

IN THE COURT OF DIVISIONAL COMMISSIONER,  
JAMMU

Dr. Raghav Langer, IAS

File No.

Date of Institution

Date of Decision

25/Appeal  
2017-18

25.07.2017

11-9-2021

Rachpal Chand S/o Duni Dass, Executive Engineer Electric Maintenance  
& RE Division, Udhampur.

.....Appellant

Versus

1. State(Revenue Department) through Deputy Commissioner,  
Collector Udhampur.
2. Madan Lal S/o Gopalu R/o W.No-1, Shiv Nagar, Tehsil & District  
Udhampur, through Attorney holder Kamaljit Singh S/o Sewa  
Singh R/o W.No-3, H.No-89, MH Road, Udhampur.

...Respondents

3. Commissioner/Secretary, PDD, J&K, Government.
4. Chief Engineer, PDD, Jammu
5. Settlement Officer, Udhampur.

...Proforma Respondents

**IN THE MATTER OF :-** Appeal against the order dated 23-05-2017  
passed by Deputy Commissioner, Collector  
Udhampur U/S 32 of Land Revenue act, by  
virtue of which, he has decreed the suit of  
the respondent no. 2 for making correction

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in Record of Rights pertaining to the land measuring 04 Kanals 14 Marlas comprising Khasra No. 206(old) & 273( new) situated at village Shiv Nagar Tehsil and District Udhampur & has further ordered for restoration of possession of land from the Power Development Department in favour of respondent no. 2

Present:-

Advocate Faquir Mohd. for the Appellants

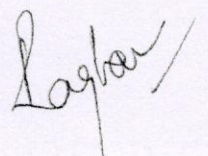
Advocate K.C Gupta for the respondent no. 2

A.R.A for the State.

### **J U D G M E N T**

The present appeal has been filed by the appellant against the order dated 23-05-2017 passed by Deputy Commissioner, Collector Udhampur U/S 32 of Land Revenue Act, by virtue of which, he has decreed the suit of the respondent no. 2 for making correction in Record of Rights pertaining to the land measuring 04 Kanals 14 Marlas comprising Khasra No. 206(old) & 273( new) situated at village Shiv Nagar Tehsil and District Udhampur & has further ordered for restoration of possession of land from the Power Development Department in favour of respondent no. 2. The assertions contained in the petition are:

1. That the ordered dated 23-05-2017 passed by Deputy Commissioner, Udhampur is totally against law and facts and therefore, the same is not sustainable under law, as such the same is liable to be set aside.





2. That the impugned order has been passed at the back of appellant as well as the proforma respondents no. 3 & 4 that to without their knowledge. No opportunity of being heard has been provided to the appellant.
3. That no doubt a notice was served to the appellant and the appellant in turn filed documentary proof regarding the possession of the land involved in this appeal.
4. That the respondent no. 2 had filed a suit u/s 32 of Land Revenue act titled Madan Lal Vs. Settlement Officer & others for correction of Record-of-Rights pertaining to Khasra No. 206(old) & 273 (new) before the Deputy Commissioner, Udhampur for land measuring 04 Kanals 05 Marlas situated at village Shiv Nagar, Tehsil & District Udhampur. But the Court below has failed to frame issues after the documentary proof submitted by the appellant.
5. That the suit which was filed before Deputy Commissioner(Collector) Udhampur after a period of more than 10 years from the date of completion of Record- of-Rights which was not maintainable and liable to be dismissed Under Section 3 of Limitation Act of 1963, which casts a duty upon the Court to dismiss the suit or appeal or an application, if made after the prescribed period, although limitation has not been set up as a defence, so suit was liable to be dismissed out rightly.
6. That the possession of appellant i.e. Power Development Department(PDD) is an old one, the PDD has occupied/taken the possession of the said land since Rabi 1983 till date the PDD is using the said land for purposes of storage. The possession of PDD is for the last more than 03 decades as such the possession of PDD has become adverse to the

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respondent no. 2. Thus, the possession of appellant (PDD) is continue and uninterrupted for the last more than 12 years.

7. That the land involved in the appeal is the ownership land of Mandir Shivji Parmandal under the management of son of Phisar Raj Nath Chela Phool Nath Jogi & one Late Sh. Pheroo S/o Mahiya Megh was the occupancy tenant on the payment of 1/3<sup>rd</sup> of the produce alongwith other land comprising Khasra No. 203, 204, 205 & 209 & one Mst. Jatti W/o Lt. Gopalu was the non-occupancy tenant this Girdawari entry is existing till Rabi 1971 and during Kharief 1971 the possession of Mst. Jatti W/o Late Gopalu was the occupancy tenant this Girdawari entry is existing till Rabi 1971 and during Kharief 1971 the possession of Mst. Jatti W/o Late Gopalu Megh has been entered on the basis of the 1/3<sup>rd</sup> of the produce, this entry has been recorded by the Naib Tehsildar without mentioning the date and during Rabi 1972, Pheroo occupancy tenant has been shown died and Jatti Widow, son Gopalu are in possession in equal share and again during Kharief 1976 Pheroo S/o Mahiya Megh occupancy tenant has been shown in possession of the said land and this entry is existing till Kharief 1980 and during Rabi 1981 again one Mst. Jatti widow of Gopalu has been entered as non-occupancy tenant on the payment of rent in cash, till Kharief 1984 and during Rabi 1985 a note has been made in the Column of cultivation of register of Girdawari regarding attestation of mutation no. 592 by virtue of which inheritance of Late Sh. Pheroo and this mutation is not available in the record room of Tehsil Office, due to attestation of this mutation the present dispute has arisen whereas the Power Development

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Department has occupied the said land since Rabi 1983 which is continued till date.

8. That the Suit Under Section 2 of the Land Revenue Act which as filed before the Court below had been filed against the Government functionaries without following the mandate of Section 80 of CPC, as such the suit was liable to be rejected/dismissed under Order 7 Rule 11 because suit was not maintainable for want of notice, section 80 of CPC is not useless formality. No doubt subsection 3 of Section 80 permits institution of a suit with the leave of the court without following the mandate of the Section, provided an urgent or immediate relief against the Govt. or public officer is to be sought. But the suit instituted under section 32 before the Court below and no leave was sought nor granted for the institution of the suit without the service of the notice. So where the suit is filed without following the mandate of section 80 of CPC, the Court below was duty bound to reject the plaint on the score also.
9. That after institution of the suit notice was issued to only one of the respondent i.e. 4 and that to without any copy of plaint.
10. That no notice was served to the respondent no. 1,2, 3, the appellant appear before the Court below and presented the documentary proof, but no issues has been framed.

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

Ld. Counsel for the appellant submitted his oral arguments which are in line with the memo of the appeal. He also

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submitted that Section 80 of CPC have not been followed by the respondent no. 1 i.e. Deputy Commissioner, Udhampur, as he was obligated to serve a notice on the department/Government. As per Girdawari entry of Rabi 1972, Pheru the original occupancy tenant had died. The order of Deputy Commissioner, Udhampur is pithy, the whole sequence of events of interim orders of the suit shows that it has been dealt very casually. The suit has been filed before the Court of Ld. Deputy Commissioner, Udhampur after a period of 10 years, which will be hit by Section 6 of Limitation Act. No application for condonation of delay has been filed by respondent no. 2. There is no order by virtue of which the occupancy rights of Pheru has been transferred in favour of Madan Lal/respondent no. 2. The mutation no. 592 pertains to the inheritance of one Sh. Pheru in favour of Madan Lal but this mutation has been given effect for transferring the inheritance of Pheru occupancy tenant whereas Pheru died issueless.

On the other hand, Ld. Counsel for the respondent no. 2 submitted that appellant has no locus standi over the land in question. Section 32 of Land Revenue Act has been amended and there is no period of limitation. Section 5 of CPC does not apply to the Revenue Court, so there is no requirement of prior notice u/s 80 CPC. Notice has been served on the appellant, first on 22-02-2017 and 2<sup>nd</sup> on 27-02-2017. Ld. Counsel for the respondent no. 2 submitted that as per Section 138 of Transfer of Property Act, Svt. 1977, no person has obtained a transfer of immoveable property referred to in sub-section(1) shall apply for and obtain from any Revenue or Settlement Officer or Court any alteration in any existing entry in any Settlement Record or paper, unless such person produces before such officer or Court a duly executed registered instrument. As per standing Order

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No. 23-A, no alteration allowed in Jamabandi entries without mutation order.

ARA for the State submitted that the order passed by the Court of Ld. Deputy Commissioner, Udhampur is correct and needs to be upheld.

**Held:**

**I have applied thoughtful consideration to the whole matter, examined the record and attentively heard the Ld. Counsel for the petitioner, it emerges that the nature of the case is such that the entire matter requires an insightful judicial determination.**

From the perusal of the record, it transpires that on 27-02-2017, the Court of Deputy Commissioner, Udhampur had directed the appellant herein (respondent therein) to appear in this Court with valid documents which may prove legal status of the department but the appellant did not prove the legal status of the land in question, whereas the respondent no. 2 is in occupancy of the land in question. As per the Record of Right(Misal Haqayait) of Khasra No. 206(old) 273(New) of land measuring 04 Kanal-01 Marlas situated at Shiv Nagar, for the year 2006-2007, in the Column of ownership, Mandir Shivji Maharaj, Purmandal, Raj Kumar S/o Madan Lal caste Brahmin R/o Shiv Nagar were recorded as Mohatim Mandir, in the column of tenant, Madan Lal S/o Gopallu caste Megh R/o Shiv Nagar were recorded as tenant Under Section 3-A of Land Revenue Act and kind of soil is shown as Gair Mumkin store(under the possession of PDD Department)

In the present case, appellant is neither the tenant of the land in question nor occupied the same by way of acquisition. However

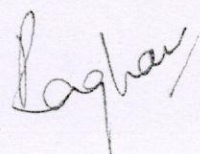
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as per the Record of Rights, 2006-2007, appellant is recorded as 'Kabaz' and the suit land is in possession for appellant department for storage purpose. The contention of the Ld. Counsel for the appellant that on filing the appeal by the respondent no. 2 (appellant therein) before the Court of Ld. Deputy Commissioner, Udhampur, the Appellate Court has not served the notice u/s 80 of CPC to the department does not completely satisfy this Court and the same is not held tenable. Leave of the Court may be taken, subject to merits, to institute the suit without compliance of provisions contained under Section 80 CPC.

The 2nd contention of the Ld. Counsel for the appellant that he is in possession of the disputed land since 2006-2007 during settlement and the appellant department has used the suit land for storage purpose, but the Ld. Counsel for appellant has not produced any relevant record showing the mode of acquisition of this particular piece of land and moreover any communication regarding the acquisition of disputed land. As per Section 32 of Land Revenue Act, if any person considers himself aggrieved by an entry in a record-of-rights (he may institute a suit before the Collector (Deputy Commissioner or Additional Deputy Commissioner) for the correction of the record, and for possession of the right claimed, if he is not in possession thereof, within one year from the date of publication of the record.

In light of the facts & circumstances of the case, the present appeal is hereby accepted. The order passed by the Court of Ld. Deputy Commissioner, Udhampur is accordingly set aside. However, the Power Development Department whose status is that of a Kabazdar/occupant of the suit land is directed to approach the





proper forum for acquisition of the suit land, if the department requires the same.

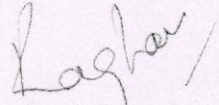
Meanwhile, in view of observation of this Court regarding exclusion of certain classes of occupiers from acquisition of occupancy right contained **Under Section 13 of Tenancy Act, 1980**; wherein no right of occupancy can be conferred on the attendant of any shrine or religious institution, in respect of land held by him from such shrine or institution in consideration of his services rendered thereto."

Accordingly the Collector Udhampur is directed to hold enquiry & take further steps for correction of the revenue record, if deemed necessary & as per the laid down norms.

Interim directions. If any, passed by this Court shall stand vacated. File be consigned to record after its due completion. Record file, if any, received from the Court below shall be sent back.

**Announced**

-11-9-2021

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