

(2018) 10 J&K CK 0048

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 2133 Of 2018, IA No. 1 Of 2018, Caveat No. 3865 Of 2018

Sehdev Singh Charak And Anr @APPELLANT@Hash State Of Jammu & Kashmir And Ors

Date of Decision : 16-10-2018

Acts Referred:

Jammu And Kashmir Big Landed Estates Abolition Act, 2007 — Section 20B

Citation : (2018) 10 J&K CK 0048

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : K.S.Johal, Jatinder Choudhary, Aseem Sawhney, Monika Kohli

Judgement

Petitioners are aggrieved of the order dated 05.10.2018 issued by the Divisional Commissioner, Jammu. It is urged that the said order amounted to reviewing an order earlier passed by the same authority dated 14.06.2018. It is stated that the order impugned has been passed without affording an opportunity of being heard.

It is stated that according to the order dated 14.06.2018 issued by the predecessor in office of the Divisional Commissioner, Jammu it had been established that the petitioners were the owners of the land in question falling under Khasra Nos. 772 and 773 in regard to 41 kanals 2 marlas. It was, thus, urged by Mr. K.S.Johal, learned senior counsel that there was no occasion for the Divisional Commissioner, Jammu to pass the order impugned. Reference is also made to the Judgment of this Court dated 28.05.2014.

Mrs. Monika Kohli, learned counsel, who is on caveat stated that the order impugned passed by the Divisional Commissioner Jammu was rightly passed, inasmuch as, number of issues which were otherwise required to be gone into, had not been gone into by the erstwhile Divisional Commissioner while issuing order dated 14.06.2018. It is also stated that there was an earlier order dated 26.04.2018 issued by the Divisional Commissioner, Jammu, whereby the construction activity on the plot in question was stayed on an application having

been moved by the Sainik Cooperative House Building Society Ltd., Jammu.

Learned counsel for the petitioners Mr. Jatinder Chowdhary assisting Mr. Johal, however, stated that the said order dated 26.04.2018 had subsequently been modified to the extent of land of the petitioners.

It appears that the Divisional Commissioner, Jammu on the basis of the material before it, deemed it appropriate to constitute a Committee and directed the Deputy Commissioner, Jammu to conduct a comprehensive inquiry after obtaining the relevant facts and statutory position with regard to the land in question. It appears that the Divisional Commissioner, Jammu was of the view that the land in question was Gair Mumkin Khad and fell within the provisions of Section 20-B of the Jammu and Kashmir Big Landed Estates Abolition Act, 2007. Reliance in this regard can be placed upon the Divisional Commissioner's affidavit dated 16.10.2012. It was in that context that the order dated 14.06.2018 is said to be contradictory to the earlier communication dated 16.10.2012 passed by the Divisional Commissioner.

Having heard the learned counsel for the parties, in my opinion, the issue is one where proper inquiry is required which has already been ordered by the Divisional Commissioner, Jammu. The issue with regard to the ownership, certainly cannot be gone into by this Court with a view to enforce the rights of the petitioners. Therefore, any request for permission to raise construction over the land in question as prayed for by the petitioners cannot be exceeded to at this stage, inasmuch as, the issues beyond proprietary rights have also been highlighted in the order passed by the Divisional Commissioner, Jammu.

In my opinion, the matter cannot be considered without the report of the Committee constituted by the Divisional Commissioner, Jammu.

Notice.

On asking of the Court, Mr. Aseem Sawhney, learned AAG accepts notice on behalf of official respondents, who shall file a response within four weeks.

Mrs. Monika Kohli, learned counsel who is on caveat accepts notice on behalf of the respondent No. 4, who shall also file response within four weeks. Caveat stands discharged.

Meanwhile, Divisional Commissioner, Jammu shall ensure that the Committee so constituted proceeds with reasonable dispatch and submit its report, preferably within a period of four weeks.

This Court was inclined to give a liberty to the petitioners to file their appropriate documents before the Divisional Commissioner, Jammu, which the learned counsel for the petitioners refused.

List again on 27.11.2018.