

2) It was pleaded by the petitioners in the suit that they had jointly purchased a piece of land measuring 84 kanals 08 marlas comprising Survey Nos. 898,903,1275/1055, 1275/1056, 1300/909, 1066, 1108/1107, 1205 Khewat No. 150, 151, 154, 155, 226 Khata No. 571, 686, 687, 691, 915 situated at Mouza/Estate Chatterhama, Tehsil Srinagar (North) District Srinagar, from Ashutosh Shanker Koul and Vibhu Shanker Koul through their Attorney Holder, namely, Mohammad Anwar Gundroo, who had entered into an agreement to sell with them and had also acknowledged the receipt of payments from them. During the pendency of the suit, the plaint was amended and Ashutosh Shanker Koul and Vibhu Shanker Koul, through their attorney Mohammad Anwar Gundroo were arrayed as defendants. In the written statement filed by attorney holder on behalf of the defendants, the execution of agreement to sell and receipt of payment/ consideration was admitted by him though the prayer was made for dismissal of the suit but surprisingly it was pleaded by the attorney holder that he being the attorney holder is well within his rights to approach any authority for taking necessary steps to execute formal sale deed or any other deed of conveyance in favour of the petitioners.

3) The petitioners entered into a compromise with the attorney holder and the matter was referred to the National Lok Adalat where the suit was disposed of in terms of the compromise vide award dated 12.12.2020. After the aforesaid suit was disposed of in terms of the compromise by the National Lok Adalat, the petitioners approached the

respondent No.3 for implementation of the award dated 12.12.2020 and for making necessary revenue entries in the revenue record and attestation of mutation in respect of the land mentioned above. The respondent No.3 directed the respondent N.6 to do the needful under rules. When the respondent No.6 did not attest any mutation or make necessary entries with regard to the aforesaid land in favour of the petitioners reflecting them as owners thereof on the basis of the award passed by the National Lok Adalat dated 12.12.2020, the petitioners filed a writ petition bearing WP(C) No.2978/2022 which was disposed of by this Court vide order dated 30.12.2022 by directing the respondent No.6 to consider the claim of the petitioners and pass appropriate orders within a period of two months from the date of order. When despite receipt of the order mentioned above nothing was done, the petitioners filed a contempt petition which was registered as CCP(W) No.146/2023 and vide order dated 26.04.2023, notice was issued to the respondents therein for filing of statement of facts/compliance report strictly in consonance with the Writ Court judgment. The respondent No.5 addressed a communication dated 15.05.2023 to the respondent No.6 requesting him to file the statement of facts/compliance report before the Court. Simultaneously, an appeal bearing LPA No.86/2023 was filed by some persons against the order dated 30.12.2022 passed in WP(C) No.2978/2022 and the said appeal was disposed of vide order dated 22.05.2023 by directing the respondent No.5 therein to hear the applicants also while considering

the claim of the petitioners in terms of the directions issued vide order dated 30.12.2022. Thereafter vide communication dated 26.05.2023, the respondent No.6 intimated the respondent No.5 that before the attestation of mutation, the petitioners are required to get the compromise deed registered from the appropriate authority. The respondents also filed the statement of facts wherein they reiterated the contents of communication dated 26.05.2023. The petitioners also filed an application before the respondent No.6 for revocation of the communication dated 26.05.2023.

4) Being aggrieved of the observations made by the respondent No.6 in terms of his communication dated 26.05.2023 (supra), the petitioners have filed the present petition for quashing the communication dated 26.05.2023 addressed by the respondent No.6 to respondent No.5 and further prayer has also been made for directing the respondents, more particularly respondents No.3 to 7, to mutate the land mentioned above in the name of the petitioners pursuant to the award passed by the National Lok Adalat dated 12.12.2020.

5) The petitioners have impugned the communication dated 26.05.2023 on the ground that Section 17 (1) of the Registration Act is applicable only to such decree or order of a Court where a decree is made on the basis of compromise in respect of immovable property other than that which is the subject matter of suit or proceeding. It is stated that since the land mentioned above formed the subject matter of the suit, no registration under the Registration Act was required. It is

also stated that the Revenue officers/courts are under legal obligation to implement court orders/decrees in terms of Para 103 of Standing Order 23-A of the Land Revenue Act, as such, the respondent No.6 was legally bound to discharge his duties and attest mutation strictly as per the award of the National Lok Adalat dated 12.12.2020, because the award passed by the Lok Adalat is deemed to be decree and is fully executable.

6) The respondents have filed their response stating therein that the writ petition is not maintainable as the disputed questions of facts are involved and further that before mutation is attested in the name of the petitioners, the petitioners need to register the compromise from the appropriate authority. The plea of the petitioners that in terms of Standing Order, mutation is required to be attested, is not tenable as per Section 17(2)(vi) of the Registration Act.

7) During pendency of this writ petition, an application was moved by Aijaz Ahmad Dar S/o Ghulam Mohammad Dar, Javaid Ahmad Dar S/o Gulzar Ahmad Dar and Javaid Ahmad Dar S/o Nabi Dar, residents of Chatterhama Hazratbal Srinagar, for arraying them as respondents/interveners in the writ petition. The said application was objected to by the petitioners. However, this Court vide order dated 29.11.2023 permitted the applicants to intervene in the matter.

8) Mr. M. S. Reshi, learned counsel for the petitioners argued that once the contesting parties before the Civil Court had entered into a

compromise and the suit was disposed of in terms of the award passed by the Lok Adalat, the respondent No.6 was under an obligation to attest mutation in favour of the petitioners and Section 17(2)(vi) of the Registration Act does not provide for registration of the compromise agreement entered into between the contesting parties. He further argued that the respondent No.6, in terms of Para 103 of Standing Order 23-A, was under an obligation to attest mutation in favour of the petitioners pursuant to the award passed by the Lok Adalat. Learned counsel for the petitioners further argued that in terms of Section 21 of the Legal Services Authorities Act, the award of the Lok Adalat is final and binding on all the parties to the dispute. He placed reliance upon the judgments passed by the Hon'ble Supreme Court of India in **Som Dev v. Rati Ram, (2006) 10 SCC 788** and **Mohd. Yusuf v. Rajkumar, (2020) 10 SCC 264**.

9) *Per contra*, Mr. Jahangir Dar, learned GA, submitted that the suit was filed by the petitioners only to avoid payment of stamp duty. He further submitted that an agreement to sell does not confer any right or title over the property in question and in fact the award was obtained on the basis of compromise which in turn was based on agreement to sell, as such, the present writ petition is misconceived and the same deserves to be dismissed.

10) Mr. Shuja-ul-Haq, learned counsel for the interveners, argued that only those decrees are not required to be registered in terms of Section 17 of the Registration Act which do not create any new right or

title in the immovable property but merely recognises/declares the pre-existing right. He further submitted that the award obtained by the petitioners was pursuant to the collusive suit filed by the parties therein to avoid payment of stamp duty, as such, the compromise entered into between the parties was, in fact, a nullity in the eyes of law and could not have formed the basis for passing of the award. He further argued that in the writ petition bearing OWP No. 803/1997 filed by Ashutosh Shanker Koul and Vibhu Shanker Koul through Mohammad Anwar Gundroo, the protection was sought by them under the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997 in respect of the property which is the subject matter of the present writ petition and Award was procured by the deceitful means to bypass the compliance of Act (supra). He has placed reliance upon the judgment of the Hon'ble Supreme Court of India in case titled **Ripudaman Singh vs. Tikka Maheshwar Chand**, (2021) 7 SCC 446 and a judgment of this Court in the case titled **Mushtaq Ahmad Pandit vs. Additional Deputy Commissioner and Ors.** (WP(C) No.1933/2022 decided on 22.09.2022).

11) Heard and perused the record.

12) The petitioners, admittedly, had filed the suit on the basis of an agreement to sell, which as per law does not confer any title or ownership qua the immovable property in favour of a person. On the basis of an agreement to sell, the remedy available to the proposed vendee is to seek the specific performance of contract but in no way a

suit for declaration as owner on the basis of an agreement to sell can be filed. Once no right in the immovable property was vested in the petitioners pursuant to the agreement to sell, the same could not have formed the basis for filing a suit seeking ownership over the suit property. More so, the agreement to sell was entered into between the parties to the suit in the year 2007. At the relevant point of time, the Jammu and Kashmir Transfer of Property Act was in vogue and in terms of Section 138 of the said Act, an unregistered agreement to sell could not have conferred any right, title or interest over the beneficiary-vendee to the agreement to sell. The defendants in the suit, in fact, admitted the claim of the petitioners with regard to agreement to sell and thereafter entered into another agreement styled as 'compromise deed' on 12.12.2020 by authenticating the agreement to sell and further agreeing that the petitioners shall be at liberty to get the property transferred in their own names. In the agreement to sell, the sale consideration has been shown as Rs.1,68,80,000/ in respect of land measuring 84 kanals and 08 marlas. Neither the agreement to sell nor the compromise entered into between the parties was registered, meaning thereby that without paying the stamp duty, both the documents were executed by the parties to the suit. The Hon'ble Supreme Court of India has deprecated the practice of entering into agreements without paying the stamp duty resulting in to loss to the state exchequer. It would be profitable to take note of the judgment of the Hon'ble Apex Court in *Ripudaman Singh v. Tikka Maheshwar*

Chand, (2021) 7 SCC 446 and the relevant paras are extracted as

under:

14. In respect of a question whether the decree requires registration or not, this Court in *Bhoop Singh v. Ram Singh* [*Bhoop Singh v. Ram Singh, (1995) 5 SCC 709*] held that decree or order including compromise decree creating new right, title or interest in praesenti in immovable property of value of Rs 100 or above is compulsory for registration. It was not the case of any pre-existing right but right that has been created by the decree alone. This Court explained both the situation, where a party has pre-existing right and where no such right exists. It was observed as under :

"13. In other words, the court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and included the essential terms of the same; if the document, including a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other, relating to immovable property of the value of Rs 100 and upwards, the document or record or compromise memo shall be compulsorily registered.

16. We have to view the reach of clause (v), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

18. The legal position qua clause (v) can, on the basis of the aforesaid discussion, be summarised as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require

registration. In a converse situation, it would require registration.

13) The whole case of the petitioners is based on the ground that the Award of the National Lok Adalat is in fact a ‘compromise decree’ and as such the provisions of section 17 (1) of the Registration Act are not applicable in the instant case. In *Noida v. Yunus, (2022) 9 SCC 516*, the Hon’ble Supreme Court of India has held that the award passed by the Lok Adalat is not a compromise decree and has observed as under:

62. The award passed by the Lok Adalat in itself without anything more is to be treated by the deeming fiction to be a decree. It is not a case where a compromise is arrived at under Order 23 of the Code of Civil Procedure, 1908, between the parties and the court is expected to look into the compromise and satisfy itself that it is lawful before it assumes efficacy by virtue of Section 21. Without anything more, the award passed by Lok Adalat becomes a decree. The enhancement of the compensation is determined purely on the basis of compromise which is arrived at and not as a result of any decision of a “court” as defined in the Act.

14) So far as the present case is concerned, the petitioners had no pre-existing rights which were settled by them through the medium of the compromise leading to the passing of award by the Lok Adalat. In fact it was only through the medium of agreement to sell and the compromise, that for the first time the rights were sought to be created by the parties in the immovable property in favour of the petitioners.

15) From the perusal of the order dated 31.08.2017 passed by this

Court in OWP No. 803/2007 titled “Ashutosh Koul & Anr. versus State of J&K and others”, it is revealed that both Ashutosh Shanker Koul and Vibhu Shanker Koul had filed writ petition through their attorney Mohammad Anwar Gundroo (the same person who entered in to agreement to sell and the compromise with the petitioners) declaring themselves to be the migrants and sought protection of land measuring 84 kanals and 11 marlas comprising Survey No.1108 and 1107 situated at Village Chatterhama, Srinagar. The said writ petition was disposed of by the Writ Court vide order dated 31.10.2017 with the directions to the official respondents to protect and preserve the property of the petitioners therein under the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997. Ashutosh Shanker Koul and Vibhu Shanker Koul had pleaded that the property was migrant property and, as such, was covered under the Act (supra). The attorney holder concealed this fact not only before the learned trial court i.e. 1st Additional District Judge, Srinagar, but also before Lok Adalat. Had that fact been brought to the notice of the trial court as well as the Lok Adalat, then the award would never have been passed. In terms of section 20 (4) of the Legal Services Authority Act, Every Lok Adalat while determining any reference before it under this Act, shall be guided by the principles of justice, equity, fair play and other legal principles. In this context, this Court deems it proper to extract Section 3 of the Jammu and Kashmir Migrant Immovable Property

(Preservation, Protection and Restraint on Distress Sales) Act, 1997

Act, which reads 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.

16) In terms of Section 3 of the Act (supra), the alienation of immovable property of migrant is not at all permissible without following the mandate of the Act (supra). Once the alienation of immovable property of migrant without the act of parties or by decree of court without following the provisions of the Act (supra) is

forbidden, the provisions of the Act(supra) cannot be circumvented by getting an award passed by the Lok Adalat, which is only a deemed decree. When the learned counsel for the petitioners was confronted with this situation, he submitted that the writ petition was wrongly filed as in the Power of Attorney itself it was mentioned by the Principals that they were not the migrants and he further submitted that the petitioners are ready and willing to follow the mandate of the Act (supra) if the same is applicable. He also submitted that the petitioners are ready to get the agreement/compromise registered and pay the stamp duty in accordance with law as well.

17) Mr. Shuja-ul-Haq, learned counsel for the interveners drew the attention of this Court to the reply filed by Tehsildar, North, Srinagar, in WP(C) No.367/2022, wherein it has been stated that the land falling under Survey No.1108/1107 is a proprietary land as per Record of Rights but the boundaries of Survey No.1108/1107 does not exist on Aks Latha, therefore, the actual possession cannot be ascertained though few persons of that area believe that a spot which today lies in Survey No.1097 used to be in the possession of Ashutosh Koul.

18) So far as contention of Mr. Shuja-ul-Haq, learned counsel for the interveners, in respect of the actual possession on spot is concerned, the Hon'ble Division Bench of this Court has already issued the directions to the respondent No.5.

19) The petitioners in the present petition have sought a Writ of

Certiorari for quashing communication dated 26.05.2023 addressed by respondent No.6 to respondent No.5 wherein it has been provided that the compromise is required to be registered under the Registration Act. Since the learned counsel for the petitioners has submitted that the petitioners have agreed to get the agreement/compromise registered and pay the stamp duty and further to follow the mandate of Section 3 of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997, if the same is applicable, as such this writ petition is disposed of with direction to the District Magistrate, Srinagar, to enquire and examine as to whether the property which is the subject matter of this writ petition is covered under the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997, and if the same is covered under the said Act, then the petitioners shall follow the mandate of Section 3 of the Act (supra). Copy of this order be sent to District Magistrate, Srinagar for compliance.

20) Disposed of as above.

(Rajnish Oswal)
Judge

SRINAGAR
02.04.2024
“Bhat Altaf-Secy”

Whether the order is reportable: **YES/NO**