

(2023) 10 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 442 Of 2009

Radha Krishan Bhat And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11
Constitution Of Jammu And Kashmir, 1956 — Section 103

Citation : (2023) 10 J&K CK 0033

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : P. N. Raina, Diksha Handoo, Vishal Sharma, Monika Kohli, Nazia Fazal

Final Decision : Disposed Of

Judgement

M A Chowdhary, J

1. The petitioners, through the medium of this petition under Article 226 of the Constitution of India read with Section 103 of the State Constitution seek direction to the respondents to pay the arrears of rentals for the period w.e.f. 01.04.2004 till date and to continue paying the rentals for the land measuring 27 kanals 15 marlas of Village Sombrana, Tehsil and District Anantnag, without any delay and with interest; and further quash letter dated 19.05.2006 addressed by respondent No.3-Estates Officer, Kashmir Circle, Srinagar to respondent No.4-Deputy Commissioner, Anantnag as illegal and arbitrary and against the principles of natural justice.

2. It has been pleaded that the petitioners are owners of land measuring 81 kanals 7 marlas including the land measuring 27 kanals and 15 marlas falling under different survey numbers of Village Sombrana, Tehsil and District Anantnag as per the following details:

Khasra Nos.

Land Measuring

199

8 marlas

201

11 marlas

271/207

11 kanals and 11 marlas

278/207

15 kanals and 05 marlas

3. It has been pleaded that the land in question has been occupied by the Army in the year 1951 who continues to hold the same till date; that initially rent was being paid by the Army for 54 kanals 7 marlas only through Deputy Commissioner, Anantnag, however no rent was being paid for the land measuring 27 kanals and 15 marlas mentioned in the aforesaid survey numbers though occupied by the Army since the year 1951.

4. It was further pleaded that after strenuous efforts and intervention of Deputy Commissioner, Anantnag, Military Estate Officer, Srinagar, agreed to release the rent for the aforesaid land of 27 kanals and 15 marlas by issuance of Communication No.JK 906 HRG- Defence Estates Officer Kashmir Circle dated 03.12.1985 and the petitioners received an amount of Rs.5079.70 which both the petitioners received equally; that the petitioners received the amount of rent up to 31.03.2004; that they have been released the aforesaid amount as rentals for the land in question only after the army authorities had convinced themselves about the ownership of the petitioners, of the land in question, as there was no dispute with respect to the rest of the land so far as payment of rent was concerned. The petitioner further pleaded that the rent for 54 kanals 7 marlas of land was being disbursed to them through Deputy Commissioner, Anantnag, however, the rent for 27 kanals and 15 marlas and was paid directly by the Military Estate Officer to the petitioners; that the Defense Estate Officer after 31.03.2004 assured the petitioners that they would be receiving the rent in due course, however, a Communication dated 19.05.2006 was addressed by the Defense Estate Officer to Deputy Commissioner, Anantnag, asking him to stop the payment of rent for land measuring 26 kanals 15 marlas, whereas the fact of the matter is that as per measurement, the land was 27 kanals and 15 marlas.

5. Petitioners claimed to have immediately protested stoppage of rental and sent a communication on 19.06.2006 not only to Defense Estate Officer but also to Deputy Commissioner, Anantnag and on 28.07.2006, petitioner no.2 received a reply to his representation from Defense Estate Officer, wherein he was asked to send legible copies of the documents, which he had sent along with his

representation; that the petitioners, with no response from the Defense Estate Officer, approached Director, Defense Estate, Northern Command, Jammu by filing representation on 30.11.2007 furnishing entire record, and pleaded for release of rent for 27 kanals and 15 marlas; that the petitioner No.2 received a communication dated 17.09.2008 from the office of Director, Defense Estates wherein he was intimated that the Defense Estate Officer, Srinagar had been advised to take action in the matter, as such, petitioner no.2 attended the office of Defense Estate Officer at Srinagar, however, nothing was done on the plea; that the office of Defense Estate Officer had been burnt and they would ask Director, Defense Estate, Jammu to give orders in the matter.

6. The petitioners have assailed the impugned Communication on the ground that the action on the part of the respondents was arbitrary and illegal as the petitioners cannot be deprived of their proprietary land without following any due course of law; that the Defense Estate Officer has no reason or power to stop the rent and deprive the petitioners of the use and money which they were getting and are entitled to as rentals for the land, without any justification.

7. Pursuant to notice, the respondents no.1 and 3 filed objections asserting therein that the land in question being Ex-State Forces Property had been vested in the Union of India, in view of agreement dated 14.01.1956 executed between the President of India and State of Jammu & Kashmir providing that all Ex-State Forces Properties as it stood on 01.09.1949, shall vest in the Union of India. It was admitted that the land measuring 27 kanals 15 marlas comprising of survey nos. 199, 201, 271/207 and 278/207 of Village Sombrana, Tehsil and District Anantnag has been under the occupation of the army authorities since 01.05.1951.

8. Respondents asserted that in view Administrative Sanction No.4008/Q3L dated 25.01.2005 issued by HQr 31 Sub Area, the lease agreement was executed with the petitioners, for the land measuring 27 kanals 15 marlas and after completion of procedural formalities, the payment of rent was released in the year 1987 and stand regularly released up to 31.03.2004. However, in the year 2006, it was reported by the Field Staff that area measuring 26 kanals 16 marlas comprising of survey No. 271/207 (11K-11M) and 278/207 (15K-05M) is Ex-State Force Properties transferred to the Government of India, besides being under requisitioning in case No. KAS/6022/LH and on this information the respondents immediately approached the Deputy Commissioner, Anantnag to stop the payment for area measuring 26 kanals 16 marlas; that the land in question could not have been mutated in favour of the petitioners, being Ex-State Forces Property; that in view of the land being Ex-State Force Property, the petitioners have no locus standi over the land and the rent already received by them, is required to be refunded back to the respondents.

9. The respondents 2 and 4 have chosen not to file any response to the petition. The petition had been admitted vide interim order dated 31.10.2011. The reply filed by respondents 1 and 3 was prayed to be treated as counter affidavit and

the then learned AAG appearing for respondent no.4 made a statement that he does not wish to file counter affidavit. As such, right of respondent No.4 was closed. The petitioners also did not file any rejoinder and the case was processed for final hearing.

10. Mr. Raina, learned senior counsel for the petitioners argued that the petitioners' land measuring 27 kanals 15 marlas comprising of survey no. 199 (8 marlas), 271/207 (11 kanal 11 marlas), 278/207 (15 kanal 5 marlas) had been under the possession of Military authorities since 01.05.1951 and by accepting the petitioners as owners, the respondents had issued order for paying them rent, however, meager amount was fixed; that the respondents after paying the rent for some years requested the Deputy Commissioner, Anantnag to stop the payment of rent and the petitioners are, thus, aggrieved of that communication. He has further argued that the contention of the respondents that the land in question was Ex-State Force Property is factually misconceived and the respondents cannot at their whim decide at their own place to reject the claim of payment of rent for the land of the petitioners occupied by them, as the respondents have failed to produce any record with regard to land being Ex-State Force Property vested in the Union of India. He has drawn the attention of this court towards the revenue extracts placed on record by the respondents themselves showing the land in their possession recorded as Khalsa Sarkar which was also factually incorrect, as the land was in the mane of the petitioners.

11. Mr. Raina has further argued that the Union of India and its officials cannot claim the land in question on a presumption of an agreement dated 06.01.1956 between the President of India and State of Jammu & Kashmir vesting all the Ex-State Force Properties and assets in Union of India. The land in question had never been recorded as JK State Forces Property.

12. Learned senior counsel would further argue that even in the year 1956 when this agreement was executed between the President of India and the State of J&K including such properties, the land owners were protected from being divested of their lands, without following due course of law, as to hold the property by the owner was the exercise of his fundamental right; and that the State Land Acquisition Act, which was being enforce, also protected the owners of land of being divested, without following the due course of law. The property in question has been requisitioned by the District Magistrate, Anantnag on 19.06.1952 w.e.f. 01.05.1951, therefore, the agreement between the Union of India and the State of J&K, which is being relied by the respondents, was simply not applicable to the land in question. It was finally prayed that the petition be allowed and the respondents be directed to pay rental of the land in question to the petitioners, as owners thereof.

13. Mr. Vishal Sharma, learned DSGI appearing for respondents 1 to 3 argued that the land was requisitioned in 1952 w.e.f. 1951, thereby, the possession of the Forces was admitted in 1951. He further argued that the petitioners appeared on the scene in the late 80s, asking for the rental of the land in

question. He further argued that the requisition of the land in 1952 was just a regularization and lease was executed between the respondents and the petitioners on the basis of revenue record and rent was agreed to be paid. He, however, vehemently argued that once the land in question has been found to be the land of Ex-State Forces Property, which automatically vested in the Union of India and has been held by the respondents no. 1 to 3, the rental thereof cannot be claimed by the petitioners as owners of that land. He further argued that the respondents have taken a conscious decision for stopping of the payment of rent to the petitioners, as they were not owners of the land, therefore, there is no illegality in passing the communication asking for stopping of the payment of rent. It was finally prayed that the petition, being misconceived be dismissed.

14. Learned counsel for the respondent no.4 argued that the contesting petitioners and respondents should have exercised the remedy of determination of the title of the land, so as to decide as to whether petitioners are entitled to the payment of rent as owners of the land or respondents are entitled to withhold the rent payable to the petitioners, if the land is found to be Ex-State Forces Property and prayed that the parties be relegated to seek declaration with regard to the property in question.

15. Heard, perused and considered.

16. It is an admitted fact that after requisitioning of the land in question by the respondents, Defense Estate Officer, Kashmir Circle, Srinagar in the year 1952 w.e.f. 01.05.1951, executed the lease deed, as admitted by the respondents in their response, with the petitioners and having paid the rent up to 2004, the respondents could not have taken any unilateral decision to withhold the rent as decided in terms of the lease deed based on requisition. The respondents are estopped from taking any U-turn without seeking any declaration with regard to the title of the suit to deny rental benefits to the petitioners, who had already been admitted as owners of the land by the respondents based on the revenue records.

17. The respondents had issued the impugned communication regarding stopping of the rent without issuing any show-cause notice to the petitioners asking them to explain as to why the action as warranted, with regard to rent, be not taken against them. The respondents having not been able to show or place on record any executive order whereby the land in question was declared as Ex-State Forces Property by Maharaja and in absence of such an order/acquisition, the owners of a land cannot be divested of their property as Section 11 of the Land Acquisition Act provided that a property can be acquired in accordance with the provisions of the Land Acquisition Act by the Collector, after holding an enquiry and passing an award. Admittedly, pursuant to requisitioning of the land in question, respondent-Defense Estates Officer, Kashmir Circle, had executed lease deed, with petitioners, knowing that they are owners of the land in question. Lease Deed cannot be cancelled unilaterally by the respondent- Estates Officer, without following due course of law. Moreover, the respondent-Estates Officer

sent the communication to the concerned Deputy Commissioner with a request to stop payments of rentals to the petitioners, without issuance of any show cause notice, to explain as to why the rentals be not stopped in view of the fact, that the land in question does not belong to them and is deemed to have been vested in Union of India, being Ex-State Forces Property in terms of 1952 Agreement referred hereinabove. The respondents have thus contravened the important postulate/cardinal principle of being heard.

18. In the aforestated background of the case, since the respondents have taken a unilateral decision, even without affording right of being heard against the principles of natural justice to the petitioners and also the Collector of the District was not approached to ascertain the title of the land in question, the impugned communication being arbitrary, is not sustainable.

19. Having regard to the aforestated reasons, the impugned communication is not sustainable and is liable to be quashed. In this backdrop of the matter, the impugned communication dated 19.06.2006 is hereby quashed. The respondents shall, however, be entitled to pass fresh orders, after verification of the title of the land in question. Parties shall also have the liberty to seek the available legal remedy.

20. The petition is, accordingly, disposed of along with connected application(s). No order as to costs.