

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

Reserved on: 19.04.2023

Pronounced on: 26.04.2023

CM(M) No.177/2021

CM No.7613/2021

**ZAHOOR AHMAD BHAT**

**...PETITIONER(S)**

*Through: - Mr. M. A. Qayoom, Advocate,  
with Mr. Mian Tufail, Advocate.*

Vs.

**UT OF J&K & OTHERS**

**...RESPONDENT(S)**

*Through: - Mr. Hakim Suhail Ishtiyaaq, Advocate.*

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

**JUDGMENT**

1) The petitioner has challenged order dated 10.11.2021 passed by Collector Agrarian Reforms (Assistant Commissioner, Revenue), Anantnag, whereby revenue entries recorded in respect of land measuring 1 kanal 14 marlas in khasra No.320 situated at Khanabal Anantnag have been set aside and Tehsildar, Anantnag, has been directed to remove the petrol pump installed by the petitioner on spot and a recommendation has been made for cancellation/revocation of the licence in favour of the petitioner's petrol pump.

2) According to the petitioner, he is operating a petroleum outlet under the name and style of M/S United Filling Station over a parcel of land measuring 01 kanal 14 marlas under Survey No.320 situated at

Khanabal, Anantnag. It is case of the petitioner that the aforesaid petroleum outlet was set up in the year 1961 by his father-in-law in partnership with one Gh. Hassan Patigaroo, who was attorney holder of Haji Gh. Mohammad Wani. It has been submitted that the aforementioned Haji Gh. Mohammad Wani was holding possession of the said land as mortgagee. It has been further submitted that on account of family arrangement, the right to operate the petroleum outlet was vested in Shri Mohammad Yaseen Balti, father-in-law of the petitioner and upon reconstitution, the licence came to be transferred in the name of the petitioner.

3) According to the petitioner, respondents No.4 to 8 filed an application under Section 10 of the Agrarian Reforms Act, 1976, seeking restitution of the land in question and the said application was filed against the father of respondents No.9 and 10 who had already died. Later on, respondents No.9 and 10 were impleaded as parties to the said application. It has been submitted that as per report of the Tehsildar produced before respondent No.2, the property in question was transferred in the name of respondents No.4 to 8 vide mutation No.3021 and that a petrol Pump is existing on the land in question.

4) It is grievance of the petitioner that respondent No.2 has proceeded to pass the impugned order without issuing a notice to him and without impleading him as a party/respondent despite availability

of the report of the Tehsildar that the petitioner is running a petrol pump on the land in question.

5) The petitioner has challenged the impugned order on the grounds that the land, which is subject matter of this case, does not fall within the definition of 'land' as given in Section 2(9) of the Agrarian Reforms Act and, as such, respondent No.2 did not have any jurisdiction to proceed under Section 10 of the Agrarian Reforms Act. It has been further submitted that the impugned order has been passed without adherence to the principles of natural justice, inasmuch as neither the petitioner was impleaded as a party to the proceedings nor any notice was issued to him.

6) Respondents No.4 to 8 have resisted the petition by filing a reply thereto, in which it has been submitted that the impugned order is appealable in terms of the provisions contained in J&K Agrarian Reforms Act and without exhausting the remedy of appeal, the petitioners cannot maintain the instant writ petition. It has been submitted that the petitioner has, admittedly, come into possession of the property in question on the basis of an illegal lease deed executed by father of respondents No.9 to 10 while relying upon some mortgage deed executed by one Ghulam Rasool Dar and on this basis, the petitioner cannot claim any right or title to the property in question. It has been submitted that the land in question was mortgaged by ex-landlord for agricultural purposes and the same could not have been

used for any other purpose, much less for running a petrol pump. The private respondents have further submitted that during the proceedings before respondent No.2, the petitioner produced the documents including the licence relating to his business, as such, he cannot feign ignorance about the proceedings.

7) I have heard learned counsel for the parties and perused the record of the case including the rejoinder affidavit filed by the petitioner.

8) At the very outset, the private respondents have raised objection regarding maintainability of the writ petition on the ground that the impugned order is appealable in nature and without exhausting the remedy of appeal, the instant writ petition is not maintainable.

9) It is a settled law that there is no legal or constitutional bar to High Court to exercise its writ jurisdiction even in the presence of an alternative remedy. However, the High Courts, are, as a measure of self-imposed restraint, generally reluctant to entertain a writ petition against an order which is appealable or revisable in nature but to this general principle, there are exceptions where High Courts do exercise their writ jurisdiction even in the presence of an alternative remedy. These exceptions are by now well settled by various judicial pronouncements of the Supreme Court and of this Court. The High Court, in a case where the principles of natural justice have been violated or where the jurisdiction of the authority that has passed the order is under challenge,

would be well within its rights to exercise its writ jurisdiction. In the

instant case, the petitioner has not only raised the issue with regard to jurisdiction of respondent No.2 to adjudicate the matter at hand but he has also pleaded that the principles of natural justice have not been followed by respondent No.2 before passing the impugned order. Thus, the instant writ is maintainable even in the presence of an alternative remedy.

10) If we have a look at the impugned order passed by respondent No.2, admittedly, the petitioner is not a party to the proceedings. In the impugned order, it has been noted by respondent No.2 that during the proceedings of the case, certain observations came to fore and in order to enquiry further into the matter and to dispose of the case as per merits, the Tehsildar, Anantnag, was directed vide order No.ACR/READER/282 dated 06.08.2021, to clarify the observations. In pursuance of this direction, Tehsildar, Anantnag, vide his No.T/A/QQ/21/605 and T/A/QQ/21/914 dated 22.09.2021, submitted his report and in his report, the Tehsildar, *inter alia*, stated that on spot a petrol pump under the name and style of M/S United Filling Station, is existing. It was further noted in the report of the Tehsildar that the rent is being paid by the proprietor of the petrol pump in favour of one Nazir Ahmad Patigaroo. It is also recorded in the impugned order that during the proceedings, owner of the petrol pump has provided documents including copy of licence as well as agreement issued in his favour for running the petrol pump.

11) The question that arises for consideration is as to whether on the basis of the report of the Tehsildar that petrol pump is existing on spot and on account of production of documents including copy of licence and agreement by the petitioner, who is proprietor of the petrol pump, it can be said that the petitioner has been afforded an opportunity of being heard before passing of the impugned order.

12) As already noted, the petitioner, who is, admittedly, in possession of the property in question and running a petrol pump therefrom, was not a party to the proceedings before respondent No.2. There is nothing in the impugned order to show that the petitioner was summoned during the proceedings. There is nothing on record to show that the petitioner has either been provided the copy of the application or the copies of the documents produced by respondents No.4 to 8, which they had filed before respondent No.2. The record does not even suggest that the petitioner has been given a chance to meet the contents of the application or to produce record/documents in controversion of the record/documents produced by respondents No.4 to 8. It was incumbent upon respondent No.2 to implead the petitioner as a party to the proceedings and to provide him copies of all the material on the basis of which he has passed the impugned order so as to afford an opportunity to the petitioner to meet the case of respondents No.4 to 8. Without undertaking such an exercise, respondent No.2 has passed a drastic order affecting the livelihood of the petitioner in an adverse manner, thereby besides directing his eviction from the property in

question a recommendation regarding cancellation of his licence for running the petroleum outlet has also been made. Such a drastic action against the petitioner could not have been made without affording him an opportunity of hearing.

13) Merely because certain documents were summoned from the petitioner does not absolve respondent No.2 from his duty to afford an opportunity of hearing to the petitioner. Adherence to the principles of natural justice is not an empty formality. No person can be deprived of his property or source of livelihood without adhering to the principles of natural justice and without following the procedure prescribed under law. In the instant case, respondent No.2 has, while passing the impugned order, observed the principles of natural justice in breach, which makes the impugned order unsustainable in law.

14) Since the impugned order, as already noted, has been held to be unsustainable in law for the reason that the petitioner has not been afforded an opportunity of hearing by respondent No.2 and the case is required to be remanded to respondent No.2 for a fresh decision after hearing the petitioner, as such, it may not be appropriate for this Court to render its opinion on the question whether the land, which is subject matter of the impugned order, qualifies to be a land defined under Section 2(9) of the J&K Agrarian Reforms Act. Doing so may prejudice the case of the parties. The said question has to be gone into and decided by respondent No.2 at the very outset and if it is found that the

land in question does fall within the definition of 'land' under Section 2(9) of the Agrarian Reforms Act, only then respondent No.2 would proceed further in the matter to decide the case on its merits.

**15)** The petition is, accordingly, allowed and the impugned order 10.11.2021 is set aside. Respondent No.2 is directed to afford an opportunity of hearing to the petitioner which would include right to file pleadings and documents, whereafter a fresh decision shall be arrived at by respondent No.2 in accordance with law and the observations made hereinbefore.

SRINAGAR  
26.04.2023  
"Bhat Altaf, PS"

