

(2002) 11 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 460 of 2002

Shiv Nath Gupta and Others

APPELLANT

Vs

Asstt. Settlement Officer and Others

RESPONDENT

Date of Decision : 12-11-2002

Acts Referred:

Jammu and Kashmir Agrarian Reforms Act, 1976 — Section 31, 35

Citation : (2003) 1 JKJ 430

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

T.S. Doabia, J.—Notwithstanding the fact that the parties to this litigation had entered into a compromise and a compromise degree was

passed on 16.5.1987 by the trial court, they continued to litigate for another fifteen years.

2. The other limb of the controversy was subject matter of challenge in OWP No. 708/2001. This was decided on 31-12-2001, The decree

between the parties which has been adverted to, stands referred to in the judgment given in the writ petition. It was observed that the entries made

in the revenue record, are not contrary to the decree in question. The parties were, however, left free to challenge the order dated 29.8.2001.

Against this judgment, a letters patent Appeal was filed. This is LPA (O) No. 58/2002. This was dismissed on 11.3.2002. "The litigative

persistence shows by the appellants before the letters patent Bench was commented upon. After this, a direction has been driven by the J&K

Special Tribunal. The Special Tribunal found no justification to interfere with the order passed by the Subordinate Revenue hierarchy. It is against

that decision, the present writ petition has been preferred. It is submitted that the order passed by the Special Tribunal on 3.5.2002 does not

contain any process of reasoning. It is submitted that as to how the view expressed by the Division Bench was attracted to the facts of this case,

has not been demonstrated. It is, accordingly, submitted that the case be sent back, so that the Tribunal may furnish reasons, and which reasons

alone can be examined by this court.

3. It be seen that the litigation between the parties is going on for more than two decades. It has to come to an orderly end. It is precisely for this

reason that instead of remanding the matter, it has been thought apt to deal with the controversy which has been projected by the petitioner. The

learned counsel for the petitioner does not dispute the existence of the compromise decree. It is also not disputed that a compromise decree cannot

be challenged in view of the provisions contained in Section 3 and 35 of the J&K Agrarian Reforms Act, 1976. The provisions of Section 31 and

35 are being quoted below:-

31. Restriction on alienation and felling or removal of trees:-Notwithstanding anything contained in any law for the time being in force :-

(a) (i) alienation of land, whether by act of parties or a decree or order of a court or of a Revenue Officer: or

(ii) felling or removal of tree standing on land;

except under such conditions as may be prescribed and with previous permission of the Revenue Minister, or such officer as may be , authorised

by him in this behalf, is forbidden:

Section 35 reads as under:-

Transfer to defeat provision of this law: where on or after the first day of September 1971, any land has been transferred by act of parties or in

compliance with a decree or order of a court or a Revenue Officer or by the operation of any other Act, and the transfer does not fall within the

purview of Section 31 but has the effect of defeating the provision of this Act, the land so transferred shall be deemed to have been retained by the

person who held such land immediately before such transfer for purposes of calculating the area retainable under this Act by him, anything to the

contrary contained in this Act notwithstanding"".

4. The learned council for the respondents submit that the compromise decree which was passed by the trial court has been challenged time and

again. Three attempts were made and in all the attempts, the petitioner met nothing but failure.

5. A perusal of the above provisions would make it apparent that it is only that Decree of a Civil Court which has the effect of interfering with the

process of implementation of J&K Agrarian Reforms Act, 1976, which can be ignored. If a decree has the effect of changing the rights of the

tenants or the rights of the state then that can be ignored. A mere compromise decree arrived at between the co-shares with a view to settle their

inter se dispute does not in any way effect the rights of tenants or the State. Therefore, the bar created u/s 35 would not be attracted. This petition

is found to be mis-conceived and is dismissed with costs. Costs are assessed at Rs. 1000/-.