

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

Present: Dr. Pawan Kotwal, IAS

File No.
56/Appeal
2014

Date of Institution
15-10-2014

Date of Decision.
17-12-2016

1. Aradhana Andotra, aged 57 years
W/o late Dharuv Singh R/o Village Jarai, Tehsil & District Kathua.
2. Sudhakar Singh, aged 34 years
3. Diwakar Singh aged 32 years
All S/o Late Dharuv Singh R/o Village Jarai, Tehsil & District Kathua.
4. Bhuvneshwari Jamwal Aged 30 years D/o Late Dharuv Singh R/o VPO Raipur,
Tehsil & District Jammu.

(Appellants)

V/S

1. Deputy Commissioner, Kathua.
2. Tehsildar, Kathua.
3. Jia Lal S/o Basilu Ram R/o W.No.8 Kathua Town

(Respondents)

In the Matter of: Appeal against ex-parte order No. DCK/SQ/2014-14/707 dated 03-09-2014 issued by respondent No. 1 as also other consequential proceedings undertaken by respondent No. 2 herein whereby while completely bye-passing and over ruling the mandate of Judgment dated 24-06-2013 passed by this Hon'ble Court in the earlier round of litigation, respondents have not carried out demarcation on spot afresh and rather have declared the construction raised by the appellants on the said land as illegal and has further ordered respondent No.2 to demolish the same, being without having any Jurisdiction in law and also while totally misconceiving and misconstruing the allotted and proprietary land of the appellant as Nazool land without consulting the revenant revenue record and without affording and reasonable opportunity of being heard to the appellants. Prayer for setting aside the same.

Appearing Counsel: - Advocate Vikas Magotra for petitioners.
Respondent No. 3 in person.

ORDER

The facts of the case are that an appeal was filed by the appellant herein before this court against the alleged ex-parte order dated 08-12-2011 passed by District Magistrate, Kathua whereby the Construction raised by appellant has been held as illegal on Nazool Land & EO Municipal Committee Kathua is directed to remove the illegal structure. The said appeal was subsequently transferred to Additional Commissioner, Jammu (With powers of Divisional Commissioner) for disposal under law which was decided on 24-06-2013. The operative part of which is as under:-

"Therefore, in view of the reasons mentioned above, the present appeal is allowed to the extent that the court below shall carry out re-demarcation of the land in dispute to draw a factual position and thereafter the law shall take its own course."

1. The present appeal has been filed against the order No. DCK/ SQ/ 2014-15/707 dated 03-09-2014 of Deputy Commissioner Kathua wherein direction to dismantle illegal structure has been passed to Tehsildar Kathua.
2. The grounds taken are :
 - a. That the said order dated 24-06-2013 was duly brought to the notice of the respondents by the appellants herein, especially respondent No. 1 who though initially directed respondent No.2 to implement the court order dated 24-06-2013 in letter & spirit within the time frame, where after the appellants had been pursuing the matter before respondent No.2 It is stated that thereafter, the authorities seem to have taken a u-turn in the matter and act in clear defiance to the dated 24-06-2013 by issuing the impugned order dated 03-09-2014, & another consequential proceedings, which besides being illegal, arbitrary, unlawful & unsustainable in law & required to be set aside.
 - b. That as such, respondent No.1 while acting in sheer arbitrary manner has issued ex-parte order No. DCK/SQ/2014-15/707 dated 03-09-2014, by virtue of which, respondent No. 1 despite there being a categorical direction for demarcation of the land under reference by this Hon'ble Court has over ruled the same and has directed for dismantling of the structure raised by the appellants on spot on totally unsustainable & flimsy grounds.
 - c. However, despite above being the position, the respondent No. 2 has not carried out any demarcation on spot and on the contrary has been issuing dismantling notices to the appellant No. 1.
 - d. That it is stated that the impugned act of the respondents is per se illegal and bad in law, as the same is against the existing factual position on spot as also the law governing the field. It is stated that the above named predecessor in interest of the appellants herein never encroached upon the Nazool Land and has raised construction over the land owned by him. Therefore the impugned order is required to be set aside and denovo demarcation / inquiry in to the dispute is required to be carried out as has already been directed by this Hon'ble Court in the earlier round of litigation.
 - a) That the impugned order dated 03-09-2014 issued by respondent No. 1 on the face of it is a legally unsustainable order and the same has been issued by respondent No. 1 without providing any opportunity of being heard to appellants herein and also in complete derogation & disregard to mandate of order & judgment dated 24-06-2013 passed by this Hon'ble Court directing the respondents herein to carry out re-demarcation after giving due opportunity of being heard to the appellants herein. It is stated that the above named predecessor in interest of the appellants herein is neither been provided with the copy of the complaint nor had he been associated with the enquiry conducted by the committee and even the report of the enquiry was also not given to him.
 - b) That the impugned order / report are non-speaking in nature and have been issued in a slip shod and hot haste manner by respondent No. 1. It is stated that the impugned order did not makes mention of the description of the land which has been declared by said respondent No. 1 as Nazool land and ordering for demolition of the construction raised over it. And also land measuring 1 Kanal 4 Marlas comprised in Khasra No. 189, both situated at Ward No. 10 Tarraf Manjali, Kathua being the absolute proprietary land of the above named predecessor in interest of the appellants herein.
3. During pendency of appeal one Jia Lal S/o Basilu Ram filed application for impleadment as respondent & after hearing both the parties. Jia Lal was arrayed as respondent No.3.
4. The case came up for hearing. Petitioner along with counsel present Respondent present in person. Counsel for petitioner reiterated the grounds taken in the memo of appeal and further pleaded that this Hon'ble court passed an order on 24-06-2013 and directed the court below to conduct fresh demarcation of the land in question but the court below without conducting fresh demarcation and without hearing petitioner passed order and thus violated the order of this superior court. He prayed to set aside the order impugned.

5. The respondent submitted that Deputy Commissioner has passed order under law & prayed to upheld the order.
6. It is to be noted that during course of arguments the issue with regard to 3 frontage in the shop of respondent No.3 was also raised by counsel of appellants. It has not been understood that how a person can have frontage on 3 sides of a shop and claim right of way on all sides. This issue requires to be inquired and addressed.
7. I have heard the arguments of both the parties & record examined. The contentions of the petitioner is that the order passed by Deputy Commissioner Kathua for demolition is in contravention of the order of Addl. Commissioner (With powers of Divisional Commissioner Jammu) dated 24-06-2013 wherein direction has been passed for fresh demarcation of the disputed land in presence of the all interested parties including Jia Lal who has been impleaded as respondent before this court.
8. It is to be mentioned that from the record file it has been found that Deputy Commissioner Kathua despite having knowledge of order of Addl. Commissioner Jammu has not adhered to the direction of conducting fresh demarcation and has remarked that there is no need of fresh demarcation & subsequently he passed order for demolition which is in clear violation of this court order and is liable to be set aside. Thus plea of the appellant that court below has passed order in violation of this court order dated 24-06-2013 has legal force and deserves to be considered.
9. In view of the above reasons the instant appeal having legal grounds is allowed and the order of the court below is set aside with a direction that fresh demarcation of the land in question be conducted in presence of all the interested parties and thereafter order under law be passed.
10. In addition to demarcation, the matter of having frontage on 3 sides by respondent No.3 in his shop as alleged by appellants be also looked into. One shop can have only front and one back and two sides as per convention and by laws.
11. This process be completed within a period of one month.
12. A copy of this order along with record file be sent to Deputy Commissioner, Kathua for information & further necessary action.

Stay issued if any shall stand vacated. The Case file be consigned to records after due completion.

Parties are directed to appear before Deputy Commissioner, Kathua on 30-01-2017.



(Dr. Pawan Kotwal) IAS,
Divisional Commissioner,
Jammu.

Announced
17-12-2016.

Copy of order dated 17-12-2016 containing 03 leaves alongwith record file containing 29 leaves in the case - titled Asadhana Andotra & ors vs Deputy Commissioner Kathua / Jia Lal is forwarded to the Deputy Commissioner Kathua for favour of information & further necessary action.

no: 201/1078

21.10.17/2017

Readers to
Divisional Commissioner
JAMMU