

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

File No.

76/Revision
2012-13

Date of Institution

23-01-2013

Date of Decision

13-11-2021

1. Ranjit Singh.
2. Kulbir Singh
3. Rajpal Singh sons of Puran Singh

R/o Village Marchola Tehsil Sunderbani District Rajouri.

..Petitioners

Versus

Sub Divisional Magistrate, Nowshera District Rajouri.

IN THE MATTER OF :-

Revision against the order dated 19-11-2012 passed by respondent by virtue of which the petitioners were ordered to be evicted from Survey No. 620, (15 Kanals 13 Marlas) and 621 (13 Kanals 3 Marlas) total 28 Kanals 16 Marlas situated in village Prat Tehsil Sunderbani District Rajouri. Prayer for setting aside the same.

Appearing Counsel:-

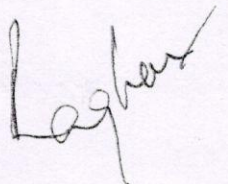
Advocate Gian Sharma for the petitioners
ARA for the State

Raghav

J U D G M E N T

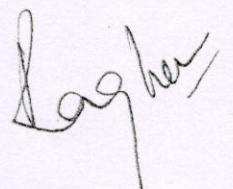
The present revision petition has been filed by the petitioners against the order dated 19-11-2012 passed by respondent by virtue of which the petitioners were ordered to be evicted from Survey No. 620, (15 Kanals 13 Marlas) and 621 (13 Kanals 3 Marlas) total 28 Kanals 16 Marlas situated in village Prat Tehsil Sunderbani District Rajouri. The assertions contained in the petition are:

1. That the order dated 19-11-2012 passed by Sub Divisional Magistrate, Nowshera District Rajouri is against facts, law and all cannon of natural justice, as such the same is liable to be set aside.
2. That brief facts of the case are that the petitioner's father Puran Singh was in cultivating possession of the aforesaid State land bearing Survey No. 260(15 Kanals 13 Marls) and 261(13 Kanals 3 Marlas) total measuring 28 Kanals 16 Marlas of land situated in village Prat Tehsil Sunderbani and after his death the petitioner were in continuous cultivating possession over the said land till date.
3. That vide Notice No. 338 dated 30-12-2006, Tehsildar Sunderbani directed the petitioners to apply in terms of Section 5 of the Act vesting of ownership right over State Land 2001, to avail benefit and accordingly the applicant applied in terms of the notice.
4. That the Tehsildar Sunderbani vide his No. OQ/386 dated 06-06-2012 recommended the case of petitioners for conferment of ownership right in terms of the Act to Deputy Commissioner, Rajouri for accord of



sanction for conferring ownership rights in terms of condition land down in the Act.

5. That Deputy Commissioner, Rajouri vide Communication No. SQ/957-58 dated 07-11-2012 addressed to Sub Divisional Magistrate, Nowshera intimated that the file of the petitioner was examined and found that the petitioners i.e. Ranjit Singh and others sons of Puran Singh are not eligible to be accorded benefit in terms of Roshni Act 2001, as such their application is rejected.
6. That Sub Divisional Magistrate, Nowshera vide his communication No. SDM/NSR/Exc/2012-13/1900-02 dated 19-11-2012 on his own directed the Tehsildar Sunderbani to evict the petitioners from the suit land without conducting inquiry and affording an opportunity of being heard to petitioners and passed the said order, which is patently wrong and is liable to be set aside.
7. That Sub Divisional Magistrate, Nowshera was not competent to pass suo moto eviction order for evicting the petitioners from the State Land which was in the peaceful cultivating possession of petitioner's father and after his death, the petitioner since decade back.
8. That the Sub Divisional Magistrate, Nowshera had passed the order in the capacity as Executive Magistrate, Ist Class as depicted in the communication itself and as a Executive Magistrate, Ist Class, SDM Nowshera have no power to cause the eviction of petitioners from the State Land, as such ADM Nowshera had exceeded his authority in evicting the petitioners without any plausible reason.



9. That the SDM Nowshera failed to mention under which provision of law, he had passed the impugned eviction order thus caused a failure of justice to petitioner.

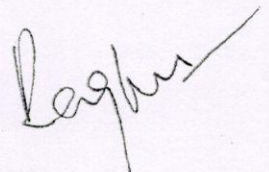
On presentation of the Revision Petition, respondent was put to notice who is represented through Assistant Revenue Attorney.

On 01-10-2021, Ld. Counsel for the petitioners put forth oral arguments at length which is rebutted by ARA for the State and the case is fixed for final orders.

Held:

I have heard the engaging discourse and forceful arguments/Counter arguments shared by Ld. Counsel for the petitioners and ARA for the State, as also perused the material on record.

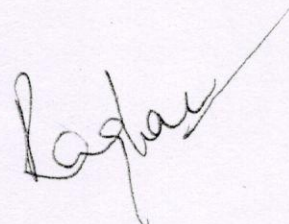
During the Course of proceeding, report has been sought from the Additional Deputy Commissioner, Sunderbani which reveals that the Khasra No. 620 measuring 15 Kanals 13 Marlas and Khasra No. 621 measuring 13 Kanal 11 Marlas of village Prat is recorded as Frangi and others as owners and in self cultivation as per missal haqueet 1960-61. The Khasra No. 620 measuring 15 Kanals 13 Marlas and Khasra No. 621 measuring 13 Kanal 11 Marlas is recorded as ownership of Tarlok Singh and others in self cultivation as per Jamabandi 1991-92 Bikrami whereas as per jamabandi 1969-70, the land is recorded as State Land and in possession of State . Also as per the Jamabandi of 1989-90, the land falling under Khasra No. 620 and 621 is recorded as State land and in possession of State. That as per Jamabandi 1995-96, the land falling



under Khasra No. 620 measuring 15 Kanal 13 Marlas and Khasra No. 621 measuring 13 Kanal 01 Marlas(Bareen Land) State land in self cultivation of Puran Singh S/o Mathura Singh Labana. The Roshni file of Puran Singh S/o Mathura Singh for both Khasra numbers for land measuring 27 Kanal 16 Marlas has been rejected by Deputy Commissioner, Rajouri vide order No. SQ/957-58 dated 07-11-2012. The land falling under Khasra No. 620 & 621, total measuring 28 Kanal 16 Marlas has been transferred under the provision of S-432 of 1966 in favour of Puran Singh S/o Mathra Singh vide mutation no. 485 by then Assistant Commissioner, Revenue Rajouri on 09-10-2017 under the provision of S/432 of 1966 and the said land has been transferred in favour of Ranjit Singh, Kulbir Singh, Rajpal Singh sons of Puran Singh and Darshan Kour, Sunil Kour daughter of Puran Singh, Santosh Kour Wd/o of Puran Singh by inheritance vide mutation no. 679 on 13-03-2019 and the land in question is in possession of said persons.

As per the record available with the file, Khasra No. 620 measuring 15 Kanal 13 Marlas situated at village Prat Tehsil Nowshera, is recorded as State Land Kharif 1999, whereas Ranjit Singh, Rashpal Singh, Rajpal Singh sons of Puran Singh were recorded as illegal occupants. In Khasra No. 621 measuring 13 Kanal 13 Marlas, recorded as State land in Kharif 1993 and Puran Singh S/o Marthra Singh were recorded as illegal occupants and kind of soil is recorded as Banjer Kadeem.

The mutation No. 426 attested under Govt. Order LB-6/C of 1958 dated 05-06-1958 and mutation No. 485 attested under S-432 of 66 dated 3rd June 1966, both the mutations has been attested by the then Assistant Commissioner(Revenue), Rajouri on 09-10-2017. Also mutation no. 679 dated 13-03-2019 of inheritance has been attested by Naib Tehsildar, Prat in favour of Ranjit Singh, Kulbir Singh, Rajpal Singh sons of Puran Singh and Darshan Kour, Sunil Kour daughter of Puran Singh, Santosh Kour Wd/o of Puran Singh.



The covenants of Govt. Order LB-6/C of 1958 dated 05-06-1958 are:

Government Order No. LB-6/C of 1958 dated 05-06-1958 states that:

Clause 2:

Nothing contained in Paragraph I (regarding Regularization of Nautors from State lands- Conferment of status of tenants-at-will shall apply in such land as is:

- i) Held by occupants, who do not reside or own any land in the village in which the land occupied is situated;
- ii) Recorded or used as path-way, grazing ground, graveyard, cremation ground, camping ground, kuhl (irrigation channel) or forest, demarcated or otherwise including Berun Line;
- iii) Held by any Government Department or institution under the control of the Government;
- iv) Situated on a hill slope and likely to be affected by erosion;
- v) Situated within the limits of Municipality (A Town Area), a notified area or a Cantonment or in areas to which rules for the grant of land for building purposes or other rules and orders in respect of Nazool lands for the time being in force extend;
- vi) Allotted to or left with the displaced persons under the provisions of Cabinet Order No. 578-C of 1954 dated 7th May, 1954;
- vii) In excess of 100 Kanals; or is held by occupants whose ownership or tenancy holding or both together with the area so occupied exceeds 100 kanals to the extent only of such excess:

S-432 of 66 dated 3rd June 1966-It is ordered that proprietary rights be conferred on the cultivators of State Lands who are permanent residents of

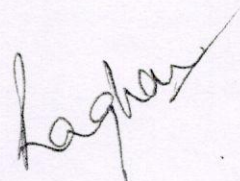
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the State and have already been declared as tenants-at-will in terms of Government Order No. LB/6-C of 1958 subject to the conditions that:

- (1) Land is held by them in self cultivation continuously from Kharif 1957-58
- (2) The areas of the land given on proprietary rights should not exceed two acres of Abi and four acres of Khushki in Khasmir Province including the District of Ladakh and four acres of Abi or 6 acres of Khushki in the Jammu Province, in both cases including the land already held in ownership rights;

From the perusal of impugned mutation no. 485 attested on 09-10-2017 bearing Khasra No. 620 and 621 total measuring 28 Kanal 16 Marlas is attested under section S-432, without following the due procedure of concerned Govt. orders and application of legal scheme designed for conferment of rights. The petitioners in their petition also declared that their father namely Puran Singh was purportedly in cultivating possession of the State land bearing Khasra No. 620 and 621, total measuring 28 Kanals 16 Marlas and they had also applied for ownership of the said land in terms of Roshni Scheme(vesting of ownership right over State Land 2001) before the Deputy Commissioner, Rajouri who vide Communication No. SQ/957-58 dated 7-11-2012 rejected the file of the petitioners.

Viewed thus, in totality of the facts and circumstances of the case, specifically the law position in this regard, the mutation No. 426 attested under Govt. Order LB-6/C of 1958 dated 05-06-1958 and mutation No. 485 attested under S-432 of 66 dated 3rd June 1966 attested by the then Assistant Commissioner(Revenue), Rajouri on 09-10-2017 and also mutation no. 679 dated 13-03-2019 of inheritance that has been attested by Naib Tehsildar, Prat in favour of Ranjit Singh, Kulbir Singh, Rajpal Singh sons of Puran Singh and Darshan Kour, Sunil Kour daughter of Puran Singh, Santosh Kour Wd/o of Puran

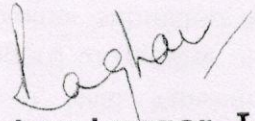


Singh; are in violation of the laid down procedures/covenants of such Govt. orders and are thus declared as null and void and the order of Sub Divisional Magistrate, Nowshera dated 19-11-2012 is upheld. The present revision petition is dismissed with the directions to Tehsildar, Sunderbani to expunge all illegal entries made over the said State land. It is further ordered to Tehsildar, Sunderbani to evict illegal encroachments over the said State land.

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

Announced

13-11-2021


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