

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU
Present Dr. Pawan Kotwal, IAS.

File No. 36/Revision
2012-13

Date of Institution
13-9-2012

Date of Decision.
01-4-2017

Bala Ram (Deceased) S/O Arjun Dass, caste Ramdasia, D.P of 1947 R/O Qasba
Through LR. OM Parkash
Bala Tehsil Nowshera
Jagdish Chander, Power of Attorney,

Petitioner

Vs.

Balbir Singh S/O Bahadur Singh R/O Chowki Handon, Tehsil Nowshera

Respondent

In the matter of : Revision against the impugned order dated 20.10.2008 passed by Collector Dy. Commissioner, Rajouri, Prayer for setting aside the same.

ORDER

A) The present revision petition has been filed on the following grounds:-

1. That the order under revision is against facts and law and is liable to be set-aside. Copy of the impugned order in enclosed herewith for your kind perusal as annexure P-1
2. That the petitioner is a D.P. of 1947 and belongs to Scheduled caste.
3. That the petitioner is in physical possession of the land in question situate in village Qasba Bala Tehsil Nowshera bearing Khasra No.99/1 15 kanals.
4. That the respondents has no locus standie to file the said appeal before the collector Dy. Commissioner, Rajouri. He is a local while as the petitioner is a D.P. of 1947. Moreover, he is residing at Chowki Handan Tehsil Nowshera and not in Qasaba Bala. He is an imposter and not necessary or proper party.
5. That the Collector, Dy, Commissioner Rajouri has not visualized this aspect that the mutation is the outcome of allotment made by the allotment authority. Until and unless allotment subsist, the question of thrashing out of the mutation does not arise. It is travesty of law that the Collectors Dy. Commissioner Rajouri has passed the premature order when the allotment is subsisting.
6. That the mutation does not confer title. It is mere a fiscal entry for the purpose of land revenue.
7. That any order which decides the rights of the party is a final order and not interlocutory.
8. That beside above other grounds to be discussed at the time of final arguments.
It is, therefore, requested the impugned order passed by the Collector Dy. Commissioner, Rajouri may kindly be set-aside.

B) Initially the case was transferred to Additional Commissioner, Jammu, for disposal who after hearing the parties has sent the case to this court to be disposed of in terms of para 17 of cabinet order 578 C of 1954.

C) During the pendency of the revision petition before this court the petitioner (Bala Ram) died and his legal heir Om Parkash (son) has been brought on record.

D) The counsel for respondent filed reply / Written arguments wherein it is submitted that:-

1. Bala Ram is a unit member of his father Arjan Dass as per (Form-A) issued by the concerned department (PRO, Jammu) who was allotted full scale unit of 48 kanals of land in village Agrati Tehsil Rajouri as per CO of 578-C of 1954 comprising of 5 members over the land khasra No.2, and 51 and as such no further additional land can be allotted to him.
2. Bala Ram/ Arjan Dass disposed 48 kanals of land as mentioned above and shifted to Nowshera where they misrepresented his case occupying the land under the coverage of 578-C of 1954 with the collaboration of Revenue staff. The record never favoured Balla S/O Arjan but he managed by the cooperation of Revenue Staff connected Tehsildar of Nowshera who blindly helped the petitioner to ensure him to make owner of land measuring 15 kanals under Khasra No.99/1 of village Qasba Bala. Bala had no rights to get such right on the said land on reasons as mentioned below.

- i) He has no Form-A on his name even if he is a member of Arjan Dass his father does not qualify for such rights which was above scale besides no allotment and possession over land under khasra NO. 99/1 .
- ii) Tehsildar Nowshera (settlement) had no powers of Assistant Custodian 1st class as required even for recommending such allotment or passing any mutation there upon.
- iii) The land in question being in Municipal area as such no allotment can be favoured to the petitioner.
- iv) Additional land measuring 5 kanals under Khasra No.2179 has been allotted to Bala Dass his father in village Noinal besides 48 kanals in Agrati Tehsil Rajouri besides some other land in Rajwa Nowshera in front of the house of respondent out of which 2 kanals was cancelled from the said Khasra No.
- v) Bala also possesses 19 kanals land making a total 34 kanals of land in his illegal possession in the said area. Now since he is not entitled to allotments under CO 578 - C being a member of Arjan Dass his father's family.

It is prayed that the facts are quite clear and as such setting aside mutation No. 647 of Village Qasba Bala under Kh.No.99/1 may kindly be cancelled.

- E) The case came up for hearing. Counsel for both the parties present. They are heard. In the course of arguments, Id. Counsel for the petitioner reiterated the grounds already taken in the revision petition and also stated that father of the petitioner namely Arjun Dass was a DP of 1947 and was allotted land measuring 48 kanals situated in village Agrat Tehsil and District Rajouri. But against the same, physical possession of 21 kanals and 14 marlas of land only could be given to the family in the said village. And, mutation in this behalf being No. 175 was attested on 29.11.2001 to the extent of 21 kanals and 14 marlas of land only. And after his father's death, he (the petitioner) disposed of the property and settled in Village Qasba Bala, Nowshera, where a piece of State land measuring 15 kanals was also allotted to him and ownership rights over the same under Government Order No. 254/C of 1965 were also conferred on him vide mutation No. 647 of the village.

Ld. Counsel for the petitioner further pleaded that the respondent has no locus standi to challenge the mutation in question because neither he is an aggrieved person nor he is a displaced person of 1947. The land which came to be allotted and possession delivered to the petitioner including 15 kanals of State land of village Qasba Balla comes to 36 kanals and 14 marlas only. His allotment is deficient in land as per scale. However, he has also acquired some land privately (i.e. other than the land allotted to him) which otherwise is exempt to be accounted for in the scale in terms of Para 3-A of Cabinet Order 578-C of 1954.

Ld. Counsel for the respondent, however, pleaded that petitioner's family consisting of five members was allotted full unit of 48 kanals of land comprising Khasra No. 2 and 51 of village Agrat Tehsil Rajouri, as per Government Order 578-C of 1954. The petitioner's family disposed of this land and shifted to Nowshera where the petitioner misrepresented his case and got fresh land allotted in his name again under Government Order 578-C of 1954. But, even form-A does not seem to have been filed by him. Still if he is a member of Arjun Dass's family, his father did not qualify for such rights over and above the allotment already made in his favour to the extent of full allottable unit. Moreover, Tehsildar (Settlement) Nowshera was not enjoying the powers of Assistant Custodian and, as such, he was not competent even for recommending such allotment or passing order on mutation in regard thereto. Thus, over and above 48 kanals, he has been enjoying illegal possession over 34 kanals of land in Nowshera and prayed for setting aside mutation No. 647 of Village Qasba Bala wrongly attested in favour of the petitioner.

- F) I have heard the parties and gone through the law point referred to by the petitioner. In this connection, reference to Para No. 3-A of Cabinet Order No. 578-C of 1954 dated 07.05.1954 is very relevant. It provides that "any land acquired in ownership or occupancy right by inheritance or transfer on and after 11.06.1964 by a displaced person shall not be taken into account in the calculation of the evacuee or Government land found in excess of the unit." This paragraph is reproduced as under:-

"3-A. Excess land not to be taken into account.

Notwithstanding anything contained in rule 3, any land acquired in ownership or occupancy right by inheritance or transfer on and after 11.06.1964 by a displaced person shall not be taken into account in the calculation of the evacuee or Government land found in excess of the unit;

Provided that the provisions of this rule shall also apply to such land acquired in ownership or occupancy right by inheritance or transfer not so far detected and treated as excess over the unit prescribed or the cases which are still subjudice."

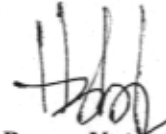
G) Anyhow, perusal of record on the file reveals that, by virtue of mutation No. 175 land measuring 21 kanals and 14 marlas was mutated in favour of Bala Ram (now deceased) son of late Shri Arjun Dass in village Agrat Tehsil and District Rajouri. This land was disposed by Bala Ram and he, thereafter, got settled in Qasba Bala where he got 15 kanals of State land allotted to him for which ownership rights under Govt. Order No. 254/C of 1965 were also granted to him under mutation No. 647. Besides this, as per Khasra Girdawari of Rabi 2006, 5 kanals of State land comprising Khasra No. 2179-min of village Noniala is shown to be held under his possession as "kashtkar" under State. In addition to this, as per Khasra Girdawari 2006, he is also shown to have been in cultivating possession of 8 kanals and 10 of State land as Gair Maroosi under Piara Lal allottee in village Nonial Tehsil Nowshera. Later on, vide mutation No. 1472 attested under Government order 254/C, ownership rights were also conferred in favour of Bala Ram to the extent of 13 kanals and 10 marlas only (i.e. 5 kanals comprising Khasra No. 2179-min and 8 kanals and 10 marlas comprising khasra No. 2180 min of village Nonial). But as per the afore-cited rule this part of the land is not to be accounted for while determining the allotable unit of the allottee. Thus, as per material available on the file late Bala Ram appears to be holding 21 kanals 14 marlas + 15 kanals + 13 kanals 10 marlas of land i.e. 50 kanals and 04 marlas of land in his allotment. It is not clear, how 49 kanals and 1 marlas of land has been shown to have been allotted to him. Actually, land already allotted to the petitioner's family does not seem to exceed the prescribed scale of allotment. But of course with the allotment of 13 kanals and 10 marlas, 02 kanals and 04 marlas exceeds if it is accounted for in the allotable unit of land. However, since this 13 kanals and 10 marlas appears to have not been allotted to him under Cabinet Order 578-C of 1954 and the mutation of the same could not have been attested in his favour under 254/C. This has also been admitted by the counsel for the petitioner. He has pleaded that the petitioner has already applied for benefits under J&K State Lands (Vesting of Ownership to the Occupants) Act and the rules made there under.

H) On the other hand, the respondent has failed to satisfy this court that the petitioner is not entitled to retain land in excess to his entitlement. The respondent also failed to justify his claim and locus standi to challenge the allotment made in favour of a displaced family. He has also not challenged the original allotment made in favour of the petitioner. However, paragraph 3-A of Cabinet Order 578-C of 1954 is relevant with respect to the land acquired personally i.e. the land other than the land in village Qasba Bala for which mutation under Govt. Order 254/C has been attested.

Thus, in nut shell it has been found that the court below has not appreciated this aspect of the case in the totality of circumstances, the Deputy Commissioner has failed to appreciate this aspect of the case while returning his finding in the matter.

In view of the above this court has come to the conclusion that the order passed by court below is not as per law & deserves to be set aside. Hence revision petition having merit is allowed & order dated 20-10-2008 set aside. A copy of this order along with the record file be sent to court below for information.

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



Dr. Pawan Kotwal (IAS)
Divisional Commissioner
Jammu

Announced
01-4-17