

(2009) 11 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 247 of 2007 and CMP No's. 378 of 2007, 483 of 2008 and 956 of 2009

Munshi Khan and Another

APPELLANT

Vs

Chairman, J and K Special Tribunal and Others

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 104

Jammu and Kashmir Agrarian Reforms Act, 1976 — Section 21

Citation : (2010) 2 JKJ 490

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Singh, J.—The Jammu and Kashmir Special Tribunal, constituted under the Jammu and Kashmir Special Tribunal Act, 1988, exercising

powers which vested in the Government u/s 21 of the Jammu and Kashmir Agrarian Reforms Act, 1976, hereinafter to be referred as the, ""Act"",

for short, set aside Mutation Nos. 1017 and 1018 attested under Sections 4 and 8 respectively of the Act, in respect of land measuring 12 Kanal

17 Marias, comprised in Khasra No. 873, situated at village Kewal, Kotranka-Rajouri, and the orders passed in this respect by Assistant

Commissioner (R), Rajouri on October 26, 2002 and October 28, 2002 and by the Financial Commissioner Revenue/Commissioner Agrarian

Reforms Jammu, in Appeal, on March 09, 2007.

2. The Petitioners, Munshi Khan and Talab Hussain have filed this Writ Petition questioning the Special Tribunal's abovementioned order, on the

ground that the Revisional power, exercised by the Tribunal, was without

jurisdiction, in that, the provisions of Section 21 of the Act, 1976 would not permit the Revisional Authority to interfere with the orders passed under the Act, unless however, a question of law or public interest, was involved in the case, which, according to the Petitioners' counsel, did not arise in the present case.

3. I have considered the submissions of learned Counsel for the parties and gone through the records.

4. The Jammu and Kashmir Special Tribunal, has set aside the orders, impugned before it, on the ground that the Petitioners had failed to place any material before the Authorities under the Jammu and Kashmir Agrarian Reforms Act, to prove them to be either the tenants or the lawful cultivators of the land, and that the Mutations were attested in the absence of the Respondents, who, recorded as owners in the Revenue records, in the year 1971, were entitled to a hearing in the matter before any order adverse to them regarding their rights in the property could, in law, be passed against them.

5. The Tribunal had further taken note of the contradictory findings regarding possession of the land, recorded by the two Revenue Officers i.e. by Tehsildar, Kotranka indicating Manzoor Ahmad, Shamim Ahmad and Abdul Shakoor, sons of Ahmad Din, to be in cultivating possession of the land while attesting Mutation No. 394 and by the Assistant Commissioner (Revenue), Rajouri indicating the Respondents to be in cultivating possession of the land from the year 1971 onwards.

6. It was not disputed at the time of consideration of the petition that Respondents had neither signed the Mutation nor were they present when the Mutations are stated to have been attested in favour of the Petitioners.

7. Petitioners' counsel's plea that the Tribunal has erred in exercising Revisional jurisdiction to set aside the Mutation attested in favour of the Petitioners, when no question of law was involved in the case, is found unsustainable, in that, attestation of Mutations under Sections 4 and 8 of the Act, in the absence of the Respondents, who stood recorded as owners of the land, in the Revenue records, was violative of the principles of Natural Justice, giving rise to a question of law as to whether or not Mutations u/s 4 and 8 could be attested by the authorities, under the Act, without hearing the recorded owners in this behalf.

8. The orders passed by the Tribunal, cannot thus, be faulted on the ground that no question of law had arisen in the Revision before the Tribunal,

in that, finding of the Tribunal that the Respondents were not present at the time of attestation of the Mutation did give rise to a question of law

which has been properly answered by the Tribunal by annulling the Mutations being bad in law, for violation of the principles of natural Justice.

9. The Tribunal's further finding that the Mutations had been attested contrary to the Provisions of Standing Order No. 23-A, governing attestation

of Mutations, too was the Tribunal's response on a question of law arising in the case, requiring consideration of the Tribunal as to whether or not

Mutations attested in violation of the Standing order could be sustained.

10. Consideration of facts, emanating from the records, by the Tribunal, to determine the questions of law, arising in the case, was therefore

permissible and I do not find any error to have been committed by the Tribunal in setting aside the Mutations and orders impugned before it,

finding those to be unsupported by the recorded facts and in violation of the principles of natural justice and the provisions of Standing Order No.

23-A issued under the Jammu and Kashmir Land Revenue Regulation.

11. Assessment of the facts by the Tribunal, on the basis of the information derived from the records that the impugned Mutations and Orders

passed under the Act, were against facts is further supported by one of the documents placed on records by the Petitioners themselves, i.e.

Agreement to Sell executed by Manzoor Ahmad, Shamim Ahmad and Abdul Shakoor, in terms whereof abovementioned persons are stated to

have transferred the land in dispute and its possession to the Petitioners somewhere in the year 1999, which demonstrates that the plea of

Petitioners being in lawful possession of the land in question as cultivators thereof much before that is a made up story.

12. For all what has been said above, I do not find any merit in this Petition justifying interference in the Tribunal's order in exercise of jurisdiction

u/s 104 of the Constitution of the Jammu and Kashmir. This Petition is, accordingly, dismissed.