

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

Reserved on: 24.08.2023
Pronounced on 01.09.2023

OWP No1938/2015
c/w
OWP No.1086/2016

BILLO KASANA & OTHERS

...PETITIONER(S)

Through: - Mr. Lone Altaf, Advocate, with
Mr. Wani Parvaiz, Advocate.

Vs.

STATE OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Ilyas Laway, GA-for official respondents.
Mr. S. H. Thakur, Advocate, with
Mr. Farhat Sohrawardy, Advocate, for private
respondents.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common judgment, two writ petitions, one bearing OWP No.1938/2015 and another bearing OWP No.1086/2016 are proposed to be disposed of.

2) Vide OWP No.1938/2015, the petitioners have challenged the order passed by respondent No.3-District Magistrate, Shopian, whereby, while exercising powers under Section 5 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"), the District Magistrate has directed the Naib Tehsildar,

Kanjiullar to take possession of the land mentioned in the said order, which includes the land measuring 25 kanals 17 marlas in Khasra No.2914/294 and land measuring 8 kanals in Khasra No.3969/287 situated at Ramnagri Shopian, which is subject matter of the instant writ petitions.

3) It seems that the petitioners filed an appeal against the aforesaid order in terms of Section 7 of the Act of 1997 and the same has been dismissed by the Appellate Authority i.e., Financial Commissioner, Revenue, J&K Srinagar, in terms of order dated 23.06.2016. The same has been challenged by the petitioners by virtue of OWP No.1086/2016.

4) According to the petitioners, the land in question is not a migrant property as the same was under the cultivation/tenancy of ancestors of the petitioners even before Kharief 1971 and that presently the said land is under the cultivation of the petitioners. It has been contended that this fact is supported by the revenue entries and even in the impugned order, it is indicated that the petitioners are in possession of the land in question as tenants. It has been contended that the impugned order passed by the District Magistrate is without jurisdiction, inasmuch as the said Authority has ignored the entries in the revenue record. It has been further contended that the District Magistrate has not conducted any enquiry to ascertain as to whether the possession of the petitioners over the land in question can be termed as unauthorized nor the said Authority made any enquiry as to whether the private

respondents are migrants as according to the petitioners, the private respondents had left the Valley even prior to 1st November, 1989. It has been also contended that the District Magistrate has not heard the petitioners and thereby principles natural justice stand violated.

5) Regarding impugned order dated 23.06.2016 passed by the Financial Commissioner, Revenue, it has been contended that the same has been passed mechanically without appreciating the contentions of the petitioners. It has also been contended that the petitioners have filed a civil suit against the private respondents in which a status quo order has been passed but this aspect of the matter has been ignored by the District Magistrate while passing the impugned order.

6) The private respondents in their reply to the writ petitions have submitted that a detailed enquiry was conducted by the District Magistrate, Shopian before passing the impugned order and there is no illegality in the order passed by the District Magistrate or in the order passed by the Financial Commissioner. It has been further submitted that the notice was duly served upon the petitioners during the process of enquiry, as is evident from order dated 29.08.2014. It has been submitted that a detailed enquiry was conducted, during the course of which a report was called from the Tehsildar, Shopian, who vide his report dated 25.08.2014 has clearly stated that the land in question is recorded in the name of Deena Nath and Shamboo Nath. It has also been submitted that the petitioners have unauthorizedly occupied the land which is subject matter of the instant writ petitions and the District

Magistrate, Shopian, has rightly passed the eviction order against the petitioners which order has been upheld by the Appellate Authority. Regarding suit filed by the petitioners before the Civil Court at Shopian, it has been submitted that the same is not maintainable in view of the provisions of the Act of 1997. The private respondents have asserted that they are migrants and in this regard, they have placed documents on record in support of their contention. They have denied the status of the petitioners as tenants of the land in question. It has been submitted that the land in question was under the personal cultivation of the private respondents prior to their migration.

7) I have heard learned counsel for the parties and perused the record of the case.

8) Before testing the merits of the grounds raised by the petitioners in the instant writ petitions, it would be apt to notice certain provisions contained in the Act of 1997 so as to have an idea as to the scope of power of the District Magistrate while passing the orders under Section 5 of the Act of 1997. Sections 3, 4 and 5 of the Act are relevant to the context and the same are reproduced as under:

3. Restriction on alienation of immovable property. –
Notwithstanding anything to the contrary contained in any other law for the time being in force–

(a) alienation of immovable property of a migrant by act of parties or a decree or order of a court or of a revenue officer except under such conditions as may be prescribed and with previous permission of Revenue and Relief Minister, or such officer as may be authorised by him in this behalf, is forbidden:

Provided that no such permission shall be necessary in case of a mortgage without possession of such immovable property in favour of an institution mentioned in section 4-A of the Jammu and

Kashmir Alienation of Land Act, Samvat 1995 and transfer of the said immovable property in favour of Government of Jammu and Kashmir:

Provided further that the permission to alienate shall be deemed to have been granted, if an application seeking permission for alienation of such property is not decided by the prescribed authority within fifteen days from the date of receipt of such application:

Provided also that the enquiry for the purposes of the grant of permission by the prescribed authority shall be limited to the question of sale being not distress;

(b) any alienation of immovable property on or after the commencement of this Act, in contravention to the provisions thereof, shall be null and void and immovable property so alienated shall, after such enquiry as may be prescribed, vest in its owner; and

(c) no document purporting to alienate such immovable property in contravention of the provisions of this section shall be admitted to registration.

4. Custody of immovable property. – (1) *Within 30 days from the commencement of this Act, the District Magistrate shall take over the possession of immovable property, belonging to Migrants, falling within his territorial jurisdiction and shall, on the expiry of said period of 30 days, be deemed to have the custody of such immovable property.*

(2) The District Magistrate shall take all such steps as may be necessary for preservation and protection of such property:

Provided that possession of such property shall not be handed over to one save with the express consent of the migrant in writing.

5. Eviction of unauthorised occupants. – *If any unauthorised occupant of any migrant property refuses or fails on demand to surrender possession thereof to the competent authority, such authority may use such force as is necessary for taking possession of such property and may for this purpose after giving reasonable warning and facility to any women not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.*

9) Section 3 of the Act of 1997 prohibits alienation of immovable property of a migrant not only by act of parties but also by a decree or order of a Court or a revenue officer without previous permission of Revenue and Relief Minister. It further provides that any alienation of immovable property in contravention of the Act shall be null and void.

10) The Rules framed by the Government in exercise of its powers under Section 14 of the Act of 1997, prescribe the manner in which an application for grant of permission to alienate the property has to be dealt with. These Rules further provide that in case any property is transferred in contravention thereof, the District Magistrate of the area *suo moto* or on the basis of information received or otherwise has to hold an enquiry into the matter himself or through a Revenue Officer not below the rank of Tehsildar and if necessary, he may take possession of the property after evicting the person in possession so as to preserve and protect the same.

11) A perusal of Section 4 of the Act of 1997 would reveal that the District Magistrate becomes *custodia legis* of any property belonging to a migrant and the same cannot be alienated without the permission of Revenue and Relief Minister and any alienation in violation of the same or without such permission is null and void.

12) Section 5 of the Act of 1997 authorizes the competent authority to evict an unauthorized occupant from a migrant property and use such force as may be necessary for taking possession of the property if the unauthorized occupant refuses to surrender the possession.

13) Thus, as per the scheme of the Act of 1997, the District Magistrate, who is the competent authority in terms of Section 4 of the Act, is authorized to take such steps as may be necessary for preservation and protection of such property which includes eviction of an unauthorized occupant. It is in the light of the scheme of the Act of

1997, that the instant case has to be approached so as to test the legality of the impugned orders.

14) In the instant case, the petitioners claim that they are tenants of the land which is subject matter of the writ petitions and the District Magistrate without holding an enquiry into this aspect of the matter has passed the impugned order in breach of principles of natural justice. The petitioners have also placed on record copies of the revenue extracts in order to demonstrate that they are tenants of the land in questions.

15) The impugned order passed by the District Magistrate indicates that the land measuring 50 kanals under Survey Nos.293, 296, 290, 291, 289 and 3970/287 is recorded in the name of the petitioners as tenants before Khariet 1971 but the subject matter of the dispute is not the aforementioned land but the dispute relates to land measuring 25 kanals 17 marlas under Survey No.2914/294 and the land measuring 8 kanals in Survey No.3969/287. Regarding this portion of the land, the impugned order passed by the District Magistrate indicates that the said land is recorded as proprietary land of the private respondents. It is further indicated in the impugned order that the petitioners claim that they have paid rent in respect of the said land to the private respondents but as per the report of the Tehsildar, the possession of the land in question was taken over by the petitioners after the migration of the land owners.

16) The petitioners have placed on record copies of revenue extracts. Even as per these revenue extracts, the land under Khasra No.3969/287 is shown under the ownership of the private respondents and their predecessors-in-interest and in the column of possession, the same is shown as “under self-cultivation of owners”. Similarly, the land in Khasra No.294 is shown as Shamilati Deh in the ownership column and in the column of possession, it is shown to be under the occupation of predecessor-in-interest of private respondents. Therefore, even the documents placed on record by the petitioners along with their writ petitions confirm what has been concluded by the District Magistrate in the impugned order.

17) In the impugned order passed by the District Magistrate, the claim of the petitioners has been duly considered and after analyzing the revenue entries, it has been found that the land in question was under the self-cultivation of the migrants. The claim of the petitioners that they were paying rent to the private respondents/land owners has been found to be false on the basis of the report of the Tehsildar. This shows that the petitioners have been heard by the District Magistrate and their claim as regards the tenancy has been considered by the said Authority before passing the impugned order. In the present writ petition also, the petitioners have raised the plea of tenancy, which stands already considered by the District Magistrate. Thus, it cannot be stated that the impugned order has been passed by the District Magistrate in breach of the principles of natural justice.

18) As already indicated, Section 3 of the Act of 1997 prohibits alienation of immovable property of a migrant not only by act of parties but also by a decree or order of a Court or a revenue officer without previous permission of Revenue and Relief Minister. It also provides that any alienation of immovable property in contravention of the Act shall be null and void. Reliance in this regard is placed upon the ratio laid down by the Division Bench of this Court in the case of **Manzoor Ahmad Mir & anr. vs. UT of J&K & Ors.** (LPA No.16/2021 decided on 17.08.2021).

19) The claim of the petitioners that they are in possession of the land in question as tenants is not supported by any revenue entries and the private respondents deny their status as tenants. The possession of the petitioners over the land in question, in the absence of any document evidencing conferment of title in their favour with the previous permission of Revenue and Relief Minister, is clearly unauthorized in nature and even a decree or order of Civil Court, which is contrary to the provisions contained in Section 3 of the Act of 1997, would not legalize the possession of the petitioners over the land in question.

20) So far as the contention of the petitioners that the private respondents are not migrants is concerned, the same is also without any merit. Private respondent Sanjay Koul has placed on record a copy of the ration card which indicates that he is registered as a migrant and besides this, the impugned order passed by the District Magistrate

indicates that the land owners migrated to Jammu leaving behind the land in question. To this effect, the District Magistrate has relied upon the report of the Tehsildar Shopian communicated vide his office No.639/OQ/Spn dated 25.08.2014. Thus, it cannot be stated that the District Magistrate has not made any enquiry on this aspect of the matter.

21) That takes us to the impugned order passed by the Financial Commissioner, whereby the order passed by the District Magistrate has been upheld. As per Section 7 of the Act, it was obligatory upon the petitioners to surrender the possession of the land in question so that their appeal could have been considered by the Appellate Authority but the petitioners, without complying with this condition, filed the appeal before the Financial Commissioner. The same could not have been entertained and, therefore, the Financial Commissioner has rightly held it to be not maintainable. The impugned order dated 23.06.2016 passed by the Financial Commissioner, therefore, calls for no interference.

22) For the foregoing reasons, I do not find any merit in these writ petitions. The same are, accordingly, dismissed. The interim order, if any, shall stand vacated.

(Sanjay Dhar)
Judge

Srinagar

01.09.2023

"Bhat Altaf, PS"

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