

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

File No.  
34/Revision  
2014-15

Date of Institution  
21-10-2015

Date of Decision.  
29.4.2017

Bir Singh S/o late Krishan Lal R/o Village Seri, Tehsil Bhadarwah, Distt. Doda, age 60 years.

(Petitioner)

V/S

1. Des Raj, S/o Tara Chand, R/o village Seri, Tehsil Bhaderwah, Distt. Doda.
2. Deputy Commissioner, Doda.
3. Sub-Divisional Magistrate (Collector), Bhaderwah.
4. Tehsildar, Bhaderwah.
5. Naib-Tehsildar, Circle Chinta, Tehsil Bhaderwah, Distt. Doda.

(Contesting Respondents)

6. Mohinder singh S/o late Krishan Lal R/o village Seri, Tehsil Bhaderwah, Distt. Doda.
7. Wazir Chand S/o late Krishan Lal R/o village Seri, Tehsil Bhaderwah, Distt. Doda.

(Pro forma Respondents)

IN THE MATTER OF:-

A Revision Petition for setting aside the order impugned No. RA/15-16/213 dated 11-06-2015 passed by Collector (SDM) Bhadarwah and Notice No. 15/OQ dated 15-10-2015 issued Tehsildar Bhadarwah and order No. 178/RA dated 27-09-2007 and order dated 24-02-2001 passed by Respondent No. 3 in appeal and Order No. 415/OQ dated 20.03.1999 passed by Respondent No. 4 (Tehsildar) in eviction proceedings directing the eviction of the Petitioner and pro forma Respondents No. 6 and 7 from land measuring 7 Marlas comprised in Khasra No. 111 situated in village Niota, Tehsil Bhaderwah, Distt. Doda.

## ORDER

1. The present revision petition has been filed on the following grounds:-
  - a) That Khasra No. 111 Min measuring 7 Marlas situated at village Niota, Tehsil Bhaderwah is under the continuous physical possession of the Petitioner and the pro forma Respondents No. 6 & 7 since 1950. Copies of Khasra Girdowari for the years 1956, 1971 and 2006 are enclosed herewith. Copies of the impugned orders passed by the Collector Bhaderwah and Tehsildar Bhaderwah are also enclosed herewith.
  - b) That the orders of eviction are very harsh and in case these are implemented, the Petitioner and the Respondents No. 6 & 7 who have constructed their shop in this land since 1950 and are earning their livelihood shall be rendered jobless. The shop is constructed in 2 Marlas of land and rest 5 Marlas is under cultivation of the Petitioner and pro forma Respondents No. 6&7.
  - c) That the orders impugned have been passed at the back of the Petitioner and the pro forma Respondents No. 6&7 and they have not been provided an opportunity of being heard in violation of the principles of natural justice.
  - d) That it is further submitted that the land in question is not a thoroughfare. The Respondent No. 1 is pursuing the whole matter to settle his score with the Petitioner. The land in question falls between the motor road and the land possessed by Respondent No. 1. By removing the Petitioner and pro forma Respondents from this land, the Respondent No. 1 wants to connect his land with the road for increasing the commercial value thereof. It is further submitted that only Respondent No. 1 has made a complaint against the Petitioner and the pro forma Respondents 6&7, therefore the eviction proceedings are conducted by the official Respondents in exercise of a colorable jurisdiction as no other resident of the village has made a complaint. No other inhabitant of the village has any objection to the occupation of the land in question by the Petitioner and the pro forma Respondents.
  - e) That the official respondents were under a legal obligation to accept the offer of 7 Marlas of land in exchange of the land in question under the provisions of Section 133, Sub-section-2, Clause-C(2) of Land Revenue Act from the petitioner and the pro forma respondents- 6&7. This opportunity has not been provided by the official respondents to the petitioner and the pro forma respondents. Hence the order impugned are illegal and bad in law.

- f) That the Petitioner is prepared to exchange this land with his proprietary land in the said village but this opportunity has not been afforded to the Petitioner by the official Respondents. The provisions of the Land Revenue Act have not been compiled with.
- g) That the total land comprising Khasra No. 111 is 5 Kanals in revenue record as well as on spot. Whole of the land has been occupied by the residents of the village. A Government School is also built in this Khasra number and is functional. Prior to 1947, this was a bridal path which is now closed due to the construction of Batote-Bhaderwah motor road on a different alignment. This old path is not in use for the last more than 70 years.
- h) That the land from which the Petitioner and pro forma Respondents are directed to be evicted is not required for any public purpose.

2. Counsel for respondent filed objections to the stay application wherein it has been submitted that:

i) That the order of respondent No. 3 dated 11-06-2015 and notice in consequence of the same of respondent No. 4 dated 15-10-2015 are in pursuance to the orders passed by Tehsildar Bhaderwah dated 20.03.1999, SDM Bhaderwah dated 24.02.2001, Sub Judge Bhaderwah dated 31.03.2006 and Learned Joint Financial Commissioner though mention in the order of respondent No. 3, Financial Commissioner Revenue dated 03.04.2014 as such the revision at hand is not tenable and interim order (stay order) dated 31.10.2015 which case is now fixed on 27-11-2015 is not tenable and liable to be vacated.

ii) That petitioners by misstatement of facts have maneuvered the stay order which requires to be vacated. It is needless to mention here that respondent No. 1 filed an application for implementation of the order of Tehsildar Bhaderwah with regard to land bearing Khasra No. 111 (7 marlas) situated at village Niota Tehsil Bhaderwah dated 20.03.1999.

3. The case came up for hearing. Both the parties along with Counsel present. Counsel for petitioner reiterated the grounds taken in memo of petition and in written arguments. He pleaded to set aside the order of the court below submitting that whole of the land has been occupied by the residents of the village. On the other hand Counsel for respondent contended that the land in dispute is state land so the revision petition be dismissed.

4. I have heard the arguments advanced by the parties and record placed on file examined from which it has been found that the dispute between the parties is with

regard to land measuring 7 Marlas comprising Kh. 111 min of village Niote Bhaderwah. The land in question is state Land & recorded as Share-E-Aam".

It is to be mentioned that Tehsildar Bhaderwah vide order dated 20.03.1999 passed in the case titled Des Raj Vs Krishan Lal & Ors. Passed eviction order against father of petitioner herein with regard to construction of shop.

6. It has been observed from the order of Tehsildar dated 20.03.1999 that on the application of respondent herein & on the report of NT Concerned, the eviction order has been passed.

7. From the perusal of copy of Kh Girdawari Rabi 1958, It has been found that grandfather of petitioner has been recorded over 1 Kanal of land out of Kh. No. 111 as Gair Marusi as per the order of Tehsil dated 26-06-1958.

Further, In Kharief 1958 land measuring 1 K -10 Marla Gair Mumkin sadak by way of Nautor has been recorded as follows

1 K	-	Jagan Nath S/o Hashia Megh
3M	-	Chandu S/o Jabu Jogi
7M	-	Nand Lal S/o Parshotom Lal Gair Marusi

8. Admittedly the revenue record shows that the land in dispute is state land GM Sadak but it appears that after construction of Pacca Road, the land remained aside has been taken possession of by the residents of the village.

9. Though the petitioners have approached different forums but it has been found that the case has not been decided on merits but dismissed in default.

10. From the photographs of the said land produced by the petitioners though not taken as evidence shows that by the road side, some other shops also exists there but the case before Tehsildar appears to be filed only against the petitioners herein.

11. The grounds taken by the petitioner that he was neither summoned nor afforded opportunity of being heard holds grounds since there is no mention of the entries recorded in favour of petitioner in Khasra Girdawari of 1958.

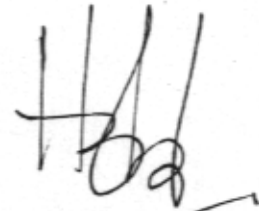
12. This court observes that there may be some other occupants over the said state land but eviction order has been passed only against the father of petitioner by Tehsildar Concerned.

13. In view of what has been discussed above this court is of the opinion that petitioner & pro forma respondents cannot be singled out to be evicted. But the same action requires to be initiated against all those who have illegally occupied state land. Hence the present petition having merit deserves to be allowed.

14. Further the matter warrants enquiry to be conducted by Tehsildar Bhaderwah by visiting spot personally & as per revenue record and to take necessary action under law against all those found in possession of state land. It may be noted that opportunity of being heard be provided to all the parties. Till then the orders of Tehsildar Bhaderwah and Sub Divisional Magistrate Bhaderwah dated 20.03.1999 and 24.02.2001 respectively be kept in abeyance.

15. Accordingly, the case file U/S 15 (3) of LR Act is submitted to Ld. Financial Commissioner (Revenue) J&K, Jammu for final orders.

16. Both the parties shall appear before Ld. Financial Commissioner Revenue J&K at Jammu on 30-05-2017.



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

Announced  
29.4.2017