

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

File No.
21/Appeal/2008-09

Date of Institution
18-11-2008

Date of Decision.
17-12-2016

Behari Lal
S/o Sardhu Ram
R/o Chak Jaralan, Tehsil Bishnah.

(Appellant)

V/S

Gurā²Ditta S/o Sardhu Ram, R/o Chak Jaralan, Tehsil Bishnah.

(Respondent)

In the Matter of:

Appeal against the order of the director Land Record Jammu dated 28-01-2008 pertaining to Survey Nos. 297/33,311/100, 312/100, 320/146 & 147 of Village Chak Jaralan, Tehsil Bishnah.

Appearing Counsel:- Advocate M L. Bhat for petitioner
Advocate Devender Sharma for respondent

ORDER

The present appeal has been filed against the order of the Director Land Records Jammu dated 28-01-2008 pertaining to Survey Nos 297/33,311/100,312/100,320/146, &147 of Village Chak Jaralan, Tehsil Bishnah

1. The appellant submits as under :-


- a) That the director Land Record vide his order dated 28-01-2008 ordered correction of Girdawari entries in respect of Khasra No. 297/33, 311/100, 312/100, 320/146 & 147 measuring 42 Kanals and 04 Marlas of Village Chak Jaralan, Tehsil Bishnah recorded in favour of the appellant by Naib Tehsildar through Fard Badar dated 09-05-2001 and directed the Tehsildar to restore the possession prevailing before 2001. This order has been passed by the director Land Records on the application of the respondent herein. An attested copy of the impugned order is attached.
- b) That the appellant herein on the advice of his counsel filed a revision petition before the J&K Special Tribunal Jammu on 15-02-2008 as the Director Land Records had written in the impugned order Director Land Records with powers of Commissioner Agrarian Reforms Jammu.
- c) That the J&K Special Tribunal vide his order dated 30-09-2008 held that the impugned order has not been passed under the Agrarian Reforms Act, 1976 but correction ordered under Land Revenue Act. So the Tribunal has no jurisdiction to adjudicate such a case. He therefore advises the appellant herein to challenge the order in the proper forum if so advised. Accordingly the appellant approached a new counsel who advised the appellant to apply a fresh for the attested copy of the impugned order. In the meanwhile the appellant fell ill on 08-10-2008 and remained and confirmed.

2. The present appeal has been Challenged on the following grounds:-

- a) That the order passed by the Director Land Record is without Jurisdiction and as such it is nullity in the eyes of law.
No nest order need not be challenged but should be completely ignored as held by the Superior Courts.
- b) That Class of Revenue Officers is enumerated under section 6 of the Land Revenue Act. Director Land Records is not a Revenue Officer under the said Section. So his adjudication on the application presented before him is without Jurisdiction.
- c) That the correction of Girdawari entries does not pertain to Kharif 1971 but was made by the Naib Tehsildar under normal law so Director Land Record as slurring the Jurisdiction as Commissioner Agrarian Reforms Jammu and passing such order is also beyond his competence. Had the correction of Kharif 1971 would have been effected even then the director Land Record with Powers of commissioner Agrarian Reforms was not competent to adjudicate an application for correction of Girdawari entries as under Section 21(1) of Agrarian Reforms Act, 1976, he was competent to hear appeal only against the order passed by the Tehsildar or Naib Tehsildar which is not the case herein.
- d) That the order of the Director Land Record is otherwise also expert and as such violation of Natural Justice has taken place. No order can be passed in absence of the interested party. So on this court also the order is bad in law.
- e) That the parties are brothers and local allottees. The land is in possession of the parties without any interference. In view of the submissions made above and much more which will be submitted at the time of arguments, the impugned order is bad in law which requires to be set aside by accepting the appeal.
3. Counsel for respondent filed written arguments wherein it is submitted that :
- A) That the above noted appeal filed by Behari Lal is time barred as same has been filed after more than 01 years where the Behari Lal filed the revision against the order of Director Land Records dated 28-01-2008 and said revision has been rejected by the Member Tribunal on 30-09-2008, so the present appeal is time barred as Behari Lal and his counsel has chosen wrong forms in filing the revision.
- B) That Behari Lal appellant has to stand on his own legs and there is negligence on the part of Behari Lal and his counsel who did not file the appeal in the right forum. The court has to clear bar of limitation in the first instance only then the court can decide the case on merits after clearing the bar of delay of limitation.
- C) That this Hon'ble Court enjoys the powers of appellate court against the order passed by the Collector and thus if Director Land Records is not holding the powers of Collector than this Hon'ble Court has no jurisdiction to hear the appeal under Section 11 of Land Revenue Act where it is observed in the Section that appeals lies to the Collector when the order is made by the Assistant Collector or either class.
- a. To the Divisional Commissioner, when the order is made by the Collector.
- b. To the Financial Commissioner when the order is made by the Divisional commissioner. So according Section 11 of the Land Revenue Act if collector then this Hon'ble Court has no jurisdiction to hear the appeal and Behari Lal has to go to Hon'ble High Court to challenge the order of Director Land Records in a writ petition.



That Guran Ditta being allottee and brother of Behari Lal was enjoying the peaceful possession of the land mentioned in the order and the Girdawari right from 1947 till 2007 was recorded in the name of Guran Ditta and the Jamabandi was also recorded in the name of Guran Ditta but all of sudden surprisingly without any application and without adopting the procedure of Law the Naib Tehsildar changed the Girdawari by Farad Partal when no Roznamcha Waquiati or Register Farad partal has been written and even no notice to the villagers or Guran Ditta has been issued for making Farad Partal. An ex-parte order has been recorded in Khasra Girdawari with one stork of pen where the Naib Tehsildar was not competent to change the Khasra Girdawari when there is a Govt. orders and Circular issued by the Ld. Financial Commissioner that the Girdawari can only be changed for one crop by entering the mutation of correction of Girdawari in the village where concerned parties are to be called to attend the proceedings. The Naib Tehsildar is not authority to change any Girdawari or confirm any Girdawari. So the order of the Naib Tehsildar was nullity in the eyes of Law on the other hand the Directors Land Records in holding supervisory powers over Jammu State where he is authorized to check the ROR and other revenue record to remove the wrongful act done by any subordinate revenue officer. So being the collector the Director Land Records has gone on spot in presence of the residence of the locality after issuing the notice where the Behari Lal did not come on spot and the Director Land Records Jammu mentioning all the circulars issued by the Govt. and the Financial Commissioner directed the Tehsildar to proceed under Law if there is any need to correction of Girdawari he should hold the camp after calling the necessary parties in presence of residents of the village and proceed under Law. He has not passed any final order against Behari Lal or in favour of Guran Ditta, so the said order is complete order under Law. It is within the jurisdiction of Tehsildar to pass any orders with concerned to correction of Girdawari after spot inspection. Behari Lal he has himself admitted that he was in the Army so he could not cultivate the land. If he is having any grievance with concerned to share of the land he can file an application under SRO 739 before the Tehsildar or the PRO to get the share if any he alleged in the allotment which is the right course to get the partition of the land. The Change of Girdawari is no way to get the possession or to dispossess Guran Ditta who is enjoying the peaceful possession of the land mentioned in the order of the Director Land Records and the Member Tribunal.

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5. In the present case Behari Lal himself admits that the Director Land Record is not a collector and when he says that Director Land Records is not collector then this Hon'ble Court cannot entertain an appeal under Section 11 of the Land Revenue Act. His appeal is required to be rejected being time barred and without jurisdiction on the very face of it and he may be directed to knock the doors of the Hon'ble High Court when Member Special Tribunal has also held that the revision was without jurisdiction. Director Land Records was holding jurisdiction to check the record of revenue agency with concerned to correctness of the revenue record made by the Lower Revenue agency. Thus the order of the Director Land Records is very much competent. If your Honour will see the grounds of appeal they are also false and frivolous to misled the court when the Naib Tehsildar has not having jurisdiction to confirm any Girdawari without hearing the other party or without giving any opportunity of being heard.
 6. It is, therefore, most humbly prayed that appeal filed by the Behari Lal may kindly be rejected as same is without Jurisdiction under Section 11 of Land Revenue Act, when the Director Land Records did not come under the control of under Section 11 of the Land Revenue Act, this Hon'ble Court cannot entertain the appeal. On the other hand if court feels that the Director Land Records is having the powers of collector then his

- order is justified and same may be required to be upheld in both the base the appeal of Behari Lal is required to be rejected. Any other relief court deems fit may also be granted.
7. On the submission of parties that they have argued the matter & Written arguments have already been filed, the case has been fixed for orders. At first instance the delay in filing the present appeal is condoned.
 8. I have gone through the contents of appeal & written arguments of respondent. Order impugned is perused & record examined which reveals that the land in dispute is Evacuee land and the parties are local allottees. The land in dispute has remained in cultivating possession of Guran Ditta since 1971 onwards continuously but Naib Tehsildar concerned changed the Khasra Girdawari in respect of the land in question by way of Fard Badar' on 09-05-2001 in favour of appellant herein.
 9. Further on the application filed by respondent herein before Dir. Land Records, an order was passed on 28-01-2008 by virtue of which the order of Naib Tehsildar had been set aside & Tehsildar Bishnah was directed for holding fresh enquiry in presence of all the interested parties & prominent citizens of locality and for passing a lawful order in the matter.
 10. So far as order of Dir. Land Records is concerned this court has observed that the order under challenge is a well reasoned, justified and a detail order which do not suffer from any infirmity. The order has not affected the rights of any party & more over both the parties have been afforded opportunity to plead their contentions before Tehsildar Bishnah.
 11. Though the appellant has raised question about the Jurisdiction of the Court below but in this regard it may be noted that the order under challenge was very well within his Jurisdiction.

In view of the above this court has come to the conclusion that the grounds taken in the appeal are not tenable and the appellant has not succeeded in making out a case.

Therefore the appeal being devoid of merit is dismissed and the order under challenge is upheld

Stay issued by this court shall stand vacated. The case file be consigned to records after due completion.



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

Announced

17-12-2016

No. 801/1067
Dt. 29-12-2016

2. The present appeal has been Challenged ON THE FOLLOWING GROUNDS.