

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

File No.
05/Revision
2011-12.

Date of Institution
11-05-2012

Date of Decision.
31-12-2016

Gulam Hussain S/o Lala,
R/o Village Chhajla
Tehsil Mendhar

V/S

1. Additional Deputy Commissioner, Poonch
2. Tehsildar Assistant Collector 1st Class,
Mendhar
3. Munir Hussain S/o Babu
R/o Chhajla.

(Petitioner)

(Respondent)

In the Matter of:

Revision against the order dated 15-06-2011 passed by Addl. Deputy Commissioner Poonch and order dated 02-11-2009 passed by the Tehsildar Assistant Collector 1st Class, Mendhar, whereby the petitioner has been ordered to be dispossessed from the land covered under Khasra No. 1229/1 measuring 04 Kanals and 10 Marlas situated in village Chhajla Tehsil Mendhar.

Appearing Counsels:

Advocate Haji Abdul Majid for Petitioner
ARA for State respondents
Respondent No. 3 in person.

ORDER

The present revision petition has been challenged on the following grounds:

1. That the petitioner is a landless person and is in continuous peaceful possession of state land covered under Survey No. 1229/1 measuring 05 Kanals situated in village Chhajla Tehsil Mendha for the last more than 40 years.
2. That the possession of the petitioner was recorded in the revenue records in the year 1990.
3. That the court below has passed the order impugned without providing opportunity of being heard to the petitioner and therefore the order impugned is malafide, illegal, void abinito and requires to be quashed straight away in the interest of justice, equity and fairplay.
4. That in the year Kharif 2007, the officer of Revenue Department have recorded 02 marlas of Gair Mumkin Kassi out of 05 Kanals of land in possession of the petitioner and rest of the land i.e 04 Kanals and 18 Marlas is recorded continuously in possession of the petitioner.
5. That the petitioner has constructed residential house on the said land in dispute in his possession since long before and putting up with his family members.
6. That the petitioner has no land either in ownership or in occupancy tenant except the land in dispute and dispossessing the petitioner from the land in dispute in his peaceful possession for the land more than 40 years is injustice and by dispossessing the petitioner from the said land in dispute, he will be thrown on the road and house less.
7. During pendency of petition one Muneer Hussain S/o Babu filed application through counsel YM Khan for impalement as party respondent. Objections to the application were filed by petitioner. But after hearing both the parties, application was allowed & Muneer Hussain applicant had been arrayed as respondent No. 3. Counsel for petitioner also filed written arguments.

8. The case came up for hearing. Petitioner alongwith counsel present Assistant Revenue Attorney appeared for state. Respondent No.3 present in person. Counsel for petitioner reiterated the grounds taken in the memo of petitioner. Assistant revenue Attorney appearing on behalf of state respondent submitted that the land involved is state Land (Gair Mumkin Kassi) & nobody can be allowed to occupy State land. The order passed by the court below is as per law & be upheld. Respondent No.3 Also pleaded to uphold the order of court below.
9. I have heard the arguments advanced by the parties. Record placed on file is examined. The dispute between the parties is with regard to Kh. No. 1229/1 of village Chhajla Mendhar.
10. It may be noted that land comprising Kh. No. 1229/1 land comprising Kh. No. 1229/1 measuring 16 K 16M is state land and recorded as Gair Mumkin Kassi. The petitioner herein got entry recorded in Kh. Girdawari 1999 over 5 K of land shown as unauthorized occupant.
11. Further respondent No. 3 who was also in possession of state land in the above cited Kh. No. filed application before Tehsildar concerned for eviction.
12. But it is to be noted That Tehsildar concerned after conducting enquiry passed order of eviction of both the parties herein U/S 133 of LR Act.
13. Feeling aggrieved, petitioner herein filed appeal before Additional Deputy Commissioner Poonch who vide order dated 15-06-2011 has upheld the order of eviction passed by Tehsildar Mendhar on the ground that the order of Tehsildar is justified & requires no intervention.
14. Admittedly the land in dispute is State land Gair Mumkin Kassi and the order passed for eviction is under law.
15. Though the petitioner has pleaded the kind of soil as Kap, but does not make any difference since the land in question is state land & nobody can be allowed to occupy it illegally.
16. The court below has also mentioned that the kind of land from Gair Mumkin Kassi to Kaap cannot be changed & this issue needs to be addressed.
17. The court has noted the petitioners allegation that the respondent and his family is too in illegal possession of 86 K- 7 M of EP/ State Land & 143 K 19 M of Kaap state land. The court feels it appropriate to issue direction to the Deputy Commissioner, Poonch to enquire into this allegation and also take necessary action under law in the matter, if the allegation, prove to be true.
18. In view of the above facts, this court has come to the conclusion that the order of the court below is as per law & do not suffer from any infirmity. Hence the petition is without merit & thus dismissed.

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
31-12-2016.