

(2018) 10 J&K CK 0100

In the Jammu And Kashmir High Court

Case No : RMC No. 152 Of 2014, IA Nos. 175 Of 2014, 01, 02 Of 2017

**Ramesh Chand And Ors @APPELLANT@Hash State Of Jammu & Kashmir
And Anr**

Date of Decision : 26-10-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 420, 427, 441, 441A, 447, 447A, 467, 468
Jammu And Kashmir Tenancy Act, 1923 — Section 4(A), 44, 45
Companies Act, 1956 — Section 3

Citation : (2018) 10 J&K CK 0100

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : L. K.Sharma, Vishal Sharma, C. M. Koul, K. D. S. Bandral

Final Decision : Allowed

Judgement

1. In this petition filed under Section 561-A of the Code of Criminal Procedure Svt. 1989, the petitioners seek quashing of the FIR No. 156/2012 dated 12.11.2012 registered with the Police Station, Bishnah under sections 447, 420, 467, 468, 427 RPC and consequent Challan No.187, titled State vs. Sudagarmal and others under section 447-A RPC pending in the Court of Judicial Magistrate, 1st Class, Bishnah.

2. Brief facts of the case are that the land measuring 20 kanals 08 Marlas comprising Khasra Nos. 175 and 177 (new) Khasra No. 2 (old) situate at village Jinder Khurud, Tehsil Bishnah, was under the ownership of Gamu, Irshad Begum and Bader Din, over which Laju the father of respondent No. 3, Chaman Lal and others were recorded as occupancy tenants of class 1 under section 4 class 1 of the Tenancy Act of 1923 A.D. being cultivating the said land before 1947. It is contended that the owners, namely, Gamu, Irshad Bagum and Bader are alleged to have migrated to Pakistan in 1947 but before migration, they had let out the said land to the ancestors of Chaman Lal on or before Samvat year 1928 with the result the ancestors of Chaman Lal had attained the status of Occupancy Tenant

class 1 in terms of the Section 4 (A) of the Tenancy Act 1923.

3. It is further contended that the ancestors of Chaman Lal, who had become occupancy tenant of the land belongs to non-agriculturist class and have further let out the aforesaid land to Sh. Mendak and Sh. Kukad, sons of Sh. Labhu before 1955 and with the coming into operation of the Tenancy Amendment Act of 1955, Sh. Mendak and Sh. Kukad were declared as protected tenant by virtue of Section 15 (A) of Amending Act of 1955 and its effect was recorded in the record of rights (Jamabandhi) for the year 1956-1957. It is further stated that though the Tenancy Act was further amended in the year 1965 and all types of tenants cultivating the land were declared as protected tenants under the landlords. Sh. Kukad, who was the grandfather of the petitioners, had already attained the status of protected tenant under the ancestors of respondent No.3- Chaman Lal by virtue of the Amendment incorporated in the Tenancy Act, 1955 being in cultivating possession of the land prior to 1955. The recorded owners/ landlords i.e. Gamu and others had migrated to Pakistan and their ownership rights in the land comprising Khasra Nos. 175 and 177 (new) Khasra No.2 (old) measuring 20 kanals 08 marlas along with other lands had vested in the respondent No.2, under the Evacuee Property Act. It is contended that respondent No. 2 in whom the limited rights of the evacuees vested has no power or jurisdiction to evict the occupancy tenant or the protected tenant under the occupancy tenant as the petitioners are, who have inherited their tenancy from their father Kutti and grandfather Kukad. The respondent No. 2 was only entitled to receive the land revenue from the occupancy tenants which evacuees allege to be receiving before their migration. It is stated that in the present case there is intermediary i.e. the occupancy tenant, respondent No.3 and his ancestors between respondent No.2 and the petitioners who are protected tenants of the land the subject matter and the petitioners cannot be evicted from the said land under their tenancy without extinguishing the occupancy rights of respondent No.3. The respondent No.2 has no jurisdiction to resume the land from the petitioners who are protected tenants under respondent No.3 that too without following the procedure laid down under Section 44 and 45 of the Tenancy Act and without giving the petitioners an opportunity of being heard.

4. It is further case of the petitioners that Chaman Lal through his wife Smt. Krishna in connivance with their Son-in-Law, who has a close infinity with the then Revenue Minister made a false report to the Tehsildar Bishnah that the petitioners are illegally excavating and mining their agricultural land and upon which the then Revenue Minister directed lodging of FIR against the petitioners with the Police Station, Bishnah. The Tehsildar, Bishnah on the direction of the then Revenue Minister and without any notice to the petitioners and without affording them opportunity of being heard passed order dated 19.05.2012 appointing the Naib Tehsildar, Bishnah as a Receiver of the land comprising Khasra Nos. 65, 175, 177, which includes the land measuring 20 kanals 08 marlas, comprising Khasra Nos. 175 and 177 (new). The said order dated 19.05.2012 could not be executed by Naib Tehsildar, Bishnah because of wrong

mentioning of the name of the village and the Tehsildar again vide order dated 18.07.2012 corrected the order dated 19.05.2012 by substituting the name of village as Jinder Khurud instead of Mahmoodpur. That respondent No.3 with the help of his son-in-law has managed with Settlement Tehsildar to change the status of the petitioner from protected tenants to tenants at will in the settlement conducted in 2003-2004 of which the petitioners have no knowledge and came to know only about 1 ½ years back when respondent No.3 in connivance with his son-in-law with the help of then Revenue Minister have hatched a conspiracy to evict the petitioners from the land under their protected tenancy which is the only source of livelihood of the petitioners.

5. The petitioners have further contended that they have only leveled 1 kanal 12 marlas of land out of the total land measuring 20 kanals 08 marlas by removing uneven clay over the said portion of the land in order to make it irrigated and cultivable, for which purpose the land was let out by Sh. Chaman Lal and his ancestors to the ancestors of the petitioners. The Police Station, Bishnah after investigation of the FIR No. 156/2012 has dropped the offences under sections 420, 467, 468 and 427 RPC as not proved and filed the challan No.187 in the trial court under section 447-A RPC against the petitioners

6. The petitioners being aggrieved of the FIR, have challenged the same in the instant petition on the ground that the respondent No. 2 has only proprietary rights, which are subject to the liability of occupancy tenancy and protected tenancy, which is a statutory right and respondent No. 2 has no right to divest or extinguish those rights; that the challan filed before the Court of Judicial Magistrate 1st Class, Bishnah pursuant to FIR No. 156/2012 does not disclose any offence punishable under any provisions of law and the allegations made in the challan and the statement of the witnesses neither constitute offence under section 447-A RPC on the face of the allegations made in the challan nor the allegations made in the challan fulfill any of the ingredients of section 447-A RPC.

7. On the other hand, respondent No. 1 has filed objections/ status report, in which it is stated that in terms of letter written by the Custodian Evacuee Property, Jammu dated 09.11.2012, addressed to Sr. Superintendent of Police, Jammu, wherein it has been stated that the evacuee property land covering khasra Nos. 65, 175 and 177 situate at village Jinder Khurud in Tehsil Bishnah has been reportedly grabbed by the petitioners on the basis of fabricated documents, who in furtherance have tried to alienate the said evacuee land in favour of some brick kiln owner, thus, caused damage to the Evacuee Property Department and the Evacuee as well. The said land grabbers are required to be prosecuted under law for their illegal acts committed towards the said evacuee property in order to deter them from causing further damages to the department. On the basis of letter dated 09.11.2012, FIR No.156/2012 was registered in Police Station, Bishnah and Challan was produced in the Court of JMJC, Bishnah.

8. I have considered the rival contentions of learned counsel for the parties.

Counsel for petitioner has reiterated all grounds taken in memo of petition, whereas State counsel has stated that petition is required to be dismissed as no case is made out. It is pertinent to note here that respondent No.3, Chaman Lal stands deleted vide order dated 09.07.2018 from the array of respondents.

9. For the facility of reference, communication dated 09.11.2012 on the basis of which FIR lodged, is reproduced as under:

"Office of the Custodian Evacuee Property Jammu.

To

The Sr. Superintendent of Police,

Jammu

Subject: Illegal alienation and misappropriation of evacuee property land situated at village Jinder Khurd, Bishnah and lodging of FIR against the land grabbers.

Sir,

The evacuee property land covering khasra Nos. 65, 175 and 177 situate at village Jinder Khurd in Tehsil Bishnah has been reportedly grabbed by S/Shri Sodagar Mal, Ajit Kumar, Romesh Lal and Banarsi Lall all sons of late Kuti residents of Skinder Pur, Tehsil Bishnah District Jammu, on the basis of fabricated documents, who in furtherance have tried to alienate the said evacuee land in favour of some brick Kiln owner, thus caused damages to the Evacuee Property Department and the Evacuee as well. The said land grabbers are required to be prosecuted under law for their illegal acts committed towards the said evacuee property in order to deter them from causing further damages to this department.

It is, as such requested that the concerned Station House Officer of the Police Station, may kindly be directed to lodge an FIR against the delinquents named above for the offences committed by them i.e. illegal alienation of evacuee land and its misappropriation, treating the matter as most urgent."

10. On the basis of above letter, FIR No. 156/2012 for offences under sections 420, 467, 468/447-A and 427 RPC was lodged , but police failed to prove other offences except 447-A RPC and filed the challan No.187 in the trial court under section 447-A RPC against the petitioners.

11. Section 447-A RPC reads as under:-

"447-A Criminal trespass of public premises-Whoever commits criminal trespass of public premises shall be punished with imprisonment of either description for term which may extent to one year but shall not be less than three months ,or fine which my extend to five thousands rupees or with both."

12. From bare perusal of this section, it is evident that for constituting this offence, firstly there should be public premises, secondly accused should have

committed criminal trespass in it. Further, this section consists two parts. The first part deals with entry, which is initially unlawful and the second with entry which is lawful in the beginning but becomes unlawful subsequently. The instant case as alleged, the entry which is said to be unlawful from the very inception and I will, therefore, confine myself to the first part of the Section 447-A RPC only.

13. Criminal trespass has been defined under section 441 RPC. It reads:-

"441. Criminal trespass.-Whoever enters or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent to intimidate insult or annoy such person or with intent to commit an offence,

is said to commit "criminal trespass".

14. Perusal of this section would reveal that accused should have entered into possession of property of other with intention to commit offence or to intimidate, insult or annoy any person in possession of such property.

15. Section 441-A of RPC defines Criminal trespass of public premises. It reads as under:-

"441-A. Criminal trespass of public premises.-Whoever-

(a) unlawfully enters into or occupy any public premises or having been evicted from public premises under any law for time being in force, again occupy the premises without authority for such occupation; or

(b) continuous in occupation of public premises after authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premise, has expired, is said to committed criminal trespass of public premises.

Explanation-Public premises any land or building or part of a building -

1) belonging to, or taken on lease or requisitioned by, or on behalf of Government,

2) belonging to or taken on lease by or on behalf of -

i) any company defined in section 3 of companies Act 1956 in which not less than fifty one percent of the paid up share capital is held by the Govt. or any company which is a subsidiary (within the meaning of that Act) of the first mentioned company.

ii) any corporation (not being company as defined in section 3 of Companies act or local authority) established by or under a state or central Act and owned or

controlled by the Govt.

iii) any university established or incorporated by or under any state Act.

3) belonging to Municipal counsel or town area committee and

4) belonging to Development authority constituted under the Jammu Kashmir Development Act, whether such premises are in possession or leased out by said authority."

16. In view of these relevant definitions, it is evident that in order to frame charge under section 447-A RPC against the petitioners, they should have committed criminal trespass into the possession of premises/land of Govt./custodian in order to commit an offence or to intimidate, insult or annoy respondent no.3 or an eviction order was passed by Custodian and they were still in occupation of land or accused were evicted from land and they re-occupied the same.

17. Land is Custodian Land, but from the perusal of Jamabndi of 1956 (Annexure-A) would reveal that possession on disputed land was with predecessor of petitioners (grandfather-Kukad and his brother Mendak) as protected tenants. After the death of Kukad, the father of petitioners namely Kutti Ram inherited the status of protected tenancy after the death of Kukad; now after the death of Kutti in 2008, petitioners herein are in possession of land under dispute as protected tenant and are paying share in produce to respondent no.3 through his wife vide (Annexure -B). Litigation between respondent no.3 and petitioners with regard to change of status from protected tenant to tenant at Will in 2003-2004, is pending. As alleged by petitioners that civil suit of injunction filed by petitioners against respondent no.3 also pending and a writ petition OWP no.702/2013 with regard same subject is also pending before this Court . The khasra Girdawari 2011-2013 annexed in petition also reveals name of father of petitioners in possession column. So from above documents, it is evident that respondents have failed to show that complainant/custodian department was exclusive in possession of land under dispute at the relevant time. Even after going through the documents of criminal challan, it has not been proved that petitioners are in unauthorized possession of land under dispute.

18. In view of what has been discussed above, this petition is allowed. The FIR impugned and challan pending before the Court of Judicial Magistrate 1st Class Bishnah, are quashed.