

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

File No.

Revision
2010-11

Date of Institution

24-06-2010

Date of Decision.

02-12-2016

1. Naresh Kumar Kesar
 2. Ashok Kumar Kesar
 3. Pawan Kumar All sons of Late Sh. J. L. Shashtri
 4. Vishav Nath
 5. Krishan Gopal
- Both sons of Late Rudermani all residents of Ward No. 6 Katra

Petitioners

Versus

1. Parmod Gandotra S/o Late Sh. Harbans Gandotra
2. Assistant Commissioner, Reasi
3. Tehsildar Reasi

Respondents

4. Madan Lal S/o Late Sh. Rudermani
5. Kuldeep Kumar S/o Late Sh. J.L Shashtri both R/o Ward No. 6 Katra

Proforma Respondents

In this Matter of :-

Revision petition against order dated 04-06-2010 passed by Assistant Commissioner (Revenue) Reasi and prayer for setting aside the same as well as prayer for quashment of the consequential proceedings.

ORDER

1. The present petition has been filed against the order of AC(R) Reasi dated 04-06-2010 on the following grounds :-
 - a) That the order impugned is against law and facts.
 - b) That the respondent No. 2 had no jurisdiction to entertain and decide an application u/s 94 of the land Revenue Act as such the order passed by the respondent No. 2 is void abinito hence liable to be set aside.
 - c) That the petitioners and the proforma respondents have not been afforded an opportunity of hearing during the proceedings done by the respondent No. 2 and 3 and other revenue staff and the non affording of opportunity of hearing vitiates the whole of the proceedings as such the order impugned is liable to be set aside.
 - d) That the order impugned is an example of abuse of process of law and flagrant use of official powers by public servants hence the same is liable to be set aside.
 - e) That assuming for the sake of the arguments that the respondent No. 2 has got jurisdiction to entertain an application u/s 94 of the land Revenue Act even then there must a finding that the person making an application U/S 94 of Land Revenue Act has to prove that he has been dispossessed illegally within a period of 6 months from the date of making the application and if the same is missing then the remedy lies in the civil court. The proceedings as well as the order

impugned are silent with respect to proof of any fact that the respondent No. 1 have been illegally dispossessed within 6 months. The order impugned as such is liable to be set aside.

- f) That the application u/s 94 of Land Revenue Act has been filed by the respondent No. 1 with malafide intentions to encroach upon land of petitioners so that he could use the same as a additional pathway to his land and whole of the proceedings are outcome of the malafide intention stated herein above as such order impugned is liable to be aside.
- g) That the revision petitions been filed with in the period of limitation and there is no legal impediment in entertaining and admission of the revision.

2. Counsel for respondent has filed written arguments wherein it is submitted that :-

1. That the revision petition filed by the petitioners is barred by law and is not maintainable under Section 95 of Land Revenue Act hence needs to be dismissed out rightly.
2. That the revision petition is nonest in eyes of law thus needs to be dismissed out rightly and order of Assistant Commissioner (Revenue) Reasi needs to be protected.
3. That section 94 of Land Revenue Act read with section 95 of Land Revenue Act clearly shows that there is bar to the revision petition or any appeal against the order passed by revenue official i.e. Assistant Collector of the 1st Class.
4. That despite of the fact that revision petition is barred by law the respondent No.1 hereby wants to submit some factual position of the case.
 - a. That the land of respondent No.1 and petitioners are lying adjacent to each other and is an open land which needs to be demarcated, so that each person should utilize his own land.
 - b. That the respondent No.1 has moved an application before the Assistant Commissioner (Revenue) Reasi for demarcation of his piece of land from other.
 - c. That under the provision of Section 94 the Assistant Commissioner (Revenue) Reasi for demarcation of his piece of land from other.
 - d. That under the provision of Section 94 the Assistant Commissioner (Revenue) Reasi took out the proceedings and demarcated the land with the help of Tehsildar and Patwari concern, the order of whom came to be passed on 04-06-2010 (the record is available with the Hon'ble Court).
 - e. That the case filed by the petitioners in the Learned Court of Munsiff, Katra is dismissed and the fact was not disclosed by the petitioners before the Hon'ble Court.
5. The case came up for hearing. Petitioner along with counsel present Respondent present in person. Counsel for petitioner reiterated the grounds taken in the petition and further pleaded that Tehsildar has jurisdiction to entertain application U/S 94 of LR Act. when the person making application proves that he has been dispossessed illegally within a period of 6 months from the date of making application but if it is not so, the remedy lies in the civil court. In the order impugned, it has not been mentioned and as such the order impugned be set aside.
6. Respondent submitted that they raised construction about 15 years back and Assistant Commissioner (R) Reasi has passed order after conducting enquiry. He prayed to upheld the order.



7. The arguments put forth by the parties are heard & record placed on file is perused from which it has come to fore that the land of both the parties comprising Kh. No. 47, 48 & 49 is adjacent & the contention between them is the land measuring 1 Karam which the respondents alleged to be encroached by the petitioners & Ors. by way of breaking the Aad Bana" & merging the land of Kh. No. 49 into Kh. No. 47.
 8. The perusal of order impugned shows that AC(R) Reasi passed order after obtaining from field staff a Naib Tehsildar Katra, & Tehsildar Katara. But it is to be mentioned that the order passed is not a detail / speaking order.
 9. Respondent has pleaded in his written arguments that there is a bar to the revision petition or any appeal against the order passed by revenue officer U/S 94 & 95 of LR Act & has further pleaded that the remedy available to petitioners is before civil court. But it may be noted that there appears to be no findings of the court below in the matter which may appear to be in consonance to Sec. 94 & 95 of LR Act & even order impugned is silent in this regard.
 10. The ground taken by respondents that petitioners have not disclosed about the dismissal of their case filed in the Ld. Court of Munsiff Katra has no legal force.
 11. The contention of the petitioners that they have not been given an opportunity of being heard carries weight & cannot be ignored as respondents have not rebutted this plea of the petitioners.
 12. In view of the above facts & circumstances this court is of the opinion that the eviction order passed by the court below is an ex-parte order and cannot be considered as a judicious order & the same thus deserves to be set aside.
 13. Hence, the petition deserves to be allowed & order passed by court below set aside. The case warrants remand for denovo enquiry & passing order afresh after hearing all the interested parties.
- Accordingly the case U/S 15(3) of the Land Revenue Act 1939 AD is submitted to Ld. Financial Commissioner (R) J&K Jammu for confirmation.

Both the parties are directed to appear in the court of Ld. Financial Commissioner (R) J&K Jammu on 27-12-2016.



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

Announced
02-12-2016.

Copy of order dated 02-12-2016 alongwith case file containing 38 leaves and record file of subordinate court file containing 18 leaves is submitted to Financial Commissioner R, J&K Jammu for information & further necessary action please.

No.: 201/984

Dt.: 19-12-2016

[Handwritten mark]
Reader to
Divisional Commissioner
JAMMU