

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

Present- Dr. Pawan Kotwal, IAS

File No.

Appeal
2009-10

Date of Institution

6-2-2010

Date of Decision.

29-4-2017

Subash Singh (Deceased) S/o Janak Singh R/o Katli Tehsil Hiranagar Distt.
Kathua through LRs.

1. Sudesh Kumari (Wife)
2. Jasbinder Singh (Son)
3. Cheena Kumari (Daughter)
4. Sagar Singh (Son)

Appellants

Versus

State of Jammu & Kashmir through Tehsildar Hiranagar.

In the matter of:-

An appeal against the order dated 13-11-2009 passed by the Assistant Commissioner (R) Collector, Kathua in file No. AC(R) / 693 in an appeal case titled Subash Singh versus State by virtue of which the order dated 07-03-2009 passed by the Tehsildar, Hiranagar for eviction of the Appellant from the land measuring 08 Marlas comprising Khasra No. 2625/1530 situated at Village Katli Tehsil Hiranagar has been upheld and further against the said order dated 07-03-2009 passed by Tehsildar Hiranagar praying for setting aside the above said orders dated 13-11-2009 and 07-03-2009 respectively.

ORDER

The present appeal has been filed on the following grounds:-

1. That the appellant is a permanent resident of J&K State and has ancestral land comprised of Khasra No. 1523 (4K-4M), 1524(10K-3M) situated at village Katli in his co-owner
2. That the appellant has filed an appeal against an order dated 13-11-2009 passed by Assistant Commissioner (Revenue), Collector Kathua in file No. ACR/693 by virtue of which the order dated 07-03-2009 passed by Tehsildar Hiranagar for eviction of appellant from land measuring 8 Marlas comprising Khasra No. 2625/1530 situated at village Katli Tehsil Hiranagar has been upheld dated 07-03-2009 passed by Tehsildar Hiranagar praying for setting aside both the orders.
3. That the appellant has assailed the order impugned in appeal on the grounds that he has ancestral land comprised of Khasra No. 1523(4 Kanals 4 Marlas), 1524 (10 K-03 M) situated at village Katli in his co-ownership and possession. The appellant having land in his proprietorship is also entitled to share in Shamilat land of the village land of the village in proportionate to his proprietary land.

4. That the further ground taken by appellant is that land comprised Khasra No. 2625/1530 of village Katli is situated adjacent to the afore said proprietary land and the appellant many years back deeming this Khasra No. as his own land constructed straw hut in this land wherein he along with his family members are residing there for more than one decade.
5. That Tehsildar Hiranagar on 07-03-2009 passed an order for eviction of appellant from land measuring 8 Marlas comprising Khasra No. 2625/1530. Being aggrieved of this order the appellant assailed the same in an appeal before the court of Assistant Commissioner (R) Collector Kathua who at the back of the appellant decided the appeal on 13-11-2009 without affording an opportunity of being heard to the appellant.
6. The during the pendency of appeal the appellant desired to exchange this land with his proprietary land and this court vide letter No. 801/141 dated 25-05-2012 directed Deputy Commissioner Kathua to submit the factual report in the matter regarding valuation of Kahcharai land under the occupation of the appellant and the land being offered by him in exchange thereof.
7. The Deputy Commissioner Kathua in compliance to the referred communication vide his No. DCK/SQ/ 2012-13/572 dated 30-08-2012 submitted report of Tehsildar Settlement Hiranagar in which it was stated by the Tehsildar that appellant has proprietary land comprising Khasra No. 1521 measuring 14 Marlas and he is ready to exchange with the 8 Marlas of Kahcharai Land upon which he has constructed his straw house and is residing therein. The valuation of the land near road is Rs. 60,000/- per Kanal, and the valuation of the other land is Rs. 35,000/- per Kanal.
8. During the pendency of appeal, the appellant died and his legal heirs as per application filed along with death certificate by counsel has been brought on record.
9. The case came up for hearing. Counsel for appellants present. ARA appeared for state. Counsel for appellants reiterated the grounds taken in the memo of appeal as well as in written arguments whereas ARA also submitted that Kahcharai land can be exchanged with the proprietary land.

The Counsel for appellant cited proviso to Section 133 (2) of Land Record Act which reads as under:

“provided that where on any land mentioned in clause (a) any structure raised, the person encroaching upon the land shall be ejected there from forth-with leaving an area of 10 marlas under and adjacent to the structure in respect of which the owner thereof shall be given a notice in writing affording him an opportunity to:-

- i) *Dismantle the structure standing on such land and to remove the material from the site; or*
- ii) *Offer suitable equivalent area in exchange from out of his proprietary land or from out of the land which he may acquire or purchase for the purpose in the same village from the date of issue of the notice failing which the Revenue officer aforementioned of the structure and may dismantle the structure and remove or cause to be removed the material from the site and in doing so the Revenue office may use such force, as may be necessary.*

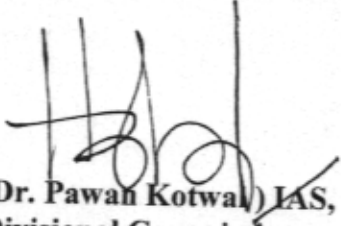
The person so ejected shall be liable under the order of Revenue officer not below the rank of a Collector or officer in charge of the settlement or an assistant collector of the first call subordinate to him to a fine not less than Rs. 500 per day till the contravention on the land mentioned in section 133 is removed in addition to revenue payable on the land for the period of possession reckoned at village revenue rates.

What emerges from the reading of the said proviso is that in case petitioner is found in possession of Kahcharai land, he has to be ejected except for 10 Marlas of land under and adjacent to the structure. Non adherence to the proviso to sub section 2 of Section 133 of Land Revenue Act renders the orders passed by the Revenue authorities as unsustainable and deserves to be set aside.

10. I have heard the arguments advanced by the parties and report of Tehsildar with regard to valuation of the land offered by appellant from his proprietary land in exchange for Kahcharai land over which appellant has raised straw shed is perused which shows the rates of land of the said village. The above cited proviso is applicable in the present case.
11. In view of the above facts and circumstance and the law point involved in the matter, the appeal is allowed and order dated 13-11-2009 passed by ACR Kathua and order dated 07-03-2009 of Tehsildar Hiranagar are set aside. Deputy Commissioner, Kathua shall issue necessary directions to Tehsildar Hiranagar as per Sec. 133(2)(c) of LR Act for attestation of mutation of exchange of 8 Marla of Kahcharai Land held by appellant with his 14 Marlas of the proprietary land.

A copy of this order be sent to Deputy Commissioner Kathua for information and further necessary action.

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


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

Announced
29.4.17