while an alternative, efficacious remedy was available to him under the Act itself. Otherwise also the matter in hand deserved to be dealt with at the level of appellate authority for the reason that the controversy involved raises question of fact also i.e. nature of land occupied by petitioners was under plantation/constructed upon so as to enable the concerned authority to come to a just and equitable conclusion for disposal of the matter. Determination of all these questions of fact, intricate as they are, would perhaps not be possible in writ proceedings which furnishes yet another reason for not maintaining the writ petition.

6. For all that has been said above, the petition is dismissed with an observation that the other remedies available to the petitioner under the Act or

any other law shall be open for being taken recourse to. Petition in hand stands accordingly disposed of alongwith connected CMPs.