(2011) 06 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1404 of 2010 and CMP No. 1892 of 2010

Naresh Kumar and Others — APPELLANT

Vs

State of Jammu & Kashmir and Others — RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Big Lands Estates Act, 2007 — Section 20B
Jammu and Kashmir Agrarian Reforms Act, 1976 — Section 13

Citation : (2011) 2 JKJ 471

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, J.—Challenge in this petition is to order No. DCJ/S-Q/210-11/1505-39 dated 11.08.2010 to the extent the order

prohibits issuance of Fard-i-Intikhab i.e. copy of annual record/record of rights in respect of land where the type and the land is recorded as

Chair Mumkin khud/Nallah/Pond"". The Petitioners question the impugned order on the grounds that the order has been issued mechanically in an

arbitrary manner and in clourable exercise of jurisdiction and without any competence or authority. The impugned order, according to the

Petitioners, who are estate holders in revenue circle of Halqa Chawadi, places blanket ban on issuance of revenue extracts in their favour, violating

their constitutional rights to own, posses and enjoy immovable property and is thus liable to be quashed. The order is also said to be in conflict with

and offend various provisions of Land Revenue Act 1996 (1939 A.D.) whereunder estate holders have a right not only inspect the record maintained but also to get extracts thereof on payments of prescribed fee.

2. The Respondents in their reply to the writ petition detail the background in which the impugned order was made. It is pleaded that the impugned

order is referable to the prohibition imposed on transfer of land recorded as arak, kap, kahkrisham u/s 20-B of Big Lands Estates Act, Svt. 2007

and Section 13 of Agrarian Reforms Act. The transfers of land made in violation of Section 20-B of Big Lands Estates Act samvat 2007 and

Section 13 of the Agrarian Reforms Act, it is pleaded, is void ab-nitio. The Respondents insist that the Petitioners have no absolute right to enjoy,

alienate the land in question or challenge user of such land. It is pointed out that the Petitioners as per their own admission, propose to alienate

uncultivable land for construction purposes, unmindful of the position that such transfer is prohibited under law. The order in question is said to

have been passed by Respondent No. 4 as District Collector in exercise of his power of superintendence and control over the subordinate

Revenue Officers. The impugned order, it is pointed out, is issued to stop encroachment and constructions on water bodies like khads, nallahs and

ponds and to maintain natural flow of water in the water bodies.

3. Heard and considered.

4. The Jammu and Kashmir Land Revenue Act, Svt. 1996 (1939 AD) chapter IV deals with preparation and maintenance and revision of record

of rights and annual records for each estate and the procedure to be followed by the revenue authorities while preparing, maintaining and revising

etc the record. In exercise of powers conferred by different provisions of Jammu and Kashmir Land Revenue Act 1996, the competent authority

has framed rules called Jammu & Kashmir Land Revenue Rules.

5. In terms of Rule 34, the Patwari has a statutory obligation to allow anyone interested to inspect his record and to take notes of the same in

pencil in his presence, to give applicant certified extracts of record and enter in his diary a note of the inspection and extracts given. A conjoint

reading of provisions of Land Revenue Act, 1996 and the Rules made thereunder, leads to the conclusion that an estate holder has a statutory right

to obtain extract or certified copy of the revenue record pertaining to his estate on payment of fee prescribed under law. It follows that neither the

Respondent No. 3 nor any of the Respondents is clothed with the power to place blanket ban on issuance of duly attested fard-i-intikhab or

certified copies of the revenue record in favour of the estate holder.

6. So viewed, the ban imposed vide the order impugned, by Respondent No. 4 District Development Commissioner Jammu, on issuance of

certified copies of the revenue extracts regarding some types of lands recorded therein, is without any authority. The Respondent No. 3 and

superior officers may regulate issuance of certified copies of the extracts of the revenue record in favour of an estate holder but cannot impose

complete ban on issuance of fard-i-intikhab or certified copies of the revenue record to the estate holder for any reason whatsoever. The problem

identified by the Respondents in the impugned order may be a threat to the eco-system in Jammu District warranting immediate steps to address

the problem. But the response to the problem must be in conformity with law. The concern shown by Respondent No. 3 to encroachments on

khads, nallahs, ponds and illegal constructions raised on encroached areas, choking and diminishing areas of water bodies, is laudable and well

appreciated, but Respondent No. 3 is expected to realize that not only must be the object of an executive order legitimate but means of achieving

the object must be equally lawful.

If there is Will on part of the Respondents and all other authorities under constitutional and statutory obligation to protect and preserve the

environment and prevent environmental degradation, there are sufficient tool available under law to ensure that environment is protected and water

bodies and other common lands not encroached upon by the land sharks. The Jammu & Kashmir Land Revenue Act, 1996 (1939), Jammu &

Kashmir Development Act, 1970, Jammu & Kashmir Municipal Act, 2000, and Environmental Protection Act are only a few of number of -

enactments that cloth the authorities with sufficient powers to prevent encroachments, illegal transfer of immovable property, alienation of

uncultivable land, shamilat and kahcharai lands and prevention of illegal construction. Such legal devices have been made use of elsewhere in the

State to prevent construction on green belts and prohibited areas. The right course is to come up with the comprehensive legal framework to ban

the transfers and prohibit constructions in such areas and. till such legal framework is in place to make use of available legal tools. In any case complete ban on issuance of certified copies of fard-i-intikhab and certified copies of the revenue record, is not the answer as it offends the

aforementioned provisions of Land Revenue Act and are expected to be aware of efforts made all over the country to make the revenue record

available online, so that not only the estate holder but all others have access to the revenue record in view of such ambitious program, imposing

complete ban on issuance of certified copies is not only unwarranted but offends the right to information guaranteed under law. The ban on

issuance of certified copies of revenue record is like a ban on an account holder with a bank, to have excess to his bank account.

7. So viewed, the writ petition is allowed and the order impugned in the petition to the extent it prohibits issuance of fard-i-intikhab certified copies

of the revenue record, is quashed. Needless to mention that the Respondents shall be free to regulate grant of certified copies of the revenue

record and lay down the conditions to be incorporated in such certified copies/ extracts of the revenue record as are permissible under law.

Disposed of alongwith CMPs.