



IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU
Present: (Dr. M.K. Bhandari) IAS

File No.
56/Revision
2017-18

Date of Institution
09.08.2017

Date of Decision
29.12.2017

1. Joginder Pal S/o Punu Ram R/o Ramnagar, Tehsil & District Kathua.
2. Deep Kumar alias Billu S/o Yash Pal R/o Ramnagar, Tehsil and District Kathua.

Petitioners)

VERSUS

1. Banarsi Lal S/o Nathu Ram R/o Ramnagar, Tehsil & District Kathua.
2. Tehsildar Assistant Collector 1st Class, Kathua.
3. SHO/Incharge Police Station, Lakhampur, Kathua.
4. Incharge Police Post, Kirian (Ramnagar), Kathua.

(Respondents)

In the matter of: Revision petition against order dated 04.04.2017, passed by the Tehsildar Assistant Collector 1st Class, Kathua in an application filed by the respondent No. 1 Banarsi Lal, where under the petitioners have been restrained from raising construction in their own land by replacing the old Kacha construction. Prayer for setting aside the same.

ORDER

1. The present petition has been filed against order dated 04.04.2017, passed by the Tehsildar, Assistant Collector 1st Class, Kathua in an application filed by the respondent No. 1 Banarsi Lal, where under the petitioners have been restrained from raising construction in their own land by replacing the old Kacha construction.
2. Counsel for respondent filed objections/ written arguments to the petition wherein it has been submitted that vide order dated 04.04.2017, the

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petitioners have been issued show cause notice for causing their appearance on 20.04.2017 and that the present revision petition requires dismissal on the ground that revision is not against any final order but the same is only against a show cause notice issued by respondent 2.

3. The case came up for hearing. The petitioner along with the counsel is present. Respondent is present in person. Counsel for petitioner reiterated the grounds mentioned in the memo of petition and further pleaded that petitioner and father of respondent are share holders. Further, as per their family settlement, land in Punjab remained with father of respondents and the petitioner got the land in question in Kathua. He further pleaded that the petitioners are raising construction in their own land and the respondent has nothing to do with this land. He further submitted that Kh. No. 301 comprises land measuring 7 Kanals 3 marlas, the possession of which to the extent of 6 Kanals – 3 Marlas is with petitioner, and out of the same, Ratan Chand & Nathu Ram (brothers of the petitioner No. 1) have houses on 10 marlas of land each and the remaining 10 marlas of land is Gair Mumkin.
4. The petitioner submits that since April 2017, they have not been able to complete the roof work. Moreover, the winter season has set in, which is causing difficulties for the family of petitioners. He prayed for setting aside of the order impugned.
5. Counsel for petitioners further submits that Natha Ram, father of respondent herein, is alive, and during his life time, Banarsi Lal (Son of Natha Ram) was not competent to file any application or petition before any court for the purpose. Therefore, Banarsi Lal was not eligible to move the application before Tehsildar Kathua, and on this ground, the order of court below deserves to be set aside.
6. I have heard the parties and perused the written arguments filed by counsel for respondent. The record has also been examined. It comes to fore that

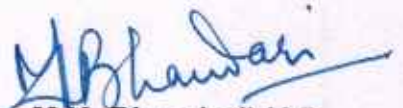
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the respondent, without enclosing any revenue papers depicting his claim, has filed an application before Tehsildar concerned to stop the construction work of petitioner herein. Tehsildar concerned sought report from field staff, and the Patwari Halqa forwarded a report which was acknowledged by GQ and NT concerned. Patwari, in his report, has submitted that in Kh. No. 301 land measuring 7 kanal- 3 marla escheated to the State from old land owners Kulbhushan & ors, and the same is under the cultivating possession of Rattan Chand & Ors sons of Punu. Out of this land Rattan Chand & Nathu sons of Punu Ram have houses in 10 marlas of land each.

7. Moreover, when Natha Ram father of Banarsi Lal respondent No. 1 herein is alive, Banarsi Lal was not competent file any application/ suit against petitioners. And Tehsildar concerned without considering this fact, issued notice to the petitioners and restrained them from raising further construction. So, when the respondent herein was not eligible to file any application or suit on account of his father, being alive, the application filed is incompetent and not maintainable and subsequently the order passed by Tehsildar Concerned is not tenable and hence deserves to be set aside.
8. Further, the petitioner has filed an affidavit before the Court wherein he has committed to removing the construction raised for residential purposes if the case is decided against him and in favour of the Respondent No. 1. The affidavit has force and is considered
9. Moreover, the petitioners who are raising construction on the same location, after dismantling their old house, cannot be restrained from completing the same when respondent No. 1 has no right over that land.
10. From the above, as also from the revenue record, it has been found that respondent herein has not been able to prove his claim over the land where the petitioners are raising construction, and therefore, has no locus to file application for restraining petitioners from raising construction.

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11. Hence in view of above facts, this court is of the opinion that the petition having merit deserves to be allowed & order impugned be set aside.
12. Accordingly under section 15 (3) of Land Revenue Act 1939-AD, the case file along with record file of subordinate court is submitted to the Financial Commissioner (Revenue) J&K Jammu for kind confirmation.
13. Both the parties shall appear before Financial Commissioner (Revenue) on 16-01-2018.


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

Announced