



In the Court of Additional Commissioner, Jammu
(With the powers of Divisional Commissioner)
(Rail Head Complex, Jammu)
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File No.

55/Appeal 2014

1. Ghulam Mohd
2. Fareed Ahmed
3. Mohd Baloch

All sons of Late Shri Allah Rakha, R/o village of Rakh Bahu, Tehsil & District Jammu.

....Appellants

1. The Collector, (Deputy Commissioner), Jammu
2. The Director Survey and Land Records (Ex-officio Settlement Officer), Jammu
3. The Assistant Settlement Officer, Jammu
4. The Tehsildar Bahu, District Jammu

.....Respondents

5. Sh. Lal Mohd. Sabir S/o Late Fazal Din R/o Mendhar, Tehsil Mendhar District Poonch, At present, opposite Police Post Gujjar Nagar, Jammu
6. S. Rameshwar Singh S/o S/. Pritam Singh R/o Gandhi Nagar, Jammu

.....Performa Respondents

In the matter of: Appeal against the impugned order dated 01-11-2014 passed by the respondent no. 1, whereby the suit for declaration filed by the appellants under Section 32 of the Land Revenue Act for declaring the revenue entries made by respondents no. 2 to 4 in the Misal Haqiat (Records of Rights) in favour of proforma respondents no. 5 and 6 with respect to land measuring 02 kanals (proforma respondent no. 5) and 02 kanals and 02 marlas (proforma respondent no. 6) total measuring 04 kanals and 04 marlas falling under khewat no. 487, khata no. 501/27 and khasra no. 58 new (35 Old) situated at village Rakh Bahu, Tehsil and District Jammu as null and void to the extent it affects the rights of appellants. Prayer for setting aside the same.

ORDER

The present appeal has been filed against the order dated 01-11-2014 passed by the respondent no. 1, whereby the suit for declaration filed by the appellants under Section 32 of the Land Revenue Act for declaring the revenue entries made by respondents no. 2 to 4 in the Misal Haqiat (Records of Rights) in favour of proforma respondents no. 5 and 6 with respect to land measuring 02 kanals (proforma respondent no. 5) and 02 kanals and 02 marlas (proforma respondent no. 6) total measuring 04 kanals and 04 marlas falling under khewat

no. 487, khata no. 501/27 and khasra no. 58 new (35 Old) situated at village Rakh Bahu, Tehsil and District Jammu as null and void to the extent it effects the rights of the appellants with a prayer for set aside the same. The main submissions made in the appeal are as under:-

1. That the father of the appellants namely Late Shri Allah Rakha son of Phian Gujjar along with Shri Nika son of Late Shri Phuri Gujjar were cultivating the State land measuring 32 kanals falling under khasra no. 307/5 situated at village Rakh Bahu, Tehsil and District Jammu prior to 1947 under "Grow More Food Scheme" and paying "Galla Batai" to the State. In the same year, the father of the appellant constructed his residential house over the said land.
2. That in the year 1960-62, the land in question was handed over from Agricultural Department to Revenue Department, a fresh measurement was conducted by the Revenue Department and khasra number 307/5 situated at village Rakh Bahu Jammu was converted to khasra number 55 and its area increased from 32 kanals to 56 kanals and 01 marla. It is pertinent to mention here that the father of the appellants was paying Lagan Nakdi to the Government. The possession of the father of appellants and Nikka Gujjar was separated in 1967.
3. That again in the year 1971-72, a measurement was conducted in the Village Rakh Bahu and the khasra number 55 was converted to khasra numbers 35 and 38 respectively. That between 1963 to 1971, some portion of khasra no. 55 was acquired by the Public Works Department for construction of road from Hotel Asia to Railway Station Jammu out of land under the occupation of father of appellants. The father of appellants remained in possession of land measuring 23 kanals under khasra no. 35 new, 55 old.
4. That after preparation of jamabandi of 1971-72, the father of the appellants continued in cultivating possession of land measuring 19 kanals and 19 marlas and paid Lagan to the State, the entry of Lagan Nakdi Hasab Parta Deh is reflected in the khasra girdawari of Kharif 1971.
5. That in the year 1973-74, out of land measuring 19 kanals and 19 marlas, land approximately measuring 10 kanals was acquired by the Public Works Department for construction of road, out of possession of father of appellants. The father of appellants remained in physical cultivating possession of land measuring 09 kanals and 19 marlas in khasra no. 35 of village Rakh Bahu.
6. That the father of the appellants was continuously cultivating the above said land and in the year 1990, the Jammu and Kashmir Government ordered the revision of Record-of-Right; the holdings of the father of the appellants were measured by the Revenue Authorities pertaining to khasra no. 35 which was in cultivating possession of the father of the appellants. In the meanwhile, during the settlement process, the father of the appellants died.
7. That during the settlement operation, khasra no. 35 was measured and the same was converted into new khasra number i.e. 59 (06 kanals-10 marlas),

56 (09 marlas) and 58 (06 Kanals-14 marlas) total measuring 13 kanals-13 marlas situated at Village Rakh Bahu, Tehsil and District Jammu.

8. That in the month of December 2007, to the utter surprise of the appellants, the appellants came to know that the names of respondents no. 5 and 6 have been shown in the khasra Nos. 58, khata no. 501/27, khewat No. 487 for land measuring 02 kanals in favour of respondent no. 5 and (02 kanals-02 marlas) in favour of respondent no. 6, total measuring (04 kanals-04 Marlas) in the Record-of-Rights, the appellants herein immediately applied for the certified copy of RoR in the General Record Rood, Jammu and the same was provided to the appellants on 19-12-2007.
9. That the proforma respondent no. 5, who is a resident of Mendhar District Poonch in conspiracy with the Settlement Authorities manipulated girdawari entry with respect to land measuring 02 kanals and got his name recorded in khasra number 58 of Record-of-Rights of said Village. The proforma respondent no. 6 also in connivance with Revenue Authorities got his name entered in the said RoR with respect to land measuring 02 kanals and 02 marlas in the same khasra number.
10. That the girdawari entries of the proforma respondents in the Record-of-Rights were made by the Settlement Staff at the back of the appellants. The official respondents never ascertained the actual and physical position of the khasra numbers in question. The entries of the proforma respondents have been recorded in utter violation of the principle of natural justice.
11. That the appellants immediately after knowing the illegal entries of proforma respondents in the above said khasra numbers, approached the official respondents to correct the same, but the illegal entries were not corrected by the official respondents.
12. That since the proforma respondents were never in possession of land mentioned hereinabove, they were not the local residents of village Rakh Bahu. Aggrieved of entries of the proforma respondents in RoR, the appellants herein on 25-04-2008 filed a suit under section 32 of Land Revenue Act declaring the revenue entries made by respondents no. 2 to 4 in the Misal Haqiat (Records of Rights) in favour of proforma respondents no. 5 and 6 with respect to land measuring 02 kanals (respondent no. 5) and 02 kanals and 02 marlas (respondent no. 6) total measuring 04 kanals and 04 marlas falling under khewat no. 487, khata no. 501/27 and khasra no. 58 new (35 Old) situated at village Rakh Bahu, Tehsil and District Jammu as null and void before the Court of Learned Collector, (Deputy Commissioner) Jammu.
13. That on 01-11-2014, the suit has been dismissed by the Court below.
14. That since the father of the appellants was cultivating the above said land and paying the Lagan to the State prior to 1955, the father of the appellants was entitled to get the proprietary rights under Government Order No. LB-6/C of

1958 and S-432 of 1966. But due to ban imposed by the Government, the mutations could not be attested in his favour. The ban was lifted by the Government with respect to attestation of mutation subsequently.

15. That the appellants herein had also filed a representation before the Hon'ble Revenue Minister on 29-10-2009 for attestation of mutation in favour of appellants, the case of the appellants for attestation of mutation was processed by the Settlement Officer Jammu and after completing all formalities submitted the same to the Government for attestation of mutation, which is pending disposal in the office of Commissioner Secretary to Government, Revenue Department.
16. That it is pertinent to mention here that the appellants also applied for conferment of ownership rights under the provisions of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants), Act 2001 amended up to which is pending disposal.
17. That when the land of the father of the appellants was acquired by the various departments, including the JDA, the compensation has been paid to the father of the appellants. The same was paid to the father of the appellants in view of the order no. Rev/CA/65/5A dated 19-07-1969 wherein the occupants of Rakhs and Farms Departments were treated as tenant at will under the State.

It has been submitted that the impugned order passed by the court below may be set aside to the extent it affects the rights of the appellants, with the further prayer allowing the suit of the appellants and passing of a declaratory decree restoring the entry in the name of the appellants in the RoR of kharief 2006-07 of village Rakh Bahu District Jammu with respect to entire land measuring 13 Kanal 14 marlas under khewat no. 487, khata no. 499/27, 500/27 and 501/27 falling under khasra no. 35 old, new 59 (6 kanals-10 marlas), 56 (9 marlas) and 58 (6 kanals-14 marlas) on the name of the appellants as per position prevailing on spot.

Ld. Counsel for appellants reiterated the points highlighted in the memorandum of the appeal and submitted that the appellants are entitled for vesting of ownership in terms of Government Order No. LB-6/C of 1958 and S-432 of 1966. He also filed copy of order passed by Hon'ble High Court of Jammu and Kashmir in OWP No. 1860/2018, IA No. 01/2018 dated 14.09.2018 in case titled Ghulam Mohd V/s State & others and stated that directions be conveyed to Tehsildar concerned for taking appropriate action in terms of Hon'ble High Court directions.

ARA appearing on behalf of the State have filed written objections as:-

1. That as per report of Settlement Officer, Jammu submitted to Deputy Commissioner, Jammu vide No. SOJ/R/12/304 dated 09.11.2012, the suit land is a State land out of which some portion has been acquired by

Railway and remaining is under road. So the entry in the name of all illegal occupants are illegal and needs to be removed.

2. That vide instructions issued by the Ld. Financial Commissioner (Revenue), J&K in the year 1997, none of the field staff is allowed to enter the name of the illegal occupants on the State land.
3. That as per the record-of-rights for the year 2006-07, the petitioner are entered as illegal occupants over the said State land (suit land). So in compliance the order of Hon'ble High Court in case titled S.K Bhalla V/s State, there is clear instruction for expunging all illegal entries and their eviction from the State land.
4. That the order passed by Deputy Commissioner, Jammu is in accordance with the law and there is no illegality in the said order. The appeal filed by the appellants against the impugned order of Deputy Commissioner, Jammu is without merit and baseless which may be dismissed. Moreover, as per SRO 417 dated 18th of December 2012, this court is not having jurisdiction for hearing of appeal in the instant case, copy of which is enclosed herewith. Thus the instant appeal is liable to be dismissed out rightly.

The performa respondents despite due service had not appeared in the court and they were as such set ex-parte on 28.11.2015.

I have examined the record placed on the file and heard the arguments put forth by Ld. Counsel for the appellants and the ARA in the office of Divisional Commissioner, Jammu on behalf of the official respondents. The operative part of the impugned order dated 01.11.2014 passed by Collector, (Deputy Commissioner) Jammu in a case titled Ghulam Mohd & other V/s Lal Mohd Sabir & others is as under:-

“..... As per the circular instruction issued by the then Financial Commissioner, Revenue vide No. FC/LS/MISC-1648/97 dated 22.12.97 there by laying down the specific procedure to be followed right from Patwari to Tehsildar in case of land which is as per record is a “State Land”. More so, the settlement of village Rakh Bahu was completed in the year 2006-07. Further the plaintiffs and defendants No. 1 & 2 have failed in taking benefit under J&K State Lands (Vesting of Ownership To The Occupants) Act 2001, for the suit land which further raises reasonable doubts on possessory status of the land. The circular instructions of Financial Commissioner (Revenue) referred above was issued much earlier than the date of preparation of Record of Rights of the village. Record of Rights should have been prepared while taking into consideration of State land and none of the illegal occupant should have been entered into the Record-of-Rights, rather a procedure should have been adopted to evict all those who are in possession of State land. But the field staff has not done so as such this dispute.”

Hence, taking into consideration the arguments of Assistant Revenue Attorney appearing for the official defendants plea raised by the plaintiff, the instant suit is rejected and in order to protect the State land from illegal occupants, it is, directed that a correction in the Record-of-Rights of the village should be done in the following manner:-

Khewat No.	Khata No.	Ownership column	Kashat Column	Khasra Number		Area K1-M1	Kind of soil
				Old	New		
487	499	Sarkar	Maqbuza Sarkar	35	59	03-01 03-09 06-10	Banjar Qadeem Gair Mumkin
Do	500	Do	Do	35	56	00-09	Gair Mumkin
487	501	Do	Do	35	58	04-14 02-00 06-14	Warhal- doaim Gair Mumkin

Let the copy of this order be sent to Regional Director (Survey and Lands) Record Jammu and Tehsildar Bahu for implementation and necessary correction in the Record-of-Rights of the village.

Further taking into consideration the instructions laid down in Rule 13 of J&K State Land (Vesting of Ownership to The Occupants) Rule 2007 and circular No. FC/LS/MISC-1648/97 dated 22.12.97 issued by the then Financial Commissioner (Rev.), Tehsildar Bahu is directed to follow the above said circular instruction in order to get the suit land evicted from all encroachers and also erect hoardings of State land on the suit land. Tehsildar is further directed to take all necessary steps to make a list of all the persons who are encroachers of State land in village Rakh Bahu and get all the State land encroachment free while following the procedure as laid down in the above said Rules & Circular. All this should be done in two months from the date of this order.....”

After examination of the case file, the following has emerged

- That Collector (Deputy Commissioner), Jammu has rejected the suit filed by Sh. Ghulam Mohd & others under Section 32 of Land Revenue Act seeking correction of entries in the Record-of-Rights of village Rakh Bahu against khata No. 501/27 of khewat No. 487 under which 02 kanals and 02 marlas of their land falling under Old khasra No. 35 brought under new khasra No. 58 and **has ordered to protect the State land from illegal occupants with a further direction for correction in the Record-of-Rights in favour of the State in respect of khasra No. 59 (Old 35)**

measuring 06 kanals 10 marlas, 56 (Old 35) measuring 09 marlas, 58 (Old 35) measuring 6 kanals 14 marlas of village Rakh Bahu.

- that Hon'ble High Court of Jammu and Kashmir in OWP No. 1860/2018, IA No. 01/2018 dated 14.09.2018 in case titled Ghulam Mohd & others V/s State & others has disposed of the writ petition with directions to the respondents therein.

After careful consideration it has been found that Hon'ble High Court has already disposed of the writ petition pertaining to the land in question, so this court is constrained to pass any further directions. The present appeal has become infructuous and is as such dismissed without any observation. Interim order, if any, passed by this court shall stand vacated. A copy of this order along with the record file of the court below shall be forwarded to the court below for reference and record. The case file be consigned to record after due completion.

**Announced
17.08.2022**

**Pawan Kumar Sharma, JKAS
Additional Commissioner, Jammu
[with the powers of Divisional Commissioner]**