

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

(With the powers of Deputy Custodian General &
Financial Commissioner Jammu under Govt. order 578-C of 1954)

Present: Dr. Pawan Kotwal, IAS

File No.

Revision
2011-12

Date of Institution

20-12-2011

Date of Decision.

12-11-2016.

Smt. Rajinder Kour w/o Late S. Mehar singh R/o Choawala Tehsil R.S Pura at present
H. No. 216 Shastrinagar Jammu

(Petitioner)

V/S

1. PRO Jammu
2. Chattar Singh S/o Raja Singh R/o Kartholi Tehsil Samba.

(Respondents)

In the Matter of: Revision against the order of PRO Jammu dated 08-05-2008 read with corrigendum dated 04-05-2010 where under evacuee land measuring 3K and 3M from out of Kh. No. 1498, Village Chowala and state land measuring 1K 10 Marla form out of Kh. No. 247 of village Kartholi being excess of the scale against double allotment of the allottee.

Appearing Counsel: - Advocate O. P Sharma for petitioner.
Nemo for respondents.

ORDER

The present revision petition has been filed on the following grounds

- i) that the order under revision is against law and facts and the same is liable to be set aside.
- ii) That the court below failed in the statutory duty miserably while passing the impugned order as the court was required to summon the original allotment file for perusal and consideration to determine the facts with respect the excess or deficiency of land held by the petitioner, as the allotment was made after due deliberation, reporting and further consideration and verification by revenue official of the two tehsils.

But the court below intentionally and deliberately with a preconceived mind came to the conclusion by passing an impugned order which is in excess of jurisdiction or failed in the right exercise of its jurisdiction which has resulted a great prejudice to the rights of the petitioner who is in cultivating possession of the allotted land to the extent of 30 Kanals 4 Marlas and the application for making up of the deficiency was filed by the husband of the petitioner who died during the pendency of the application and the petitioner stepped into the shoes of her husband and processed the application for making up her deficiency. The order passed by respondent No.2 is bad, illegal and is required to be set aside.

iii) That the complaint has been entertained without spelling out any reason much less a substantial one from a person who has no locus standi, furthermore, a time barred complaint from a person who has failed before the proper forum and even his person planted by him vicariously filing the revision petition titled Ranjit Singh Rana V/S Rajinder Kour was also dismissed by the competent forum and no appeal or writ petition has been filed to the knowledge of the petitioner which has attained the finality with respect to the question of double allotment or holding excess land by the petitioner.

iv) That after allotment dated 19-12-1992, the petitioner was put into possession of the allotted land and mutation No. 1281 dated 10-04-1993 was also attested in favour of the petitioner.

v) That the respondent went in appeal before the Hon'ble High Court wherein appeal is pending but while in his testimony before the Add. District Judge Jammu in response to the claim of the petitioner the respondent has categorically and in unequivocal terms stated.

This suit was filed by the petitioner on 30-10-1995 and was decided on 00-01-2007. The 1st appellant No. 4 of 2008 was filed on 23-01-2008 from the perusal of these judicial proceedings it reveals that the respondent was aware of the fact of dismissal of the revision petition by the learned Divisional commissioner and the J&K Special Tribunal and his own application of becoming party before the learned Divisional Commissioner with powers of Financial Commissioner and Deputy Custodian General, but the same was kept guarded secret and has been suppressed intentionally and deliberately by the petitioner and one who suppressed the facts is not entitled to any relief much less a discretionary one the complaint is liable to be dismissed out rightly as the kernel point has already been determined by the competent authority and it has attained finality and this fact is in the very much knowledge of the respondent also at least since 20-09-1998.

vi) That the court below has been misled itself intentionally and deliberately by the respondent No.1 just to maneuver an erroneous order already attained the finality and there was no good ground, cause or scope to review the order by the court below of his predecessor in such like circumstances. The order has been passed by the lower court without application of mind.

vii) That the impugned order has been passed without summoning the petitioner and apparently only for paper work "doparta" summon has been issued but the court below failed to observe whether the summons issued for 02-02-2008 has been served or refused. Furthermore, the court below failed to get the statement of process server recorded regarding the effect and consequences of this summon.

viii) That the time barred illegal complaint was filed by the respondent who has no locus standi entertained by respondent No. 2 and the respondent succeeded in getting the impugned order passed by suppressing the material facts in connivance with and simultaneously the court below failed in its solemn duty to verify the allotment file and failure on the part of the presiding officer has caused in passing an erroneous, illegal and arbitrary order which is not tenable in the eye of law and is required to be set aside.

ix) That the petitioner has suffered a deleterious irreparable prejudice and she has been dragged into a false and frivolous litigation for no fault on her parts and the respondent No.1 has no locus standi. Procured the order at the back of the petitioner which is against all canons of natural justice and is required to be set aside.

x) That the court below fell in error while passing the impugned order without appreciating the contents of the report submitted by the concerned Patwari regarding the physical cultivator possession of the allottee and the allotment made in the register cancellation, it was incumbent on the part of learned Presiding officer to summon the Patwari and verify the facts through his statement by the court below took the register cancellation as gospel truth and passed the impugned order on the basis of copy of allotment as entered in the register of cancellation, and failed to take into consideration the report submitted by the concerned Patwari regarding the physical on spot possession of the petition regarding the quantity of land. Thus the view taken by the learned presiding officer is contrary to law and facts and is required to be set aside.

xi) That since the impugned order has been obtained by suppression of material facts intentionally and deliberately and practically for all purposes played a fraud on the court and it is the settled proposition of law that decree / Judgment obtained by playing a fraud on the court is nullity and the same is nonest in the eye of law. Such a judgment or decree can be easily treated as a nullity by every court and the same cannot be used in evidence even for collateral purposes.

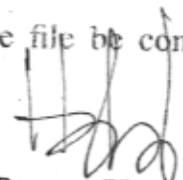
xii) That the kernel principle of res-judicata is applicable in the instant matter. The principle of res judicata is based on the need of giving finality to the judicial decision and the instance matter purely falls within the ambit of res judicata on the score that the competent court / forum has given finding over the issue canvassed by the respondent before the court below thus, the order passed by the court below is illegal, not sustainable and is required to be set aside.

1. It may be noted that a written Complaint made by Chatter Singh the contesting respondent that Smt. Rajinder Kour the petitioner herein was a double allottee having allotted land in Villages Chouhalla and Kartholi was immediately dealt with by the Custodian EP (PRO) Jammu and vide his order dated 08-05-2008, evacuee land measuring 3K & 3M of village Chowala being in excess with her was directed to be taken possession of by the Tehsildar (Asst. Custodian), At the same time Tehsildar was also asked to provide them a copy of the mutation for purpose of seeking its modification.
2. As regards state land of village Kartholi the Tehsildar was asked to resume it and at the same time initiate proper proceedings for the cancellation of the mutation attested in favour of the allottee in respect of that land. It is this order against which the present revision petition has been filed by the petitioner.
3. This contention of the petitioner is that her husband was a displaced person of 1947 from POK and was initially allotted 30K-4M of land in village Chowala Tehsil RS Pura. But he died soon thereafter and the petitioner became head of the family. As the land already allotted to the family was below the prescribed scale of land, she therefore applied before the PRO for making good her deficiency in the land unit. Consequently ~~40K~~ 10 M of state land was allotted to her by the PRO on 19-12-1992 in village Kartholi. But a revision petition was still filed by one Ranjit Singh against that order before the learned Divisional Commissioner. But that revision petition could not succeed and was dismissed by learned Divisional Commissioner on 07-08-2000. Further a revision petition was filed by Chatter Singh before the special Tribunal Jammu. But that too failed and was dismissed by the Special Tribunal on 08-06-1999.
4. But the complainant went on chasing the case on fraudulent grounds and as a result of which the impugned order came to be passed by the PRO arbitrarily behind the back of the petitioner without affording her any opportunity of being heard.
5. It was further argued on behalf of the petitioner that even in earlier proceedings it was clearly reported by the Patwari on 01-11-1988 concerned that only 30K- 4M of nehri land had been allotted to the allottee in village Chohala and there was deficiency of 2 K of land in her allotted unit. But these facts have not been taken note of by the PRO and as such the impugned order being illegal & not based on facts deserves to be set aside.
6. The court below has assessed the excess land as per cancellation register wherein land in Kh. No.1499 of village Chouhala measuring 4K - 19M has been shown in possession of the petitioner whereas actually the said land has never been in her possession.
7. But the submissions made on behalf of the petitioner have been opposed by the respondent. It is submitted on behalf of the respondent that the PRO had himself held

- on the basis of record available with him that the allottee was already holding 35 K – 3M of irrigated land which was itself in excess of the prescribed unit and excess land was legally required to be cancelled. As such the directions given by the learned PRO in his order are well-founded and deserves to be carried and followed.
8. The case came up for hearing. Counsel for Petitioner present. He is heard. The written arguments filed by respondent are gone through. The record is examined. There is no denying the fact that the petitioner is a displaced person of 1947 and she claims to have been allotted 30K – 4M evacuee land in village Chohala and additional Land was within scale and question of her being a double allottee or cancellation of any part of her allotted land did not arise. But these facts have not been paid proper consideration by the PRO. Rather he has passed impugned order without hearing her or appreciating them in real perspective.
 9. Apparently the plea put forth on behalf of the petitioner have a legal force. It is therefore, clear that this fact has not been appreciated by the Custodian (Ex-Officio PRO) Jammu while hearing the parties more particularly to the petitioner.
 10. It is pertinent to mention that the state land measuring 1K & 10 M to make up her deficiency was allotted to her in 1992 in village Kartholi by the then Custodian (Ex-Officio PRO) Jammu after getting enquiry conducted with regard to the quantum of allotted land and the deficiency in the allotment. But it appears that the court below has not considered this fact but passed order impugned which is not sustainable & deserves to be set aside.
 11. In this view of the matter the impugned order cannot be said to be a judicious and well-founded order and deserves to be set aside. Accordingly this revision petition is allowed and the impugned order of the Custodian (Ex-Officio PRO) Jammu dated 08-05-2008 is set aside.

Stay granted by this court if any shall stand vacated. The case file be consigned to records after due completion.

Announced
12-11-2016


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