



In the Court of Additional Commissioner, Jammu
(With the powers of Divisional Commissioner)
(Rail Head Complex, Jammu)
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File No.
22/Appeal/2020-21

Date of Institution
29.12.2020

Date of Decision
18.01.2021

1. Inhabitants of village Halqa Tehsil Marh District Jammu through Pyar Singh S/o Teja Singh R/o village Halqa Post Office Halqa Tehsil Marh District Jammu
.....Appellant

Versus

1. Devi Dass S/o Sh.Chhajju Ram R/o Village Halqa Post office Halqa Tehsil Marh District Jammu
2. S K Gupta S/o Sh.Devi Dass R/o Village Halqa Post office Halqa Tehsil Marh District Jammu

Respondents

IN THE MATTER OF:

Appeal against order dated 16.12.2020 issued vide order No SDM/m.PS/2020-21/1733-34 passed by Sub-Divisional Magistrate Marh. Prayer for setting aside the same; with further prayer that competent authority, Deputy Commissioner i.e. District Collector, Jammu under the Land Revenue Act may kindly be directed to initiate proceedings against the respondents under Section 133-C of the Land Revenue Act.

Any other order/direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the appellant and against the respondents, in the interest of justice.

ORDER

The instant case was transferred to this court by the Learned Divisional Commissioner, Jammu. The appeal has been filed on the grounds; that there is a piece of land comprising Khasra no. 89 in village Halqa which originally belongs to the family of one Karan Singh. The respondents herein started construction work for raising a commercial complex of 5 shops over a piece of land measuring about 5 marlas and inhabitants of village brought this fact into notice of the revenue authorities i.e. Tehsildar Marh that the provisions of section 133-A are being violated by the respondents and they are raising construction over the agriculture land and converting it into a commercial complex. Afterwards SDM Marh issued an ex-parte order, in contravention of the provisions of Land Revenue Act. The order is without jurisdiction and therefore, the same is nullity in the eyes of law. The impugned order is without jurisdiction as section 133-A(1) specifically provides that no land which is used for agriculture purpose shall be used for any non-agriculture purpose except with the permission of District Collector and therefore, the order is without jurisdiction and thus the same is nullity which may be set aside in interest of justice.

The learned counsel for the respondents has filed objections to the appeal that the land measuring 10 kanals and 13 marlas comprising khasra no. 89 situated at village Halqa Marh, Tehsil Marh District Jammu had fallen in the share of the non-applicant No 1, as such the non-applicant No. 1 is the lawful owner and is in cultivating possession of the aforesaid land, therefore the applicants/ appellants have no concern/right/title over the aforesaid land of the non-applicant No. 1. Hence the applicants have no prima facie case in their favour and the appeal is liable to be dismissed. The applicants are not the party before the Sub Divisional Magistrate Marh, therefore the applicants have no right or authority to file the appeal before this court. In terms of Section-13 of Agrarian Reforms Act, the non-applicant No.1 being the lawful owner and in cultivating possession of his land comprising khasra No. 89 has a right to raise construction for residential house on 02 kanals, and also has the right to raise the construction of commercial purpose over 10 marlas, therefore the permission for raising the above mentioned construction is not required, as such the appellants have filed misconceived appeal and stay application and obtained the ex-parte status quo order dated 31.12.2020, which is required to be vacated.

During the course of proceedings Learned counsel for appellant filed an application for treating appeal as revision petition to which learned counsel for respondents agreed. The application is allowed and the present appeal is being heard as "revision petition."

Both the counsels argued the matter at length on maintainability of the appeal. Learned counsel for the petitioners pleaded that the court below has not appreciated the matter in its right perspective and has wrongly taken the issue under Agrarian Reforms Act. Learned counsel for the respondent pleaded that the Court below has rightly appreciated the facts and legal aspect of the matter before passing the impugned order. As such the order doesnot suffer from any infirmity and same needs no interference. He further pleaded that the order impugned has been passed under Agrarian Reforms Act and the same cannot be challenged before this forum. If anybody has any grievance, the said person can challenge the same before right forum.

From perusal of the record file and the arguments put forth by learned counsels of both the parties it has been observed that the court below has passed order under Agrarian Reforms Act. Therefore this court lacks jurisdiction to take the cognizance of the matter and the case is dismissed. The parties are free to move before the appropriate forum, if they choose so. It is clarified that this court has not expressed any opinion with respect to the proceedings (if any) taken or will be taken before District Collector in terms of S.O. 3807(E) & 3808(E) & the provisions thereof. The Court below has made reference to S.O. 3807(E) and 3808(E) and observations of the court below are without jurisdiction since the authority prescribed for the same is District Collector. Since no order has been passed by District Collector so the question of such revision can be proceeded only after the order is passed by District Collector.

The stay order issued by this Court, if any, shall stand vacated. The case file be consigned to records after due completion.

Announced
18.01.2021.


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