

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU
Present:- Dr. Raghav Langer, IAS

File No.

15/Revision
2014-15

Date of Institution

28.05-2014

Date of Decision

09-10-2021
01-10-2021

Har minder Singh S/o Late S. Raja Singh R/o Tringle Batote, through his son
Ravinder Singh Fower of Attorney Holder

....Petitioner

Versus

1. Tehsildar Ramban

2. Ravinder Kishen Kitchlu S/o Late Sh. Jewan Krishen Kitchlu R/o Village
Tringla P.O Batote Tehsil and District Ramban

...Respondent

IN THE MATTER OF :-

Revision petition against ex-parte order dated 09-05-2014 passed by respondent no. 1 restraining the petitioner to self cultivate the land on the petition of respondent no. 2 (stranger to the litigation) served through SHO Police Station Batote—Prayer for setting aside the same being illegal

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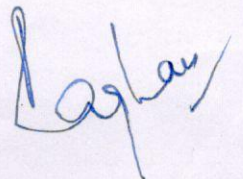
Appearing Counsel:-

Advocate Gurcharan Singh for the petitioner.
Respondent no. 2 present in person

J U D G M E N T

The present revision petition has been filed by the petitioner against the ex-parte order dated 09-05-2014 passed by respondent no. 1 restraining the petitioner to self cultivate the land on the petition of respondent no. 2(stranger to the litigation) served through SHO Police Station Batote. The assertions contained in the petition are:

1. That the respondent no. 1 passed an ex-parte order against the petitioner on the application of respondent no. 2 who is stranger to the litigation restraining the petitioner from self cultivating the land. The petitioner has been in self cultivation of the above said land since 1969 and the mutation have been made on the name of the petitioner in 1985 and the petitioner have sown crop on the land and the Girdawari of the year 2013.
2. That the petitioner has been self cultivating the land since 1969 and no court have ever restrained the petitioner from cultivating the same. The litigation is pending in the Hon'ble Court(DB) in LPAOW D-5-2014, CMA (D-5), 2014, CDLOW, D-3/2014 between the petitioner and one Surinder Kichloo, Kapil Kichloo both sons of Sh. Upender Kichloo. The respondent no. 2 is not a party in the entire litigation pending between the parties since the last 16 years.



3. That the order impugned dated 09-05-2014 have been passed against the petitioner behind his back and is illegal and without jurisdiction.
4. That the order impugned has been passed on the application of respondent no. 2 who is not a party to the litigation pending in the Hon'ble High Court or any other court subordinate to High Court. The petitioner is stranger to the litigation between the writ parties.
5. That the order impugned is illegal and without jurisdiction and passed on considerations other than legal and constitutional and the right of the petitioner to be heard have been denied to him.

On presentation of the petition, respondent no. 2 was put to notice, who appeared through his Counsel before this Court. After completion of processes, the case was put to arguments.

Ld. Counsel for the revisionist made arguments which are in line with the petition and stated that the present revision petition is against the order of Tehsildar-on an application dated 09-05-2014, through which Tehsildar has restrained the respondent from interfering into the disputed land.

Defendant no. 2 has submitted his reply in the case. In his reply he submitted that, respondent is in physical possession of the said property on spot. However, petitioner managed a mutation Under Section 4 & 8 of the Agrarian Reforms Act fraudulently and clandestinely in his favour on flimsy grounds. He further submitted that the mutation Under Section 4 & * was challenged before the Additional Deputy Commissioner, Doda with powers of Agrarian Commissioner, Doda on 05-12-1985 who after hearing both the parties had set aside both the mutations vide judgment dated 13-03-1995 which was challenged by the petitioner in revision petition before the J&K Special Tribunal on 07-06-1995. The Hon'ble J&K Special Tribunal also set aside

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the case of the petitioner and remanded to Director Land Records, Jammu for deciding the case afresh. Thereafter petitioner had filed a revision petition before the Hon'ble High Court, who also dismissed the writ petition upholding the judgment passed by the Agrarian Reforms Commissioner and the J&K Special Tribunal. The allegation of the petitioner that the defendant no. 2 is not a party in the entire litigation is baseless, misleading. The Electric, water and telephone connections of the said ancestral house at Tringla, Batote has been on the name of the respondent no. 2. That this baseless and unjustifiable suit has been yet another attempt by the petitioner to delay the implementation of justice since the Hon'ble High Court, J&K had dismissed his appeal bearing OWP No. 270/2013, CMA No. 337/2013.

Held:

I have applied thoughtful consideration to the whole matter and attentively heard the Ld. Counsel for the petitioner as well as the respondent no. 2.

From the perusal of the record, it transpires total land measuring 12 Kanals 13 Marlas was owned by Roop Kishan, Pratap Kishan and Bal Krishan, sons of Purdhuman Kishan Kitchloo. As per revenue records available on the file, the whole land was shown in the cultivating possession of the said owners from Rabi 1963 to Kharif 1967. During the period of Kharif 1968, father of the petitioner was shown in cultivating possession of the disputed land of which entry continued upto Rabi 1971. In Kharif 1971, the land was again shown in the possession of owners and this entry continued upto Rabi 1973 and thereafter, again in Kharif 1973, Raja Singh, father of the petitioner was shown in possession of the disputed land which continued upto Kharif 1975 and thereafter, in Rabi 1976, again owners shown in cultivating possession of the

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land which continued upto Rabi 1985, when in Kharif 1985, again Raj Singh, father of the petitioner was shown in possession of the land out of 12 Kanals 13 Marlas to the extent of 08 Kanal, as owner through mutation No. 403 & 408 of the Agrarian Reforms Act, 1976.

Since there are disputed entries of the possession before and after Kharief 1971, which needs determination through denovo enquiry on spot. Even the Hon'ble High Court of J&K in OWP No. 270/2013, CMA No. 337/2013 titled Harminder Singh Vs. J&K Special Tribunal, Jammu & Ors. held that **"it would become necessary to get the matter settled by the concerned Tehsildar in accordance with provisions of the Act of 1976 and the Rules of 1977."**

Perusal of record also reveals that there is only photocopy of the endorsement order annexed with the file, against which the petitioner has filed the present petition. The order of Tehsildar also evident that he has passed order only on conditional basis that "Restrain the non-applicants from interference in the disputed land till further order in this case."

The parties in dispute had filed a case before the Court of J&K Special Tribunal, Jammu on 06-08-2002 and J&K Special Tribunal vide its decision dated 13-12-2012 held that **"the revision petition is held not maintainable before this Tribunal, hence dismissed, resultantly the order dated 05-06-2002 passed by the Court below is upheld and the case be sent to Tehsildar Settlement Ramban for follow up actions as per impugned order dated 05-06-2002, passed by the Additional Deputy Commissioner, Ramban(with the powers of Commissioner Agrarian Reforms) Ramban."**

Thereafter without getting the denovo enquiry conducted through Tehsildar, Ramban, petitioner again approached the Hon'ble High Court

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of J&K, Jammu in OWP No. 270/2013, CMA No. 337/2013 titled Harminder Singh Vs. J&K Special Tribunal, Jammu & Ors. wherein Hon'ble High Court of J&K, Jammu held that " **it would become necessary to get the matter settled by the concerned Tehsildar in accordance with provisions of the Act of 1976 and the Rules of 1977.**"

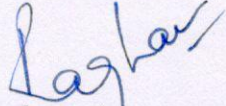
But till date no denovo enquiry on spot has not been conducted by the Tehsildar concerned. Even this Court vide order dated 14-02-2020 held that: "both the parties also agreed that this matter since falling in the competence of Tehsildar concerned, shall be settled accordingly."

In view of the discussion made herein above, the revision petition is held not maintainable, hence dismissed. The record of the Court below be returned alongwith copy of this order. A copy of this order be also sent to Tehsildar, Ramban (Now Tehsildar, Batote) for conducting denono enquiry and passing such order, as per law within a period of sixty days.

Interim directions, if any, passed by this Court shall stand vacated. File be consigned to record after its due completion.

Announced


1-10-2021


Dr. Raghav Langer, IAS,
Divisional Commissioner,
Jammu.

No.: 84/Reader/Div-Com/675

Dated:- 12/10/2021

Copy of order dated 07-10-2021 alongwith record file containing 50 leaves in the case Harminder Singh vs Teh Ramban/ Ravinder Kichloo is forwarded to the Tehsildar Ramban for further necessary action pl.


Reader
Divisional Commissioner
JAMMU