

S. No.3
Regular List

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

WP(C) 649/2021

CM (1923/2022),CM(1946/2021), (6382/2021),CM (987/2022)

Reserved on:06.05.2022

Announced on : 10.05.2022

Muzaffar Ahmad Dar

...Petitioner(s)

Through: Mr.Arshad Andrabi,Advocate.

Vs.

Commissioner Secretary and Ors.

...Respondent(s)

Through: Mr.Tariq M.Shah, Advocate for respdt. No.4.
Mr.Usman Gani, GA.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

01. Petitioner in this petition has called in question order dated 08.03.2021 and order dated 06.10.2018 passed by District Magistrate/ Addl. District Commissioner, Shopian. The petitioner has also challenged order dated 06.12.2001 passed by Divisional Commissioner, Kashmir, to the extent of declining the permission for alienation in respect of the land measuring 6 kanals and 17 marlas under survey no.2903/1056 situated at Village Ram Nagri, Tehsil Shopian.

02. So far as challenge of the petitioner to the order of Divisional commissioner, Kashmir, dated 06.12.2001 is concerned, same is rejected for the reason that the Divisional Commissioner is not arrayed as party respondent in this petition and also that there is a huge delay and laches in calling in question the order dated 06.12. 2001. The petitioner has not explained the huge delay of 20 years in approaching this court to challenge the aforesaid order of Divisional Commissioner, Kashmir. Otherwise also, the

petitioner lacks locus to question the order which has been passed by the Divisional Commissioner at the request of Migrant namely Sh.Arjun Nath Koul and others.

03. In so far as the challenge to the order dated 06.10.2018 passed by District Magistrate, Shopian, is concerned, the same is also rejected. As per own admission of the petitioner, the order dated 06.10.2018 is already subject matter of the challenge in appeal before the Financial Commissioner. This Court is at loss to understand as to how the petitioner could dare to challenge the same order before this court. No body is permitted under law to pursue two remedies simultaneously. The writ petition of the petitioner, in so far as it throws challenge to the order dated 06.10.2018, is grossly misconceived and deserves to be dismissed.

04. This brings me to the challenge of the petitioner to the order dated 08.03.2021 passed by District Magistrate, Shopian, whereby, the District Magistrate has directed Tehsildar Shopian to release the auctioned amount of the apple fruits in favour of the attorney of the migrant i.e respondent no.4 herein. In this regard, it may be pointed out that the subject land measuring 12 kanals and 13 marlas falling under different survey numbers at village Ram Nagri, Shopian, was the subject matter of the proceedings under Section 4 and 5 of the J&K Migrant immovable Property(Preservation, Protection and Restraint on Distress Sales) Act, 1997 [hereinafter for short “ the Act”] before the District Magistrate, Shopian. District Magistrate, Shopian, vide its order dated 06.10.2018, declared the subject property as “Migrant Property” in the custody of District Magistrate and accordingly passed the order under Section 5 of the Act directing Tehsildar Shopian to evict the petitioner from the subject land. The District Magistrate further directed the Tehsildar, Shopian, to pluck the apple fruits from the apple trees standing on the subject land and open a bank account to deposit the sale

costs of the produce. True, it is, this order of District Magistrate, Shopian dated 06.10.2018, is subject matter of challenge before the Financial Commissioner. There is status-quo order with regard to the subject land except measuring 6 kanals and 17 marlas under survey no.2903/1056. it means status of the subject land other than 6 kanals and 17 marlas aforesaid shall be governed by order of District Magistrate, Shopian dated 06.10.2018 and same shall be deemed to be in the custody of District Magistrate, Shopian. The District Magistrate, Shopian, is under obligation to ensure that the Tehsildar concerned plucks apple fruits and other usufructs and deposit the sale proceeds of the same produce in the account maintained by the Tehsildar, Shopian.

05. That since the matter as aforesaid is subjudice before the appellate authority as such it is not competent for the District Magistrate to modify its own order and direct the Tehsildar to release the auctioned amount in favour of the attorney holder of the migrant. But it is equally true that despite there being the order of District Magistrate, Shopian, dated 06.10.2018 still in operation, the petitioner too has appropriated usufructs arising out of the subject land to his benefits.

06. Having ringside appraisal of the facts and circumstances of the case, I am of the view that order of District Magistrate, Shopian, dated 08.03.2021 impugned in this petition deserves to be modified to provide that the subject land shall remain in the possession and custody of the District Magistrate, Shopian, in terms of order dated 06.10.2018 except the land measuring 6 kanal and 17 marla falling under survey no. 2903 /1056 and the usufructs arising out of the subject land would be deposited in the account opened and maintained by Tehsildar, Shopian, in terms of District Magistrate's order dated 08.03.2021. The amount so deposited shall be disbursed to party entitled thereto after the dispute pending before the Financial Commissioner is finally

decided. Neither the petitioner nor the private respondent shall be allowed to enter into and use the subject land in any manner. The Tehsildar, Shopian, shall be under obligation to maintain the subject property and put the same to beneficial use by raising crop or fruits thereon. It is, however, clarified that Tehsildar shopian shall be entitled to utilize the amount for the maintenance and upkeep of the subject property from out of the money deposited in the account realised as cost of the usufructs/fruits etc arising out of the subject property.

07. With the aforesaid modification, the order impugned dated 08.03.2021 is upheld. Rest of the reliefs claimed by the petitioner, are however, declined for the reasons stated above.

Petition disposed of.

(SANJEEV KUMAR)
JUDGE

SRINAGAR
10.05.2022
“Nuzhat,J.R.Secy”