

(2018) 07 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No..482 Of 2007, 268 Of 2018

Zubeda Begum & Anr. @APPELLANT@Hash State & Others

Date of Decision : 06-07-2018

Acts Referred:

Jammu and Kashmir Wakafs Act, 2001 — Section 4, 21, 38, 42, 62

Citation : (2018) 07 J&K CK 0033

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

A. OWP No.482/2007

1. Petitioners through the medium of present petition are seeking quashing of J&K Wakafs Act, 2001, more particularly Act No.III of 2001 being

ultravires to the Constitution. Petitioners are also seeking a direction in the nature of prohibition restraining respondent No.4 from dispossessing or

interfering into their peaceful possession over the land measuring 1 kanal 14 marlas, comprising under Khasra No.331, bounded by East - land

transferred to the Aquaf Deptt; West - road; North - Van Bhawan and South - Land belonging to Dharmarth Trust, situate at Chand Nagar, Jammu.

2. Present petition originally came to be filed by one Talat Niaz Qazi. However, during the pendency this petition, he came to be died and in his place

his legal heirs, namely, Zubeda Begum (wife) and Imran Qazi (son) came to be impleaded as petitioners 1 & 2 herein vide order dated 08.06.2015.

3. The facts-in-brief, as projected in the petition, are that for the last more than 20 years the original petitioner, namely, Talat Niaz Qazi was in

occupation of 1 kanal and 14 marlas land belonging to the State of J&K, comprised under Khasra No.331-min, situated at Chand Nagar, Jammu,

which is bounded by East - land transferred to the Aquaf Deptt; West - road; North - Van Bhawan and South - Land belonging to Dharmarth Trust.

It is averred that the original petitioner had constructed one room in the corner of said land. He was Kawadi by profession and was using the said land

for storing the material.

4. In the year 2001, the Government of J&K promulgated an enactment, i.e., the Jammu and Kashmir State Lands (vesting of ownership to the

occupants) Act, 2001 (hereinafter, for short, Roshani Act), for the purposes of vesting ownership rights in favour of occupants of the State land.

Accordingly, the original petitioner applied before the Committee headed by Divisional Commissioner, Jammu for conferment of ownership rights in

his favour in respect of the said land. Thereafter, an inquiry came to be conducted and revenue officers were deputed for on-spot verification. The

revenue officials submitted the report on 15.09.2004 stating the petitioner to be in possession of land-in-question. It is averred that thereafter

respondent No.4 attempted to forcibly dispossess the original petitioner from the land-in-question, he filed a suit along with an application for grant of

temporary injunction, however, the same came to be dismissed in view of provisions of Section 62 of J&K Wakafs Act, 2001. Against, the said

judgment, the petitioner filed an appeal and the same is pending adjudication.

5. While questioning the Wakafs Act, learned counsel appearing for petitioners herein contended that the Act gives excessive and disproportionate

powers to the authorities as there is no provision under the Act, whereby any of the authorities specified has the power to issue interim injunction till

the disputes are finally settled and decided. He further contended that since the Tehsil Committees have not been constituted so far, as such the

powers of the Act are being defeated with impunity.Â

6. Learned counsel further contended that there is overlapping of powers under the Act, as the Administrator Wakaf, besides his own duties, has also

been given powers under Section 4 of the Act to hold inquiries, and further to act as a Tehsil Committee with judicial powers of eviction etc. Further,

in terms of Section 21 of the Act, the Tehsil Committees have not been framed, which consists of elected representatives of the people. Learned

counsel argued that the land-in-question is not Wakafs property, rather the same is State land. He further argued that the provisions of Section 62

ousting the jurisdiction of Civil Court shall not be made applicable to the cases mentioned under Section 38 of the Wakafs Act, because power to issue declaration lies with the Civil Court in terms of Section 42 of the J&K Specific Relief Act and not with any other authority, much less the authority specified under the Wakafs Act. Section 62 of the Act comes into operation only in those cases where title of any Wakaf or Wakafs property is not under challenge.

7. Objections have been filed on behalf of respondent No.4, i.e., Administrator, Aquaf Islamia Department averring therein that the Act provides for

appointment of Special Officer Aquaf for the purposes of conducting survey and deciding the cases of disputes over the title of any such property,

and, in terms of Section 4 of the Act, after deciding the cases, sends his report to the Government. So far as the case of writ petitioner is concerned,

the Government of J&K, Forest Department vide Government Order No.17-FST of 1977 dated 14.01.1977 transferred land measuring two kanals

under Khasra No.331 belonging to the Forest Department under Forest Nursery, situate at Chand Nagar, Gumat, Jammu to the Wakaf Committee,

Jammu and since then it has been under the possession and use of Wakafs Committee, earlier known as Anjuman-a-Auqaf Islamia, Jammu. It is

averred that on the basis of transfer of said land to Wakafs Committee, Jammu, the Revenue Department too effected necessary entries in its

revenue records, showing the title of the said land in the name of Ahal-e-Islam through Anjuman-e-Auqaf Islamia, Jammu. Out of the said land, land

measuring 01 kanal and 14 marlas under Khasra No.331, i.e., land-in-question came to be allotted to different persons at different rates on contractual

basis. First of all, the land-in-question came to be allotted to one Mani Ram on contract basis in the year 1986-87 onwards, and from 1994 to 1996-97,

it was allotted to one Shalinder Anand, who later on chose to challenge the action of Wakafs Committee in OWP No.887/2007. Mani Ram too took

up the matter before the Courts of learned Sub-Registrar, Sub Judge (Excise Magistrate) and then before the learned Principal District Judge, Jammu.

In the meantime, original petitioner approached respondent No.4 for allotment of land-in-question for agricultural purposes vide his application dated

27.09.1996. The Field Inspector reported that the land-in-question even if allotted to the petitioner in the year 1990 in consideration of Rs.700/- had

already been handed over by the original petitioner to the Wakafs Committee after the expiry of contract period and, thereafter, the said land came to

be allotted to other persons on contract basis, as such the land was not under the possession of writ petitioner Talat Niaz Qazi.

8. It is averred that the original petitioner with oblique motive of getting undue benefits under the Roshani Act moved an application before the

Tehsildar, Jammu on 21.08.2004 claiming to be in possession of the land-inquestion since 1971 being the State land, upon which ownership rights are

required to be granted to him under the Roshani Act. It is averred that the original petitioner also managed to get the report in his favour in connivance

with the officials of Revenue Department, and when Wakafs Committee came to know about the same, it apprised the Divisional Commissioner,

Jammu on 20.06.2005 and also reported the matter to the police for action against the petitioner.

9. I have heard learned counsel appearing for the parties, considered their rival contentions and also perused the writ file.

10. It reveals the whole controversy hinges around whether the land-inquestion is State land or belongs to the Aquaf Department.

11. In the objections filed, it is the specific stand of respondent No.4 that the land-in-question came to be transferred to the Aquaf Committee, Jammu

by the Government of Jammu & Kashmir, Forest Department vide Order No.17-FST of 1977 dated 14.01.1977 and since then it has been under the

possession and use of Wakafs Committee. It would be appropriate to reproduce the relevant portion of said order hereunder:

Â??Sanction is accorded to the transfer of 2 kanals of Forest land from Khasra No.331 from Forest Nursery Gumat to the Auqaf Committee

Jammu.

Â By order of the Govt. of Jammu & Kashmir.Â??

12. Thus, admittedly two kanals Forest land under Khsra No.331, situate at Gumat, Jammu came to be transferred to the Aquaf Committee, Jammu in

January, 1977. Even, this fact has also been admitted by the petitioners herein in paragraph-xv of their petition, but they claim that the land-in-question

is a separate land, although falling under same khasra number; meaning thereby it is the admitted stand of petitioners that two kanals of land under

Khasra No.331 also belongs to the Auqaf Committee, which was transferred to it

by the Government of J&K in January 1977.

13. Now the question arises for consideration is: whether the land-inquestion, i.e., 01 kanals and 14 marlas under Khasra No.331 falls within the same

strip of two kanals land, which belongs to the Auqaf Committee, or it is a different piece of land, which, as claimed by the petitioners, is a State land.

14. It is claimed by respondent No.4 that after the transfer of two kanals Forest land under Khasra No.331 by the Government of J&K, necessary

revenue entries also came to be effected in the revenue records showing the title of said land in the name of Ahal-e-Islam through Anjuman-e-Auqaf

Islamia, Jammu. In support of its claim, respondent No.4 also annexed copy of Khasra Girdawari as Annexure R2 with the objections. It is also

claimed by respondent No.4 that in order to generate income, first of all the land-in-question came to be allotted to one Mani Ram on contract basis in

the year 1986-87 onwards, and from 1994 to 1996-97, it was allotted to one Shalinder Anand.

15. Annexure R-3 with the objections of respondent No.4 reveals that the original petitioner, namely, Talat Niaz Qazi also made an application to

respondent No.4 on 27.09.1996 with the request to collect the contract money/rent from him for 10 marlas of land falling under Khasra Nos.331 and

614, on the ground that earlier he had taken 01 kanal and 10 marlas land under Khasra Nos.331 and 614 on contract basis and out of which he had

already returned 01 kanals land to respondent No.4. A report on the said application also reveals that in the year 1990, original petitioner was given 01

kanal land under Khasra No.331, belonging to the Aquaf Department, on yearly contract/rent basis for an amount of Rs.700/- and after completion of

contract period, Talat Niaz Qazi returned the possession of said land and, thereafter, the said land was given on contract to another persons; meaning

thereby at one point of time, original petitioner Talat Niaz Qazi was given the Aquaf land on yearly contract basis and even he had applied to

respondent No.4 on 27.09.1996 to collect the contract money/rent for 10 marlas of land under Khasra No.331, belonging to Aquaf. Therefore, in view

of this factual position, one thing is clear that in the year 1990 out of two kanals of land, which was transferred to the Auqaf Committee in the year

1977 by the State Government, one kanal land was given to original petitioner Talat Niaz Qazi on yearly contract basis, and when, after the expiry of

contract period, he did not return some portion of said land, an FIR also came to be registered against him in Nawabad Police Station.

16. Since petitioners herein claim that the land-in-dispute under Khasra No.331 is a State land and not the one transferred to respondent No.4 by the

Government of J&K, i.e., two kanals under same Khasra No.331, I think the appropriate course would be to direct Deputy Commissioner, Jammu to

demarcate the land transferred to Aquaf Committee in the year 1977.

17. Accordingly, the writ petition is disposed of with a direction to the Deputy Commissioner, Jammu to depute a team of revenue officers/officials

headed by Tehsildar concerned to demarcate the land transferred in favour of Aquaf Committee, Jammu by the Government of Jammu & Kashmir,

Forest Department vide No.17-FST of 1977 dated 14.01.1977 falling under Khasra No.331, situate at Gumat, Jammu, and, after proper demarcation,

physically hand over the vacant possession of same to respondent No.4 herein. Deputy Commissioner, Jammu to issue prior notices to the petitioners

as well as respondent No.4 herein against proper receipts with regard to the date and time of visit of revenue officers for such demarcation so that

the demarcation could be effected in their presence and possession handed over to respondent No.4. After proper demarcation, if there remains some

State land under Khasra No.331 in the physical possession of petitioners herein, in such a case the petitioners shall be left free to apply before the

competent authority for conferment of ownership rights in their favour in respect of the left out State land, if any, under the Roshani Act, if they are

otherwise eligible and entitled to apply for the same under rules. Interim direction shall stand vacated. Connected miscellaneous petition(s),

accordingly, stands disposed of.

B.Â OWP No.268/2018

18. Through the medium of this petition, the petitioners herein are seeking a writ in the nature of prohibition against respondents 1 to 4 from making

any construction over the land measuring 1 kanal 14 marlas, comprising under Khasra No.331, situate at Chand Nagar, Jammu, with a further

direction to Deputy Commissioner, Jammu to demarcate the land of petitioner as well as the land leased out to respondent No.3.

19. Since the land-in-question as well as controversy involved in this case is same as that of OWP No.482/2007 (supra), therefore, in view of

directions passed in OWP No.482/2007, the present writ petition does not survive and the same is, accordingly, disposed of along with connected miscellaneous petition(s).

C. COA(OW) No.268/2018 (in OWP No.482/2007)

20. In view of disposal of OWP No.482/2007, this contempt petition does not survive and the contempt proceedings are, accordingly, dropped. Â