

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

File No.  
02/Revision  
2011-12

Date of Institution  
06-4-2011

Date of Decision  
25-2-2017

1. Kali Dass S/o Sh. Makhan Lal
  2. Rajwanti D/o Makhan Lal
- Both residents of Kasbawala, Tehsil Nowshera, District Rajouri.

(Petitioners)

V/S

1. Darshan Lal S/o Sh. Bhagat Ram Resident of Kasbawala, Tehsil Nowshera, District Rajourti.
2. Naib- Tehsildar, Nowshera.

(Respondents)

In the matter of:-

Revision petition against the order passed by the respondent No. 2 by which the Khasra Girdwari entries of the allotted land in possession of the petitioners has been changed and has been entered in the name of the respondent No. 1 of the land falling under this Khasra No. 103 situated at Kasbawala, Tehsil Nowshera.

Prayer for setting aside the same.

Also prayer for initiating legal action against the erring official for misusing of his official position and for exercising powers not vested with him for unlawful motive and that too against the circular issued by the financial commissioner.

Appearing Counsel : Advocate Mohd Latif for petitioner.  
Advocate Haji for respondent.

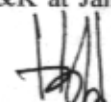
ORDER

1. The present petition has been filed on the following grounds:-
  - I. That the act of the respondents is against the law and facts and hence is not sustainable in the eyes of law and therefore deserves to be set aside.
  - II. That the entry dated 11-04-2006 has been made contrary to the position existing on spot and this fact is crystal clear from the reports of the Patwari and Naib-Tehsildar dated 28-09-2007 & 09-08-2008 respectively and also from the perusal and appreciation of the Akas Titma Shazra dated 28-09-2007 and Akas Titma Shazra dated 09-08-2008. Therefore the entry impugned dated 11-04-2006 is not sustainable in the eyes of law and therefore deserves to be set aside.
  - III. That the act of the respondents is also bad in the eyes of law on the ground that the Naib-Tehsildar who has changed the Girdwari has did so at the back of the petitioners and without following due course of law and without giving an opportunity of being heard to the petitioners which is highly illegal and against the basic spirit law and hence the impugned order is bad in the eyes of law and hence deserves to be set-aside.
  - IV. That the impugned order is also bad in the eyes of law because the Naib-Tehsildar concerned is hand in glove with the respondent No. 1 and has thus exercised powers not vested with him. Hence the impugned order is not sustainable in the eyes of law and hence the same deserves to be set aside.
  - V. That the impugned order / entry has been made by the respondent No. 2 in violation to the circular No. FC/LS/MISC-1648/97 dated 22-12-97 issued by the worthy Financial Commissioner, J&K as it has been made it mandatory in the circular that the change of Khasra Girdawri can only be made by attestation of a mutation by the Tehsildar only and the Patwari should while effecting the change mention the number of the mutation. Hence the impugned order passed by the Naib-Tehsildar is without Jurisdiction and against the procedure prescribed in the Circular and hence the impugned order is not sustainable in the eyes of law and hence the same deserves to be set aside. For kind perusal of this Hon'ble Court, the copy of the circular No. FC/LS/MISC-1648/97 dated 22-12-1997 issued by the worthy Financial Commissioner, J&K.

2. Counsel for petitioner filed written arguments wherein it has been submitted that:-
- That the petitioners are the lawful allottee of the land in question as the same has been allotted to the petitioners being the refugee of the 1947 holocaust. It is further submitted that right from the day of allotment till today, the petitioners are in continuous physical possession of the land in question measuring 15 Marlas.
  - The respondent No.2, got the Khasra Girdawri entries recorded in his name at the back of the petitioners, against the position existing on spot as well as in sheer violation to the circular No. FC/LS/MISC-1648/97 dated 22-12-1997 issued by the worthy Financial Commissioner, J&K as it has been made it mandatory in the circular that the change of Khasra Girdawri can only be made by attestation of a mutation by the Tehsildar only.
  - That it is further submitted that on the application of the petitioners, the Patwari concerned has submitted a factual report after spot inspection that the petitioners are in possession of the land in question and the respondent No.1 as well as his father Bhagat Ram has no right or possession with the land in question.
  - That it is further submitted that Tehsildar Nowshera after receipt of the report from the Patwari forwarded it to the Naib-Tehsildar Nowshera and the Naib-Tehsildar Nowshera has clarified in the report dated 11-10-2007 vide No. NT/559 that the respondent has no concern as well as also not in possession of the land in question.
  - That the act of the respondents is also bad in the eyes of law on the ground that the Naib-Tehsildar who has changed the Girdawri has did so at the back of the petitioner and without following due course of law and without giving an opportunity of being heard to the petitioner which is highly illegal and against the basic spirit law and hence the impugned entries are bad in the eyes of law and hence deserves to be set aside.
3. Counsel for respondent also filed written arguments whereas it has been submitted that: -
- That out of land covered under Kh. No.103 Min 15 Marlas of land is in possession of the answering Nowshera while verifying the physical possession of the answering respondent, on 15 Marlas of land under Kh. No. 103 min, the Girdawri was recorded in the name of answering respondent who was physically in possession of 15 Marlas of land out of total land under Kh. No. 103(08K-05-M).
  - That it is pertinent to submit that the petitioner has got fraudulently allotment of 10 Marlas of land out of the said Kh. No.103 by misrepresentation and by producing Form 'A' of another displaced person namely Kali Dass S/o Salakhan and has got fraudulently mutation under Section 3-A of the Agrarian Reforms Act, on 01 Kanal of land covered under Khasra No. 125(10 Marlas) and 103 Min (10 Marlas) vide Mutation No.633 dated 23-09-1999.
  - That the date of birth of the petitioner namely Kali Dass S/o Makhan Lal R/o Kalsian Tehsil Nowshera is 14-10-1946. It is strange how the petitioner has played fraud by misrepresentation and having presented Form 'A' of another DP namely Kali Dass S/o Salakhan and got allotment of land under Khasra No. 125(10 Marlas) & 103 Min (10 Marlas) whereas the petitioner was of the age of 08 years as per date of birth certificate issued by Head Master Govt. Middle School Kalsian Nowshera is 14-10-1946 and a child of 08 years of age cannot be appointed as the Head of Family as a displaced person and to get allotment of land as displaced persons and consequently have got Mutation under Section 3-A of the Agrarian Reforms Act, 1976
  - That the Vigilance Organization has registered FIR No. 29/2006/ P/S VOJ under Section 109, 420, 467, 461 & 471 RPC and 12/14/Public men & Public Servant Act, against the petitioner for committing fraud as stated above in connivance with one Mohinder Lal S/o Sita Ram R/o W.No. 2 Kasba Bala under the said sections who is actually the mastermind of getting land in dispute allotted to petitioner through fraudulent means who is virtually in possession of the land under Kh. No.103 Min (10Marlas), 125(10 Marlas) fraudulently got allotted to the petitioner and has himself raised construction of house and shops on the said land. The vigilance Organization Jammu has also registered case under the above referred sections of RPC and Public Men & Public Servant Act Against Mohinder Lal who is involved in the criminal conspiracy and raised huge assets on the land got allotted by the petitioner by fraudulent means.
  - That the petitioner is family member of his mother Karam Devi Wd/o Makhan and is residing in Village Chowki Handan and not in Village Kasba Bala Nowshera.
  - That he land measuring 10 Marlas under Kh. No. 103 Min is a separate land which has been got fraudulently allotted by the petitioner whereas the 15 Marals of land in possession of the

- answering respondent is a separate piece of land out of the said Kh. No. 103 and the petitioner has no concern with the 15 Marlas of land in possession of the answering respondent.
- g. That the Provincial Rehabilitation Officer has also certified this fact that Kali Dass S/o Makhan Lal is not a registered displaced person and not traceable in the office record.
  - h. That on the application of answering respondent dated 22-12-2009 to the address of Tehsildar Nowshera, the Patwari has clearly mentioned in his report dated 30-12-2009 that out of Kh. No. 103 is recorded in the name of Kali Dass S/o Makhan Lal Jat i.e the petitioner and 05 Marlas of land out of said Kh. No. is recorded in possession of Karam Devi W/o Late Makhan Lal i.e mother of the petitioner.
  - i. That the mention made by the petition of the circular No. FC/LS/Misc/1648/97 dated 22-12-1997 is not applicable in the Girdawri recorded in the name of answering respondent in respect of 15 Marlas of land out of Khasra No. 103. The said circular is applicable only on the cases where change of Girdawri is made from one person to another person by attesting the mutation. The land in possession of the answering respondent measuring 15 Marlas was not in possession of the petitioner or any other person.
4. The case up for hearing. Counsel for both the parties present. They submitted that they have filed written arguments and order be passed on the basis of their written arguments.
  5. I have gone through the contents of revision petition & written arguments of parties are gone through & record perused. The contention between the parties is with regard to the land measuring 15 Marlas comprising Kh. No.103 of Village Kasbawala over which the name of respondent is entered in remarks column of Khasra Girdawri of Rabi 2006 on 11-04-2006.
  6. The perusal of Khasra Girdawri of 2006 shows that the land in question is sham lat Deh measuring 8 K 5 M and recorded in possession of owners. The petitioners has taken plea that entry has been made at their back and without following due course of law & without providing opportunity of being heard to them
  7. That Naib Tehsildar has exercised powers not vested with him and as such the order is not tenable. That entry has been made by Respondent No.2 in violation to circular No. FC/L/Misc-1648/97 dated 22-12-1997 whereby change of Khasra Girdawari can only be made by attestation of a mutation by Tehsildar only. As such the Naib Tehsildar has exceeded Jurisdiction & the order impugned deserves to be set aside.
  8. In rebuttal to these contentions of petitioners, the respondent in his written arguments have contended the allotment of petitioner as fraudulent by misrepresentation and by producing form 'A' of another displaced person namely Kali Dass & that PRO has also certified that Kali Dass S/o Mohan Lal is not a registered displaced person.
  9. But it is to be mentioned that respondent has not submitted any substantial ground for recording of entry in Kh Gardawri of 2006 for land measuring 15 Marlas in Kh No. 103 in his favour. Even if, he is aggrieved of allotment of petitioner he may challenge it at appropriate forum.
  10. Further copy of report signed by Patwari Halqa & G Q dated 28-09-2007 with regard to land in question & report of Naib Tehsildar Nowshera dated 28-09-2007 states that Darshan Lal & his father Bhagat Ram has no connection with this land which shows that entry made in Kh. Girdawri by Naib Tehsildar is contrary to the spot position & deserves to be set aside.
  11. From the perusal of a copy of Order of Hon'ble Principal Distt Judge Rajouri dated 24-04-2015 in the case titled Darshan Lal V/S Kali Dass & Ors. has observed that appellant Darshan Lal (respondent herein) has failed to prove his legal & physical possession over the land under dispute & that entries made in mutation or Girdawari are not substantial piece of evidence from which legal Physical possession is inferred. These entries are only of fiscal nature.
  12. In view of the above this court is of the opinion that Girdawari entry made by Naib Tehsildar during PARTAL on 11-04-2006 is contrary to ground position and in violation of circular of FC(R) No. FC/LS/MISC-1648/97 dated 22-12-1997.
  13. Hence, the present petition having merit deserves to be allowed & order be set aside.  
The case file in terms of section 15(3) of LR Act is submitted to Ld Financial Commissioner (R) J&K Jammu for favour of final order.  
Both the parties are directed to appear before Ld Financial Commissioner (R) J&K at Jammu on 12-4-2017.

Announced  
25-9-2017

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