
(1975) 06 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 98 of 1972

Ramun and others

APPELLANT

Vs

Honble Revenue Minister and others

RESPONDENT

Date of Decision : 05-06-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1976 J&K 20 : (1975) JKLR 316

Hon'ble Judges : Mian Jalal-Ud-Din, J

Bench : Single Bench

Advocate : S.P. Gupta, A.D. Singh, Advocates appearing for the Parties

Judgement

1. The petitioners seek the quashing of the order dated 1271972 of respondent No. 1 and also the order dated 1041972 of respondent No. 2 by

means of a writ of certiorari. The petitioners have averred that they are tillers of the land as described in mutations Nos. 886, 738, 746, 740, 742

and 903 situate in village Kotli Tehsil Sambar: that they have been in occupation of the said land as tillers for many years before the relevant date of

the promulgation of the Big Landed Estates Abolition Act i. e. 1st Kartik 2007; that the respondents are Big Landlords and were given due notices

under the provisions of the Big Landed Estates Abolition Act by the concerned authorities for selecting the prescribed unit of 182 kanals, but they

intentionally did not appear and did not make selection of the land and therefore the Revenue authorities made selection of the requisite units for

them on their behalf and attested the mutation as mentioned above. It is averred that this order of selection was passed by the Tehsildar on 15th

Bhadon 2008 Samvat and the land which was left out from the selection units of the respondents was mutated in favour of the petitioners as

proprietors on the strength that they were tillers of the said land. After conferment of the proprietary rights on the petitioners they made great

improvements in the land. Respondents, however, approached the revenue authorities for cancellation of the above mentioned orders by which

selection of the land was made by the Tehsildar. The Financial Commissioner vide his order dated 1041962 accepted the revision of the

respondents by which the respondents have been given the right to make fresh selection of their units and the mutations by which selection was

made by the Tehsildar have been set aside. When the petitioners came to know of the said order they preferred a revision petition before

respondent No. 1 for setting aside of the order of the Financial Commissioner dated 1041962, but the revision was rejected by the respondent

No. 1 on 1271972. The petitioners seek the quashing of these orders on the following grounds:

(a) That the orders were passed without making the petitioners parties before the Divisional Commissioner and the Financial Commissioner. They

were not given any opportunity to meet the cases of the respondents and the petitioners have been condemned unheard. These orders have been

passed in contravention of the principle of natural justice. They are therefore illegal and without jurisdiction. Respondent No. 1 failed to consider

the fact that the respondents were given notices under Section 14 of the Big Landed Estates Abolition Act but they did not avail of the same.

Therefore the order suffers from an error that is apparent on the face of the record.

(b) Once a selection was made by the Tehsildar for the respondents that selection could not be assailed especially when the proprietary rights of

the respondents had extinguished in the land not kept for their selection. The land so left was transferred in favour of the petitioners as proprietors

in whose favour mutations were attested. (c) Selection could be made only once whether it be by the Tehsildar or by the proprietors themselves

and this could not subsequently be challenged in any court of law.

(d) No fraud or undue influence, or coercion was alleged against the Tehsildar and therefore the selection could not be upset.

(e) Mutations conferring proprietary rights on the petitioners were attested in the year 2008 and it was after 21 years that they were being

discharged and their claims disregarded in a summary way.

2. Respondents Nos. 1 and 2 have not filed any reply affidavit. Objections have, however been filed on their behalf by the Assistant Advocate

General. In these objections it has been admitted that Special Tehsildar Samba made selection for the landlords in pursuance of which mutations

were attested in the year 2008. As regards the dispute raised by the petitioners that notices under Section 14 of the Big Landed Estates Abolition

Act were sent to the landlords it has been submitted that this question was gone into by the revenue authorities and they had come to the finding

that no such notices were served on them (vide Annexures A and B). The Special Tehsildar Samba expropriated the said landlords from the lands

in question suo motu and without compliance of the provisions of Section 14 of the Big Landed Estates Abolition Act. This illegal expropriation

was further crowned by another illegal act by attestation of mutations in favour of the tillers of the land. The position that the petitioners have

become the proprietors of the land pursuant to the mutations has not been accepted. It is admitted that the revision petition filed by the petitioners

was dismissed by the Respondent No. 1. The orders of the Divisional Commissioner and the Financial Commissioner merged with the order of the

1st respondent. The petitioners were given ample opportunity by the respondent No. 1 to be heard in the matter. The entire record was before the

first respondent. This opportunity was availed of by the petitioners but they failed to substantiate the allegations that the landlords were given the

requisite notices. The grounds urged by the petitioners for quashing the order have not been admitted by the respondents. It has further been

averred that the petitioners were not necessary parties before the Revenue authorities and therefore the allegation made is misconceived.

3. Respondent Nos. 3, 7, 9, 10, 11, 12 and 13 have also filed their objections. In their objections they have stated that Parkash Singh respondent

No. 4 and Masu respondent No. 3 died long before the filing of the writ petition, therefore the writ petition being against dead persons is liable to

be dismissed. No persons of the names of Harnam Singh son of Khojoo respondent No. 13, Nahar son of Khoju respondent No. 14, Hanja son

of Aswara exist. The writ petition has been presented against wrong persons. On merits it is stated that Kaka, Puran Singh, Nagar Singh, Tara,

Lachiman, Harnam Singh, Nar Dehi landlords who were given right of selection in the disputed lands have not been made parties.

Nonimpleadment of these persons is fatal to the petition. Only one landlord Jabbar Singh selected land in collusion with the Tehsildar out of the

Joint holders without the knowledge of the other landlords the respondents. Therefore the action of the Tehsildar in selecting land without the

consent of other landlords was illegal. It has been denied that the petitioners were the tillers of the land at the relevant time. Respondents landlords

were never given notices under the provisions of the Big Landed Estates Abolition Act by the concerned authorities to select the prescribed unit of

land. This has also been held by all

the Revenue officers including respondent No. 1. The petitioners had an opportunity to meet the case and therefore there was no violation of the

principle of natural justice.

4. I have heard the learned counsel for the parties.

5. In this case preliminary objections have been raised by S. Avtar Singh learned counsel for the other respondents that the writ must fail because

of the nonimpleadment of necessary parties in the case and also because the writ has been filed against the dead persons namely Parkash Singh

and Massu respondents 3 and 4.

6. It appears that during the progress of this petition the petitioners made an application praying for substitution of legal heirs of Parkash and

Massu. This application was contested by the other respondents on the ground that substitution could not be ordered in their case as these two

respondents had already died at the time of filing of the petition. The matter was pending until December, 1974 when the counsel for the petitioners

stated before the court that he did not want to bring the legal representatives of the deceased respondents on record as the deceased respondents

were not necessary parties in this petition. An exception was taken by the counsel for the respondents to this statement. The court however

observed that it was unnecessary to opine on this matter at that stage. If the counsel for the petitioners made a statement he did it at his own risk. If

incidentally a question arises during the hearing of the case whether these persons are necessary parties to the petition and in their absence or in

absence of their substituted representatives the petition could not proceed that

could be considered at the appropriate stage. The application for substitution was therefore dismissed as not pressed. It was ordered that the writ petition shall be treated to have abated as against these deceased respondents. It may be stated here that the petitioners have themselves made an averment in the writ petition that the respondents including Parkash and Massu are big landlords and they were given due notices under the provisions of the Big Landed Estates Abolition Act to select their units of lands, but they did not avail of the same and they remained absent. The Revenue authorities selected their units and attested various mutations; that it was the land which was left out from the selected units of the respondents which was mutated in favour of the petitioners as tillers of the land. It is further averred that the respondents approached the revenue authorities for cancellation of the above order of selection of the land. Thus from this as well as from the attested copies of the orders of mutation it appears that these respondents namely Massu and Prakash have figured everywhere and have been in picture throughout. Orders passed by the Revenue authorities including the one of the Revenue Minister which are sought to be impugned by the petitioners have been passed in favour of these respondents as well. It is therefore manifest that these respondents are necessary parties. It is contended by the other respondents that these two respondents (Massu and Parkash) were dead at the time of the filing of the petition. This has not been controverted by the petitioners in the case; nor have the petitioners made any attempt to bring their legal representatives on the record. The result is that as these respondents are necessary parties and their representative have not been brought on the record the writ petition cannot lie. A Constitution Bench of the Supreme Court deciding Civil Appeal No. 586 of 1962 *Udit Narain Singh v. Addl. Member of Board of Revenue Bihar*, reported as AIR 1963 SC 786 has laid down that where in a petition for a writ of certiorari made to the High Court, only the Tribunal whose order was sought to be quashed was made party but the persons who were parties before the lower Tribunal and in whose favour the impugned order was passed were not joined as parties, the petition was incompetent and was liable to be rejected.

7. The same argument will apply with equal force in the case of those landlords

who have not been made parties. It seems that some of the original landlords whose names appear in the orders of mutation have died. Following are some of the original landlords or their representatives:

1. Kaka son of Hari Singh
2. Puran Singh son of Dhanu
3. Nagar Singh son of Dhawan
4. Tara d/o Lachman
5. Machan d/o Lachhman
6. Harnam Singh son of Laju
7. Nar Dehi d/o Laju

As these persons are not on the record before us in the petition therefore the impugned order cannot be disturbed in their absence.

8. Grievance of the petitioners that they have not been heard when the impugned order was passed by respondent No. 1 is also not genuine and

the argument is devoid of force. The order of the Revenue Minister shows that he did hear the parties and after affording an opportunity to them

decided the revision petition. He noticed that there were some landlords like Dhannun and Laju who have not been permitted to retain even the

ceiling areas of 182 kanals which could be allowed to them under the Act. He found the order of mutation passed by the Special Tehsildar was full

of flaws and suffered legal infirmity. The principle as regards the right of party to be heard is enshrined in the maxim 'audi alteram partem. But that

does not give a party right to be heard at every stage. What the rule requires is that no case should be decided without hearing the parties. That

indeed has been done by respondent No. 1. A Division Bench of the Patna High Court in a case reported as AIR 1956 Pat 202 has laid down

that it is not correct to state that the party adversely affected should be heard at each and every stage of the administrative process. The principle,

that a party must be heard and no decision should be arrived at without hearing the party, is satisfied if the party adversely affected is given the

opportunity to know the case he has to meet and to answer that case at some stage and not at all stages of proceeding. The same view has been

reiterated in AIR 1957 Pat 21.

9. In view of this it is difficult to accede to the contention of the petitioners that

they were heard at no stage by the Revenue authorities in the matter and that therefore the impugned order violated the principle of natural justice.

10. The order passed by the Revenue Minister does not suffer from the legal flaw even otherwise. He has expressed the view that no notices to file

their claims were served upon the respondents landlords under Section 14 of the Act by the Special Tehsildar Samba. It was at the instance of the

Land Reforms Officer who obtained a report from the Special Tehsildar Samba that the Commissioner sought cancellation of the mutation orders

as it was found that these orders of mutation violated Section 14 of the Big Landed Estates Abolition Act. What the revenue Minister has done is

that he has directed the Tehsildar Samba to afford a reasonable opportunity to the landlords to file their declarations under Section 14 of this Act

and also give opportunity to both the parties to be heard before passing orders on these matters. The order of respondent No. 1 in my view cannot

be termed as unjust. It secures justice for those landlords who have been expropriated without notice and who have been given land less than the

ceiling area permitted by the Act.

11. In my view the writ cannot succeed. The same is therefore dismissed. No order as to costs.