



IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

File No 23/Revision
2017-18

Date of Institution
24-5-2017

Date of Decision
6-12-2017

1. Mangta 2. Mustaq Ahmed.
Both sons of Abdul Majid and residents of Village Koti at present Sorjan, Tehsil Bani District Kathua.

(Petitioners)

VERSUS

1. Fazal Kareem S/o Ghulam Mohd. R/o Duggan Bani Headmaster Govt. High School Chandhar Bani District Kathua.
2. Zonal Education Officer, Bani District Kathua.
3. Sub-Divisional Magistrate, Bani District Kathua.

(Respondents)

1. Gul Mohd. 2. Farooq Ahmed Both sons of Abdul Majid.
3. Abdul Rashid. 4. Mansa Mohd. 5. Sadeeq Ahmed. 6. Sajad Ahmed. 7. Arshad Ahmed.
All sons of Nazir Ahmed.
8. Altaf Hussain. 9. Mohd. Afzal. 10. Mohd. Ayoub
All sons of Mohd. Sharief

(Proforma Respondents)

In the matter of: Revision against the order of respondent No. 3 dated 01.05.2017 for setting aside the same.

ORDER

1. The present petition has been filed against the order of SDM Bani dated 01-05-2017, by virtue of which he has dismissed the application of petitioners herein filed for interim order, against the construction of school building of High School Chander Bani.
2. The grounds taken are:
 - a) Petitioners and the performa respondents are the owners of land comprising Kh. No.383 measuring 12K 2M. A Govt. School is situated in about 1 K & 19 M out of the above said land. Government has neither paid any compensation

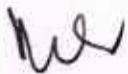
MS

at the time of taking over land to the petitioners & proforma respondents, nor any employment given to any person of family of petitioners & proforma respondents as per the promise of authority.

- b) That the respondents 1 to 2, without their permission are forcefully raising construction over the land and the Respondent No.3 decided the application of petitioners therein within 12 days itself without applying judicial mind & proper procedure.
 - c) That the respondents have admitted the petitioners as owners of land in dispute and that there is no entry of school in revenue record.
 - d) That the respondents have no right and title to carry on construction over the land in dispute.
3. After completion of service of respondents & receipt of record from the court below, the matter was fixed for arguments.
 4. During pendency of petition, residents of Bani presented a resolution passed by Panchyat Halqa Kote Chandhyar containing signatures of 30 residents with a prayer to vacate the stay and to allow resumption of the construction.
 5. The case came up for hearing. Petitioner along with counsel is present. Nobody appeared from other side.
 6. Counsel for petitioner pleaded that they are the owners of land measuring 12K 2M comprising Kh. No.383 & out of which 6K 1M falls in the share of Mushtaq and Ors. He further contended that only 10 Marlas of land has been donated for the School & that Rs. 22,000/- as claimed to have been paid in lieu of the land, has not been received by him. Further, there is no entry of the School in the revenue record and that new construction over the land in dispute is being raised. He further contended that alienation of property can only be through registered deed.

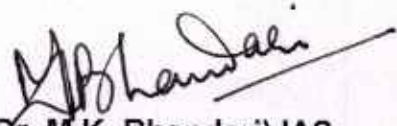
WV

7. I have heard the counsel for petitioner. Record the subordinate Court & report sought from Tehsildar concerned have also been perused from which it has been observed that the land in question in Kh. No. 383 of Village Surjan is an ownership land and that the petitioners have share in the said land over which the Building of Govt. High School Chandhyal Bani is existing.
8. The petitioners are admitting the donation of only 10 Marlas of land, but the reports of Tehsildar Bani, SDM Bani & resolution of residents of Bani clearly show that land measuring 1 K 19 M is under the possession of High School, in lieu of which an amount of Rs. 22,000/- has also been mentioned to have been paid to petitioners. During the course of arguments, the petitioner has even admitted that two of his family members have also been engaged in the school, in lieu of the donated land, though in the petition, the petitioners have denied having received either any amount or engagement of family members. This is contrary to the contents of the communication of Headmaster Govt. High School Chandhyal submitted to Zonal Education Officer, Bani vide No. GHSCH/174 dated 19-04-2017, and subsequent admission of petitioner before the Court that their family members have been engaged in the School. The facts had thus been presented wrongly in the petition.
9. Moreover, from the report and record it has also been found that SDM Bani, after obtaining report from Tehsildar concerned, has passed a reasoned order. Therefore, the plea of petitioners that their application has been decided without applying judicial mind, doesn't sustain.
10. Further, the absence of entry in the concerned record in favour of Education Department, cannot be a ground to stop the construction. The existing of school building on the land in question and the raising of construction on the same land which is in the possession of school and having been received in donation has legal force. The main contention of petitioners that present construction school building is being raised in their land is contrary to the report of field staff, Tehsildar Bani and SDM Bani.



11. In view of the above, discussion this court has come to the conclusion that the petition in hand has no merit and is thus dismissed.

12. Stay issued, if any, shall stand vacated. The case file be consigned to record after due completion.



(Dr. M.K. Bhandari) IAS
Divisional Commissioner,
Jammu.

Announced
6-12-2017

No:- 801/1300

- Dated: 20-12-2017

Copy of order dated 6-12-2017 alongwith record file containing 15 leaves in the case titled Mangta & ors vs Fazal Kareem & ors is forwarded to the Sub-Divisional Magistrate Bani for information and further necessary action.


(Vivek Chander)
TEHSILDAR
Head Quarter Asstt. to
Divisional Commissioner
Jammu