
(2023) 12 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 815 Of 2021

Sunil Kumar

APPELLANT

Vs

UT Of Jammu And Kashmir

RESPONDENT

Date of Decision : 08-12-2023

Acts Referred:

Citation : (2023) 12 J&K CK 0012

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : C. M. Koul, A. R. Bhat, Amit Gupta

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. Before this court proceeds further to adjudicate the present writ petition, it is proper to note that the quantum of the land mentioned in para-II of the title of the writ petition is different to the quantum of land as mentioned in para-II of the prayer part of the writ petition.

2. The petitioner has filed the instant petition for directing the respondents to remove all the obstructions/impediments i.e. PCC poles, barbed wires and other fixtures built up/erected by the Forest Department on the proprietary land of the petitioner, measuring 17 kanals and 1 marla comprising survey No. 73 situated at village Bhambhliya, Tehsil Sunderbani, Rajouri and the land measuring 10 marlas, 17 marlas and 17 marlas in respect of which the petitioner holds power of attorneys, taking into account the various demarcation reports prepared in the matter including the reports submitted by the Naib Tehsildar, Sunderbani.

3. It is contended by the petitioner that he is owner in possession of the land measuring 17 kanals and 1 marla comprising survey No. 73, situated at village Bhambhliya and is having power of attorneys in respect of 10 marlas, 17 marlas and 17 marlas comprising survey No. 73, which is adjacent to the land of the

petitioner in village Bhambhliya Tehsil Sunderbani. The petitioner has placed on record gift deed and various powers of attorney in respect of the land comprising survey No. 73 situated at village, Bhambhliya Tehsil Sunderbani. The petitioner claims to have submitted a representation for demarcation of the property and after the demarcation of the land, a detailed report was submitted to the Range Officer, Lamberi by the Tehsildar, Sunderbani vide communication dated 28.11.2020, in which it has been specifically mentioned that the land comprising survey Nos. 71 and 73 situated at village Bhambhliya is the proprietary land of the petitioner, wherein the Forest Department has wrongly established the enclosure. The details of the said report were also brought to the notice of Add. Deputy Commissioner, Sunderbani by Assistant Commissioner (Revenue) Rajouri vide communication dated 13.02.2021. It is also averred that the respondent No. 4 has brought to the notice of respondent No. 1 that after enquiry it was found that the land comprising survey No. 73 at village Bhambliya Kantha is a private land and further that Enquiry Officer has recommended that high level committee of officers from the Demarcation Department and Revenue Department may be constituted to re-ascertain the status of the land under question. It is further stated that the report submitted by the Naib-Tehsildar to the Tehsildar, Sunderbani also substantiates the claim of the petitioner. Likewise, the report submitted by the Additional Deputy Commissioner, Rajouri to the Deputy Commissioner, Rajouri also substantiates that the Forest Department has constructed the enclosure in the land comprising survey Nos. 73 situated at village Bhambhliya Tehsil Sunderbani.

4. During the pendency of the petition, the petitioner has placed on record the report of demarcation submitted by the team of Revenue Officials as well as Forest Department.

5. The respondent Nos. 1, 3 and 4, who are the main contesting respondents, have filed the response, stating therein that the Forest Department has erected a fencing unit during 2018-2019 in the Forest Comptt. No. 102/D inside the boundary pillar (from Boundary Pillar No. 85-89) of Bhambliya Kantha Demarcated Forest existing over the land comprising survey No. 88 of village Bhambhliya. It is further stated that the cost of the land has increased multiple times due to construction of Bambliya-Kantha road and also as the said land is in close proximity to Shiv Khori Shrine, so the petitioner has started trying to grab the said land adjoining to his land bearing survey No. 73 of village Bhambhliya by making representations to the higher authorities of the Forest Department and Revenue Department. It is stated that the petitioner first of all approached the Tehsildar Sunderbani for identification of the land and the Tehsildar Sunderbani vide communication dated 28.11.2020 submitted his report to the Range Officer, Lamberi, wherein it was reported that the Forest Department has erected the fencing unit on Khasra No. 88 and extended the said fencing unit towards Khasra No. 71 (over 6 kanals 9 marla) and survey No. 73 (over 5 kanals 8 marlas). The respondents have stated that the said report is contrary to the factual position existing on spot. The Range Officer, Lamberi approached the

Division Office, Nowshera Forest Division to conduct joint verification of the said land in presence of the staff of the Demarcation Jammu. Accordingly, a joint verification was done on 21.05.2021 and report was furnished, wherein no area has been mentioned under Khasra Nos. 71 and 73, over which fencing unit has been extended, which is contrary to the earlier report. The field staff of the Forest Department again showed dissatisfaction with the demarcation and again wanted independent demarcation of the said land by involving staff of Demarcation Division, Jammu and higher Revenue Officials, other than the Revenue officials of Tehsil, Sunderbani. Precisely the stand of the respondents in their reply is that the fencing unit (enclosure) has been raised in survey No. 88, which is adjacent to survey No. 73. The survey No. 88 falls in the demarcated forest, where boundary pillars have been erected by the Demarcation Division Jammu. It is the stand of the respondents that the Forest Department has not encroached any land of the petitioner comprising survey No. 73.

6. Mr. C. M. Koul, learned Senior Counsel for the petitioner relied upon the various demarcation reports annexed with the writ petition so as to demonstrate that the Forest Department has encroached the land of the petitioner comprising survey No. 73 situated at Bhambliyan, tehsil Sunderbani.

7. Per contra, Mr. Amit Gupta, learned counsel for the respondents submitted that the Forest Department has constructed the enclosure on its own land comprising in survey No. 88 in village Bambliya which is the demarcated forest and as such, has not encroached any land of the petitioner.

8. Heard and perused the record.

9. The only dispute involved in the present writ petition is in respect of location of the enclosure. The contention of the petitioner is that enclosure has been raised by the Forest Department over the land comprising survey No. 73 owned by the petitioner situated at Bambliya Tehsil Sunderbani. The petitioner has placed reliance on the various demarcation reports, including the one dated 21.05.2021 placed on record by the petitioner along with the application but has been disputed by the respondents in their response that the same does not reflect the true position.

10. The respondents have placed on record the communication dated 22.05.2021 addressed by the Range Officer Lamberi to the Divisional Forest Officer, Nowshera Forest Division, stating therein that there is need to demarcate the land comprising survey No. 73 at Ransoo by involving Demarcation officials of Demarcation Division, Jammu and the revenue officials excluding the revenue officials of Tehsil, Sunderbani. It is further mentioned in the said communication that the original massavi of survey No. 73 lying in Forest Mohafiz Khana, Jammu be also taken note of, for better comparison with massavi of Bhambhliya Kantha village.

11. This is the admitted case of the respondents that they have not raised any enclosure over the land comprising survey No. 73 situated at village Bhambhliya

but rather their positive stand is that they have constructed the enclosure in the land comprising survey No. 88 of village Bhambhliya.

12. The petitioner though has placed on record various demarcation reports, but the respondents have disputed the said survey reports and in fact the respondents want to get fresh demarcation conducted by the demarcation officials of Demarcation Division Jammu and the Revenue Officials excluding the Revenue Officials of Tehsil, Sunderbani. The demarcation report dated 21.05.2021 nowhere reflects that the poles have been raised upon the land of the petitioner. The claim of the petitioner in the present writ petition is in respect of encroachment of his proprietary land measuring 17 kanals and 1 marla comprising survey No. 73 and land measuring 10 marlas, 17 marlas and 17 Marlas comprising survey No. 73 situated at Village Bhambliyan, whereas in demarcation reports placed on record by the petitioner, the quantum of encroached land is not in consonance with the claim of the petitioner. In the reports placed on record by the petitioner with the writ petition, the quantum of encroached land is different and the reports do not mention the quantum of encroached land of the petitioner, as such in order to settle the controversy once for all, this Court deems it proper to dispose of this petition with the following directions:

(i) The Divisional Commissioner, Jammu shall constitute a Commission of senior revenue officers for conducting the demarcation of the land situated at Village Bhambliyan to identify the location of enclosure raised by the Forest Department, whether the same is situated in survey No 73 at village Bhambhliya, Tehsil Sunderbani, Rajouri or not.

(ii) The commission of the revenue officials appointed by the Divisional Commissioner, Jammu shall conduct the demarcation in presence of the petitioner and the respondent No. 3 or his representative and shall submit the demarcation report to the Divisional Commissioner Jammu.

(iii) The petitioner and the respondent No.3 shall be at liberty to present before the commission any document as may be helpful to the commission for conducting the demarcation.

(iv) If it is found that the enclosure has been constructed by the Forest Department over the land comprising survey No. 73 situated at village Bhambhliya, Tehsil Sunderbani, Rajouri owned or legally possessed by the petitioner, the respondent No. 1, 3 & 4 shall remove the same within a period of one month from the date of submission of the demarcation report to the Divisional Commissioner.

(v) The entire exercise shall be completed within in a period of three months, the copy of this order is made available to the Divisional Commissioner, Jammu.

13. Disposed of.