
(1977) 04 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 21 of 1972

Shri Rajkumar

APPELLANT

Vs

State of Jammu and Kashmir and Others

RESPONDENT

Date of Decision : 20-04-1977

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Jammu and Kashmir Evacuees (Administration of Property) Act, 2006 — Section 2, 39(2)
Transfer of Property Act, 1882 — Section 108

Citation : AIR 1978 J&K 11

Hon'ble Judges : Iqbal Kishen Kotwal, J; Adarsh Sein Anand, J

Bench : Division Bench

Advocate : S.P. Gupta and A.N. Dhar, for the Appellant; R.P. Sethi, for the Respondent

Final Decision : Dismissed

Judgement

I.K. Kotwal, J.—Through this letters patent appeal the Appellant seeks to challenge the order of the learned single Judge of this Court J.N.

Bhat J., as His Lordship then was, who dismissed the writ petition filed by the Appellant against the order of the Respondent No. 2 cancelling

allotment of land in favour of the Appellant. A brief resume of the facts relevant for the disposal of this appeal may be given as below:

2. The Appellant who claims to be a displaced person was allotted 4 kanals of land including 7 marlas in Khasra No. 283-min in village Taraf

Tajwal Tehsil Kathua by the Provincial Rehabilitation Officer, Jammu, vide his order No. LS-2518-19 dated 29-7-1967. As these 7 marlas of

land comprising the aforesaid Khasra number: stood already allotted in favour of Respondent No. 3 herein, by the Deputy Commissioner Kathua,

vide his order dated 13-2-1963, for residential purposes, the Appellant challenged this order of allotment made by the Dy. Commissioner before the Divisional Commissioner Jammu. The Divisional Commissioner being of the view that the Deputy Commissioner had no jurisdiction to allot the land in favour of Respondent No. 3, made a recommendation to the v. Financial Commissioner, Respondent No. 2, herein, that the order of the Deputy Commissioner be quashed. Accordingly the Financial Commissioner heard the parties before him and accepted the recommendation made by the Divisional Commissioner vide his order dated 28-11-1969. The Financial Commissioner however did not rest content with over-setting the order of the Divisional Commissioner, Kathua, but also cancelled the allotment of the said land which had been made in favour of the Appellant by the P.R.O. vide his order dated 29-7-1967. Aggrieved by this order the Appellant filed a writ petition in the High Court challenging the aforesaid order of the Financial Commissioner cancelling allotment of land in favour of the Appellant on the ground that the order of the Financial Commissioner was illegal and ultra vires as there was no proceedings before him in which the allotment in favour of the Appellant was challenged, that the Financial Commissioner could not have gone beyond disposing of one way or the other the recommendation made to him by the Divisional Commissioner, that the order of the Financial Commissioner was violative of the principles of natural justice and that the Petitioner-Appellant had been granted ownership rights in respect of the said land under a Govt. Order No. 264-C of 1965. There being no dispute about the facts stated. Respondents 1 and 2 resisted the writ petition on the grounds that there was no violation of any legal or fundamental right of the Petitioner entitling him to maintaining the writ petition, that the order of the P.R.O. allotting the land in favour of the Appellant was a nullity as being without jurisdiction, that the order of the Financial Commissioner was not violative of the principles of natural justice as the party before him had opportunity to address arguments on all the points before him and the Financial Commissioner was competent to examine the whole case in exercise of his revisional jurisdiction it was further pleaded that the parties had been heard and after hearing the parties the learned Financial Commissioner passed the impugned order.

3. The learned single Judge dismissed the writ petition holding that the Appellant had submitted to the jurisdiction of the Financial Commissioner, argued the points in issue (sic) writ petition before the Financial Commissioner and when the decision was against the Petitioner-Appellant he has proceeded to challenge (sic) same in the writ petition. According to the learned single Judge, the Financial Commissioner was seized of the entire case and therefore, (sic) fully competent to pass the impugned order. In the opinion of the learned single Judge, there has been no violation of any natural justice in so far as the order of the learned Financial Commissioner was concerned.

4. Mr. Gupta, the learned Counsel for the Appellant has raised two contentions in this appeal. His first contention is that the limited issue before the Financial Commissioner was as to whether the allotment made by the Deputy Commissioner, Kathua, in favour of Respondent No. 3 was valid line. According to the learned Counsel the question whether or not the allotment made by the P.R.O. subsequently in favour of the Appellant was a valid one was not sub judice before the Financial Commissioner. The Financial Commissioner by cancelling the allotment in favour of the Appellant sprang a surprise on him as the Appellant was never heard on this point by the Financial Commissioner nor was there any occasion for the Financial Commissioner to hear him on the point. That is how the order according to the learned Counsel, is also violative of principles of natural justice. His second contention is that by virtue of Govt. Order No. 254-C of 1965 the Appellant had become the owner of the land which was allotted to him by the P. R O.

5. As against this the learned Counsel for Respondents 1 and 2 has argued that the Financial Commissioner while exercising his powers of division was competent to examine the whole case which was placed before him which also included the case whether or not the allotment Subsequently made by the P.R.O. in favour of the Appellant was a valid (sic)e. He further contends that the Financial Commissioner had heard the parties on the question of cancellation of allotment in favour of the Appellant as well and after hearing (sic)em at length he proceeded to pass the impugned order. According to the learned Counsel there was absolutely (sic) violation of the principles of natural justice. The learned Counsel has further argued

that much less to speak (sic) vesting any ownership rights in the Appellant under Govt. Order No. (sic)4-C of 1965, the Appellant did not possess

any other fundamental or any legal right entitling him to maintain the writ petition.

6. We have heard the learned Counsel for the parties at length and also perused the record placed before us.

7. We think it would be better if we first deal with the contention of the learned Counsel for the Respondents as to whether the Appellant had any

right which could entitle him to bring the present writ petition. The case of the Appellant is that the land in dispute along with other land was allotted

to him by the P.R.O. by his order dated 29-7-1967 under the provisions of Cabinet Order No. 578-C of 1954. He further submits that his

allotment could not have been cancelled by the Financial Commissioner without following the provisions of Para 12 of the aforesaid Cabinet

Order.

8. Cabinet Order No. 578-C of 1954 has been issued by the Government in exercise of the powers conferred by Clauses (e), (i) and (g) of Sub-

section (2) of Section 39 of the J and K State Evacuees' (Administration of Property) Act, 2006, (for short 'Evacuee Act') In this Cabinet Order

the term allotment has not been defined anywhere. It is therefore reasonable to apply the definition of the word allotment as given in the Evacuee

Act itself. Section 2(a) of the Evacuee Act defines allotment thus:

Allotment means the grant by the Govt. or the Custodian or any other person duly authorised by the Custodian in this behalf of a temporary right of

use and occupation of any immovable property of an evacuee to any person otherwise than by way of lease.

Clearly therefore the term allotment as defined in the Act has all the characteristics of a licence. Licence only legalises a certain act which would

otherwise be unlawful and does not confer any interest in the property itself. The words 'otherwise than by way of lease' clearly indicate that it is a

personal right granted to a person to do something upon the property of the grantor and does not amount to the creation of an interest in the

property itself. It is purely a permissive right and is personal to the allottee. It creates no duties or obligations upon the person making the grant.

The same view has been taken in two Full Bench decisions of this Court in Gian

Kaur v. Provincial Rehabilitation Officer AIR 1956 J and K 33

and Shamsher Singh v. Dy. Custodian General AIR 1973 J and K 89. Mr. Sethi, the learned Counsel for Respondents 1 and 2 has vehemently

argued before us that allotment being a mere licence it does not create any fundamental or legal right in the allottee entitling him to approach the

High Court in writ jurisdiction. To support his contention he has relied heavily upon the aforesaid two Full Bench judgments of this Court. We are

afraid we cannot agree with Mr. Sethi as in our opinion the proposition propounded by him is much too broad. The Petitioner is entitled to move

the High Court in writ jurisdiction not only if he has a fundamental right. He can move the High Court in the absence of any fundamental right

provided he has even a legal right. The legal right of an allottee to move the High Court is clearly guaranteed by the words ""a temporary right to use

and occupation of any immovable property"" employed in the definition of the term allotment in the Evacuee Act. In the Full Bench case Gian Kaur

and Ors. (supra) the issue before the Full Bench was not whether an allottee had a legal right to move the High Court in writ jurisdiction; the issue

before the Full Bench was whether an allottee could be said to have any right or interest in the property allotted to him so as to constitute property

within the meaning of Article 19(1)(f) of the Constitution of India. The Full Bench held that as the allottee's right was of mere use and occupation

which did not create any interest in the property allotted to him, it could not be said that the allottee's right was property within the meaning of

Article 19(1)(f) of the Constitution of India. In Shamsher Singh's case (supra) the Petitioner claimed to be the adopted son of the allottee who had

since died. He had brought a writ petition challenging the order of the Deputy Custodian General cancelling the allotment of the land made in favour

of Mst. Gogri deceased of whose adopted son he claimed to be. The Full Bench relying upon the earlier Full Bench case held that as the allotment

did not create any right or interest in favour of the allottee qua the property allotted to him but created only a licence in his favour there was no right

capable of being inherited by the descendant of the deceased allottee through operation of law. On facts also it was held that the adoption of the

Petitioner by Mst. Gogri was not established. It was in these circumstances that the Full Bench came to the conclusion that the Petitioner had no

right i.e. not even an allottee's right to maintain the writ petition. The authorities are clearly distinguishable and cannot be deemed to lay down that

an allottee does not possess an such right which can entitle him to vindicate the same through a writ petition.

9. But this is not the end of the matter. The question will remain to be decided as to whether the Appellant had any such allottee's right which he

could possibly defend through the instant writ petition. Admittedly he was never put in possession of these seven marlas of land about which the

dispute exists. According to his own showing this land was allotted at least four years earlier by the Deputy Commissioner (sic) favour of

Respondent No. 3 who (sic) also taken possession thereof. It therefore, obvious that except (sic) bare order of allotment made by P.R.O. in his

favour, the Appellant had nothing to fall back upon. (sic) pertinent question which therefore arises is did the bare order of allotment without any

delivery of possession create any right in favour (sic) the allottee. As already observed right which is created in favour the allottee under the

definition the term allotment as given in Section 2(a) of the Evacuee Act is (sic) right of temporary use and occupation of any Immovable property.

In o(sic) words it is the temporary use (sic) occupation of the property which allottee has a right to defend.

10. The next question which arises is can an allottee be said have acquired any right of use occupation unless the order of allotment is followed by

delivery of possession in his favour and if not, can he compel his grantor to hand over the possession or occupation of the allotted property after

the same has been allotted in his favour. There can be no doubt that unless and until the allottee is put in possession of the property his right cannot

materialise for the simple reason that he has no other right or interest in the property allotted. The term lease which has been used in the definition

of the term 'allotment' in contra-distinction to the term 'allotment' does create and right or interest in the property and even if the (sic)ame is not

coupled with possession the lessee acquires a right u/s 108 Clause (b) of the Transfer of Property Act to get possession of the lease-hold from the

lessor. No such right has been created in favour of an allottee under the provisions of the Evacuee Act. The result would be that an allottee cannot

compel the grantor to put him in possession of the property allotted after the allotment has been made in his favour. Obviously therefore, unless the

allottee is in possession of the property allotted he has no right of temporary use and occupation of the property allotted. His right would come into

existence only after he has been put into the possession of the property allotted pursuant to the order of allotment. A bare order of allotment is

therefore, clearly incapable of creating even a right of temporary use and occupation in favour of the allottee.

11. We are therefore, clearly of the opinion that the Appellant not having been put into possession of (sic) disputed land as a consequence of (sic)

allotment made in his favour by (sic) P.R.O. no right whatsoever (sic) vested in him so as to entitle him to the present writ petition.

12. The other contention of Mr. Gupta that the Appellant became owner of the land allotted to him as consequence of Govt. Order No. (sic) C of

1965 is totally misconceived. The aforesaid Govt. Order reads (sic):

The Govt. hereby grant proprietary rights on the State lands in favour of the displaced persons from non-liberated areas of the State who, in

pursuance of Cabinet Order No. 578-C of 1954 or any other orders issued prior to the C.O. No. 578-C of 1954 about allotments in favour of

such displaced persons, have been settled on such lands and partly on evacuee lands subject to the condition that the allottees have continuously

been holding the land from the date of the allotment and have been so recorded. The grantees shall be liable to the payment of land revenue

assessed at village rate according to the class of soil which the land belonged to or has assumed on being cultivated or if there is no village rate

available, to such land revenue as may be fixed by the Collector with regard to the assessment of similar land in the assessment circle in which such

land is situated and also to the payment of cesses and other dues under any law for the time being in force.

By order of the Govt. of Jammu and Kashmir.

13. A plain reading of the aforesaid Govt. Order would unmistakably reveal that it was intended to confer proprietary rights on State lands in

favour of only those displaced persons who had been settled on such lands when the order came into force. The other condition for conferring

proprietary rights under the aforesaid Govt. Order was that the displaced person should have continuously been in possession of the land allotted

in their favour from the date of the allotment till the date the order came into

force. It cannot be gainsaid that this order came into force on 7-7-1965. i.e., much earlier to the date when the land came to be allotted in favour of the Appellant. Again the Appellant has never been in possession of the land allotted to him which was also a condition precedent to the vesting of ownership rights in the allottee. Obviously therefore there is no force in this contention of the learned Counsel, which is hereby repelled.

14. In view of our finding that the Appellant had no title to move the High Court in writ jurisdiction, we need not go into the other grounds canvassed by the learned Counsel before us.

15. In the result the appeal fails and is hereby dismissed but in the circumstances of the case without any order as to costs.

A.S. Anand, J.

16. I agree.