(2022) 06 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal (LPA) No. 82 Of 2022, Civil Miscellaneous No. 2444 Of 2022

Owais Adil Parray — APPELLANT

Vs

Union Territory Of J&K & Ors — RESPONDENT

Date of Decision : 28-06-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11
Jammu And Kashmir Land Revenue Act, 1996 — Section 94, 94(1), 95, 95(1), 95(2), 139, 139(2)

Citation : (2022) 06 J&K CK 0025

Hon'ble Judges : Ali Mohammad Magrey, J;Puneet Gupta, J

Bench : Division Bench

Advocate : R. A. Jan, Aswad Attar, M. A. Chashoo, M. I. Dar, Saima Mehboob

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. This LPA has been filed against the judgment and order dated 27.04.2022 passed by the learned Single Judge in writ petition, WP(C) No.935/2021, declining the relief prayed for by the appellant therein.

2. The private parties to this lis have been engaged in this litigation for quite some time. The dispute pertains to land measuring 3 Kanals falling in Survey no.318 min Khewat no.37 (01 Kanal and 10 Marlas) and Survey no.319 min Khewat no.56 (01 Kanal and 10 Marlas) situated in estate Watduru, Galwanpora, Tehsil, Budgam. Respondents 8 to 10 herein claim to have purchased the aforesaid land through sale deeds executed on 07.10.1991 and 07.09.1993, respectively. It is seen that in the first round of litigation before this Court, the private respondents 8 to 10 herein on 31.07.2018 filed writ petition, OWP no.1454/2018, alleging therein that there was a huge chunk of land which was in illegal occupation of some people, including land mafia in the area and that these people, having patronage of the official respondents therein, namely, the revenue

officials, were unnecessarily disputing their ownership/possession vis-a-vis the Survey Numbers, Khewat Numbers and measurement of the aforesaid land measuring 3 Kanals purchased by them. They sought a direction to the official respondents therein to demarcate and identify their land measuring 03 Kanals as per the particulars given in the sale deeds. That writ petition was disposed of by the Court vide order dated 03.08.2018 with direction to the official respondents therein to treat the writ partition as representation on behalf of the writ petitioners therein and decide the same in light of the annexures appended thereto within a period of four weeks.

3. Subsequent to the above, respondents 8 to 10 herein filed another writ petition, being OWP no.2393/2018, before this Court. That writ petition was dismissed by the Court by order dated 26.12.2018. Perusal of the said Court order dated 26.12.2018 reveals that respondents 8 to 10 had in that writ petition averred that in consideration of the order of the Court dated 03.08.2018 passed in OWP no.1454/2018, the Tehsildar vide communication dated 26.10.2018 directed the Naib Tehsildar, Humhama, to verify the matter under rules and take due course of action under law. It was further contended that a team of officers was constituted who visited the spot and found that the dispute between the respondents 8 to 10 herein and one Bashir Ahmad and Owais Abid could only be sorted out by appropriate demarcation of the land. In para 7 of the aforesaid Court order, the Court observed that the grievance of the petitioners was that one Bashir Ahmad and Owais Abid had encroached upon their land which had been taken note of by the revenue authorities who had pointed out that the dispute could be settled only by proper demarcation. Respondents 8 to 10 in the aforesaid writ petition had made the prayer that the official respondents therein, i.e., the revenue authorities, be commanded to identify the 03 Kanals of land in question, to conclude the process already undertaken by them and to handover the possession of the patch of land to them. As mentioned above, the writ petition was dismissed as being not maintainable with liberty to the writ petitioners therein to approach the competent revenue authority for seeking demarcation of their land, observing that in case any such application was filed by the petitioners the concerned revenue authorities shall dispose of the same expeditiously in terms of the provisions of the Land Revenue Act, 1939 AD (hereinafter, the Act) and Rules framed thereunder.

4. The private respondents 8, 9 and 10 again approached this Court through Writ petition, OWP no.3095/2019, with the prayer to command the official respondents to handover the possession of the aforesaid 03 Kanals of land to them after removing encroachments thereon. It was averred in the petition that their land stood duly identified and demarcated in terms of report dated 15.02.2019 by the team of revenue officers pursuant to the aforesaid Court orders, but possession thereof was not being handed over to them. That writ petition was dismissed by order dated 09.12.2019 on the ground that the revenue officers had failed to actually demarcate and define the land in question, therefore, the relief prayed for by the petitioners therein could not be granted.

However, on appeal, by the respondents 8 to 10, a Division Bench of the Court by order dated 22.06.2020 passed the following directions:

"(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 the appellants by passing a speaking order thereon strictly in terms of Section 95 of the Land Revenue Act."

5. In compliance to the aforesaid Division Bench Order, the Deputy Commissioner, vide order No.SQ/20/F/918/5152-60 dated 08.07.2020, constituted a team of revenue officials to identify and demarcate the disputed piece of land. On receipt of the report of the team of revenue officials, and identification and demarcation of the land in question by such team etc., the Deputy Commissioner made and announced order dated 16.01.2021, recording the following findings and directing as under:

"Therefore, from the above facts, it is clear that the land claimed by the petitioners is at present under the possession of the private respondents though the exact boundaries of such land cannot be ascertained in view of the absence of 'shajra kat' with the sale deed.

Now, Tehsildar Budgam (Assistant Collector 1st Class) being the competent Authority is directed to proceed under Section 95 of the Land Revenue Act to consider the request of the petitioners for possession and pass speaking orders after hearing both the parties and making necessary inquiries as directed by the Hon'ble High Court. Copy of the order along with demarcation report including maps shall go to Tehsildar Budgam for necessary action. Parties are directed to appear before Tehsildar Budgam on 23.01.2021."

The aforesaid order, announced by the Deputy Commissioner, Budgam on 16.01.2021, was endorsed to the Tehsildar, Budgam, under No.DCB/SQ/2021/F-916/10037 dated 18.01.2021.

6. It may be observed here that perusal of the aforesaid order reveals that in compliance of the directions of the orders of the Court, with a view to ensuring proper identification and demarcation of the land, the Deputy Commissioner vide order No.SQ/20/F/918/5152-60 dated 08.07.2020 constituted a team of revenue officials to demarcate and identify the disputed piece of land. The said team of officials vide no.588/NTH dated 23.07.2020 submitted their report delineating the disputed land on map duly superimposed on the google map. The team also reported that the area being built up, and that the possession of land having been given to the vendees in the shape of plots irrespective of survey numbers, the exact location of the land claimed by the claimants could not be identified. However, on directions of the Deputy Commissioner, the team of revenue officials again visited the post and demarcated on map the land identified by respondents

8 to 10 herein. In the order, the Deputy Commissioner has also stated to have visited the spot himself on 27.11.2020 and found that the area was built up, converted into a residential colony and the land identified by the respondents 8 to 10 was under possession of Bashir Ahmad Mir and Owais Adil.

7. Pursuant to the above order dated 16.01.2021, passed by the Deputy Commissioner, the Tehsildar, Budgam, after hearing learned counsel for the parties, made order no.02 of 2021 dated 22.03.2021 with the following concluding para:

"Now, therefore, in view of the above position obtaining in the case, it is concluded that the applicant is entitled to the possession of the land measuring 03 Kanals comprising of Survey No.318, 319 situated at Wathduru Galwanpora, which is very much available on spot and I order accordingly upon the authorities of the department especially the revenue team comprising of Mr. Mohammad Ayoub, Naib Tehsildar, Humhama, Mr. Shabir Ahmad, GQ Soibugh, Mr. Mohammad Iqbal Andrabi, the then Patwari Sheikhpora, Mr. Mohammad Amin, the then Patwari, Humhama, Mr. Manzoor Ahmad Ganai, Patwari and ETS Settlement Assistant Mr. Nisar Ahmad Rather who have already demarcated, submitted their report to the competent authority and identified the land being under legal obligation are obliged to ensure that the above piece of land is given possession of the applicant (Nasreen Jan) on spot, for this purpose they shall proceed on spot on 27.03.2021 and submit the compliance report by or before 03.04.2021."

8. It appears from the record that the appellant herein challenged the aforesaid order of the Assistant Collector, 1st Class, in a suit before the Civil court in which an interim direction of stay was passed. However, that suit was later dismissed and the interim direction was vacated. Thereafter, in continuation to the aforesaid order dated 22.03.2021, the Tehsildar, Budgam, passed an order issued under endorsement no.65-71/OQ/Bud/021 dated 09.04.2021 to the following effect:

"Now, therefore, in continuance of my earlier order dated 22.03.2021, I hereby order that a team of revenue officials who had already demarcated and identified the land shall proceed on spot and execute the order dated 22.3.2021, handover the possession to the applicants at 2 PM on 10.04.2021 and send compliance report to this office as per directions of Division Bench of Hon'ble High Court of J&K at Srinagar passed in LPA No.123/2019 titled Nasreen Jan & Others v/s State of J&K & Others dated 22.06.2020."

9. The appellant herein challenged the above orders dated 16.01.202, 22.03.2021 and 09.04.2021, in the writ petition, WP(C) No.935/2021, with prayers, inter alia, to command the respondents, in particular respondents 1 to 7, to desist, refrain and forbear from interfering and/or causing any interference in any manner with the rights of the petitioner to hold, possess, use and enjoy the residential house with land underneath and appurtenant thereto admeasuring

02 Kanals situate at Watduru, Galwanpora, Shah Anwar Colony, Hyderpora, Tehsil Budgam.

10. The learned Single Judge, finding no illegality or infirmity in the order of the Deputy Commissioner, insofar as it pertained to the appellant (writ petitioner), upheld the same leaving it open to the appellant to raise all objections in the proceedings under Section 95 of the Act initiated by the Assistant Collector, 1st Class, Tehsildar, Budgam, in terms of the directions contained in the order impugned in the writ petition. The learned Single Judge thus disposed of the writ petition vide judgment dated 27.04.2022.

11. Aggrieved of the aforesaid judgment of the learned Writ Court, the writ petitioner (appellant) has challenged the same in this LPA.

12. Heard learned counsel for the parties and considered the matter.

13. The controversy raised by the appellant in his writ petition and, of course, this appeal, undoubtedly, arises out of the orders passed by the Deputy Commissioner, Budgam, and the Tehsildar (Assistant Collector, 1st Class), Budgam, in terms of the powers conferred by Sections 94 and 95 of the Act. Section 94 provides for the powers of a revenue officer to define the limits of any estate, or of any holding, tenancy, field or other portion of an estate, and Section 95 provides for the power of the revenue officer in proceedings under Section 94 to reinstate the party dispossessed. Sub- section (2) of Section 95 of the Act provides the remedy to a party dissatisfied with the order of the revenue officer passed under Sub-section (1) thereof. It would be apt to quote Sections 94 and 95 of the Act hereunder. The same read as:

"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."

From a perusal of Section 94(1) of the Act it is seen that the revenue officer is required to define the limits of any estate, or of any holding, tenancy, field or other portion of an estate. Perusal of sub-section (2) of Section 95 reveals that there is a remedy of going to the Civil Court provided to the party who feels dissatisfied with the order passed by a revenue officer under Sub- section (1) of Section 95 of the Act.

14. It is seen that Section 139 of the Act excludes the jurisdiction of civil courts in matters within the jurisdiction of revenue officers. The provision of Section 139 of the Act says that except as otherwise provided by the Act, no civil court shall have jurisdiction in any matter which a revenue officer is empowered by the Act to dispose of or take cognizance of. Sub-section (2) of Section 139 of the Act reads that a civil court shall not exercise jurisdiction over any of the matters enumerated thereunder. Contrary to the provision of Section 139 of the Act, Sub-section (2) of Section 95 of the Act makes a special provision providing for remedy in a civil court to a person who feels dissatisfied by any order passed by a revenue officer under sub-section (1) of Section 95 of the Act. Obviously, if and when the remedy made available under the statute is exercised, the civil court, with a view to reaching at a just conclusion, would have to hold a full-fledged trial where the parties would have all the opportunities to fully put forth their respective cases and evidence. So, the statute itself specifically provides an efficacious remedy against an order passed by a revenue officer under Sub-section (1) of Section 95 of the Act.

15. In the instant case, it is seen that respondents 8, 9 and 10 in their objections before the learned Writ Court had taken a preliminary objection that the writ petition was not maintainable because of the fact that efficacious and proper remedy was available to the petitioner against both the orders impugned in the writ petition. In fact, it is borne out from para 8 of the impugned judgment that this objection was duly and vehemently raised at the time of hearing of the writ petition as well before the learned Single Judge by the learned counsel for respondents 8, 9 and 10, and the argument in that regard has been duly recorded at the beginning of para 8 of the judgment in the following words:

"8. Per contra, Mr. A. H. Naik, learned Senior Counsel appearing for the private respondents submits that this petition is not maintainable in view of the availability of alternate statutory remedy under the Land Revenue Act…"

But, a further reading of the judgment shows that the learned Single Judge has not been attended to and dealt with the point. In fact, while recording the arguments of the learned senior counsel for the said respondents, it is further mentioned in the very same para of the impugned judgment that the writ petitioner had pursued the remedy before the civil court by filing a suit before the Additional District Judge, Budgam, seeking a decree of declaration and injunction against the orders impugned in the writ petition. That suit was opposed by the private respondents who sought rejection of the plaint under Order 7 Rule 11 CPC, and that the application was allowed and the plaint filed by the petitioner was rejected. The appellant has not taken any further remedial course against that order.

16. The objection as to maintainability of the writ petition on the aforesaid ground has again been raised in this letters patent appeal. Since the objection goes to the root of the matter, we think that it would be appropriate to deal with the same before going to the merits of the case.

17. Mr. R. A. Jan, learned senior counsel, appearing for the appellants submitted that the orders passed by the Deputy Commissioner and the Assistant Collector, 1st Class, Budgam, are without jurisdiction, inasmuch as they run counter to the order dated 22.06.2020 passed by the Division Bench in LPA no.321/2019 and the mandate of the provisions of Sections 94 and 95 of the Act. He submitted that, therefore, in terms of the settled position of law, the writ petition was and is maintainable. The learned senior counsel submitted that in terms of the order dated 22.06.2020 passed by the Division Bench in LPA no.321/2019, the Deputy Commissioner, Budgam, was ordained to ensure proper identification and demarcation of the land of respondents 8, 9 and 10 and then the competent revenue officer was to consider the request of the said respondents by passing a speaking order strictly in terms of Section 95 of the Act. The learned senior counsel submitted that, in fact, that is the mandate of Section 94 of the Act. Inviting the attention of the Court to the order dated 16.01.2021 passed by the Deputy Commissioner, the learned senior counsel submitted that in the order the Deputy Commissioner has unambiguously stated that in view of the absence of 'shajra kat' with the sale deed, the exact boundaries of the land cannot be ascertained, and yet the Deputy Commissioner proceeded to direct the Tehsildar (Assistant Collector, 1st Class), Budgam, being the competent Authority, to proceed under Section 95 of the Act to consider the request of respondents 8 to 10 for possession and pass speaking orders thereon. He submitted that unless the boundaries of the disputed land were ascertained and defined, the Deputy Commissioner could not pass such a direction to the Assistant Collector, 1st Class, Budgam. The learned counsel submitted that such jurisdiction could be conferred by him on the Assistant Collector, 1st Class, only on demarcation of the

land and identification of the boundaries of the land. The learned counsel submitted that on this count the order passed by the Deputy Commissioner is without jurisdiction and, therefore, the writ petition against the order passed without jurisdiction is maintainable.

18. The learned senior counsel also submitted that the power exercisable under Section 95 of the Act is further dependent upon fulfilment of two mandatory conditions: first, that it must appear to the revenue officer in proceedings under Section 94 of the Act that the party to the proceedings had illegally encroached upon any land adjacent to the boundary so defined; and second, that the other party must have been previously in the lawful possession of the land in question. He submitted that the revenue officer has to record definite findings in that regard and then only the Assistant Collector, 1st Class, would get the jurisdiction to proceed in the matter under Section 95 of the Act. The learned counsel submitted that there are no such findings recorded by the Deputy Commissioner in his order dated 16.01.2021. Therefore, the direction given by him to the Assistant Collector, 1st Class, Budgam, is without jurisdiction. He submitted that on the same analogy the orders passed by the Assistant Collector, 1st Class, Budgam, suffer from the same vice, and, hence, the writ petition against the said orders is competent and maintainable.

19. It be seen that order dated 22.06.2020 passed by the Division Bench of the Court in LPA no.321/2019 did not make it necessary for the Deputy Commissioner to personally do the identification and demarcation of the land in question. He was only supposed to ensure that proper identification and demarcation of the land was done. In order to comply with such direction of the Court, the Deputy Commissioner constituted a team of revenue officials. From a perusal of the order dated 16.01.2021 it is seen that the team of revenue officials made a report dated 23.07.2020 'delineating the disputed land on map duly superimposed on the google map'. The team of officials had also reported that the area was built up and that as the possession of land had been given to the vendees in the shape of plots irrespective of survey numbers, the exact location of the land claimed by the petitioners (in that case) could not be identified. On receipt of this report, the Deputy Commissioner directed the team of revenue officials to again visit the spot and demarcate on map the land identified by the petitioners therein. The Deputy Commissioner himself also visited the spot on 27.11.2020 and found that the area was built up, converted into a residential colony, and that the land identified by the petitioners (therein) was under possession of Bashir Ahmad Mir and Owais Adil. On the basis of the reports submitted by the team of revenue officials, the Deputy Commissioner in its order dated 16.01.2021, inter alia, recorded as under:

"I. The petitioners have purchased land measuring 3 Kanals (1K-10M out of survey No.318 and 1K-10M out of survey No.319) in 1993 vide sale deeds dated 16.09.1993 and 06.10.1993 and land was mutated in their name in revenue record vide mutation No.737 dated 05.10.1993 and mutation no.741 dated

19.11.1993, respectively.

II. No ‘shajra Kat’ was prepared and made part of the sale deeds nor was drawn in the mutation sheets, so exact location of the piece of land in survey No.318 and 319 is quite difficult to demarcate. The petitioners claim that it is the piece of land which is presently under the occupation of the Private Respondents. This land as per spot position/demarcation conducted by the team falls under survey No.318, 319 and 320 as per following break up:-

S.No.

Name of

Respondent (occupant)

Survey No.

Area

Kanal

Marla

Sq. Ft

1

Owais Adil

318

-

13

107

319

1

6

41

2

Bashir Ahmad Mir

318

1

4

-

319

-

15

-

320

-

01

-

III. As per records, the Respondents had also purchased 4-Kanals land (2 Kanals each) out of survey No.316, 318 and 320. Sh. Owais Adil (Respondent) had purchased 2 Kanals land (19 Marla out of Survey No.316 and 1K-1M from survey No.320) in the year 1999 and Sh. Bashir Ahmad Mir (Respondent) had purchased his 2 Kanals (1K-19M) out of survey No.318 and 01 Marla out of survey No.320) in the year 2020. The first transaction of this land took place in the year 1993, 1994 and 1998 when the original owners sold it to different persons and then through different vendees it came to be purchased by the respondents.

IV. As per spot, Sh. Owais Adil is not in possession of land purchased by him out of survey No.316 and 320. Instead the land in his possession is in survey No.318 and 319. Whereas Sh. Bashir Ahmad Mir has in his possession just 1K-4M land out of survey No.318 (against 1K-19M purchased land) and 01 Marla out of survey No.320. The remaining 15M land in his possession is in survey No.319.

Therefore, from the above facts, it is clear that the land claimed by the petitioners is at present under the possession of the pvt. Respondents though the exact boundaries of such land cannot be ascertained in view of the absence of 'Shajra Kat' with the sale deed."

From the above it becomes axiomatic that the land of respondents 8, 9 and 10 stands duly identified on the spot, inasmuch as, on the basis of the report of the team of revenue officials, it has been clearly found and delineated as to what measure/extent of land of these respondents, measuring 3 Kanals, falls in what survey No. Furthermore, there is a definite finding recorded in order dated 16.01.2021 by the Deputy Commissioner that the land claimed by the petitioners, i.e. respondents 8 to 10 herein, is at present under the possession of the private respondents, i.e., appellant herein and the other person. It may be borne in mind that the first part of the direction contained in the Division Bench order dated 22.06.2020 was 'proper identification' of the land of respondents 8 to 10 herein. So that part of the direction stands duly complied with, inasmuch as their land stands duly identified.

20. The Deputy Commissioner in his order has stated that in absence of 'Shajra Kat' exact boundaries of the land cannot be ascertained. It is seen that the

Division Bench order in reference did not require the Deputy Commissioner to determine or demonstrate the 'exact boundaries' of the land of respondent 8 to 10 on the basis of 'Shajra Kat'. The direction was to 'ensure demarcation of the land', not to draw 'exact boundaries' on the basis of 'Shajra Kat'. Once the identification of the land was duly made, its limits would naturally stand defined. In fact, Section 94 of the Act also enjoins upon the revenue officer only to define the limits of any estate, holding, field or portion of an estate; it does not prescribe or provide for determining 'exact boundaries'. What is required is to identify the land and define its limits. Once the land is identified and defined, its limits are automatically defined and that definition would be determinative/ demonstrative of the boundary between two or more plots of land or survey numbers. It is also to be borne in mind that neither Section 94, nor Section 95 prescribe that limits of the land have to be defined on the basis of 'Shajra Kat'. 'Shajra Kat' itself is nothing but a line in red ink drawn by the revenue officials on a map showing the division of a Survey Number. So, it is not that either the Division Bench order has not been complied with or that the mandate of the provisions of Section 94 or 95 has not been fulfilled. So, the arguments advanced by learned senior counsel for the appellant at the Bar in this regard are rejected.

21. We feel it apt to mention here that the records reveal that with a view to identify the land of respondents 8, 9 and 10, the team of revenue officials has applied the ETS (Electronic Total Station) method, which is an advanced technological method adopted to survey and identify the land in built up areas. This method of survey and identification of land in built up areas is duly recognized and recommended by the National Land Records Modernization Programme (NLRMP) Guidelines, Technical Manuals and MIS 2008-09 issued by the Department of Land Resources, Ministry of Rural Development, Government of India, meant to be implemented by all the States and Administration of Union Territories and we are informed that the Guidelines have also been adopted by the erstwhile State of J&K.

22. Coming to the jurisdictional part of the argument of learned senior counsel founded on the conditions mentioned in Section 95 of the Act and vehemently pressed into service by the learned senior counsel for the appellant, it may be mentioned here that the Deputy Commissioner in the operative part of the order dated 16.01.2021 directed the Tehsildar (Assistant Collector, 1st Class), Budgam, being the competent authority, to proceed under Section 95 of the Act to consider the request of respondents 8 to 10 herein for possession and pass speaking orders after hearing both the parties, as directed by the Division Bench. The Deputy Commissioner also sent the copy of the order so passed by him along with demarcation report, including the maps, to the Tehsildar (Assistant Collector, 1st Class), Budgam, for necessary action. Going by the plain language of Section 95 of the Act, once a revenue officer in proceedings under Section 94 records the requisite satisfaction in terms of Section 95, the Assistant Collector has to do nothing more than placing the dispossessed person in possession of such land. Herein, the Division Bench in direction (i) directed the Deputy

Commissioner to ensure proper identification and demarcation of the land; and in direction (ii) directed that the competent revenue officer would consider the request of the applicants by passing a speaking order thereon strictly in terms of Section 95 of the Act. The competent revenue officer, in terms of proviso to Section 95 is the Assistant Collector, 1st Class. That means that the satisfaction required by first part of Section 95 had to be acquired by Assistant Collector, 1st Class. Further, it is seen that in compliance to the aforesaid Division Bench direction, the Deputy Commissioner referred the case to the Assistant Collector, 1st Class, requiring him to pass the requisite speaking order.

23. It is seen that the Tehsildar (Assistant Collector, 1st Class), Budgam, on receipt of the aforesaid order with record, after hearing learned counsel for the parties and considering the matter, passed order no.02 of 2021 dated 22.03.2021, recording therein, inter alia, as under:

"12. Whereas, the u/s has proceeded in the matter as per directions of the worthy Deputy Commissioner, Budgam and also in pursuance to the Hon'ble High Court orders as well as orders of the Divisional Commissioner, Kashmir;

13. Whereas, the u/s heard both the parties at length identified by the worthy Deputy Commissioner Budgam as per para (6) sub-para IV which reflects as under:

'As per spot, Sh Owais Adil is not in possession of land purchased by him out of survey No.316 and 320. Instead the land in his possession is in survey No.318 and 319. Whereas Sh. Bashir Ahmad Mir has in his possession just 1K-4M land out of survey No.318 (against 1K-19M – purchased land) and 01 Marla out of survey No.320. The remaining 15M land in his possession is in survey No.319.'

14. The land in question on spot is available and possession thereof is required to be given to the owner (applicant Nasreen Jan).

15. Whereas as per section 9(2) of the Land Revenue Act, the u/s is fully satisfied that the applicant party being owner has been in possession of the land in 2018, which is admitted by the other side as they had tried to install a gate in front of the land of the applicant party, which they objected pleading that the land belongs to them, therefore, no gate whatsoever can be erected on the land of the applicant party, which clearly shows that the applicant party has been in possession of the land at the relevant point of time in as much as the applicant party was before the Hon'ble High Court/Hon'ble Division Bench and thereafter the matter remained pending for some time before the worthy Divisional Commissioner, Kashmir and as per scrutinization of the record, it surfaced that the applicant party is entitled to the possession of the land u/s 95(2) of the Land Revenue Act.

Now, therefore, in view of above position obtaining in the case, it is concluded that the applicant is entitled to the possession of the land measuring 03 kanals comprising of survey No.318, 319 situated at Watduru Galwanpora, which is very much available on spot and I order accordingly upon the authorities of the department, especially the revenue team comprising of Mr. Mohammad Ayoub, Naib Tehsildar, Humhama, Mr. Shabir Ahmad, GQ Soibugh, Mr. Mohammad Iqbal Andrabi, the then Patwari Sheikhpora, Mr. Mohammad Amin, the then Patwari Humhama, Mr. Manzoor Ahmad Ganai, Patwari and ETS Settlement Assistant Mr. Nisar Ahmad Rather who have already demarcated, submitted their report to the competent authority as and identified the land being under legal obligation are obliged to ensure that the above piece of land is given possession of the applicant (Nasreen Jan) on spot, for this purpose they shall proceed on spot on 27.03.2021 and submit the compliance report by or before 03.04.2021."

From a bare perusal of the above, it is seen that the Tehsildar (Assistant Collector, 1st Class), Budgam, has recorded his satisfaction in clear terms that the applicant party, viz. respondents 8 to 10 herein, being owners, has been in possession of the land at the relevant point of time in 2018. The phrase 'relevant point of time', obviously, has reference to the conditions of time period about being in possession of the land and encroachment thereof mentioned in first part of Section 95 of the Act. The conditions mentioned in Section 95, therefore, stand duly fulfilled and satisfied by the Tehsildar, Assistant Collector, 1st Class, Budgam, inasmuch as the requisite satisfaction has duly been attained and reordered by the Assistant Collector, 1st Class in the order. It be further seen that the Assistant Collector, 1st Class, is otherwise conferred the jurisdiction to pass an order under Section 95 as becomes clear from the proviso added to the Section, which says that 'provided that no order under this section shall be passed by any officer below the rank of an Assistant Collector of the first class…'.

24. So, in light of the above, we are satisfied that there has been no jurisdictional error committed by the Deputy Commissioner or the Tehsildar (Assistant Collector, 1st Class) while dealing with the matter under Sections 95 and 94 of the Act. That being the position, it is not correct on the part of the learned senior counsel for the appellant to say that the orders passed under Sections 94 and 95 of the Act by the Deputy Commissioner and/or the Tehsildar (Assistant Collector, 1st Class), Budgam, were without jurisdiction. Consequently, the writ petition was and is not maintainable. The appellant, if he was dissatisfied with the order of the revenue officer(s), had the alternate and effective remedy provided by the Statute in terms of Sub-section (2) of Section 95 of the Act before the civil court.

25. At this stage, it may be mentioned here that a perusal of order dated 09.04.2021 passed by the Tehsildar, Assistant Collector, 1st Class, Budgam, reveals that feeling aggrieved of the order dated 22.03.2021 passed by him, the appellant herein, in fact, had approached the civil court and filed a civil suit before the court of Addl. District Judge, Budgam, who passed an interim direction dated 25.03.2021, as a result no action could be taken pursuant to order dated 22.03.2021. However, it is revealed that the civil court rejected the suit on 09.04.2021, vacating the interim direction. In consequence thereof, the Tehsildar

(Assistant Collector, 1st Class), Budgam, passed order dated 09.04.2021 fixing 10.04.2021 as the fresh date for handing over the possession of the land to the applicants-private respondents 8 to 10 herein. It is thus established that the appellant has even exhausted the alternate statutory remedy available to him and it is more than one year thereafter that he has filed the present writ petition on 11.05.2022.

26. In light of all what has been discussed above, we hold that in view of the fact that there is a statutory remedy available in the civil court under Sub-section (2) of Section 95 of the Act against the order passed under Sub-section (1) of Section 95 of the Act, which remedy is effective, the writ petition filed by the appellant is not maintainable. There is yet another factor involved in this matter which is that the appellant has already chosen the alternate statutory remedy and has failed therein, but he has not chosen the further course of remedy, if any, available against the order rejecting his suit; instead, after a lapse of more than one year from the date of rejection of his suit, he has filed this writ petition.

27. We notice that the learned Single Judge has omitted to deal with the objection duly reflected by him in the judgment. Be that as it may, since we have come to a definite conclusion that the writ petition is not maintainable, the judgment passed by the learned Single Judge is rendered inconsequential and deserves to be set aside.

28. In view of the above, the writ petition, WP(C) No.935/2021, filed by the appellant is dismissed as being not maintainable. Consequently, the judgment dated 27.04.2022 passed by the learned Single Judge is set aside. Resultantly, this LPA by the writ petitioner against the said judgment is dismissed, too. This also dismisses/disposes of all connected CMPs, vacating the interim direction(s), if any, in operation. It is provided that the Tehsildar, Assistant Collector, 1st Class, Budgam, shall proceed further in pursuance to his order dated 22.03.2021 read with order dated 09.04.2021.

29. Though this is a fit case where the petitioner-appellant should be burdened with heavy costs, yet we take a lenient view and make no order as to costs.