(2020) 06 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : Latter Patent Appeals No. 321 Of 2019, Civil Miscellaneous No. 7449 Of 2019

Nasreen Jan — APPELLANT

Vs

State Of J&K And Others — RESPONDENT

Date of Decision : 22-06-2020

Acts Referred:
Jammu And Kashmir Land Revenue Act, 1996 — Section 94, 95

Citation : (2020) 06 J&K CK 0039

Hon'ble Judges : Dhiraj Singh Thakur, J;Sanjeev Kumar, J

Bench : Division Bench

Advocate : A. H. Naik, Saima, Zahoor A. Shah

Final Decision : Disposed Off

Judgement

Dhiraj Singh Thakur, J

1) The present Letters Patent Appeal has been preferred against the judgment and order dated 9th of December, 2019, whereby the writ petition filed by the appellants has been dismissed.

2) Briefly stated, the material facts are as under:

i) The petitioner No.1 & 3 claim that they purchased land measuring 1 kanal and 10 marlas falling under Khasra No.319-min Khewat No.56 situated at Watdooru Galwanpora Tehsil and District Budgam, vide sale deed dated 9th of June, 1993, registered on 7th of October, 1993. The land was purchased from the vendor Shaban Bhat and Gafar Bhat, both residents of Watadooru. The petitioner No.2 purchased 1 kanal and 10 marlas of land from Mohammad Wani falling under Khasra No.318-min Khewat No.37. This piece of land was purchased vide sale deed dated 07.06.1993 registered on 7th of September, 1993. The petitioners claim that mutations bearing No.737 and 741 were duly attested in their favour.

ii) In the first round of litigation, the petitioners preferred OWP No.1454/2018, which was disposed of vide order dated 3rd of August, 2018, granting liberty to the petitioners to approach the revenue authorities for demarcation of the land in question over which the petitioners claimed ownership.

iii) It appears that the grievance of the petitioners was that the private respondents were encroaching upon the land duly purchased by the petitioners.

iv) While there were various rounds of litigation before different foras, immediately it may not be necessary to refer to the same. However, what requires a mention is the fact that the petitioners did approach the revenue authorities for demarcation.

v) The case set up by the appellants before the Writ Court was that the land purchased by the petitioners had been duly demarcated and a report prepared on 5th of February, 2019, by a team of six revenue officials. It was stated that the said demarcation was made with the help of ETS Surveyor and Geo reference and it was also tallied with the Aksi Latha of the Village. It was also stated that the demarcation was done in presence of the parties without any interference from them. Documents were also enclosed with the writ petition.

vi) In the background of the aforementioned facts, the petitioners, inter-alia, prayed before the Writ Court that Mandamus be issued to the Revenue Authorities to exercise powers vested in them in terms of Section 95 of the J&K Land Revenue Act, Samvat 1996.

vii) The grievance of the petitioners was that even when demarcation has been effect by the Revenue Agencies in terms of Section 94 of the Act, the Revenue Authorities ought to have exercised power under Section 95 and handover possession to the petitioners.

viii) Since reference has been made to Section 94 and 95 of the Land Revenue Act, it would be worthwhile to reproduce herein-below the same for facility of reference:

"94. Power of Revenue Officer to define boundaries

(1) A Revenue Officer may, for the purpose of framing any record or making assessment under this Act or on the application of any person interested, define the limits of any estate, or of any holding, tenancy field or other portion of an estate, and may, for the purpose of indicting those limits, require survey-marks to be erected or repaired.

(2) In defining the limits of any land under sub-section (1), the Revenue Officer may cause survey-marks to be erected on any boundary already, determined by, or by order of, any Court, or Revenue Officer, or restore any survey-mark already set up by, or by order of, any Court or any such officer.

(3) The Revenue Officer to whom an application under this section may be made may deputed another Revenue Officer subordinate to him to take the necessary proceedings.

95. Power of Revenue Officer in proceedings under section 94 to reinstate party dispossessed

(1) In any proceedings under section 94 if it appears to be Revenue Officer that any of the parties to the proceedings has, within a period of six months preceding the date of his order illegally approached upon any land adjacent to the boundary defined, and previously in the lawful possession of any of the other parties to the proceedings, he may by his order direct that the party dispossessed be placed in possession of such land;

Provided that, no order under this section shall be passed by any officer below the rank of an Assistant Collector of the first class and if proceedings under section 94 are taken by an inferior officer, he shall submit the case for orders to the Assistant Collector of the first class having jurisdiction.

(2) The party dissatisfied with the order of the Revenue Officer passed under sub-section (1) may seek his remedy in the Civil Court and subject to the decision of the Civil Court such order shall be final."

ix) The Writ Court having considering the matter and having gone through the documents, purporting to be the demarcation reports, was of the opinion that the so-called demarcation report, in fact, did not demarcate and identify the land holding of the petitioners. It held that even when the documents in question identify the owners including the petitioners as also the persons who were occupying the land in question, yet there was no actual demarcation on the spot which could identify, precisely, the land which was owned by the petitioners. It was held that the total land in two khasra nos. 318-min and 319-min was 3 kanals 18 marlas and 5 kanals 10 marlas respectively making a total of 9 kanals 8 marlas and that the so-called demarcation report had failed to identify where precisely the land of the petitioners is located. It was held that the Revenue Agencies, in fact, have been unfair to the petitioners and had failed to discharge their statutory duties. The Court proceeded to hold that in absence of a proper identification and demarcation of the landholding of the petitioners in the aforementioned Khasra nos., it would not be possible to issue any direction to the competent authority under Land Revenue Act to exercise powers under Section 95 of the Act.

3) Learned senior counsel appearing for the petitioners vehemently urged that the Writ Court has committed an error in not appreciating the fact that the reports on record actually not only identified the landholding of the petitioners but also demarcated the same, which documents were already part of the record. In the alternative, it was urged that the Writ Court ought not to have dismissed the writ petition summarily but instead could have even directed the official respondents to conduct a fresh demarcation with a view to identify the land of the petitioners-appellants. It was also urged that the Writ Court was also not legally correct, in law, in holding that since the report had not shown the appellants? to be in possession of the land question, no direction could be issued

in terms of Section 95 of the Land Revenue Act.

4) On the other hand, counsel for the private respondent respondents No.8 and 9, reiterated and supported the view expressed by the Writ Court in favour of contesting private respondents.

5) We have gone through the judgment and order, impugned in the present Letters Patent Appeal, as also perused the documents on record on which the counsel for the appellants placed overwhelming reliance. It is not denied that the appellants had purchased land which has been described in detail in the preceding paragraphs, which, according to the appellants, had been encroached upon by the contesting private respondent No.8 and 9. Section 94 of the Land Revenue Act does give appellants a right to have the land so purchased demarcated with a view to enjoy the same and protect it from any encroachment and for purposes of availing the remedies which are otherwise available in law. To that extent, the appellants did, in fact, approach the Revenue Authorities for demarcating the land belonging to them. A report has also been prepared which has been dealt with extensively by the Writ Court.

6) While the report claimed to be a demarcation report, which was prepared by using ETS method yet, in our opinion, the view expressed by the Writ Court appears to be correct, inasmuch as the said report does not, precisely, pinpoint the location of the land owned by the appellants in the maps which are on record. Identification of Khasra nos. as also identifying the names of the owners and the actual occupants would not normally suffice, especially when the land claimed in ownership by the appellants is a part of larger chunk of land and needed to be identified precisely on the map so that, if at all, a remedy was to be availed in terms of Section 95 of the Land Revenue Act, the eviction could be ordered of only those who are unauthorizedly occupying the land claimed by the appellants. In the instant case, the report, in our opinion, does not do so. We, however, are in agreement with learned senior counsel, Mr. Naik, to the extent that the Writ Court ought not to have simply dismissed the writ petition if it was satisfied that the demarcation report was not proper. We also agree with the contention of Mr. Naik that merely because the appellants were not in possession of the land in question, would not deprive the appellants from invoking Section 95 of the Land Revenue Act subject, of course, to the fulfillment of other conditions prescribed in Section 95 as regards time of dispossession as also the proper identification and demarcation of the landholding of the appellants in terms of Section 94 of the Act.

7) We are conscious of the fact that in the Writ Petition no relief for demarcation had been prayed for by the appellants, inasmuch as they were proceeding on the premise that the demarcation report was already available on record and all that was required from the Court was a Mandamus directing the competent revenue authority to exercise powers in terms of Section 95 of the Land Revenue Act for purposes of restoration of possession. We are of the opinion that only because the appellants did not make any such prayer in the writ petition, would not

prevent the Court from doing complete justice with the parties with a view to clinch the controversy between them by ordering the competent revenue authority to undertake an exercise to clearly and precisely identify and demarcate the land of the appellants so that the appellants could then approach the concerned authority in terms of Section 95 for redressal of their grievances.

8) For the reasons mentioned above, we dispose of the present Letters Patent Appeal in the following manner:

(i) Respondent No.3-Deputy Commissioner, Budgam, shall ensure proper identification and demarcation of the land of the appellants positively within a period of one month from today.

(ii) Upon preparation of such a demarcation report, the competent revenue officer would consider the request of 13the appellants by passing a speaking order thereon strictly in terms of Section 95 of the Land Revenue Act.

