(2019) 12 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Writ Petition (Crl) No. 3095 Of 2019, CM No. 6404 Of 2019

Nasreen Jan & Ors APPELLANT

Vs

State Of Jammu And Kashmir & Ors RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

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

Citation : (2019) 12 J&K CK 0009

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : A. H. Naik, Salima Mehboob, N. H. Shah, M. Moomin Khan, Zahoor Ahmad Shah

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. This petition has been filed with the following prayers:

"a) writ of mandamus commanding the respondents to handover the possession of the aforesaid land measuring 03 Kanals falling under Survey No.318 & 319 and Khewat No.37 & 54 situated at Watadooru, Galwanpora, Tehsil & District Budgam which duly identified on spot and demarcated by a team of revenue officers on 15.02.2019 which has been legally purchased by the petitioners in terms of two registered sale deeds and, which also stands mutated in favour of the petitioners under Mutation no.737 & 741 respectively in favour of the petitioners after removing the illegal encroachments on the said land.

b) writ of mandamus commanding the respondent no.1 to initiate an enquiry against the Assistant Commissioner Revenue, Budgam for misuse and abuse of power vested upon him by the State and conspiring with the private respondents thereby granting undue, unlawful and illegal favour to the encroachers (private respondents no.8 & 9) and by creating impediments in handing over the possession of the said land to the petitioners as per the demarcation report of the team of revenue officials and as per the Aksi-Latha-Kart and law / rules governing the subject.

c) any other order / direction which this Hon?ble Court may deem fit and proper in the attending circumstances of the case may also be passed in favour of the petitioners and against respondents. Same shall be in the interest of law and justice.

As is seen, the first prayer made, which is the main relief sought in the petition, is founded on the claim of the petitioners that the land in question stands duly identified on the spot and demarcated by a team of revenue officers on 15.02.2019. This vital statement, also contained in the body of the writ petition as the fundamental averment, is not supported by the documents appended by the petitioners with the writ petition and strenuously relied upon by them. Skipping the other facts for the time being, at first I deem it apt to come to and discuss these documents.

2. It is the specific case of the petitioners that their aforesaid land was demarcated and identified on the spot by a team of revenue officials. In support of this averment, the petitioners have appended to the petition, as annexure II, photocopies of certain documents comprising six pages from page nos. 22 to 27. It is seen that the document forming page 22 is a report dated 05.02.2019 professedly prepared by six revenue officials, namely, ETS Surveyor; Patwari, Halqa Narkara; Patwari, Halqa Humhama; Patwari, Halqa Sheikhpora; Girdawar of the area; and Naib Tehsildar Humhama, though it is signed by only four of them. It says that on the spot demarcation was made with the help of ETS and Geo reference which was tallied with Aksi-latha of the village, and that the details purportedly enclosed therewith were revealed. The report also states that the parties refused to acknowledge the summons. The document forming page 23 is another report dated 15.02.2019 shown to have been prepared by the very same revenue officials, but signed by five of them. It states the same thing, except that the demarcation was done in presence of the parties, without any interference from them, and encloses the details. Two of the documents enclosed with this report, forming page nos. 24 and 26, seem to be most important. Let these be examined.

3. The document at page 24 gives the details of the area under Survey Nos. 318 and 319 situated in estate Watadooru, Galwanpora, Tehsil & District Budgam, in a tabulated form. It is shown to be the English version of the relevant page. I deem it apt to quote hereunder what is said in the document. It reads thus:

(Sic)

Details of owners as per record

Sur vey no

Area

Name of occupant on spo

Sur vey no.

Area

Remarks

Kan al

Marl al

Kan al

Ma rla

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

Watadooru Galwan pora

Jibran Nazir D/o Nazir Ahmad Sheikh R/o Zainakadal, Sgr (01 K-10m) And Mohd Amin S/o Ab Khaliq Bhat (09 mrla) and Bashir Ahmad Mir S/o Gh. Ahmad Mir R/O Karannagar (01K-19m)

18

03

18

Yasmin Yousuf D/o Moh. Yousuf Khan R/o Suthrashahi Sgr (A)

18/ m

01

03/ 200 sq

Note: The demarcation on spot conducted with no interference. (Sic) possession on spot. Hence the report alongwith "Aksi Latha

Adleen Adil Parray S/o Gh. Mohd R/o Palapora Sgr (B)

-do-

00

174 sqft

Bashir Ahmad S/o Gh. Ahmad Mir R/o Karan Nagar Sgr (C)

-do-

01

03/ 200

sqf

GEO Map/ Set (sic) Map and the extracts of Jamabandi/ Girdawari viz detailed report submitted as directed. Signed by concerned Team members

Mubashir Hussain S/o Gh. Hassan R/o K. P. Bagh (D)

-do-

- 00

17/ 177 sqft

Total:

do-

03 K

18 M

-do-

Mohd Amin S/o Ab. Khaliq Bhat R/o Natipora (03 m) and Yasmin Yousuf D/o Mohd Yousuf Khan R/o Suthrashahi (01K-11m) and Mubashir Hussain S/o Gh. Hassan Shah R/o K. P. Bagh (02 Kanal) and Nasreen Jan W/o Nazir Ahmad Jan and Naseema Nazir D/o Nazir Ahmad Sheikh in equal (01 K10 m) Rs/o Zaina Kadal Sgr, and Gaffar S/o Karim Bhat (06 m) R/0 Said village

319

05

10

Yasmin Yousuf D/o Mohd Yousuf Khan (1)

319

01

08/ 108 sqft

Pareveena D/o Gh. Nabi Shah, Gh. Mohidin Mircha S/o Ab Gaffar (2)

-do-

01

08/ 129 sqft

Adlin Adil Parray S/o Gh. Mohd R/o Palapora (3)

-do-

01

05/ 160 sqft

Bashir Ahmad S/o Said Gh Ahmad (4)

--do--

00

14/ 375 sqf

Mubashir Hussain S/o Gh Hassan Shah (above) (5)

-do-

00

09/ 68 sqft

(6) (7) Under road respectively

-do-

X

x

03/ 314 sqft

03/ 131 sqft

Total:

05 K

10 M

4. From a perusal of the aforesaid tabulated document, it is seen that its 2nd column mentions the names of the recorded owners of the land comprised in the two survey nos. viz. 318 and 319. Therein the

2nd petitioner is shown to be recorded owner of 01 Kanal and 10 Marlas of land in Survey no.318, and 1st and the 3rd petitioners are shown to be recorded owners of 01 Kanal and 10 Marlas of land comprised in Survey no.319. The 6th column of the table mentions the names of the persons who have been found and are reportedly in actual and physical occupation and possession of the land on the spot comprised in the Khasra nos. 318 and 319 to the extent mentioned in columns 8 and 9 thereof against each of their names. Curiously, none of the petitioners are shown to be in such occupation of any portion of the lands in the two Survey nos. This table, thus, does not indicate, muchless establish, that the petitioners? land in the two Survey nos. has been identified and demarcated on the spot or that its boundaries have been defined. In fact, going by what is mentioned and reported in the 6th column of the document, the team of revenue officials have not marked any part of the land, not even an inch, to be in the petitioners? occupation. So, the document does not support the claim of the petitioners that their land measuring 3 Kanals stands identified and demarcated on the spot or that its boundaries stand defined.

5. So far as the document forming page 26 to the writ petition, captioned as "Geo Reference (latest) in respect of ETS measurement / demarcation of land at village ?Watadooru Galwanpora?, Tehsil and District Budgam", is concerned, it does not say that it relates to the measurement and demarcation of the petitioners? land; it gives the location of the respective portions of land of the different occupants named in 6th column of document at page 24 of the petition. It may be reiterated here that in the 6th column of the aforesaid table of the document at page 24, the four occupants of the land in Survey no.318 have been allotted alphabetical marks ?A?, ?B?, ?C? and ?D?, respectively, and the five occupants of land in Survey no.319 have been, respectively, allotted numerical marks (1), (2), (3), (4) and (5), and the land under roads has been given the marks (6) and (7). The above alphabetical & numerical marks have been carried in the document forming page 26 to show the different portions of land comprised in the two Survey nos. 318 and 319 physically occupied on the spot by the persons named in the 6th column of the aforesaid table. The measure of the land of each of the portions represented by the aforesaid marks ?A? to ?D? of Survey no. 318, and of marks (1) to (7) of Survey no.319, is given in square feet in the legend of the document. The details under the legend demonstrate that out of the total land measuring 3 Kanals and 18 Marlas, comprised in Survey no.318, land measuring 21216 Sq. ft. are covered by the marks ?A? to ?D?, to the extent mentioned against each mark, meaning thereby that marked portions of the land are occupied by the persons represented by these marks named in 6th column in document forming page 24. The total land comprised in Survey no.318 is 3 Kanals, 18 Marlas. 21216 Sq. ft. shown to be covered by marks ?A? to ?D? come exactly to 3 Kanals and 18 Marlas of land. Thus, as per this document also, there is no land shown to be in the petitioners? occupation, or demarcated and identified on the spot to be that of the petitioners. So far as the other Survey, i.e., Survey no.319 is concerned, its total measure is 05 Kanals, 10 Marlas. The details given in the legend indicate that 30003 Sq. ft. are covered by marks (1) to (7), including the roads. 30003 Sq. ft. come to about 5 Kanals and

10 Marlas of land. Thus, in this Survey number also, there is no land shown to be occupied by the petitioners, or demarcated and identified by the revenue officials to be belonging to the petitioners.

6. It thus becomes clear and axiomatic from the aforesaid documents, that the petitioners land on the spot has neither been identified nor demarcated.

7. Seemingly, nobody has gone through these documents to ascertain as to what do they contain and say. The Financial Commissioner (Revenue) in his order dated 11.09.2019 passed in a connected proceeding, in para 4 thereof, has also said that "the revenue authorities by exercising powers under Land Revenue Act have carried out the demarcation and defined the limits / boundaries of the disputed land". This order has been placed on record of the writ petition alongwith objections filed by the private respondents. But it does not seem to be so, as the documents referred to and discussed above do not establish that. It is thus seen that it is wrong on the part of the petitioners to say that their land stands identified and demarcated on the spot. Their stand and averment in this regard is belied by the record. Consequently, the prayer made by them, being based on misconception of the fact and against the record, is equally misconceived. This is one crucial aspect of the matter.

8. The other aspect is that the obligation of the Revenue Officer under Section 95 of the J&K Land Revenue Act, Svt. 1996 (the Act) regarding reinstating possession of a party in proceedings under Section 94 thereof, apart from being subject to the condition of his attaining the satisfaction provided therein, is a step secondary to defining the limits of any estate, or of any holding, tenancy, field or other portion of an estate, and erection of survey-marks thereon. Since the condition precedent to the exercise of power under Section 95 of the Act, as provided in Section 94 thereof, has not yet been fulfilled, the question of exercise of the power under Section 95 of the Act would not arise and, consequently, the direction to that effect, as sought in the petition, cannot be issued. For facility of reference, the relevant provisions of the Act are quoted hereunder:

"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 indicating 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 depute 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 proceeding under section 94 if it appears to the Revenue Officer that any of the parties to the proceedings has, within a period of six months preceding the date of his order illegally encroached upon any land adjacent to the boundary defined, and previously in the lawful possession of any of the other parties to the proceeding, 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."

A plain reading of Section 95 of the Act thus provides that if it appears to a Revenue Officer, not below the rank of an Assistant Collector, in any proceeding under section 94, that any of the parties to the proceedings has, within a period of six months preceding the date of his order, illegally encroached upon any land adjacent to the boundary defined, and previously in the lawful possession of any of the other parties to the proceeding, he may by his order direct that the party dispossessed be placed in possession of such land. In absence of any such satisfaction recorded by the concerned revenue officer, the prayer for issuance of the direction sought for is wholly misconceived. It is another thing that the first step is to define the limits and boundaries of the land, which, as said above, has not yet been done by the revenue officials. It may be observed here that a Mandamus can be issued only when it is shown that a duty is cast on a public officer to do a particular thing and that such duty has not been discharged. Once the land has not been demarcated and defined on the spot in terms of the provision of Section 94 of the Act, and the required satisfaction of someone having illegally encroached upon land within a period of six months preceding the date of order has not been attained/recorded, it cannot be said that the revenue officer has not discharged his duty of reinstating possession of the petitioners in the land in terms of the provision of Section 95 of the Act.

9. One thing is clear that the revenue officials, who have prepared the documents referred to above, have been skilfully unfair to the petitioners to believe that their land stands demarcated and identified on the spot which, as seen above, is not the case. This is dismaying and unfortunate, and it can by no standards be said to be the discharge of an official duty cast on the revenue officers commensurate with the avowed national polity and the conscious decision of the people of the nation to be governed by rule of law.

10. It may be observed here that this Court does not, even for a second, say that the petitioners? cause, in any way, is baseless. The problem may be relatable only to their failure to choose the right remedy, for, from the record of this file, it is seen that they had filed a civil suit and allowed it to be dismissed in default. They have also withdrawn, midway, a proceeding before the Financial Commissioner (Revenue). They had also unsuccessfully, and apparently unnecessarily, sought impleadment in some other?s writ petition. At the top of it, this is the third writ petition in sequence filed by them, with the reliefs quoted above. From the record, so far, thus, they seem to have been inconsistent in their approach. It may be mentioned here that they appear to be members of one single family, comprising mother, son and daughter. The copies of the sale deeds placed on record reveal that the petitioners 1 and 3, i.e., the mother and daughter, way back in the year 1993, purchased land measuring 1 Kanal, 10 Marlas, comprised in Khasra no. 319-min, Khewat no.56, situated at Watadooru, Galwanpora, Tehsil and District Budgam. Photocopy of the sale deed, executed on 07.06.1993 and registered on 07.10.1993 before the Sub-Registrar, Budgam, reveals that the vendors of the land in question were two different persons, named: Shaban Bhat son of Sula Bhat and Gaffar Bhat son of Karim Bhat residents of Watadooru, Galwanpora. Likewise, petitioner no.2 herein, through his father, purchased land measuring 1 Kanal, 10 Marlas from one Muhammad Wani son of Subhan Wani resident of Watadoor, Galwanpora, comprised in Khasra no.318-Min, Khewat no.37 situated at Watadooru, Galwanpora. This was done vide sale deed executed on 07.06.1993, registered by the Sub-Registrar, Budgam on 17.09.1993.

According to the petitioners, the said land stands duly mutated in their name in terms of Mutation nos. 737 and 741. The total land comprised in the two Survey nos. in question is shown to be 3 Kanals, 18 Marlas + 5 Kanals, 10 Marlas = 9 Kanals and 8 Marlas. Thus the petitioners land, measuring 3 Kanals constitutes 32% of the aforesaid total land. It is, therefore, enigmatic that the revenue officials have failed to locate such a big chunk of land, demarcate and define it. Nonetheless, coming back to the reliefs claimed herein, possession is a step secondary to defining the boundaries of the land, the first step having not been taken, the obligation to discharge the second step would not arise, nor a relief to that effect can be sought.

11. As said above, this petition for the reliefs prayed for therein is misconceived. It is, therefore, dismissed, leaving the petitioners free to take recourse to the appropriate legal remedy available to them. This also disposes of the connected MP, vacating the interim order, if any, subsisting.

12. No order as to costs.

