

(2021) 04 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 3187 Of 2019, 1062 Of 2020, CM No. 6608, 6721 Of 2019, 2876 Of 2020, Contempt Petition (S) No. 778 Of 2019

Suman Bansal

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 01-04-2021

Acts Referred:

Jammu And Kashmir Land Revenue Act, 1996 — Section 94, 95
Constitution Of India, 1950 — Article 226

Citation : (2021) 04 J&K CK 0004

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Navyug Sethi, S.S.Nanda, Adarsh Sharma

Final Decision : Disposed Of

Judgement

1. The petitioner claims to be owner in possession of land admeasuring 3 kanals and 4 marlas comprised in Khasra numbers, detail whereof is given in paragraph No.3 of the petition, situated at Chowadi Teshil Bahu District Jammu. The petitioner claims that the aforesaid land was purchased by her in November, 2007 from different erstwhile owners by way of sale deeds duly executed and registered. The land also stands mutated in the name of the petitioner in the revenue record.

2. It is submitted that since the subject land is a prime land and, therefore, there had been several attempts by the State as well as private individuals to lay claim thereon. The Crime Branch of the State even registered an FIR bearing No.06/2009 on the allegation that the petitioner had encroached upon the State land but upon investigation, the claim was not substantiated and a closure report was filed by the Crime Branch, which was accepted by the Court. It is submitted that on 24.08.2019, the Deputy Commissioner, Jammu along with a team of officers and police came on the land of the petitioner and forcibly and in total disregard of law not only demolished the boundary wall erected by the petitioner

but also damaged the structure raised by the petitioner on her land.

3. It is the contention of the petitioner that not even an inch of the land in possession of the petitioner is State land and that the petitioner has fenced her land only after seeking demarcation from the revenue authorities in the year 2008. Despite the fact that the subject land is a proprietary land of the petitioner and the same is so reflected in the revenue record, the Deputy Commissioner, Jammu trespassed on her land claiming that it was a State land, which is intended to be allotted to some influential persons.

4. Faced with constant threat of eviction from respondent No.4, the petitioner filed WP(C) No.3187/2019 seeking inter alia a direction to the respondents not to cause any interference or obstruction in the lawful and peaceful possession of the petitioner over the subject land. The petitioner also sought a direction to the respondents not to lay any claim over the land of the petitioner as State land etc etc.

5. This Court, it is submitted, vide its order dated 04.10.2019 directed the Deputy Commissioner, Jammu as also the Vice Chairman, Jammu Development Authority to furnish a report as to the nature of possession of the petitioner over the land, sought to be vacated. The Court also directed to maintain status quo with liberty to the respondents to proceed only after providing opportunity of being heard to the petitioner. It is complained by the petitioner that although the respondents were well aware about the directions passed by this Court on 04.10.2019, yet they did not adhere, which constrained the petitioner to file a contempt petition.

6. While the aforesaid writ petition and the contempt petition was pending adjudication, respondent No.1 vide Government order No.53-JK(Rev) of 2020 dated 19.05.2020 accorded sanction to the grant of land on lease @ 8 marla each to 32 families of village Satwari and 6 marla each to 29 families of village Narwal Pain of Tehsil Jammu South District Jammu, who were affected due to airport expansion. It is the claim of the petitioner that this land, which has been allotted to 32 families of Satwari and 29 families of village Narwal Pain @ eight marla each and six marlas each respectively, is a proprietary land in possession of the petitioner.

7. Being confronted with the government order and with a view to thwart any attempt by the respondents to dispossess the petitioner from her proprietary land, the petitioner filed another petition i.e. WP(C) No.1062/2020. In this petition the petitioner has lodged challenge to the impugned Government Order dated 19.06.2020 by virtue of which land measuring 32 kanals falling in Khasra No.833 of village Sunjwan Teshil Bahu District Jammu has been identified for rehabilitation of 61 families affected due to acquisition of land for expansion of Jammu Airport.

8. The solitary ground on which the order impugned has been challenged is that the land identified by respondent No.1 for rehabilitation of the displaced families

of Jammu Airport expansion is proprietary land of the petitioner and the same cannot be taken over otherwise than by following due process of law.

9. The petitioner has, thus, prayed for a writ of certiorari quashing the impugned Government Order issued by respondent No.1 and has also sought a direction in the nature of writ of mandamus to the respondents to constitute a commission consisting of senior revenue and police officers for carrying out proper inspection/demarcation of the land comprised in Khasra No.833 of village Sunjwan Tehsil Bahu District Jammu so that no portion of the land owned and possessed by the petitioner is encroached upon and taken over by the beneficiaries of the impinged Government Order

10. On being put on notice, Sh. S.S.Nanda, learned Senior AAG has filed objections on behalf of respondent Nos.1, 2, 4 to 14, 18 and 19. It is the unequivocal stand of the respondents that the land subject matter of the writ petitions has not been touched, allotted or put to any use by the respondents nor is there any future proposal to do so. It is submitted that the land measuring 32 kanals falling in Khasra No.833 of village Sunjwan is a State land and the same has been duly identified and allotted to the 61 displaced families of airport expansion. It is, thus, submitted that the land, which is subject matter of the writ petitions and claimed to be the proprietary land by the petitioner is different from the land which has been allotted to the displaced families. The respondents submit that as per own showing of the petitioner, she does not own any land in Khasra No.833 of village Sunjwan and, therefore, should have no grievance against the impugned Government Order.

11. Having heard learned counsel for the parties and perused the record, it is seen that very serious and complicated disputed questions of fact are involved for determination in these writ petitions. The petitioner claims that the subject matter of impugned Government Order is actually land on spot, which is owned and possessed by the petitioner by virtue of duly executed and registered sale deeds and subsequent mutation(s) attested by the competent revenue officers. The petitioner submits that it is true that she does not own any land in Khasra No.833 of village Sunjwan but the land which the respondents have identified pursuant to the impugned Government order is actually the land, which is part of land admeasuring 33 kanal and 4 marla situated at Chowadi, owned and possessed by the petitioner.

12. On the contrary, it is the unequivocal and categoric stand of the respondents that the land, which they have identified and allotted to the displaced families of airport expansion in terms of the Government Order, is a chunk of land measuring 32 kanals, which falls in Khasra No.833 of village Sunjwan and, therefore, is not the proprietary land of the petitioner.

13. In view of the rival stand of the parties, the only dispute that remains to be determined in these petitions is with regard to the identification of the land. This Court sitting in its extraordinary writ jurisdiction vested by virtue of Article 226 of

the Constitution of India cannot adjudicate complicated disputed questions of fact, which require detailed evidence, oral as well as documentary. I am aware that this Court under Article 226 may even adjudicate the disputed questions of fact where violation of fundamental and constitutional rights is alleged but surely the questions of title or identity of the land do involve determination of complicated questions of fact and such determination would necessarily require full-fledged trial where the rival parties are afforded adequate opportunity to prove their version by leading evidence. I am, therefore, not in agreement with the learned counsel for the petitioner that this Court should constitute an independent commission of some past revenue experts to resolve the dispute. It is so because the Land Revenue Act is a complete code in itself for determination of all sorts of disputes pertaining to land. There is complete and elaborate hierarchy of revenue officers enjoined to hear appeals and revisions against the orders passed by their subordinates. At this juncture, it is appropriate to refer to Section 94 and Section 95 of the Land Revenue Act, both of which are reproduced hereunder:-

"94. Power of Revenue officer to define boundaries. -

(1) A Revenue Officer may, for the purpose of framing any record or making assessment under this Act or on the application of any person interested, define the limits of any estate, or of any holding, tenancy, field or other portion of an estate, and may, for the purpose of indicating those limits, require survey-marks to be erected or repaired. (2) In defining the limits of any land under sub-section (1), the Revenue Officer may cause survey-marks to be erected on any boundary already determined by, or by order of, any Court, or Revenue Officer, or restore any survey-mark already set up by, or by order of, any Court or any such officer. (3) The Revenue Officer to whom an application under this section may be made may depute another Revenue officer subordinate to him to take the necessary proceedings.

95. Power of Revenue officer in proceedings under section 94 to reinstate party dispossessed. - (1) In any proceeding under section 94 if it appears to the Revenue Officer that any of the parties to the proceedings has, within a period of six months preceding the date of his order illegally encroached upon any land adjacent to the boundary defined, and previously in the lawful possession of any of the other parties to the proceeding, he may by his order direct that the party dispossessed be placed in possession of such land: Provided that, no order under this section shall be passed by any officer below the rank of an Assistant Collector of the first class and if proceedings under section 94 are taken by an inferior officer he shall submit the case for orders to the Assistant Collector of the first class having jurisdiction. (2) The party dissatisfied with the order of the Revenue Officer passed under sub-section (1) may seek his remedy in the Civil Court and subject to the decision of the Civil Court such order shall be final."

14. From a reading of Section 94, it is clear that a revenue officer is empowered, on the application of any person interested, to define the limits of any estate, or

or any holdings, tenancy, field or other portion of estate and may for the purpose of indicating those limits require survey-marks to be erected or repaired. Section 95 provides that in any proceeding under Section 94, if it appears to the revenue officer that any of the parties to the proceedings, was previously in lawful possession of the demarcated land and was ousted within a period of six months preceding the date of his order, he may by his order direct the party dispossessed to be placed in possession of such land.

15. It is, thus, not the case of anybody that there is no remedy available to the petitioner under the Land Revenue Act for seeking identification and demarcation of the land owned and possessed by her. The job of identification of landed property is best performed by the experts of the revenue department in reference to the available revenue record. This Court or for that matter any other Civil Court, may not have wherewithal to effect such demarcation.

16. It is the plea of the petitioner that since there is dispute with regard to the identity of the land between the petition on one hand and the Deputy Commissioner of the District on the other hand, as such, it would be difficult to expect fairness on part of the revenue officers for demarcation of the land. Once a statute provides a remedy, which is not only statutory but is efficacious also, it should be left to the said statutory authority to adjudicate upon the issue.

17. For the reasons stated above, I am not inclined to entertain these petitions and indulge in the exercise of identification and demarcation of the land of the petitioner or the respondents. Ordinarily, I would have relegated the petitioner to the alternative statutory remedy of seeking demarcation under Section 94 and Section 95 of the Land Revenue Act by filing formal petition, however, in the peculiar circumstances of this case, it needs to be ensured that the petitioner gets fair and unbiased treatment. Admittedly, there is serious dispute of identity of the immovable property belonging to the petitioner and that belonging to the respondents, which needs to be resolved to the satisfaction of both the sides.

18. As noted above, Sections 94 and 95 of the Land Revenue Act is a statutory remedy available to the parties under such a situation. The apprehension of the petitioner is that the Deputy Commissioner of the District has already given its opinion that the land subject matter of Government Order is not the land of the petitioner, as such, expecting fairness on part of the revenue officers subordinate to the Deputy Commissioner would be a distant dream.

19. Keeping in view the totality of circumstances obtaining in the case, these petitions are disposed of by directing the Divisional Commissioner, Jammu to constitute a team of officers of the rank of Assistant Commissioner and above, who are not the officers subordinate to the Deputy Commissioner, Jammu, within a period of three weeks from the date copy of this order is served upon him.

The team so constituted shall demarcate the land measuring 32 kanal situated in Khasra No.833 of village Sunjawan, subject matter of impugned Government Order dated 19.05.2020, as also the land claimed to be owned and possessed by

the petitioner, detail whereof is given in paragraph No.3 of the writ petition. While conducting the process of demarcation, the team shall follow the provisions of Land Revenue Act, particularly Sections 94 and 95 thereof and the Rules, if any, framed in this behalf. The demarcation exercise shall be conducted by the team, so constituted, in the presence of all stakeholders, within a period of four weeks of its constitution. The party, which feels aggrieved and dissatisfied with the report of the Team/Committee shall have the remedy of revision before the Divisional Commissioner/Financial Commissioner (Revenue).

In view of the disposal of the main writ petition, no orders are required to be passed in this petition.

Accordingly, proceedings in this petition are closed.