

**IN THE COURT OF DIVISIONAL COMMISSIONER,
JAMMU**

Dr. Raghav Langer, IAS

<u>File No.</u>	<u>Date of Institution</u>	<u>Date of Decision</u>
<i>Appeal 11-09-2004-05</i>	<i>11-09-2004</i>	<i>30-10-2021</i>

Noor Mohammad S/o Haji Shair Din Caste Gujjar R/o Farwala, Tehsil
and District Rajouri

.....Appellant

Versus

1. Haji Mohammad Shafi S/o Noor Din Caste Tarkhan R/o Farwalla,
Tehsil and District Rajouri through LRS
 - (a) Adam
 - (b) Khadam
 - (c) Razia Begum
 - (d) Teena

...Respondents

IN THE MATTER OF :- Appeal against the order of Ld. Deputy Commissioner, Rajouri dated 26-06-2004 whereby the order passed by the Tehsildar Rajouri with regard to allotment of land falling under Khasra No. 123 measuring 04 Kanals in favour of the respondent has been upheld, prayer for setting aside the same.

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Present:-

Advocate Mr. Parvaiz Ahmed Choudhary for the Appellant
Advocate Haji Abdul Majeed for the respondents

J U D G M E N T

The present appeal has been filed by the appellant against the order of Ld. Deputy Commissioner, Rajouri dated 26-06-2004 whereby the order passed by the Tehsildar Rajouri with regard to allotment of land falling under Khasra No. 123 measuring 04 Kanals in favour of the respondent. The assertions contained in the petition are:

1. That the land measuring 04 Kanals falling under Khasra No. 123 situated at Farwalla Tehsil and District Rajouri in cultivating possession of the appellant since 1961.
2. That the order has been passed without any notice, summon or without any hearing the appellant. The appellant has allotted the said land which fact is clear from the copy of the Khasra Girdawari and also raised the residential house over the said land and is running a Garat in the said land.
3. That the said land has been allotted to the appellant since 1961 and the reflection of Girdawari can also be seen from the copy of Girdawari.
4. That the order of allotment in favour of the respondent is bad in the eyes of law.

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5. That the land in dispute has been duly mutated to the appellant and his four brothers and without cancellation of the allotment of the appellant, double allotment cannot be effected in the name of the respondent which is illegal on the face of record.
6. That the appellant has been the duly allotted and authorized to raise residential house which he has since raised and the allotment in the name of the respondent is illegal in the eyes of law.
7. That the lower court has passed the order in a very haphazard manner and has committed an error of law while making the allotment in favour of the respondent, when original allotment in favour of the appellant has not been cancelled.
8. That the lower court has passed the order without application of judicial mind and the law point involving is that second allotment is illegal, unlawful, unwarranted and un-justifiable and merely entry shown in the name of the respondent on the basis of illegal allotment, is itself without any justification.

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

It came to the notice of the Court that respondent Haji Mohammad Shafi died during the pendency of the case and his legal heirs were brought on record.

On 11-09-2021 arguments of Ld. Counsel for appellant were heard at length and despite repeated direction, Ld. Counsel for

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the respondents failed to appear before this Court for putting his oral arguments, however, written arguments has been filed by the Ld. Counsel for the respondents.

Ld. Counsel for the appellants submitted his written arguments. In his written arguments, he submitted that:

1. That as a matter of fact the appellant has been in cultivating possession of the land measuring 04 Kanals under Khasra No. 123 situated at Farwalla, Tehsil and District Rajouri since 1961.
2. That the respondent is not having any right, title or interest or any claim over the land in dispute nor has any prima facie case in his favour and is already having land more than the prescribed scale. On the other hand the appellant is a poor person and has to maintain large family and his livelihood is dependent solely on this piece of land. The respondent has no right, title or claim over the said land and has never been in possession of the said land.
3. That apart from the revenue entry in favour of the appellant showing cultivating possession as well as also having residential house as well as having Garat in the said land, the Patwari concerned have also made categorical report that respondent Mohd. Shafi is not in possession of the said land which is also submitted and is attached with the file.
4. That the appellant is also entitled for regularization of land apart from the allotment order in view of the Roshni Act regarding which the appellant have also filled up a form.

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5. That the order impugned has been passed at the back of the appellant without hearing the appellant or affording any opportunity to rebut any evidence if at all against the appellant. The order of allotment in favour of the respondent out of the allotment of the appellant is without any provisions of law unless and until the allotment of the appellant has been cancelled and thus the whole order passed is without any provisions of law. More so, the lower court who passed the order was not competent and was not having jurisdiction for passing such order.

On the other hand Ld. Counsel for respondent also submitted his written arguments. In his written arguments, he submitted that:

1. That the father of the respondents has remained in cultivating possession of 04 Kanals of land out of Khasra No. 123 min, situated in village Farwala Tehsil Rajouri since long before 1965. However, Girdawari in the name of father of the respondents was recorded in the year 1993. the respondents have remained in peaceful cultivating possession of the said piece of land since for the last more than five decades. The State land under Khasra No. 123 is 27 Kanals and allotted to 27 different families.
2. That the father of the respondent approached the Tehsildar, Rajouri for regularization of the said land measuring 04 Kanals out of Khasra No. 123 min and after having got proper investigation from the subordinate staff, the Tehsildar, Rajouri regularized the said land in dispute vide his order No. 401/Agr dated 31-03-2000 and directed the concerned Patwari Halqa

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Nagrota to implement the order of allotment of said land in the revenue records in favour of the father of the respondents.

3. That the appellant who is recorded in possession of 10 kanals of land out of the said Khasra No. 123 min as allottee and is in possession continuously till date. The appellant is also in possession of 24 Kanals and 13 Marlas of State land covered under Khasra No. 111, 340 and 307 in the said village. Out of Khasra No. 123 min 10 Kanals of land recorded in the name of the appellant and his brothers as allottees out of which 08 Kanals is irrigated land, 05 Marlas Kotha(House) and 02 Marlas Gharat(water Mill) and the said irrigated land, House and Gharat is continuously in possession of the appellant alongwith 24 Kanals and 13 Marlas of State land.
4. That this Court has also directed the appellant to produce allotment orders of the land measuring 10 Kanals out of Khasra No. 123 and other State land in his unauthorized occupation but he has failed to produce the allotment order of the said land in his possession. After that appellant preferred an application before the Tehsildar Assistant Collector Rajouri for issuing copy of allotment order in respect of Khasra No. 123 & 111 of Village Farwala Tehsil Rajouri. Tehsildar Assistant Collector Rajouri marked the application to Girdawar Quonongo in his office for the needful and it is strange that no allotment order in respect of land under Khasra No. 123 (10 Kanals) & Khasra No. 111 has been passed by the Tehsildar Assistant Collector, Rajouri. The office Quonongo has submitted report that there is no allotment file of the appellant in respect of land under Khasra No. 13 & 111 of village Farwala Tehsil Rajouri.

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5. That the appellant without any locus standi, right and title challenged the order dated 31-03-2000 where under 04 Kanals of land out of Khasra No. 123 min stands regularized in favour of father of the respondents. The Deputy Commissioner, Rajouri after having adjudicated the matter on the basis of fact and law upheld the order of Tehsildar Assistant Collector Rajouri dated 31-03-200 and dismissed the baseless appeal preferred by the appellant vide order dated 26-06-2004. Deputy Commissioner Rajouri in the operative para of the said order has held that the State Land under Khasra No. 123 is big chunk of State land out of which 10 Kanals of land stands allotted to the appellant and 04 Kanals of land on the basis of prolong possession and under Guidelines of the Chief Minister has been regularized and allotted to the respondent. Ld. Deputy Commissioner, Rajouri has categorically mentioned that the appellant Noor Mohd. Has no concern with 04 Kanals of land regularized to the respondent.
6. That in the written arguments submitted by the appellant, he has made mention of notice of Tehsildar Rajouri under Roshni Act as well as report of Patwari Nagrota on his application in respect of land under Khasra No. 123 min, the appellant has not mentioned quantum of land in his application and only mentioned Khasra No. 123.
7. That the appellant has applied for ownership of State land under Khasra No. 123, 340 & 307 in the said village but has not mentioned the quantum of land under the said Khasra numbers. That is why, the Tehsildar has not processed his application under Roshni Act and stand rejected.

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Held:

I have applied thoughtful consideration to the whole matter, examined the record and attentively heard the Ld. Counsel for the appellant, 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 annexed with the file, it reveals that during the years 1961-62, Khasra No. 64(old) New (123) measuring 138 Kanals 17 Marlas, in the column of ownership, state is recorded as owners and in the column of tenants, Maqboza Mehkma Mal is recorded. In the Girdawari of Kharif, 1971, Khasra No. 123 measuring 119 Kanal 07 Marlas, in the column of ownership, State is recorded as owners and in the column of tenants, Maqboza Mehkma Mal is recorded. In Khasra No. 123 min, in the column of ownership, State is recorded as owners and in the column of tenants, Noor Mohd. Dil Mohd. Mohammad Ali, Mohammad Din, Mir Mohammad Sons of Sher Din, Caste Gujjar, R/o Farwal, Tehsil Rajouri were allottees. In the Girdawari of Rabi 1988, Khasra Number 123, in the column of ownership, State is recorded as owner, in the column of tenant, again Maqboza Mall is recorded as Mohd. Shafi S/o Noor Din Caste Najar R/o Farwala, Kabaz-**Nazayaz**.

Tehsildar, Rajouri has issued a docket in the name of Patwari Halqa, Farwala on 31-03-2000 for enter in the name of Mohd. Shafi S/o Noor Din R/o Farwal as allottee in the revenue record as per the Chief Minister's Guidelines.

Further as per Girdwari 1968 Kharief, Noor Mohd. S/o Misher Din, Dil Mohd, Mohd. Ali, Mohd. Din, Mir Mohd sons of Sher Din Gujjar, is recorded as allottee in Khasra number 123 situated at village

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Farwala measuring 10 Kanals. On 21-01-2017, mutation no. 348 Under Section LB-6 and 349 Under Section S-432 has been attested in favour of Noor Mohd. S/o Sher Din R/o Farwala bearing Khasra No. 123 min measuring 15 Kanals and Khasra No. 446/210 measuring 04 Kanal, total 19 Kanals

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;

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- 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 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. 348 bearing Khasra No. 123 min, measuring 15 Kanal, 346/210 measuring 04 Kanal attested under section LB-6/C and Mutation no. 349 attested under section S-432, it is clear that the both the mutations have been attested without following the due procedure of Standing Order 23-A and application of legal scheme designed for conferment of rights whereas as per the record enclosed with the record file, Girdawari Kharif 1968 and 1971 has been entered in favour of appellant Noor Mohd. Therefore, both the mutations no. 348 attested under Section

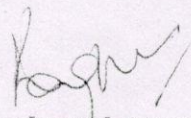
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LB-6 and mutation no. 349 attested under section S-432 do not conform to the covenants of Govt. Order LB-6/C of 1958 dated 5th June, 1958 & S-432 of 66 dated 3rd June, 1966. As such the mutation no. 348 and 349 attested in favour of Noor Mohd. (appellant herein) be declared as void ab-initio and as per the status report filed by the Tehsildar bearing no. OQ/517 dated 28-09-2021, the respondents are also not in possession of the land falling under Khasra No. 123 min measuring 04 Kanal.

Viewed thus, in totality of the facts and circumstances of the case, specifically the law position in this regard, the present appeal is hereby dismissed with the directions to Tehsildar, Rajouri to expunge illegal entries, if any, made over the said land. It is further ordered to Tehsildar, Rajouri to evict illegal encroacher, if any, over the said land.

Interim direction, if any, passed by this court shall stands vacated. File be consigned to record after due completion.

Announced
30-10-2021.


Dr. Raghav Langer, IAS
Divisional Commissioner,
Jammu

Copy to

1. Deputy Commissioner Rajouri for information
2. Tehsildar Rajouri for information and action taken report send to this Court within 15 days.

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