

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C)/44/2023

Abdul Rashid and Another

...Appellant/Petitioner(s)

Through: Mr. Bhat Fayaz, Advocate with
Ms. Nighat, Advocate

Vs.

***Union Territory of J&K and Ors. (Revenue
Department)***

...Respondent(s)

Through: Ms. Shailla Shameem, Assisting Counsel

CORAM:

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

ORDER
06.10.2026

- 1)** The petitioners claim to be in physical possession of land measuring 4 kanals and 1 marla, comprising Khasra No. 218, recorded as *Shamilat-e-Deh*, situated at Estate KaloosaNathpora, District Bandipora. The said land is stated to be contiguous to the proprietary land comprising Khasra No. 219, which was purchased by the predecessor-in-interest of the petitioners.
- 2)** The case projected by the petitioners is that the land comprising Khasra No. 218 was never migrant property and, therefore, could not have been brought within the ambit of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 (hereinafter referred to as "the Act of 1997"). It is contended that the respondents, by erroneously invoking the provisions of the said Act, initiated proceedings against

the petitioners, culminating in they being declared unauthorized occupants on the basis of an enquiry conducted unilaterally and without proper appreciation of the revenue record.

- 3) It is further averred that the predecessor-in-interest of the petitioners, and thereafter the petitioners themselves, have remained in continuous and recorded cultivating possession of the land comprising Khasra No. 218 since 1971, notwithstanding that no formal proprietary rights were conferred upon them.
- 4) According to the petitioners, the private respondents, by taking recourse to the provisions of the Act of 1997, sought to secure their eviction from the land in question, although the dispute was not amenable to adjudication under the said enactment.
- 5) The Deputy Commissioner, Bandipora, vide order dated 28.01.2020, declared the petitioners unauthorized occupants of the land comprising Khasra No. 218. Aggrieved by the said order, the petitioners preferred an appeal before the Financial Commissioner (Revenue), registered as File No. 17/FC-AP of 2020, which came to be dismissed vide order dated 06.12.2021.
- 6) The petitioners have assailed the order of the Appellate Authority, inter alia, on the ground that the finding regarding non-maintainability of the appeal, for want of surrender of actual physical possession of the disputed property, is contrary to the law laid down by the Division Bench of this Court.
- 7) It is submitted that the Division Bench, while interpreting proviso (b) to Section 7 of the Act of 1997, has held that surrender of actual physical possession is not an indispensable condition for

maintaining an appeal and that the statutory requirement is capable of being satisfied by delivery of constructive or symbolic possession. The petitioners contend that the interpretation adopted by the Appellate Authority defeats the very object of providing an appellate remedy and exposes a person in possession to arbitrary eviction even before the legality of the order under challenge is examined.

8) It is further pleaded that the Tehsildar, Bandipora, in his report dated 17.04.2018, specifically recorded that the land measuring 4 kanals and 1 marlas, comprising Khasra No. 218, was classified as *Shamilat-e-Deh* and had remained in the cultivating possession of Khalil since Rabi 1976.

9) According to the petitioners, the revenue entries consistently reflected such possession, which continued uninterrupted for more than four decades, without any proceedings for eviction having been initiated by the persons claiming ownership thereof. It is, therefore, contended that the respondents could not invoke the provisions of the Act of 1997 to unsettle possession which had commenced long before the enactment of the said legislation. The petitioners maintain that the Act is prospective in operation and cannot be pressed into service to retrospectively characterize their longstanding possession as unauthorized.

10) The petitioners further contend that where possession of the disputed property had commenced prior to the migration of the persons claiming ownership thereof, such possession could not, merely by reason of the subsequent migration, be brought within the mischief

of the Act of 1997. It is accordingly urged that the initiation of proceedings under the said Act was wholly misconceived and without jurisdiction.

11) The private respondents, in opposition, have supported the orders passed by the authorities under the Act of 1997, contending that the same are legal and valid and do not warrant interference in exercise of writ jurisdiction. It is their specific stand that neither the petitioners nor their predecessor-in-interest were ever in lawful cultivating possession of the land in question. According to them, after the enforcement of the Jammu and Kashmir Agrarian Reforms Act, 1976, no fresh tenancy could legally be created and, therefore, the claim of cultivating possession commencing from Rabi 1976 could not confer any tenancy or other enforceable right upon the petitioners. It is submitted that the possession claimed by the petitioners was unauthorized from its inception and that the competent authority rightly proceeded against them under the Act of 1997. The private respondents further submit that the revenue entries relied upon by the petitioners were subsequently set aside by the Deputy Commissioner, Bandipora, in the year 2020.

12) It is also contended that the plea regarding non-applicability of the Act of 1997 to the land in question was never urged before the Appellate Authority and has been raised for the first time in the present writ petition.

13) Another objection raised by the private respondents is that, having themselves invoked the appellate jurisdiction of the Financial Commissioner (Revenue) under Section 7 of the Act of 1997, the

petitioners cannot now be permitted to contend that the land in question falls outside the purview of the said enactment. According to the respondents, the very act of preferring an appeal under the Act proceeds on an acknowledgment of its applicability to the proceedings in question.

14) On the aforesaid premises, the private respondents have sought dismissal of the writ petition. Learned counsel appearing on their behalf vehemently argued that the Act of 1997 is not confined in its operation to unauthorized occupation commencing after its enforcement. It was submitted that the legislative object underlying the enactment is not merely preservation but also protection of migrant immovable property against unlawful occupation and interference.

15) According to learned counsel, where unauthorized occupation commenced prior to the enactment but continued even after the Act came into force, the competent authority would be fully empowered to invoke the statutory provisions for restoration of possession. It was further argued that, once the petitioners were found to be unauthorized occupants of the land comprising Khasra No. 218, their continued occupation attracted the provisions of the Act of 1997, rendering them liable to eviction.

16) Learned counsel also submitted that, pursuant to the order passed by the Deputy Commissioner, Bandipora, the revenue entries were duly rectified and the land came to be recorded in the ownership and possession of the private respondents.

17) Per contra, learned counsel appearing for the petitioners, while

controverting the submissions advanced on behalf of the private respondents, argued that the revenue entries reflecting the petitioners' cultivating possession were altered only after the Deputy Commissioner had passed the eviction order. It was submitted that, once the said order had been subjected to appellate scrutiny and the matter thereafter came to be seized of by this Court, the revenue authorities could not have proceeded to reverse the existing entries so as to prejudice the rights claimed by the petitioners during the pendency of the proceedings.

18) Learned counsel further contended that longstanding, settled possession carries legal protection and cannot be disturbed except by recourse to due process of law. It was argued that the predecessor-in-interest of the private respondents had already parted with possession of the disputed land in favour of the petitioners' predecessor-in-interest at the time of sale of the adjoining proprietary land comprising Khasra No. 219.

19) Elaborating upon this submission, learned counsel contended that Khasra No. 218, being recorded as *Shamilat-e-Deh*, was appurtenant to the proprietary holding comprising Khasra No. 219 and that, upon acquisition of the latter, the petitioners' predecessor-in-interest stepped into the shoes of the erstwhile proprietor. It was, therefore, urged that the petitioners' possession over the *Shamilat-e-Deh* land was referable to the proprietary rights acquired in the adjoining holding and could not be treated as unauthorized occupation merely on the basis of the subsequent claim raised by the private respondents.

20) It was further submitted that, even assuming that the private respondents had a subsisting claim against the petitioners in respect of the land in question, the appropriate remedy was to seek eviction in accordance with the provisions of the Jammu and Kashmir Agrarian Reforms Act, 1976, or such other law as might be applicable. Learned counsel maintained that the provisions of the Act of 1997, being prospective in nature, could not be invoked to dislodge possession which had commenced and continued long before the enactment came into force.

21) It was also submitted that the proceedings initiated at the instance of the private respondents were, in substance, directed towards securing eviction of the petitioners from agricultural land, a relief which, according to the petitioners, ought to have been pursued before the competent forum under the Jammu and Kashmir Agrarian Reforms Act, 1976, rather than by invoking the special machinery provided under the Act of 1997.

22) Heard learned counsel for the parties and perused the record made available for consideration.

23) Before advertng to the rival submissions, it would be apposite to notice certain material facts emerging from the record. As reflected in the revenue record and the report submitted by the Tehsildar, Bandipora, dated 17.04.2018, the land measuring 4 kanals and 1 marla, comprising Khasra No. 218, situated at Estate KaloosaNathpora, is recorded as *Shamilat-e-Deh*. The said report further reveals that the land was recorded in the cultivating possession of Khalil, son of Habib, and the legal heirs of Wali

Mohammad and Ghulam Hassan, residents of Watapore. The relevant entry regarding cultivating possession was made in the revenue record in Rabi 1976, and the record indicates continuation of such possession thereafter. The present petitioners claim through Khalil, son of Habibullah, being his successors-in-interest.

24) The record further reveals that the private respondent approached the Deputy Commissioner, Bandipora, on 15.03.2018, alleging unauthorized cultivation of land measuring 4 kanals and 1 Marla and 3 kanals and 1 Marla, comprising Khasra Nos. 218 and 259, respectively, stated to belong to late Dhanwanti Koul and late Shri Dhar Koul, residents of Kaloosa, District Bandipora. Acting upon the said complaint, the Deputy Commissioner, Bandipora, vide communication No. DCB/SQ/2017-18/2191-92, directed the Tehsildar, Bandipora, to conduct an enquiry into the matter. The proceedings initiated on the basis of the said complaint eventually culminated in the order dated 28.01.2020, whereby the Deputy Commissioner declared the petitioners unauthorized occupants of the land in question. The said order was assailed before the Financial Commissioner (Revenue) by way of an appeal under Section 7 of the Act of 1997. The Appellate Authority, however, did not enter upon an examination of the merits of the controversy. Instead, it proceeded on the premise that surrender of possession of the disputed property to the competent authority was a condition precedent for entertaining an appeal under Section 7 of the Act. Since the petitioners had not surrendered possession, the appeal was held to be not maintainable and was accordingly dismissed vide

order dated 06.12.2021.

25) The Division Bench of this Court in ***Rahmatullah Naik vs UT of J&K through Chief Secretary and Ors.*** In WP(C) No. 1794/2022, decided on 11.03.2026, of which I was also a member, considered the question whether the remedy of appeal could be made subject to the surrender of possession as a condition precedent to its entertainment, a requirement alleged to be unconstitutional and to render the remedy unworkable. After considering the provisions of the Act of 1997 and the concept of constructive/symbolic possession, the Division Bench held, in paragraphs 16 and 17, as under:

The concept of deemed custody of the competent authority would necessarily encompass the concept of surrender of symbolic possession to the competent authority. In these circumstances, it would be meeting the requirement of Section 7 of the Act of 1997, if aggrieved person surrenders symbolic possession of the subject property and it remains in the deemed custody of the competent authority. We are saying so, as reading the proviso to mean '*surrendering of physical possession of the subject property*' would render the remedy of appeal harsh, arbitrary and totally unworkable, more particularly, when such property is a house in which the aggrieved person is living with or without family. Unless, it is conclusively determined that he is unauthorized occupant, depriving him of the shelter would be rendering him incapacitated to avail the remedy of appeal.

It may not be equally true in cases of landed properties, yet we cannot lose sight of the fact that surrendering of possession to the District Magistrate and thereafter District Magistrate/Competent Authority placing it on the spurdari of some stranger would waste the property and would not serve any purpose. Instead of placing the surrendered property on the spurdari of a stranger, it would be worthwhile if the subject property remains with the aggrieved person, who shall be bound in law to surrender its physical possession, if appeal filed under Section 7 of the Act of 1997 goes against him.

26) The Division Bench further observed,

For the foregoing reasons, we do not find any substance in the submission of learned counsel for the petitioner that proviso (b) to Section 7 of the Act of 1997 is ultra vires the Constitution. We, however, are in agreement with the learned counsel for the petitioner that the proviso (b), if construed to mean and include only surrendering of actual possession, would be hit by Article 14 of the Constitution of India, as it would render the remedy of appeal nugatory, meaningless, totally unworkable and would be suffering from the vice of arbitrariness.

Having regard to the facts and circumstances of the case and for the discussion we have made above, we have resorted to the doctrine of reading down and held that surrendering of possession as stipulated in proviso (b) of Section 7 of the Act of 1997 shall mean and include constructive/symbolic possession and by doing so the provision is saved of being condemned as arbitrary rendering the remedy of appeal ineffective, inefficient and unworkable.

The expression 'surrender of possession' as used in proviso (b) of Section 7 of the Act of 1997, if construed constrictively would definitely infringe upon the right of the aggrieved party to file appeal against an order of eviction passed by the competent authority against him, as such, we are left with no option but to read the expression "unless possession of the property is surrendered to the competent authority" to mean and include surrendering of constructive/symbolic possession. The competent authority shall be de jure possession where is person ordered to be evicted will continue to have defacto possession of property in dispute till his appeal is decided.

Needless to say, that reading down is a judicial interpretative tool used to limit or restrict or sometime broaden the scope of a statutory provision making it constitutional and workable without invalidating the entire law. The reading down is applied by the Courts to harmonize the legislation with constitutional mandates preserving the validity of law wherever possible. This is exactly what we have attempted to do in this case.

27) In view of the aforesaid legal position, the order passed by the Appellate Authority, requiring the petitioner to surrender possession before the appeal could be entertained and holding the appeal to be not maintainable, runs contrary to the legal proposition laid down

by the Division Bench. The impugned order, therefore, suffers from an erroneous application of law. The appeal could not have been dismissed summarily by resorting to proviso (b) to Section 7 of the Act of 1997; rather, the Appellate Authority was required to consider the matter on merits.

28) Having noticed the rival submissions and the factual position emerging from the record, the principal question that arises for consideration is whether the petitioners can be treated as unauthorized occupants within the meaning of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997, notwithstanding the fact that their cultivating possession over the land in question is stated to have been reflected in the revenue record since Rabi 1976. An ancillary question that arises is whether the machinery provided under the Act of 1997 can be invoked for recovery of immovable property where the alleged unauthorized possession commenced prior to the migration of the person claiming ownership thereof, and, if not, what remedy would otherwise be available to such person under the applicable law.

29) For determination of the aforesaid questions, it would be appropriate to examine the scheme, object and relevant provisions of the Act of 1997, which came into force on 2nd of June 1997. The Statement of Objects and Reasons accompanying the enactment indicates that the Legislature, taking note of instances of distress sales of immovable properties belonging to migrants, considered it necessary to introduce measures for preservation and protection of

such properties and to prevent their alienation under compelling circumstances. The enactment thus seeks to provide a special statutory mechanism for safeguarding the immovable properties of migrants against unauthorized occupation, unlawful interference and distress sales.

30) Section 2(i) of the Act of 1997 defines an "unauthorized occupant" as a person who has encroached upon or taken possession of any immovable property of a migrant without his consent and authority of law. The expression "migrant", as defined under the Act, refers to a person who has migrated from the Kashmir Valley or any other part of the erstwhile State after 1st November 1989, subject to the other requirements contained in the statutory definition. The definition of an unauthorized occupant, therefore, assumes significance in determining whether a person already in possession of immovable property prior to the migration of its owner can be proceeded against under the special provisions of the enactment.

31) Section 3 of the Act places restrictions upon alienation of immovable property belonging to migrants. Clause (b) thereof provides, in substance, that any alienation of such property made on or after the commencement of the Act in contravention of its provisions shall be null and void, and that the property so alienated shall, after the prescribed enquiry, vest in its owner. The provision is intended to prevent alienation of migrant property otherwise than in accordance with the statutory safeguards prescribed under the Act.

32) The question concerning the applicability of the Act of 1997 to

possession originating prior to its commencement has also engaged the attention of this Court. In one such case, involving a dispute concerning possession and tenancy of a shop, the learned Single Judge in **2010 JKJ (3) 231** proceeded on the premise that the remedy available to the person claiming ownership was to seek recovery of possession in accordance with law.

33) The learned Single Judge, however, held that, in view of the enactment of the Act of 1997 and the statutory remedy available thereunder, recourse to Act was permissible and that the approach made to the District Magistrate could not be faulted.

34) The aforesaid judgment was assailed in a Letters Patent Appeal, principally on the ground that the Act of 1997 had no application to the facts of the case, inasmuch as the appellant had entered into possession of the shop lawfully and with the consent of the person competent to deliver such possession. The Division Bench in its judgement dated 09.06.2023 noticed that the shop had been handed over to the appellant in the year 1996, whereas the Act of 1997 came into force subsequently.

35) Having regard to the admitted circumstances in which possession had been delivered, the Division Bench held that the appellant could not be characterized as an unauthorized occupant within the meaning of the Act. The Division Bench further noticed that the appellant had not entered into possession of the shop by way of encroachment or any unilateral act. The premises had remained under the control of the security forces and, at their instance and in view of the concerns expressed by them, the shop was cleaned and

subsequently let out to the appellant. The entry into possession was, therefore, referable to circumstances inconsistent with an allegation of forcible or unauthorized occupation. In the aforesaid factual background, and particularly in view of the finding recorded by the authority under the Act that the appellant was not an unauthorized occupant, the Division Bench held that the Id. Single Judge had erred in sustaining the application of the Act of 1997.

36) The Division Bench also observed that the enactment could not be construed as operating retrospectively so as to alter the legal character of possession lawfully obtained prior to its commencement. Consequently, the judgment of the Writ Court was set aside.

37) Reference may also be made to the judgment of this Court in ***Ghulam Rasool Bhat and Others v. Badrinath Bhat and Others***, AIR 2009 J&K 53, wherein the question arose as to whether an agreement to sell relating to immovable property belonging to a migrant was rendered unenforceable by virtue of the restrictions contained in Section 3 of the Act of 1997. While examining the legislative scheme, the Court noticed that the principal object of the enactment was to prevent distress sales of migrant properties and to ensure that any alienation thereof was undertaken only in accordance with the procedure and safeguards prescribed by law.

38) In the said proceedings, the trial court had taken the view that a suit seeking specific performance of an agreement to sell was barred by the provisions of the Act of 1997. Upon examination of the matter, however, this Court held that the statutory restrictions upon

alienation did not, by themselves, render an otherwise enforceable agreement incapable of being considered by a civil court. It was observed that a decree for specific performance could be worked out subject to compliance with the statutory requirement of obtaining the necessary permission under the Act. Accordingly, the suit was held to be maintainable and the trial court was permitted to proceed with its adjudication, with the ultimate alienation remaining subject to the requirements of the Act.

39) The controversy in the present case, however, stands on a different footing. The petitioners do not claim to have entered into possession of the disputed land on the strength of any agreement to sell, conveyance or other instrument executed in contravention of the Act of 1997. Their claim is founded upon longstanding cultivating possession, stated to have been reflected in the revenue record since Rabi 1976, and upon the nature of the land as *Shamilat-e-Deh*. The question, therefore, is not one of validity or enforceability of an alienation prohibited by the Act, but whether possession originating long before the enactment, and allegedly before the migration of the persons claiming ownership, can be treated as unauthorized occupation for the purposes of the special statutory machinery.

40) The material circumstance requiring consideration is that the possession of the petitioners' predecessor-in-interest was recorded in the revenue record in Rabi 1976 and is stated to have continued thereafter. The subsequent alteration or cancellation of the revenue entries, allegedly pursuant to the order passed by the Deputy

Commissioner, Bandipora, does not, by itself, resolve the question whether the petitioners' possession attracted the provisions of the Act of 1997. The legality and effect of such alteration, particularly when the order forming its basis was under challenge before the Appellate Authority and thereafter before this Court, would necessarily have to be examined in accordance with law.

41) A conjoint reading of the relevant provisions of the Act of 1997 indicates that the enactment contemplates distinct situations relating to migrant immovable property. While Section 3 regulates alienation of such property and declares transactions undertaken in contravention of the statutory prohibition to be void, the provisions concerning unauthorized occupation are intended to afford protection against encroachment or possession taken without the consent of the migrant and without authority of law. The two situations, though falling within the broader protective object of the enactment, are conceptually distinct and must be examined with reference to the language employed by the Legislature. The definition of "migrant" under the Act is linked to migration occurring after 1st November 1989, whereas the enactment itself came into force on 2nd June 1997. Section 4 casts an obligation upon the District Magistrate to take over possession of immovable property belonging to migrants within his territorial jurisdiction within the period prescribed therein and provides for deemed custody upon expiry of the stipulated period. The provision thus creates a statutory mechanism for preservation and protection of migrant property through the competent authority.

42) It is in the aforesaid statutory setting that the question of unauthorized occupation must be examined. Where a person encroaches upon or takes possession of the immovable property of a migrant without consent and without authority of law during the period following the migration, the protective provisions of the Act may be attracted, subject to satisfaction of the statutory requirements. The position, however, calls for closer scrutiny where possession had commenced much earlier, particularly before 1st November 1989, and had continued openly and under entries reflected in the revenue record. In such a situation, the mere fact that the owner subsequently acquired the status of a migrant would not, without examination of the nature and origin of the possession, necessarily establish that the person already in possession had encroached upon or taken possession of migrant property within the meaning of the Act.

43) It is equally important to distinguish between the retrospective operation of a statute and its application to a continuing state of affairs. A statute may operate prospectively while regulating a state of affairs that commenced before its enactment but continues thereafter. Nevertheless, where the Legislature has provided a special and summary mechanism for removal of unauthorized occupants, the conditions attracting the exercise of such jurisdiction must be established. The protective object of the enactment cannot dispense with the requirement of determining whether the occupation in question answers the statutory description of unauthorized occupation.

44) In the present case, the petitioners' possession is stated to have been recorded in Rabi 1976, much before the date with reference to which the expression "migrant" has been defined under the Act of 1997. The question whether such possession was lawful, permissive, referable to any tenancy or proprietary right, or otherwise unauthorized, may involve consideration of the revenue record and the law governing agricultural holdings and *Shamilat-e-Deh* land. Such questions cannot be conclusively answered merely by reference to the subsequent migration of the persons claiming ownership or by treating the existence of possession, by itself, as sufficient proof of encroachment under the Act.

45) At this stage, it would be apposite to notice the settled principles governing the legal protection afforded to possession. Possession, though not invariably equivalent to ownership, is nevertheless a legally recognized interest. A person in settled possession cannot ordinarily be dispossessed by another person otherwise than in accordance with law. The nature and extent of such protection, however, depend upon the facts of the case, the character of possession and the existence of any superior right or title established by the person seeking recovery of possession.

46) In *Nair Service Society Ltd. v. K.C. Alexander*, AIR 1968 SC 1165, the Hon'ble Supreme Court examined the relationship between possession and title and recognized that possession may, in appropriate circumstances, raise a presumption of ownership. The Court, however, clarified that such a presumption cannot be mechanically invoked where the relevant facts concerning title are

known. Where neither party establishes title, prior possession may assume decisive significance in determining their competing claims. The judgment thus recognizes the protection afforded to possession while maintaining the distinction between possessory rights and proprietary title.

47) Section 110 of the Indian Evidence Act, 1872, embodies the principle that where a person is shown to be in possession of property, the burden of proving that he is not the owner lies upon the person who asserts the contrary. The presumption contemplated by the provision is rebuttable and does not, by itself, confer title upon a person merely because he is in possession. Nevertheless, it reflects the broader legal principle that possession is not to be disregarded and that a person asserting a superior right must establish the same in accordance with law.

48) The aforesaid principle has also been considered by the Hon'ble Supreme Court in ***YerikalaSunk Lamma and Another v. State of Andhra Pradesh, Department of Revenue and Others***, 2025 INSC 383, wherein the Court examined the evidentiary significance of possession and the presumption arising therefrom under Section 110 of the Evidence Act. The relevant observations of the Hon'ble Supreme Court may be noticed hereunder:

“The principle enshrined in Section 110 of the Evidence Act (now Section 113 of the BSA) is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their title over the land in question may be. It is for this purpose that the provisions of Section 6 of the Specific Relief Act, 1963, Section 145 of the Code of Criminal Procedure, 1973, and Sections 154 and 158 of the India Penal Code, 1860, were enacted. All the aforesaid provisions have the same objective. The said presumption is

read under Section 114 of the Evidence Act and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of wastelands, or where nothing is known about possession one way or another. Presumption of title as a result of possession can arise only where facts disclose that no title vests in any party and the possession of the plaintiff is not prima facie wrongful. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It, in fact, means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment, etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favour his version. Even a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act. [See: **State of Andhra Pradesh and Ors. v. Star Bone Mill and Fertiliser Company reported in (2013) 9 SCC 319**]"

49) In *Gurunath Manohar Pavaskar and Others v. Nagesh*

Siddappa Navalgund and Others, (2007) 13 SCC 565, the Hon'ble Supreme Court reiterated that entries in the revenue record are not documents of title and do not, by themselves, confer proprietary rights upon the person in whose favour they stand recorded. Such entries, however, carry evidentiary value and may give rise to a rebuttable presumption regarding possession. The Court further recognized that, in appropriate circumstances, a presumption as to continuity of possession, both anterior and subsequent to the period for which possession is established, may arise, subject to the nature of the evidence and the surrounding circumstances. It is, therefore, incumbent upon

the courts and authorities to appreciate the revenue entries in the light of the settled principles governing possession, title and the evidentiary presumptions arising therefrom.

50) Applying the aforesaid principles to the facts of the present case, it emerges from the report of the Tehsildar, Bandipora, that the predecessor-in-interest of the petitioners was recorded in cultivating possession of the land comprising Khasra No. 218, classified as *Shamilat-e-Deh*, since Rabi 1976. The existence of such an entry, though not conclusive of title or lawful entitlement, constitutes material evidence of possession which could not have been disregarded without due examination. Whether the possession so recorded was permissive, referable to any legally recognized right, or otherwise unauthorized, was a matter requiring determination with reference to the applicable law and the circumstances in which possession had originated. The mere invocation of the Act of 1997 could not dispense with such an enquiry, particularly when the possession relied upon by the petitioners is stated to have commenced long before the enactment came into force.

51) Learned counsel for the private respondents vehemently contended that, after the enforcement of the Jammu and Kashmir Agrarian Reforms Act, 1976, no fresh tenancy could legally be created and, consequently, the petitioners' claim of cultivating possession since Rabi 1976 could not confer any lawful right upon them. It was, therefore, urged that the petitioners were liable to be treated as unauthorized occupants. The submission,

though attractive at first blush, cannot be accepted as sufficient, by itself, to conclude that the petitioners answer the statutory description of unauthorized occupants under the Act of 1997. The question whether a tenancy could legally have been created, or whether the possession claimed by the petitioners was otherwise protected under the law then applicable, is distinct from the question whether the conditions necessary for invoking the special machinery under the Act of 1997 stood satisfied. It is equally well settled that possession, even where disputed, is a legally recognized interest and cannot ordinarily be disturbed except in accordance with law. The law of limitation may also have a bearing upon the enforceability of a claim for recovery of possession and, in an appropriate case, upon the acquisition of rights by prescription, provided the requisite ingredients are specifically pleaded and established. Mere length of possession, however, does not, by itself, confer title or extinguish the rights of the true owner. These considerations reinforce the necessity of examining the origin, character and continuity of the petitioners' possession before determining the legal consequences flowing therefrom.

52) In the circumstances of the present case, the competent authority could not have proceeded to declare the petitioners unauthorized occupants merely on the premise that they had failed to establish a lawful tenancy or proprietary title. The revenue record disclosed possession dating back to Rabi 1976, approximately two decades before the commencement of the Act of 1997. It

was, therefore, incumbent upon the authority to examine whether such possession had commenced with the consent of the person then entitled to the property, whether it was referable to any lawful arrangement, and whether its subsequent continuance attracted the provisions of the Act. In the absence of such determination, the conclusion that the petitioners were unauthorized occupants within the meaning of the Act could not be sustained.

53) Rule 6 of the Jammu and Kashmir Migrant Immovable Property Rules, 1997, provides for an enquiry by the District Magistrate, either suo motu or on receipt of information, in relation to alienation of migrant immovable property in contravention of the provisions of the Act. Although the said Rule concerns an enquiry into prohibited alienation, the broader question arising in the present case is whether the statutory conditions for proceeding against the petitioners as unauthorized occupants were satisfied. Such determination necessarily required consideration of the nature of the land, the origin of the petitioners' possession and the law governing the rights claimed by the parties. In this regard, it is pertinent to notice that the petitioners have specifically pleaded in paragraph 4 of the writ petition that the land measuring 4 kanals and 1 marla, comprising Khasra No. 218, is recorded as *Shamilat-e-Deh*. The said classification also finds mention in the report submitted by the Tehsildar, Bandipora.

54) It is further the case of the petitioners that the adjoining

proprietary land comprising Khasra No. 219 had been purchased by their predecessor-in-interest from the predecessor-in-interest of the private respondents. The factum of sale of the adjoining land has not been specifically disputed by the private respondents.

55) The aforesaid circumstance assumes significance in examining the nature and origin of the petitioners' possession. The petitioners contend that, upon purchase of the proprietary land comprising Khasra No. 219, their predecessor-in-interest also came into possession of the adjoining land comprising Khasra No. 218, which was recorded as *Shamilat-e-Deh*. According to them, such possession was delivered with the knowledge and consent of the erstwhile proprietors and was thereafter reflected in the revenue record.

56) It is, however, necessary to observe that the mere purchase of proprietary land does not automatically establish acquisition of proprietary or possessory rights over adjoining *Shamilat-e-Deh* land. The existence and extent of any such right would depend upon the relevant revenue record, the terms of the transaction and the law governing the land in question. Nevertheless, the undisputed sale of Khasra No. 219, coupled with the longstanding entry of cultivating possession over Khasra No. 218, constituted relevant circumstances which ought to have been examined by the competent authority before recording a finding of unauthorized occupation.

57) This aspect assumes further importance when viewed in the light

of the fact that the possession of the petitioners' predecessor-in-interest was recorded as far back as Rabi 1976. The subsequent migration of the persons claiming ownership of the land could not, by itself, conclusively determine the legal character of possession which had commenced prior thereto. Whether such possession was permissive at its inception, whether any permission was subsequently withdrawn, whether the petitioners continued in occupation without authority of law, and whether such occupation attracted the provisions of the Act of 1997 were questions requiring independent consideration. A declaration that a person is an unauthorized occupant, followed by an order directing eviction, undoubtedly entails serious civil consequences. Such a determination must, therefore, rest upon an enquiry conducted in accordance with law, consideration of the relevant material and a reasoned finding that the statutory requirements for exercise of jurisdiction stand satisfied.

58) Viewed thus, this Court is of the considered opinion that the authorities below have failed to examine the controversy in its proper legal perspective. The mere circumstance that the petitioners did not possess a formal document of title, or that the creation of a tenancy after the enforcement of the Agrarian Reforms Act was disputed, could not, without further examination, furnish a complete basis for declaring them unauthorized occupants under the Act of 1997. The competent authority was required to determine the nature and legal status of the possession claimed by the petitioners and thereafter consider

whether the provisions of the Act were attracted to the facts so established. The failure to undertake such an exercise has materially affected the legality of the order passed by the Deputy Commissioner.

59) It was next contended on behalf of the private respondents that the revenue entry dating back to Rabi 1976 had subsequently been cancelled pursuant to the order passed by the Deputy Commissioner, Bandipora, and that the land had thereafter been recorded in their favour. The petitioners, on the other hand, maintain that the alteration of the revenue entries was effected pursuant to the very proceedings which were subjected to appellate challenge and thereafter brought under scrutiny before this Court. It is true that an appeal is ordinarily regarded as a continuation of the original proceedings. However, the mere filing or pendency of an appeal does not, in the absence of a statutory provision or an order of stay, automatically suspend the operation of the order appealed against. Nevertheless, where the foundational order is itself under challenge, any consequential alteration of the revenue record would necessarily remain subject to the ultimate outcome of the proceedings and the legality of the order on which such alteration is founded. The subsequent cancellation of the earlier entries could not, therefore, be treated as independently conclusive of the petitioners' status or relied upon to dispense with an examination of the nature and origin of their possession.

60) The Deputy Commissioner, Bandipora, appears to have

proceeded on the premise that the petitioners' inability to establish a lawful tenancy or proprietary right was sufficient to bring their occupation within the definition of unauthorized occupation under the Act of 1997. Such an approach overlooks the material circumstance that the possession relied upon by the petitioners was recorded long before the commencement of the Act and, according to them, originated in connection with the purchase of the adjoining proprietary holding. Whether possession was initially delivered with consent, whether it subsequently became unauthorized, and whether the statutory provisions governing migrant immovable property could be invoked in the circumstances were matters which required specific consideration. The competent authority was, therefore, not justified in recording a finding of unauthorized occupation without first addressing these material questions. This conclusion does not amount to a declaration that the petitioners possess lawful title or an indefeasible right to remain in occupation. It merely recognizes that the statutory power of eviction could not have been exercised without proper determination of the foundational facts necessary to attract the jurisdiction conferred by the Act.

61) The order passed by the Appellate Authority is equally unsustainable. The Financial Commissioner (Revenue), instead of examining the grounds urged against the order of the Deputy Commissioner, dismissed the appeal on the premise that the petitioners had failed to surrender actual physical possession of

the disputed property in terms of proviso (b) to Section 7 of the Act of 1997. The Appellate Authority failed to appreciate the interpretation placed upon the said provision by the Division Bench of this Court, according to which the statutory requirement relating to surrender of possession is not to be construed as invariably requiring actual physical dispossession before an appeal can be entertained, and may be satisfied by constructive or symbolic possession in the circumstances contemplated by the judgment. The purpose of providing an appellate remedy would be substantially impaired if a person challenging the very jurisdiction of the competent authority were required to suffer actual dispossession before the legality of the order could be examined, notwithstanding the binding interpretation of the provision. The Appellate Authority was, therefore, required to consider the maintainability of the appeal in the light of the law laid down by the Division Bench and thereafter adjudicate the controversy on its merits. Its failure to do so renders the appellate order legally unsustainable.

62) For the reasons recorded hereinabove, this Court is satisfied that the orders passed by the Deputy Commissioner, Bandipora, and the Financial Commissioner (Revenue) suffer from material errors of law. The Deputy Commissioner failed to undertake the necessary enquiry into the origin, nature and legal status of the petitioners' possession before invoking the provisions of the Act of 1997, while the Appellate Authority declined to examine the matter on merits by adopting an interpretation of Section 7

inconsistent with the law stated to have been laid down by the Division Bench of this Court. The fact that the petitioners' predecessor-in-interest was recorded in possession since Rabi 1976 was a material circumstance requiring consideration. Equally, the claim of the private respondents regarding ownership and unauthorized occupation could not have been rejected merely because the petitioners' possession predated the enactment. The competing claims were required to be examined in accordance with the statutory framework and the law otherwise applicable to the land in question.

63) In view of the foregoing discussion, the writ petition is ***allowed***. The order dated 28.01.2020 passed by the Deputy Commissioner, Bandipora, declaring the petitioners unauthorized occupants of the land comprising Khasra No. 218, and the appellate order dated 06.12.2021 passed by the Financial Commissioner (Revenue), are hereby ***quashed***.

64) The matter is remanded to the Deputy Commissioner, Bandipora, for fresh consideration in accordance with law. The competent authority shall conduct an independent enquiry, after affording reasonable opportunity of hearing to all concerned parties, and shall examine the relevant revenue record, the nature and classification of the land, the origin and continuity of the petitioners' possession, the effect of the transaction relating to the adjoining land comprising Khasra No. 219, and the applicability of the provisions of the Act of 1997 to the facts so established.

65) The competent authority shall record specific findings on the

aforesaid aspects and pass a fresh, reasoned order strictly in accordance with law. It is made clear that this Court has not expressed any final opinion regarding the proprietary rights of either party or the ultimate legality of the petitioners' possession. All such questions shall remain open for determination by the competent forum in accordance with the applicable law. Any consequential revenue entries made solely on the strength of the orders hereby quashed shall be subject to appropriate reconsideration and correction in accordance with law.

66) The writ petition shall stand ***disposed of*** in the above terms, along with all connected applications, if any.

(SANJAY PARIHAR)
JUDGE

SRINAGAR
06.10.2026
Shabroz

Whether the order is speaking: **Yes/No**

Whether the order is reportable: **Yes/No**