

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

1. File No. 64/ Appeal	Date of Institution 24-12-2014	Date of Decision 18-03-2017
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Kaka Ram S/o SainDass R/o ChanniHimmat, Tehsil & District Jammu. (*Appellant*)

versus

1. Collector, Deputy Commissioner, Jammu.
2. The Director Survey and Land Records, (Ex-Officio Settlement Officer) Jammu.
3. Mohd. Yaqoob S/o Bashir Ahmed R/o ChhanniHimmat, Tehsil Bahu, District Jammu.
4. Controller Weights and Measures Deptt. J&K Government, Jammu.
5. Tehsildar (settlement) Jammu.
6. Tehsildar Bahu, District Jammu. (*Respondents*)

In the matter of:-

Appeal against the impugned order dated 22-11-2014 passed by the respondent No.1 (Collector Deputy Commissioner, Jammu) on file No.23/AM/2009 by virtue of which, the suit filed by the appellant has been dismissed for declaring the entries recorded in the Missal Haqiyat for the year 2006-07 of Village Thanger to the extent of land measuring 21Kanals 10 Marlas falling in Khewat No.112, Khata No.297 bearing Khasra No.256 min. (old), 275 (new), as null and void, contrary to the position prevailing on spot as the defendants No.3 & 4 are not in possession of the suit land. Prayer for setting aside the same.

Appearing Counsel

Advocate : S M Choudhary for appellant (KakaRam)
Advocate : Anuj Dewan Raina for respondent No.3(MohdYaqoob)

2. File No. 16/ Appeal	Date of Institution 23-03-2015	Date of Decision 18-03-2017
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MohdYaqoob through Attorney holder Devinder Gupta S/o Mani Ram R/o 151/A JawaharNagar, TalabTillo, Jammu. (*Appellant*)

Versus

1. The Deputy Commissioner, (Collector) Jammu.
2. Settlement Officer, (now Regional Director, Survey and Land Records), Jammu
3. Tehsildar Settlement, Jammu (*Respondents*)
 1. Controller, Weights & Measures Dept., J&K Govt. Jammu.
 2. Kaka Ram S/o SainDass R/o ChhanniHimmat, Jammu Mohd. Yaqoob. (*Other Respondents*)

In the matter of:-

Appeal against the order / Judgement dated 22-11-2014, passed in File No.23/AM/2009 titled Kaka Ram Versus MohdYaqoob& others passed by the learned Deputy Commissioner, Jammu to the extent, it takes away / dilutes the rights of the appellant.

Appearing Counsel

Advocate : Anuj Dewan Raina for appellant (MohdYaqoob)
Advocate : S M Choudhary for respondent (KakaRam)

ORDER

1. The appellant Kaka Ram has filed the present appeal against the order of Deputy Commissioner Jammu dated 22-11-2014 before this court 24-12-2014 on the following grounds:-

- a) That the order impugned to the extent it affects the possessory rights of appellant over the suit land, has been passed by the court below without application of mind and contrary to the record available on file.
 - b) That the Court below has not appreciated the record placed on the file by the official respondents in a right perspective and has dismissed the suit to the extent of rights of the appellant without appreciating the legal issue/position involved in it.
 - c) That the court below has passed the impugned order to the extent of rights of appellant in violation of standing Order No. 22 and the HidayatBandobast issued by the Government of J&K from time to time.
 - d) That the Learned court below was not competent to set aside the old Girdawries recorded in the name of appellant prior to the year 1960.
 - e) That the Learned court below has misinterpreted the Circular dated 22-12-1997, the Learned court below has to gone through the said circular in its entirety and picked up only two lines from the above said Circular and set aside the Khasra Girdawari of the appellant with a one stroke of pen without appreciating and knowing its legality.
 - f) That the Learned Court below has preferred the Circular on the expressed provisions of Land Revenue Act knowing well that the Circulars or administrative instructions cannot override the provisions of Act.
 - g) That the Learned court below was not competent to set aside the recorded entries of appellant recorded during the settlement operation on spot in the Record of Rights.
 - h) That the court below has rightly set aside the entries of respondents No. 3 and 4 as they were never in possession of suit land as established during enquiry conducted by the revenue staff.
 - i) That the Learned court below without seeking any reply with respect to submission of claims under Roshni Act from its office and appellant, wrongly came to the conclusion that the appellant has not applied for regularization of their possession under Roshni Act. Whereas, fact of the matter is that the appellant herein had applied for conferment of rights under Roshni Act before the Trial Court, which is prescribed authority for the conferment of such rights.
 - j) That the court below has wrongly dismissed the suit of the appellant, and set aside the KhasraGirdawaries / entries of ROR without any jurisdiction and ordered eviction of appellant without any authority. The appellant was entitled to get the relief as prayed for in the suit.
 - k) That the order impugned is illegal, arbitrary, and unconstitutional, against the position prevailing on spot, contrary to the provisions of Land Revenue Act and Rules framed there under, the same is without application of mind and legal acumen of court below and the same is liable to be set aside.
 - l) That since the right were accrued in favour of appellant for attestation of mutations in the year 1958 under the provisions of LB-6/C and S- 432 and further under the provisions of Roshni Act. The Learned Court below has set aside the crucial entries of Khasra Girdawries which if not corrected would deprive the appellant of his statutory rights to property.
2. Another appeal against the same order of Deputy Commissioner Jammu dated 22-11-2014 has been filed before this court by appellant MohdYaqoob on 23-03-2015 and the same was transferred to Additional Commissioner, Jammu for disposal under law.

MohdYaqoob through Attorney Holder has taken the following grounds in the appeal:-

1. Because the order impugned does not indicates rights of the appellant which has been allotted to him in lieu of his land measuring 137 Kanals, as such denying the rights to the appellant herein would

amounts to ousting the appellant from his property which is allotted to him after due deliberations and inquiries at all stages, for this reason alone, the above titled appeal needs to be allowed.

2. Because the learned Deputy Commissioner, Jammu has exercised jurisdiction not vested in it and has granted relief which has neither been sought nor been argued, as such, the order impugned to the extent which has the effect of diluting the rights of the appellant needs to be set aside.
 3. Because the leaned Deputy Commissioner, Jammu has not considered the preliminary objections raised with respect to jurisdiction and the revenue record annexed with the objections indicating the name of the appellant herein and without considering the facts and legal position in this regard, had been proper hearing, had been pleased to pass the impugned judgment dated 22-11-2014, by virtue of which the rights of the appellant has been taken away.
 4. Because the order of allotment having remained unquestioned and remained intact in favour of the appellant could not have been dealt with, more particularly, in absence of any challenge and therefore, the finding and decision of Learned Deputy Commissioner, is not only perverse in law but is untenable and unsustainable. The issue which was not under consideration cold not have been decided against the appellant in view of the subsequent to allotment, the possession in favour of the appellant also reflected in the revenue record w.e.f 2006-2007. The revenue record to that effect is also enclosed hereinabove. In presence of these facts the findings and order impugned passed by the learned Deputy Commissioner does not sustain.
 5. Because the order impugned though has directed for eviction of suit land from all encroachers yet, the appellant has been denied of his share which has been made by the Government after proper verification & in lieu if his 137 Kanals of land allotted to him taken away from him.
 6. Because the learned Deputy Commissioner, Jammu has relied upon Rule-13 of J&K State Land (Vesting of Ownership to the occupants) Rule 2007 and Circular No. FC/25/Misc-1648/97 dated 22-12-1997, which is neither part of pleading nor the same has been ever objected at the time of allotment made in favour of the appellant.
 7. Because the order impugned is liable to be set aside to the extent it dilute the rights of the appellant as the land measuring 07 Kanals has been allotted in favour of the appellant and the rest of 08 Kanal is yet to be allotted out of said land.
3. It is to be mentioned that on the request of both the parties the appeal pending before Additional Commissioner was summoned on the ground that both these appeals have been filed against one and the same Order passed by Deputy Commissioner (Collector), Jammu on 22-11-2014 and the facts of the case are also interconnected. As such, this Order shall govern both the cases. However, copy of the Order shall be placed on each file.
 4. Kaka Ram, however, claimed that whole of this 33 Kanals& 11 Mls. Of State Land had remained in his continuous physical possession right from sixties and the aforesaid entry made in the new Record of Rights was, therefore, incorrect.
 5. The contention of Kaka Ram appellant in 1st case is that whole of this 33 Kanals& 11 Mls. Of State Land had been in his continuous physical possession for more than 60 years and this land being not vacant or lease free in 1973 when Govt. Order No. Rev. (NDJ) 46 of 1973 dated 28-01-1973 transferring vacant and lease free State / Nazool lands situated in and around Jammu City to the JDA was issued, this land could not be deemed to have been transferred to the JDA. Although land measuring 15 Kanals from out of the aforesaid land was still allotted to MohdYaqoob in August, 2006 and 6 Kanals and 10 Mlstransferred to the Weights and Measures Department in Jun, 1999, yet possession of the land has continued to remain with the appellant. And in this view of the matter, whole of this land was required to be entered in his name even in the new Record of Rights and that entry of 15 Kanals and 6 Kanals 10 Marlas in the R.O.R was incorrect and wrong owing to the fact that these allottees were never put in possession of the land.
 6. He accordingly filed a Suit under Section 32 of the Land Revenue Act before Deputy Commissioner (Collector), Jammu on 08-06-2009 seeking deletion of entry made in the name of MohdYaqoob, and Weights

and Measures Department and also for maintaining his continuous possession over whole of this land. He further said that despite the land having been shown to have allotted to MohdYaqoob and Weights and

Measures Department notionally, physical possession of land continued to remain with him. But his Suit could not find favour and was rejected by the Deputy Commissioner on 22-11-2014. Rather the following entry in place of earlier recorded entry was directed to be made in the Record of Rights:-

Khewat No.	Khata No.	Ownership Col.	Kasht Col.	Khasra No. Old	Khasra No. New	Area
112	297	Sarkar	Maqbooza Sarkar	256 (old) new Kh. No.375min	375	33 Knl. 11 ML.

7. Instructions were also issued under the same order to Tehsildar, Bahu to get the Suit land cleared from all encroachers of State Land and also erect hoardings of State Land on the Suit Land. It is this Order against which both these appeals have been filed.
8. On the other hand, plea of MohdYaqoob, appellant in case No.2 is that this 15 Kanals of state land was allotted to him by the Govt. after thorough enquiry, in lieu of 137 Kanals of his land situated in village Raihan Tehsil Samba, which had been in the occupation of DPs of 1947 from POK, and as such entry made in his name in the new R.O.R of Village Thanger was clear and correct and warranted no interference.
9. Similar plea has been put forth by the Weights and Measures Department whom 6 Kanals and 10 Marlas of land has been allotted by the Govt. from out of the aforesaid State land.
10. I have heard the arguments of learned counsel for the parties and have also gone through the Record including written arguments filed on behalf of the parties. From the perusal of Missal Haqiat of 2006-07 of village Thanger it has been found that State Land measuring 15 Kanals forming part of Old Khasra No. 256 (old) now brought under new Kh. No. 375 during the current Settlement of Village Thanger has been recorded in favor of MohdYaqoobin exchange in lieu of of his 137 Kanals land falling in village Raihan Tehsil Samba. Similarly land measuring 6 Kl. & 10 Mls. from out of same Kh. No. 256 (old) now new Kh. No.375 (old) is shown to have been recorded in favour of the Weights and Measures Deptt. J&K Govt. under order 109 of 1999 dated 04-06-1999 & that Land measuring 12Kl 1M has been recorded in favour of Kaka S/o SainDassMegh as (QabizNajaiz) illegal occupant. It may be noted that the land in question is state land over which the private parties are making claim on the basis of entries recorded in revenue record & allotments made in their favour.
11. It may be noted that the Vice Chairman, Jammu Development Authority (JDA) in his communication No. JDA/litg/05/2007/81 dated 01-06-2011 to Deputy Commissioner Jammu in this case has informed that land measuring 101 Kls& 18 Marals out of Kh. No.256 (old) now new Kh. No.375 has been transferred to JDA in the year 1972-73 and has further submitted that the land is vacant at site & in the physical possession of JDA.
12. Further merely relying on the entries recorded in Khasra Girdawri no right can be claimed, as entry in Khasra Girdawri is not a conclusive evidence of possession.
13. It has been observed that the court below after due observation, considering every aspect of the case & taking into consideration the revenue record & spot position has passed a detailed order which is under law & needs no interference.
14. Hence in view of the above facts & circumstances both the appeals being devoid of merit are dismissed & order of the court below is upheld.
15. However with regard to claim of MohdYaqoob in the said Kh. No. it has been observed & found from record that MohdYaqoob S/o Bashir Ahmed R/O Ralhan Samba has been allotted of 7 Kls of land in survey no. 256 (old) now new Kh. No.375 of village Thanger by the Housing & Urban Development Department vide Govt. Order No.221-HUD of 2006 dated 29-08-2006 in lieu of his land measuring 137 Kanal which had been occupied by the displaced person/s of 1947 and had been restored to him by the Custodian. The JDA has also communicated to the Deputy Commissioner Jammu vide their No. JDA/litg/05/2007/81 dated 01-06-2011 available on record that out of the 101 k and 18 m of the JDA land in survey no. 256 (old) now new Kh.


No.375 of the village Thanger, 7 Kanals of land has been allotted in favour of Sh. MohdYaqoob by virtue of Govt. Order No.221-HUDD of the 2006 dated 29-08-2006 and subsequently the JDA has made allotment of 7

Kanal of land in Khasra No./ Survey No. 256 (old) now new Kh. No.375 in pursuance of the aforementioned Government Order and also vide decision of the Board of Directors taken in the 67th Board meeting held on 17th & 26th May 2007. The JDA has also admitted this fact in the Court below.

16. So the JDA may hand over the 7 Kanal of land to Mohd Yaqoob s/o Bashir Ahmed r/o Ralhan samba which has been duly allotted to him in the survey No. 256 (old) now new Kh. No.375 of village Thanger and be recorded in his name as such by the revenue authorities following due procedure. As far as another 8 kanal of land which was to be identified by the Vice Chairman JDA for allotment to him as per the Government order dated 221-HUDD of 2006 dated 29-08-2006, the petitioner may approach the JDA for implementation of the said Govt. order.
17. Further so far as the issue pertaining to allotment of land to the Department of Weight & Measures is concerned it has been found that vide Govt. Order No.Rev (NDJ) 109 of 1999 dated 04-06-1999, the Government has cancelled the transfer of portion of State land measuring 6 Kanal 01 Marla comprising of Kh. No. 256 (old) now new Kh. No.375 situated in village Thanger Tehsil Jammu and transferred it in favour of Weights & Measures Department for construction of their Administrative Complex. The JDA may also hand over the said land to the Weights & measures Dept. if not already done and if no other order has been issued by the competent authority to the contrary and the revenue authorities may affect the change in the revenue record accordingly after following due procedure.
18. A copy of this order along with record file be sent to the Deputy Commissioner Jammu and to the Vice Chairman Jammu Development Authority for information & further necessary action.
19. Stay issued, if any, shall stand vacated. The case files be consigned to records after due completion.

Announced

18.03.2017


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