
(2008) 01 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No.398 Of 2006

Syed Manzoor Ahmad & anr.

APPELLANT

Vs

J & K Special Tribunal & Ors.

RESPONDENT

Date of Decision : 01-01-2008

Acts Referred:

Jammu and Kashmir Agrarian Reforms Rules, 1977 — Rule 4

Citation : (2008) 1 SriLJ 136

Hon'ble Judges : Aftab Alam, C.J and Hakim Imtiyaz Hussain, J

Bench : Division Bench

Advocate : M.Abdul Qayoom, Arshad A.Andrabi, Advocates appearing for the Parties

Judgement

Hakim Imtiyaz Hussain, J.—This Letters Patent Appeal is directed against the judgement dated 3.11.2006 passed by the learned Single

Judge whereby he dismissed OWP No.332 of 2003 titled Syed Manzoor Ahmad & anr. v. J&K Special Tribunal, Srinagar & ors., filed by the present appellants.

2. The dispute between the parties (present appellants and respondent: 5) is on a piece of agricultural land measuring 5 kanals under survey No.

560/Min situate at Azadpore, Tehsil and District Anantnag. The land belonged to one Abdullah Khan on whose death it was mutated in the name

of his 'khananashin' daughter respondent: 5 as owner in 'personal cultivation' of the land.

3. In the year 1988, Tehsildar Settlement, Anantnag on a report of parwari halqa concerned directed change in the entries in a public meeting held

in the village on 27.12.1988. On the said date the Tehsildar started proceedings under Section 4 of the Jammu and Kashmir Agrarian Reforms

Act, 1976 (for short the Act) and on completion thereof mutated the land in favour of the appellants under Section 8 of the Act vide order dated

3.5.1993. All these proceedings, were conducted in absence of the respondent[^] without even a notice to her.

4. Respondent: 5 challenged these proceedings in an appeal filed by her before the Financial Commissioner/Commissioner Agrarian Reforms, J&K

Government, Srinagar, on various grounds interalia that the mutations have been effected at her back. The appeal was allowed and it was held by

Commissioner that the entries in the record were in favour of the respondent, that since there was no objection from any aggrieved person the

Tehsildar has effected changes in the record of his own and without a notice to the respondent[^]. The Commissioner further found that the

Tehsildar, being Tehsildar Settlement had no jurisdiction to make changes in the, record under the provisions of the Act.

5. Feeling aggrieved of the order, the appellants filed a revision a petition before the J&K Special Tribunal, Srinagar but the Tribunal, upheld the

order of the Commissioner vide judgement dated 26.6.2003 as it found that the order issued by the Commissioner was based on correct

appreciation of law.

6. The appellants, thereafter, challenged the order of the Commissioner as well as that of the Tribunal before this Court through a writ petition

(OWP No.332/2003). Various grounds including the ground of limitation and violation of the rules of natural justice were raised by the appellants

to assail the said judgements/orders but the writ court did not agree with any of the grounds and dismissed the petition by means of the order dated

3.11.2006 which is impugned in the present appeal.

7. The appellants have challenged the writ court judgement on various grounds. It is alleged that the learned writ court has not properly

appreciated the pleas raised in the petition, the Commissioner passed the order dated 9.8.2000 at the back of the appellantspetitioners but the writ

court has not gone into this aspect of the matter.

It is further alleged that the mutation has been attested in favour of the appellants under Sections 4 & 8 of the Act, as they were in personal

cultivation of the land and respondents being a resident of Rajbagh, Srinagar was not cultivating the land personally. The appellants, however, state

that if the court felt that the order of mutation was not proper, it should have directed rehearing of the appeal.

Heard.

8. On consideration of the pleas raised and the submissions made, I find no ground is made out for admission of this appeal.

9. Mr.M.A.Qayoom, learned counsel for the appellants vehemently argued that the appeal was heard by the Commissioner in exparte without a

due notice to the appellants. He states that on filing the appeal before the Commissioner, respondent: 5 managed to produce someone as

respondent before the Commissioner and got engaged a lawyer on behalf of the appellants and subsequently when nobody appeared on their

behalf, the appeal was decided exparte, while as the fact is that neither any notice was sent to them nor they got any information of the appeal.

Learned counsel however, could not explain why the appellants did not inform the Commissioner about this fact or did not lodge a complaint

regarding the alleged impersonation. In the order dated 9.8.2000, the Commissioner has found that the respondents have been summoned in

accordance with law and procedure, who caused their appearance but later remained absent due to which exparte proceedings were initiated

against them. In the circumstances of the case I do not find any ground to take a different view.

10. Learned counsel would next argue that the Commissioner has committed an illegality by holding that since no notice was given to respondent: 5

the mutations effected by the Tehsildar under Sections 4 & 8 of the Act were not in accordance with the procedure. Learned counsel has referred

to the mutation effected by the Tehsildar and submitted that the same was in accordance with the Rule 4 of the Rules made under the Act. The

Tehsildar went on spot and held the proceedings in public, in presence of all concerned persons, thus there was no need to summon the

respondent as she was not residing in the village but was residing at Rajbagh, Srinagar for the last 30 years. Her residence at Srinagar, according

to the learned counsel itself shows that she was not in personal cultivation of the land as such she was not entitled to any notice under the Act. The

land which was in personal cultivation of the owner in Kharief 1971 vested in the State and only the appellants, being in personal cultivation of the

land, were entitled to get its ownership under under Section 8 of the Act.

11. In my view the contention of the learned counsel is devoid of any merit. Under the scheme of the Act and the rules made there under, there is

initial presumption of correctness as regards the entries in Girdawari of Karief 1971 unless the same are objected to by any person. As indicated

by the Commissioner in his order dated 9.8.2000, an unusual procedure has been adopted by the Tehsildar concerned as in the present case there

has been never any such objection. The Tehsildar did not receive any objection as required by Rule 4 from the appellants/or any other person, but

he initiated the proceedings suo moto on the report of the Patwari of the Halqa and without affording the opportunity of hearing to the respondent:

5, who was the recorded owner holding the land in personal cultivation as per the record. He thus proceeded to upset the entries of the record, 12

years after the Act came into force, without any objection from the concerned person and without hearing the respondent. Both, the Commissioner

as well as the Tribunal have considered this aspect and have come to the conclusion that the proceedings of the Tehsildar were not in accordance

with the rules. This fact has been considered by the learned Single Judge also, who has observed as under:

As regards the mutations impugned before the appellate authority the basic one i.e, the one attested under section 4 of the Act under No. 1795

strangely nowhere shows as to who during proceedings under rule 4 or otherwise objected to the entries existing then regarding the land in

question admittedly recorded in 5th respondents favour. So far as the father of petitioners is concerned, he is not even shown to have been present

at the time of attestation of mutation, so there was obviously no question of his objecting to entry. What necessitated the change of entry, perhaps

requires to be explained by the concerned Tehsildar, and coupled with the nonobservance of the requirement to issue notice to 5th respondent

before attestation of said mutation, this aspect clouds the mutation which forms the very basis of the whole process of conferment of ownership

rights upon the petitioners father. All other aspects debated at bar. are purely factual, which may not be gone into these proceedings nor could they

perhaps be addressed by the subordinate Tribunal as the revisional forum, for the reason that the exercise of its revisional jurisdiction is in law

confined to legal questions and questions of public importance only.

12. Rule 4 of the Rules of 1977, referred to by Mr. Qayoom provides that a Tehsildar can change the entries in Khasra Girdawari only after giving

an opportunity of being heard to all the concerned on an enquiry conducted on spot in respect of such mutation. 'All the concerned' means all the

persons/parties whose name appear in the record and who are likely to get adversely effected by any change in the entry. Since the entry in the

record was in favour of respondent; 5, she was the party concerned in the matter and had a right of being heard in the matter. Denial of such a right

to her and change of entry at her back has rendered the proceedings conducted by the Tehsildar bad in law which cannot be allowed to stand and

have, therefore, been rightly set aside by the Commissioner.

13. Delay in challenging the proceedings under section 4 and 8 of the Act has been properly explained by the respondent; 5 before the

Commissioner and both the Courts below, i.e the Commissioner and the Tribunal have given due reasons while accepting the explanation as such I

do not find any ground to take a different view on the issue.

14. In view of the reasons recorded by the Commissioner to allow the appeal and in the peculiar circumstances of the case, I find that there was no

need for the Commissioner to remand the case to the Tehsildar for rehearing. Since the Commissioner has observed that there was no objection at

all, filed before the Tehsildar and the Tehsildar had suomoto initiated the proceedings, he rightly allowed the appeal and set aside the mutations

effected by the Tehsildar. Commissioner's order has been upheld and the Tribunal as well as the learned Single Judge did not find any need to

direct rehearing of the case. I find no ground to interfere in the findings and the conclusions arrived at in these proceedings.

15. Submissions were also made by Mr. Qayoom, learned counsel for the appellants, regarding interpretation of terms 'family', 'married daughter'

and personal cultivation' as contained in the Act but on consideration of all these picas in light of the facts and circumstances of the present case, I

could find no force in the same.

16. In these circumstances, I do not find any merit in the submissions of the learned counsel for the appellants and could not find any error in the

judgment impugned.

The LPA is accordingly dismissed.