

IN THE COURT OF DIVISIONAL COMMISSIONER JAMMU

Present Dr. Pawan Kotwal, IAS.

File No. 20 A/Revision
214-15

Date of Institution
24.08.2015

Date of Decision.
15.04.2017

Tanvir Ahmed Salaria
S/o Anayat Ullah Salaria,
R/o Village Batote
Tehsil and District Ramban

..... Petitioner

V/S

1. Abdullah Mochi,
(Deceased through LRs 1. Mohd Shafi, 2. Monghullah, (Sons)
3. Bezoin Begum 4. Subina. (Daughters)

R/o Village Batote
Tehsil and District Ramban

2. Deputy Commissioner,
(District Collector),
Doda

.....Contesting Respondents

3. Naib Tehsildar, Assar,
Tehsil Assar, District Doda.

4. Patwari Halqa Assar
Tehsil Assar District Doda

..... Performa Respondents

IN THE MATTER OF :-

Revision petition against the order of Deputy Commissioner (District Collector), Doda dated 04.07.2014 whereby he has entertained and disposed of the appeal under the provisions of J&K State (Vesting of Ownership to the Occupants) Act 2001 and recommended for cancellation of ownership rights conferred upon the petitioner in respect of the land measuring 3 kanals and 8 marlas comprising Khasra No. 199 min of village Karmail Tehsil Doda.

Prayer for setting aside the same.

ORDER

This revision has been filed against the order of District Collector, Deputy Commissioner, Doda dated 4.7.2014 whereby he has entertained and allowed the appeal filed by father of the respondent herein against the order of mutation No. 33 dated 4.08.2010 attested by the Tehsildar, Doda.

2. The brief facts of the case are that the land comprising Khasra No. 199 is a big chunk of state land. A portion of it measuring 6 kanals is in possession of the petitioner whereas the respondents are also in possession of 6 kanals of the state land. The J&K State Land (Vesting of Ownership to the Occupants) Act, 2001 (hereinafter referred as "Roshni Act") came into force in 2001. Later on it was amended by amendment Act of 2004. In Terms of the provisions of the Act, the ownership rights vis-a-vis the 'State Land' were to be conferred upon to a person in actual physical occupation of the land subject to fulfillment requirement incorporated therein. In terms of section

5 of the Act, the applicant (occupant of State Land) had to apply in the prescribed form to the Territorial Tehsildar. Then the Tehsildar in terms of section 6 was required to hold the enquiry to make a report to the District Collector with his recommendations. As per section 8 of the Act, the occupant claiming benefit of ownership;

- i. Must be resident of State;
- ii. Must apply within a period of 3 Months from the date of commencement of the Act.
- iii. Has to pay the price as shall be determined, and
- iv. Land shall not be required for any public purpose.

The petitioner immediately after commencement of the Act applied for conferment of the ownership right in respect of 6 kanals of land in his favour.

As is clear from the application so filed, ownership rights were conferred to the petitioner by the Committee headed by the District Collector in accordance with the provisions of Roshni Act only to the extent of 3 kanals and 8 marlas.

3. According to the learned counsel for the petitioner, the petitioner was in possession of 6 kanals of the land from the year 1989, however the possession of the petitioner was not reflected in the revenue record for various reasons. However, in 2003, after spot inspection was made by the then revenue field officer, Tehsildar, Naib Tehsildar etc, the record was corrected and the name of the petitioner was also reflected in revenue record to the extent the petitioner was in actual physical possession on spot. The respondents had full knowledge of the same rather same was corrected in his presence and with his consent. Further the respondent from 2003 till date did not challenge the entries before any forum. If it is taken that entries have not correctly been made, they ought to have assailed the same before higher forum. But the respondents never challenged the same till date. The learned counsel for the petitioner further submits that as per Section 2(e) Occupants means a person in actual physical possession of the said land on the commencement of the Act personally or through an authorized agent. It does not say whether his name exist in the register Khasra Girdawari or not. On the basis of the actual physical possession it was the petitioner who was/is entitled to be conferred ownership rights. Had the respondents been in possession then they would have till date challenged the entry recorded in the year 2003 in the revenue record. They would have also filed application for conferment of the ownership rights for 12 kanals of the land. A perusal of the form submitted by the respondents, copy of which has been placed in record shows that the respondents claim ownership rights in respect of only 6 kanals of land which was in their actual possession. This is evident from the application form filed by them before the Tehsildar territorial.
4. The learned counsel for the petitioner further submits that the appeal was a malafide as it was filed on behest of some of the stone crusher mafia who are behind the respondents and have an eye on the land in occupation of the petitioner. It is further submitted that had the respondents been aggrieved of the order then they would have objected at the time of rights were being conferred upon the petitioner or even when correction of Khasra Girdawari were made in 2003 which was made in presence and consent of the father of the respondent.

The petitioner has further submitted that there is no provision of appeal provided under Roshni Act wherein appeal against the orders of the conferment of the ownership rights lie. Appeal lies to the Government only in respect of the decision of Committee with regard to fixation of price. In this regard the petitioner relies on the following judgments of the Hon'ble Special Tribuna in case titled Des Raj & Ors. Vs. Bhushan Kumar & Ors reported in 2012(3)JKJ 58 held;

"No appeal is provided in the Act against rejection of application for conferring ownership rights on State land maintainable under the Act. Only appeal with regard to the rate fixed by Committee is maintainable before the Government".

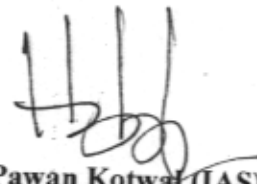
The learned counsel further submits that the Deputy Commissioner after having held the petitioner entitled to ownership rights under Roshni Act has become functus officio and has no jurisdiction thereafter to entertain any appeal and pass any order.

5. In rebuttal the learned counsel for the respondent submits that they have not challenged the order of conferment of ownership rights under Roshni Act, but their case was regarding correction of the Khasra Girdawari. Therefore, revision is not maintainable. It is further contended by the learned counsel for the respondent that correction of Khasra Girdawari can be made only by way of mutation and not otherwise. The Tehsildar has committed error in making the entries otherwise than by mutation.

6. The contention of the learned counsel for the respondents that change of Khasra Girdawari could be made only by way of mutation is concerned, the same is not applicable to State land. There is no provision whereby the entries in the Khasra Girdawari be made by way of mutations. Change of entries in Khasra Girdawari by way of mutation is applicable in respect of proprietary land and not in respect of State land. It is only under Standing Order No. 22 which decides how the changes can be made in the Girdawari during harvest. Therefore, the arguments of learned counsel for the respondent has no force.
7. Further after the ownership rights are conferred in respect of State land in favour of a party no appeal lies for correction of record. The same was available to the party aggrieved prior to the conferment of ownership rights. Further no party has any vested right over the state land on this score as well as the appeal at belated stage was not maintainable particularly when the party admittedly was out of possession.
8. The perusal of the order impugned shows that it has been passed against the mutation No. 333 attested under vesting of ownership Rights Act (the Roshni Act) on the basis of the order of the Committee headed by the District Collector Doda conferring the ownership rights upon the petitioner and against the order of change of Khasra Girdawari.
9. But from the memorandum of appeal/complaint filed by applicant/respondent before D.C Doda, it has been found that it has been made against the back dated entry made in the register Khasra Girdawari of Khariel 2003 in favour of petitioner in respect of 6 kanals of state land comprising Khasra No. 199 min of Village Karnail.
10. Further it is to be mentioned that court below after hearing the parties & framing issues to arrive at the factual position, directed Additional Deputy Commissioner, Doda to visit the site of land in question & sought a report with respect to the issues framed. And after obtaining report has allowed the appeal to the extent of changing of Girdawari in 2003 in favour of Tanveer Ahmed.
11. With regard to conferring of ownership rights under Roshni Act, in favour of Abdullah Mochi the court below has observed that the then official/officers had processed the Revenue papers in violation of the said Act and has accordingly concluded to recommend the case to the Designated Authority for cancellation of ownership rights conferred under Roshni Act upon Abdullah Mochi measuring 2 kanals 15 marlas.
12. In view of the above, this court has come to the conclusion that the order of the court below is as per law & needs no interference. Hence the revision petition being devoid of merit is dismissed.

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

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
15-04-2017