

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

File No.

18/Revision
2018-19

Date of Institution

05-06-2018

Date of Decision

11-09-2021

Ram Rattan S/o Prithvi Raj R/o Jathali Tehsil Mohalla, Doda

....Petitioner

Versus

Tirth Ram S/o Lakshmi Ram R/o Jathali Tehsil Mohalla, Doda

...Respondent

Prithvi Raj S/o Vasdev R/o Jathali Tehsil Mohalla, Doda

....Proforma Respondent

IN THE MATTER OF :-

Revision against the impugned order dated 29-05-2018 passed by Assistant Commissioner, Revenue with Powers of Additional District Magistrate, Doda,

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which is not conformity with facts and law. Prayer for setting aside the same

Appearing Counsel:-

Advocate Dara Singh for the petitioner and proforma respondent.
Advocate K.R Sharma for the respondent

J U D G M E N T

The present revision petition has been filed by the petitioner against the impugned order dated 29-05-2018 passed by Assistant Commissioner, Revenue with Powers of Additional District Magistrate, Doda, which is not conformity with facts and law. The assertions contained in the petition are:

1. That the order under revision is against facts and law and is liable to be set aside.
2. That any order, decree and mutation passed without jurisdiction is nullity in the eyes of law and the same is the fate of the order under revision.
3. That there is no passage or flow of water in Khasra No. 192 of village Jathali.
4. That the said Khasra number is in possession of the petitioner and proforma respondent since long. The elders of the petitioner and proforma respondent was also possession of the same but this aspect has not been considered by the Court below.

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5. That the order under revision is the outcome of non-application of the mind on the part of the Court below. Once so called encroachment has been removed then how the question of removal of encroachment has cropped up.

6. That the question of general public interest is false and white lie as already submitted above there is no passage or flow of water in Khasra No. 192 which is nothing reality but falsehood and fabrication.

On presentation of the petition, respondent was put to notice, who appeared through his Counsel before this Court. After completion of processes, the case was put to arguments.

Ld. Counsels, for both the parties put forth their arguments, at length.

Ld. Counsel for the revisionist submitted that Khasra No. 192 is situated in Abadi Deh. He made further arguments which are in line with the memo of petition

Ld. Counsel, for the respondent also filed objection in the revision petition. In his written objections, he submitted that the instant revision petition is not maintainable because the impugned order dated 29-05-2018 had been passed by the Court of Assistant Commissioner Revenue, Doda in exercise of powers Under Common Lands(Regulation) Act-1956 and there is no provision enshrined in the said act for filing revision petition except an appeal. There is no illegality committed in passing the impugned order and in the instant revision there is only a question of fact as to whether any encroachment

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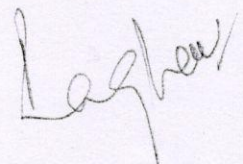
has been done by the petitioner or his father or not and such factual matters cannot be decided in a revision. The petitioner has encroached 01 Kanal 6.5 marlas out of 01 Kanal 12 Marlas under Common Land Act. Section 15 of Common Land(Regulation)Act, 1956 clearly says that an appeal shall lie to the Deputy Commissioner/Collector; so there is no provision to file revision and hence revision petition is not maintainable. He also submitted that he has not claiming possession of the Abadi Deh; he has not concerned with thorough fare which should not be blocked.

Held:

I have applied thoughtful consideration to the whole matter and attentively heard the Ld. Counsel for the petitioner as well as the Ld. Counsel for the respondent.

Present revision petition is against the order of Assistant Commissioner (Revenue), Doda wherein he has passed an order that respondents (petitioner herein) are forcibly encroaching/interfering in the said Abadi Deh land in excess to his share by planting vegetation etc and have also encroached the adjoining Shamlat land/State Land i.e. Gairmumkin Faat by fencing the said area with barbed wire and have blocked the common path, which has created problem in free movement of general public/livestock of the said area.

During the proceeding before the Court of Assistant Commissioner (Revenue), Doda, a Commission was also appointed which has strongly recommended vide report dated 12-04-2017 for eviction of the land encroached by the respondents/non-applicant(petitioner herein), and directed the Tehsildar Mohalla to remove the encroachment and fencing raised by the non-applicants (petitioner herein).



From the bare perusal of the Girdawari(Kharif 2016) and Commission appointed by Assistant Commissioner(Revenue) Doda, the Khasra No. 192 measuring 01Kanal-12 Marlas, out of which the petitioner is holding 01 Kanal-8 ½ marlas, therefore, petitioner is in possession of about 95% of the land under Khasra No. 192. But as per the definition of Abadi Deh land, all co-sharers will have a common interest in the Abadi Deh property and a co-sharer cannot be allowed to appropriate to himself land, in which his co-sharers have an interest and he cannot be allowed to build upon it in such a way which is likely to adversely effect the interest of other co-sharers over the joint land. In case titled Manji Vs. Ghulam Mohammad AIR, 1921 Lah. 157, it was held that: where a plot of Abadi-Deh land was taken exclusive possession of by the defendants, two of the proprietors of the village, who asserted their exclusive title and denied the title of the other proprietors. All Co-sharers will have a common interest in the Abadi Deh property and a co-sharers cannot be allowed to appropriate to himself land, in which his co-sharers have an interest and he cannot be allowed to build upon it in such a way which is likely to adversely effect the interest of other co-sharers over the joint land.

Whereas Section 4 of the Common Land (Regulation) Act, 1956 reads that :

- (1) Where any inhabitant of a village is denied, or obstructed in, the lawful exercise of his right of user as provided in section 3, or where any person has taken possession of or brought under cultivation or otherwise encroached upon any road, street, land, path, channel, drain, well, tank, or any source of water supply, a Revenue Officer may, on his own motion or on the application of any person interested and after such enquiry as may be deemed necessary,-
 - (a) direct the free exercise of the right of user and the removal of the obstruction, where the exercise of such right is found to have been denied or obstructed;

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- (b) eject the person who has taken possession of or brought under cultivation or otherwise encroached upon such road, street, lane, path, channel, drain, well, tank, or any source of water supply;
- (c) inflict a fine not exceeding Rs. 200 on such person or persons as are found to have denied or obstructed the exercise of the right of user in respect of or to have taken possession of or brought under cultivation or otherwise encroached upon such road, street lane, path, channel, drain, well, tank or any source of water supply.

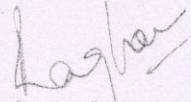
Whereas, as per Section 15 of Common Land(Regulation) Act, 1956, the appeal for any order made by a Revenue Officer shall lie to the Collector within 30 days from the impugned order. As such, the contention of the respondent with regard to non-maintainability of the instant revision petition before this Court is accepted.

Viewed thus, 'in totality of the facts and circumstances of the case, specifically the law position in this regard, the present revision petition does not sustain and the order passed by Assistant Commissioner (Revenue) Doda is upheld and Tehsildar Mohalla is directed to remove all such encroachments made by the petitioner on the State Land/Common Land, as per law.

Interim order, issued by this Court, if any, shall stands vacated. Record file, if any, be sent back to the Court below. File be consigned to record after its due completion.

Announced

11-09-2021.


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