
(2018) 12 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal (LPA) No. 101 Of 2018, IA No. 01 Of 2018,
Letters Patent Appeal (LPAOW) No.6 Of 2018

Sumeet Puri Others @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 12-12-2018

Acts Referred:

Citation : (2018) 12 J&K CK 0001

Hon'ble Judges : Gita Mittal, CJ; Sanjeev Kumar, J

Bench : Division Bench

Advocate : Abhinav Sharma, M.K.Bhardwaj, Ajay Vaid, S.S.Nanda, M.K.Bhardwaj

Final Decision : Disposed Off

Judgement

Gita Mittal, CJ

1. The factual background giving rise to the two appeals is common and, therefore, with the consent of Mr. M.K.Bhardwaj, learned senior counsel for the appellants in LPAOW No.6/2018 and Mr. Abhinav Sharma, learned counsel for the appellant in LPA No.101/2018, these appeals are taken up together for hearing and consideration.

2. It appears that Sh. Sumeet Puri (appellant in LPA No.101/2018) was the owner of a large chunk of land in village Najwal behind M.B.International School which adjoins Radha Swami Satsang Complex, Samba. Pursuant to the agreement between Sh. Sumeet Puri and Sh. Subash Singh, Sarla Jamwal, Satish Singh and Abhimanyu Singh (appellants in LPAOW No.6/2018), some of the land owned by Sh. Sumeet Puri was sold to them. The instant appeals are concerned with portions of land which fall in Khasra No. 32 and Khasra No. 306/143. We, therefore, confine our consideration to these lands. For clarity and expediency, we extract hereunder the details of the land which were sold by registered sale deeds to the appellants in LPAOW No.6/2018, which reads as under:-

Details of land in Khasra No.32 of village Najwal

Vendor

Through attorney holder

Vendee

Khasra No

Total land

Sumit Puri S/o Sudesh Puri R/o Gandhi Nagar, Jammu

Satish Singh Jamwal S/o Sh. Gupt Singh Jamwal

Subash Singh S/o Sh. Gupt Singh

32

8.00 kanal

Sumit Puri S/o Sudesh Puri R/o Gandhi Nagar, Jammu

Satish Singh Jamwal S/o Sh. Gupt Singh Jamwal

Subash Singh S/o Sh. Gupt Singh

32

8.00 kanal

Sumit Puri S/o Sudesh Puri R/o Gandhi Nagar, Jammu

Subash Singh S/o Sh. Gupt Singh

Satish Singh Jamwal S/o Sh. Gupt Singh Jamwal

32

1 kanal 4 Marla

Sumit Puri S/o Sudesh Puri R/o Gandhi Nagar, Jammu

Subash Singh S/o Sh. Gupt Singh

Satish Singh Jamwal S/o Sh. Gupt Singh Jamwal

32

02 Marla

Sumit Puri S/o Sudesh Puri R/o Gandhi Nagar, Jammu

Abhimanyu Jamwal

32

` 12.00 Kanal

Sumit Puri S/o Sudesh Puri R/o

Sarla Jamwal W/o Subash Singh

Abhimanyu Jamwal

32

7.00 kanal

Gandhi Nagar, Jammu

Jamwal

Chander Mohan Arora S/o Suraj Prakash Aroora R/o 788-A Gandhi nagar, jammu

Direct from owne

Abhimanyu Jamwal S/o Subash Sing

32

1 Kanal 05 Marla

Total

37 Kanal 11 Mar

Land Details of Khasra Nos. 306/143 of village Najwal

Vendor

Vendee

Khasra No

Total land

Chander Mohan Arora S/o Suraj Prakash Arora R/o 788- A Gandhi Nagar, Jammu

Satish Singh Jamwal S/o Gupat Singh Jamwal R/o 52-E Sainik Colony, Jammu

306/143

4.00 kanal

Chander Mohan Arora S/o Suraj Prakash Arora R/o 788- A Gandhi Nagar, Jammu

Satish Singh Jamwal S/o Gupat Singh Jamwal R/o 52-E Sainik Colony, Jammu

306/143

4.00 kanal

Chander Mohan Arora S/o Suraj Prakash Arora R/o 788- A Gandhi Nagar, Jammu

Satish Singh Jamwal S/o Gupat Singh Jamwal R/o 52-E Sainik Colony, Jammu

306/143

4.00 kanal

Chander Mohan Arora S/o Suraj Prakash Arora R/o 788- A Gandhi Nagar, Jammu
Satish Singh Jamwal S/o Gupat Singh Jamwal R/o 52-E Sainik Colony, Jammu
306/143

1 kanal 15 Marla

Chander Mohan Arora S/o Suraj Prakash Arora R/o 788- A Gandhi Nagar, Jammu
Satish Singh Jamwal S/o Gupat Singh Jamwal R/o 52-E Sainik Colony, Jammu
306/143

2.00 kanal

Chander Mohan Arora S/o Suraj Prakash Arora R/o 788- A Gandhi Nagar, Jammu
Satish Singh Jamwal S/o Gupat Singh Jamwal R/o 52-E Sainik Colony, Jammu
306/143

4.00 kanal

Chander Mohan Arora S/o Suraj Prakash Arora R/o 788- A Gandhi Nagar, Jammu
Satish Singh Jamwal S/o Gupat Singh Jamwal R/o 52-E Sainik Colony, Jammu
306/143

3.00 kanal

Chander Mohan Arora S/o Suraj Prakash Arora R/o 788-
Satish Singh Jamwal S/o Gupat Singh Jamwal R/o 52-E Sainik Colony
306/143

4.00 kanal

A Gandhi Nagar, Jammu

Jammu

Chander Mohan Arora S/o Suraj Prakash Arora R/o 788- A Gandhi Nagar, Jammu
Satish Singh Jamwal S/o Gupat Singh Jamwal R/o 52-E Sainik Colony, Jammu
306/143

4.00 kanal

Chander Mohan Arora S/o Suraj Prakash Arora R/o 788- A Gandhi Nagar, Jammu
Satish Singh Jamwal S/o Gupat Singh Jamwal R/o 52-E Sainik Colony, Jammu
306/143

6 kanal 5 Marla

Sewa Singh Katoch S/o Mahant Singh Katoch R/o Pogal District Ramban

Subash Singh S/o Gupat Singh Jamwal

306/143

4.00 Kanal

Neeru Langeh D/o Parkash R/o Krishna Nagar, Jammu

Subash Singh S/o Gupat Singh Jamwal

306/143

3.00 kanal

Sewa Singh Katoch S/o Mahant Singh Katoch R/o Pogal District Ramban

Dhanush Jamwal S/o Subash Singh Jamwal

306/143

3.00 Kanal

Total

47 kanal

Total land 47 kanal + 37 kanal 11 marlas

84 kanal 11 marla

3. We note that there is no dispute on behalf of Sh. Sumeet Puri to the execution of the above sale deeds or that of the possession of the land which was sold under the sale deeds, was physically handed over to the vendees.

It appears that thereafter certain disputes arose between the parties with Sumeet Puri setting up a claim to the effect that the vendees have exceeded the boundaries of the land which had been sold to them and had actually encroached upon additional land which continued to be owned and belongs to him.

4. On these contentions, Sh. Sumeet Puri filed OWP No.243/2018. In this writ petition, the appellants in LPAOW No.6/2018 were impleaded as party respondent Nos. 6 to 9. It was submitted on behalf of Sh. Sumeet Puri by Mr. Abhinav Sharma, learned counsel, that Sumeet Puri had filed an application for demarcation of the land which had not been sold by him and he claimed to be in possession thereof. In the writ petition, a submission was made on behalf of the official respondents that "suitable action in accordance with law shall be taken in the matter". In view of this submission, the writ petition came to be disposed of vide order dated 9th February, 2018 with the following directions:-

"In view of the aforesaid submissions and in the facts of the case, the writ petition is disposed of with the direction to the respondent No.3 to demarcate the aforesaid land of the petitioner after giving notice to the petitioner as well as

respondent Nos.6 to 9. Let the aforesaid exercise be carried out within a period of two weeks from the date of receipt of a certified copy of the order passed today. Till the demarcation is done, the respondent Nos. 6 to 9 are restrained from raising any construction on the land in question.

With the aforesaid directions, the writ petition is disposed of accordingly."

5. This order dated 9th February, 2018 was carried in appeal by Subash Singh and his associates by way of LPAOW No.6/2018 on the plea that Sumeet Puri had sold his land falling in Khasra No.32 & 306/143 to them and that he did not own any property at all.

6. In view of the above submission, when the LPAOW No.6/2018 came up for consideration before the Division Bench, an order dated 26th February, 2018 came to be passed directing that there shall be a stay of the operation of order dated 9th February, 2018.

7. In the meantime, it appears that a grievance was being made with regard to the encroachment on State land at village Najwal. Concerned with this aspect of encroachment, Sh. Sanjeev Kumar, Sub Divisional Magistrate, Vijaypur passed order dated 25th April, 2018 directing as follows:-

"ORDER

In compliance to Deputy Commissioner, Samba direction regarding the removal of the encroachment of State land at Village Najwal, the committee of following Revenue Officer/Official is hereby constituted for demarcation of State land at village Najwal.

Naib Tehsildar (Ramgarh) Prithvi Paul Sharma

Naib Tehsildar (attached with Ravinder Sharma

D.C.Office, Samba)

Naib Tehsildar (Vijaypur) Bhag Ali

G.Q.(Circle Ramgarh) Atta Mohd.

G.Q.(Circle Swankha) Nek Mohd.

G.Q.(Vijaypur) Saleem Mohd.

Patwari Halqua (Rara) MushtaqAhmed

Patwari Halqua (Vijaypur) Pawan kumar

The committee so constituted shall be headed by Tehsildar Ramgarh and shall furnish its report after detail demarcation of the said State land in village Najwal within a period of seven days."

(Emphasis by us)

8. A bare perusal of the above would show that the officials of the State were concerned with the serious aspect of removal of encroachment on the State land in village Najwal and that they had been compelled to constitute a Committee to carry out demarcation of the State land in village Najwal. This Committee was not concerned with any dispute between the parties regarding the land which was owned by them or sold by one party to another.

9. The above order dated 25th April, 2018 constituting the Committee and directing demarcation of the State land came to be challenged by Sh. Subash Singh, Sarla Jamwal, Satish Singh and Abhimanyu Singh (appellants in LPAOW No.6/2018), who were of the view that the appointment of Committee vide order dated 25th April, 2018 would result in delaying the execution of the hotel project which they were undertaking on the land they had purchased in village Najwal. As a result of the constitution of the Committee, it is asserted that there was also delay in issuing necessary revenue record/documents in their favour which would enable them to pursue their case for grant of necessary permission(s) before the concerned authorities as also taking of financial assistance for the project.

10. In this background, it appears that these four appellants filed OWP No.1066/2018 seeking direction to the official respondents to issue necessary revenue documents for loan purposes and to direct the official respondents not to obstruct raising of construction of the hotel building by them under the shield of order dated 25th April, 2018 issued by the SDM, Vijaypur.

11. OWP No.1066/2018 filed by four appellants came to be disposed of vide order dated 7th June, 2018 directing as follows:-

"9. This petition is, accordingly, disposed of by directing the SDM, Vijaypur to conclude the demarcation of the State land within a period of four weeks from today. In case, for any reasons, it is not possible to conclude the demarcation process within the aforesaid period, the respondent-SDM, Vijaypur shall demarcate the land claimed to be proprietary land of the petitioners. It is further provided that in case upon demarcation, it is found that no part of the land claimed by the petitioners is founded to be State land, SDM concerned would issue requisite directions to the Patwari concerned to issue the Fard-Intkhab as applied for by the petitioners. It is, however, made clear that if no demarcation, as directed above with respect to the land claimed by the petitioner is done within the aforesaid period, the order of the status quo directed by SDM, Vijaypur on 09.05.2018 shall not be applicable and the petitioners shall be entitled to get the Fard-Intkhab from the concerned authorities.

10. Disposed of accordingly."

(Emphasis by us)

12. Mr. Abhinav Sharma, learned counsel, who appears for Mr.Sumeet Puri, makes a strong grievance that despite a serious dispute being pressed by his client with regard to the four vendees having trespassed into the land owned by

him (which dispute was subject matter of previous OWP No.243/2018) wherein demarcation had been ordered, Sumeet Puri was not even impleaded as party respondent by these appellants. Learned counsel further submits that in para 8 of OWP No.1066/2018, these appellants had falsely stated that there is no dispute with respect to the title, possession and demarcation of the land which was under their occupation.

13. Mr. Abhinav Sharma, learned counsel for Mr. Sumeet Puri, has further contended that in the above background, the direction to the Patwari to issue Fard-Intkhab applied for by the appellants in LPAOW No.6/2018 and further that in case demarcation was not effected, the order of status quo directed by SDM, Vijaypur on 9th May, 2018 shall not be applicable, was not warranted. Aggrieved by order dated 7th June, 2018 and concerned that the same would be treated as an acceptance of the claim of four vendees/appellants in LPAOW No.6/2018 over the land occupied by them, Sh. Sumeet Puri has filed LPA No.101/2018 submitting that the order of the learned Single Judge over looks the dispute between him and the vendees regarding their occupancy of excess land and that the same be quashed.

14. We have heard Mr. M.K.Bhardwaj, learned senior counsel appearing for the appellants in LPAOW No.6/2018 and Mr. Abhinav Sharma, learned counsel appearing for the appellant in LPA No.101/2018. To our mind, the issue actually raised in these two appeals overlaps and is extremely simple in nature. Both the parties are concerned with the boundaries of the land which has been purchased by the four vendees, namely, Subash Singh, Sarla Jamwal, Satish Singh and Abhimanyu Singh (appellants in LPAOW No.6/2018). So far as the land which has been purchased by them from Sh. Sumeet Puri is concerned, it is an admitted position that the same has been purchased by valid registered sale deeds which have been detailed in para 2, the recitals in above. The extent of land, its boundaries would be easily discernible from the sale deeds, as well as the position on the ground. Therefore, in this background, appellants in LPAOW No.6/2018 can have no objections to the grant of prayer made by Sh. Sumeet Puri in OWP No.243/2018 to the extent it relates to the demarcation of the land which has been sold to them.

15. So far as the prayer made by the writ petitioners in OWP No.1066/2018 relating to the demarcation of the land which is in the occupation of the four vendees vis-à-vis the land which belongs to the State is concerned, Sh. Sumeet Puri can possibly have no objection to its demarcation for the reason that the prayer is only concerned with identifying as to whether the four vendees have encroached upon any public land.

16. In view of the admitted position regarding execution of the sale deeds, we are unable to see any conflict between Sumeet Puri and appellants in LPAOW No.6/2018 so far as ownership of four vendees is concerned. Furthermore, there is no reason as to why the demarcation cannot be expeditiously undertaken by a conjoint exercise by the official respondents in the presence of all the parties i.e.

the appellant in LPA No.101/2018 and appellants in LPAOW No.6/2018.

17. It is also trite that till the time the demarcation of the land which has been sold to and under the lawful possession of four vendees, namely, Subash Singh, Sarla Jamwal, Satish Singh and Abhimanyu Singh is done and clearly identified, they cannot be permitted to get the revenue records or raise construction thereon. It also cannot be denied that the process of demarcation cannot unnecessarily be delayed to the prejudice of the purchasers of the land.

18. We are informed by Mr. M.K.Bhardwaj, learned senior counsel appearing for the appellants, that so far as the hotel project is concerned, the four vendees, namely, Subash Singh, Sarla Jamwal, Satish Singh, Abhimanyu Singh and one Akhshay Jamwal have purchased a total land of over 84 kanals of land from Sumeet Puri. However, construction of the hotel is being carried out only over a partial land of less than 35 kanals. In view of this position, it is submitted that this construction is being undertaken after raising extensive loans and obtaining permission from the authorities including the revenue authorities.

19. Given the position stated by Mr. M.K.Bhardwaj, learned senior counsel with regard to the construction of hotel, in case the revenue authorities find that the four vendees have occupied land in excess of what has been sold to them, appropriate orders for restitution can be passed. It is submitted by Mr. Bhardwaj, learned senior counsel that the vendees would not resist any such order for restitution in order to compensate any loss and damage which may result to Sumeet Puri, in case they are found to be in possession of the land in excess to what they had purchased.

20. Having regard to the totality of the circumstance and in view of the above narration of facts, these two appeals are disposed of in the following terms:

i) The Sub Divisional Magistrate (SDM), Vijaypur shall cause demarcation of the land which is subject matter of the sale deeds detailed in para 2, above as well as the State land in village Najwal within a period of four weeks.

ii) The demarcation shall be carried out in presence of Sumeet Puri, appellant in LPA No.101/2018 as well as Subash Singh, Sarla jamwal, Satish Singh and Abhimanyu Singh, the appellants in LPAOW No.6/2018. Written notice against recorded delivery shall be served upon these parties of the date, time and venue of the demarcation proceedings.

iii) It is also made clear that these appellants shall ensure that they or their authorized representatives are present on the date and time fixed for demarcation and that there is no attempt to delay the same. In case any of the parties attempts to avoid remaining present on the date and time fixed for demarcation after receipt of the written notice, it shall be open to the concerned authorities to proceed in the matter of demarcation in absence of the party concerned.

iv) The demarcating officer shall video-graph the process to be undertaken by

them for demarcating the land.

v) So far as the construction, if any, is raised by the appellants in LPAOW No.6/2018, the same shall be subject to the outcome of the demarcation proceedings which are to be undertaken in terms of the present order. In case, the demarcation results in reporting that the appellants in LPAOW No.6/2018 are occupying land in excess of the land sold to them by sale deeds detailed in para 2, these appellants shall be liable for restitution to Sumeet Puri for any land belongs to him which they may have encroached upon. Such restitution would be in terms of handing over compensatory land as well as monetary compensation. Liberty is given to Sh. Sumeet Puri to seek such relief from this Court by way of an application in the present proceedings after receipt of the demarcation report.

vi) It shall be open for the authorities, who are effecting demarcation to take into consideration any previous inspection/demarcation which may have been undertaken by any authorities. However, the demarcation in terms of the present order shall be effected taking an independent view of the matter.

vii) The above directions are in addition to those contained in the order dated 9th February, 2018 in OWP No. 243/2018 and the order dated 7th June, 2018 in OWP No. 1066/2018.

21. In view of the above, LPAOW No.6/2018 and LPA No.101/2018 are disposed of in the above terms.

Interim orders shall stand vacated.