

(2001) 02 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 137 Of 1998

Ram Rakha and Another

APPELLANT

Vs

Karnail Singh and Others

RESPONDENT

Date of Decision : 02-02-2001

Acts Referred:

Jammu and Kashmir Big Landed Estates Abolition Act, 2007 — Section 4(2)

Citation : (2001) KashLJ 242

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Rakesh Sharma, P.N.Goja, A.Kapoor, Advocates appearing for the Parties

Judgement

1. The petitioners have retained land as permitted under the J and K Big Landed Estates abolition Act, Samvat2007. He has retained 182

kanalsofland.

2. That there is another piece of land measuring 93 kanals and 3 marlas. This is part of shamilat. The petitioners want to retain this land also. It is

stated that this is unculturable land and therefore in terms of the provisions contained in Section 4(2) of the above Act, they are entitled to retain the same.

3. As Section 4(2) of the J and K Big Landed Estates Abolition Act, Samvat2007 is required to be interpreted for facility of reference, this section

is being reproduced below;

(2) Extinction of the right of ownership under subsection (1) shall not apply to :

(a) unit of land not exceeding 182 kanals including residential sites Bedzars and safedzars.

(b) Kahkrisham areas Araks, Kapa and

14 (such lands including those used for raising fuel or fodder as are unculturable and

(c) Orchards.

4. Provided that the Government made dispose of the land maintained in clause (b). In such manner as may be recommended by the committee

that shall be set up for this purpose.

5. The further fact is that Section 4(2)(b) was amended by Act XV of 2008. Before amendment, Clause (b) would reads as under :

(b) Kahi Krisham areas, Araks, kapa and (such lands including those used for raising fuel or fodder as are unculturable"".

6. The learned counsel appearing for the petitioner submits that as 93 kanals and 03 marlas of land are unculturable therefore they are entitled to

retain such land.

7. I am of the opinion, that this argument cannot be accepted. The acceptance of this argument would lead to enforcing a provision which was

there before Act No. 15 of Samvat2007 was amended. Had the Act not been amended, then unculturable pieces of land including those used for

raising fuel and fodder could be treated as having been exempted. The wording of this statute has been changed. The wording use for raising fuel

or fodder as are unculturable"". The words such lands would apply to KahiKrisham and Kaps also. It is not the case of the petitioners that the lands

is KahiKrisham, Araks or Kaps.

8. As indicated abovem if the argument of counsel for the petitioners is accepted, then it would mean giving effect to the Act as it stood before

amendment made in the yearSamvat2008. This argument as such cannot be accepted. Even, under the provisions of J and K Agrarian Reforms

Act, 1976 the position is not different. Section 4(2)(b) thereof uses similar language. Therefore, whatever is said visavis interpretation of J and K

Big Landed Estates Abolition Act Samvat2007 would apply to the interpretation of J and K Agrarian Reforms Act, 1976. The view expressed by

the Special Tribunal cannot be faulted.

9. This petition as such is found to be without merit and is dismissed.