

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No. 201/2007

Date of decision : 20.11.2008

Ahali Manhassan v. Financial Commissioner & Ors.

Coram:

Mr. Justice J.P.Singh, Judge.

Appearing Counsel:

For Petitioner(s) : M/s P.N.Goja & K.L.Bhat,
Advocates.

For Respondent(s) : M/s A.H.Qazi, AAG & S.K.Anand,
Advocate.

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| i) | Whether to be reported
in Press/Journal/Media | : | Yes/No |
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| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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Calling in question Financial Commissioner, Jammu and Kashmir, Jammu's order of November 23, 2006, setting aside Settlement Commissioner, Jammu and Kashmir, Jammu's order of August 12, 2005 whereby, allowing petitioner's appeal, he had set aside Director Land Records, (Settlement Officer) Jammu's order of November 30, 2004 directing the petitioner to approach the Civil Court to seek

adjudication of its rights vis-à-vis the entries appearing in Record of Rights pertaining to the year 1998-1999 in respect of Shamilat land measuring 114 kanals 19 marlas, MANHAS COMMUNITY, the petitioner, has invoked this Court's extraordinary civil writ jurisdiction seeking quashing of Financial Commissioner's order and issuance of a direction to Tehsildar Settlement, Jammu to rectify the entries appearing in the Record of Rights, which are claimed, to be fraudulent.

Petitioner's learned counsel, Sh. Goja submits that the Financial Commissioner had misconstrued the provisions of Section 32 of the Jammu and Kashmir Land Revenue Act, 1996 (1939 A.D), in holding that petitioner community had approached wrong forum of the Settlement Officer (Director Land Records) Jammu for redressal of its grievance. The Settlement Commissioner, according to the counsel, was right in directing Deputy Commissioner to decide petitioner's application without taking into account the period of limitation prescribed under Section 32 of the Jammu and Kashmir Land Revenue Act.

Per contra, S/Sh S.K.Anand & A.H.Qazi submitted that Settlement Commissioner's order had rightly been set aside by the Financial Commissioner, in that, in the absence of any suit seeking a declaratory decree for correction of Record of

Rights, the Settlement Commissioner was not justified in permitting conversion of petitioner's application into a suit for its trial by the Deputy Commissioner, additionally because the suit was barred by time.

I have considered the submissions of learned counsel for the parties and perused the orders passed by the Financial Commissioner, Settlement Commissioner and the Settlement Officer, in the light of the provisions of the Jammu and Kashmir Land Revenue Act, 1996 (1939 A.D).

Few facts which may be necessary to spell out the circumstances in which this petition has come to be filed may be stated thus.

FACTS:-

Petitioner community appears to have been aggrieved by the entries appearing in the Record of Rights of 1998-1999 A.D whereby 114 kanals 19 marlas of land falling under khasra no. 124 had been included in shamilat kehvat no. 50 as "Tarf Brahmana". This entry, according to the petitioner, had been manipulated at the behest of respondent nos. 2 to 4 to facilitate illegal sale of land covered by the entries. It had, therefore, approached the Director Land Records (Settlement Officer) seeking correction of the entries.

Although Director Land Records found these entries to be arbitrary, unjust and improper, yet he refused to take cognizance of the matter, which according to him could be taken by the Civil Court.

Settlement Officer's order was questioned by the petitioner in appeal before the Settlement Commissioner, Jammu and Kashmir, who, while disagreeing with the view taken by the Settlement Officer, that the petitioner should approach the Civil Court, remanded the case for de novo inquiry to Deputy Commissioner, Jammu. While doing so, the Settlement Commissioner had provided that limitation provided under Section 32 of the Jammu and Kashmir Land Revenue Act, would not come in the way of the inquiry.

Respondent nos. 2 to 4, who were not parties to the decision either before the Settlement Officer or before the Director Land Records, questioned the Settlement Commissioner's order before Financial Commissioner, Jammu and Kashmir in revision. Vide his order of November 23, 2006, the Financial Commissioner set aside Settlement Commissioner's order holding that it was bad in law because neither could he direct dispensing with the statutory period of limitation prescribed under Section 32 of the Jammu and Kashmir Land Revenue Act nor was he right in directing an

inquiry by Deputy Commissioner, in absence of the parties in whose favour the entries stood recorded.

Aggrieved by the order of the Financial Commissioner, the petitioner has filed this writ petition seeking reliefs which have been mentioned at the threshold.

Questioning the maintainability of the writ petition and the locus standi of Jagdev Singh to maintain it in representative capacity on behalf of petitioner community, on various grounds, respondent nos. 2 to 4 have inter alia submitted that petitioner's claim over the shamilat land was not supported by the Revenue Records and was even otherwise unfounded. Giving detailed account of the entries appearing in the revenue records starting from the year 1952 (Bk) i.e. 124 years back, respondents have disputed and denied petitioner's claim over the shamilat land, as unsustainable.

In view of the case set up by the parties in their respective pleadings and the submissions their learned counsel had made, the crucial issue, which may require resolution, to set at rest the controversy which has, for the present, arisen between the parties, is regarding the forum which may be competent to take cognizance of petitioner's grievance.

Chapter IV of the Jammu and Kashmir Land Revenue Act, 1996 (1939 A.D), hereinafter referred to as the “Act”, deals with the RECORDS-OF-RIGHTS AND ANNUAL RECORDS. It contains various provisions inter alia providing for Preparation and Revision of entries appearing in the Record of Rights and Annual Records. It additionally provides forums for settlement of disputes regarding entries in the Record of Rights and Annual Records. This chapter contains two provisions which specifically deal with the determination of disputes pertaining to entries appearing in the Record of Rights and Annual Records. These are Sections 26 & 32 of the Act, which, for facility of reference, are reproduced hereunder:-

“Section 26-Determination of disputes

If during the making, revision or preparation of any record or in the course of any inquiry under this Chapter, a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue Officer may of his own motion, or on the application of any party interested but subject to the provisions of the next following section, and after such inquiry as he thinks fit including such summary enquiry into title as may be necessary, determine the entry to be made as to that matter:

[Provided that the Government may by rules curtail, limit or restrict the power of any Revenue Officer or class of Revenue Officers to inquire into and dispose of any such case or class of cases].

(2) The final order passed by the Revenue Officer declaring who is the party best entitled to the property shall be subject to any decree or order which may be subsequently passed by any Civil Court of competent jurisdiction.”

“Section 32- Suit for declaratory decree by
person aggrieved by an entry in a record

- (1) If any person considers himself aggrieved by an entry in a record-of-rights [he may institute a suit before the Collector (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 (two years in the case of Frontier Districts of Gilgit and Ladakh) from the date of publication of the record of the distribution of the assessment under section 49, sub-section (1).
- (2) If any person consider himself aggrieved by an entry in an annual record, [he may institute suit a before the Collector (Deputy Commissioner)] within the period prescribed by the Limitation Act No. IX of 1995 for correction of the record and for possession of the right claimed if he is not in possession thereof, or for declaration of his right if he is in possession thereof:
Provided that, nothing in this sub-section shall entitle any person to bring a suit for the correction of the records-of-rights of a preceding Settlement after the period prescribed for such suit in sub-section (1) has expired.
- (3) Nothing in this section shall be a bar to a suit by a tenant, to contest his liability to ejectment on the ground that he is an occupancy tenant under sections [7-A(1) and 50(7) of the Jammu and Kashmir Tenancy Act, 1980.”

Perusal of these provisions demonstrate that two forums have been prescribed by the legislature for resolution of disputes pertaining to entries appearing in the Record of Rights and Annual Records. Jurisdiction vested in a Revenue Officer under Section 26 of the Act to settle such disputes, on his own motion or on the application of any party interested, is, however, limited within the parameters prescribed by

Sections 26 & 27 of the Act. Such Revenue Officer may, DURING the Making, Revision or Preparation of any record or in the course of any inquiry under Chapter IV of the Act, may exercise his jurisdiction to correct the records but while doing so he has to remain within the parameters of the limited jurisdiction which vests in him in this behalf. On the other hand, unlimited jurisdiction vests in the Collector (Deputy Commissioner) to resolve disputes pertaining to entries appearing in the Record of Rights and Annual Records by issuing declaratory decree, on the suit of any person aggrieved by entries in the records. This power may be exercised by the Collector only after the finalization of entries in the Record of Rights and Annual Records.

There is thus marked difference in the powers which may be exercised by a Revenue Officer under Section 26 of the Act and by a Collector under section 32 of the Act.

Barring these two provisions, no other provision has been referred by learned counsel for the petitioner which may empower a Revenue Officer to entertain an application for correction of entries appearing in the Record of Rights and Annual Records.

As the petitioner had not moved the Director Land Records, during the process of making, revision or

preparation of the Record of Rights, so the only remedy available to it to question the entries appearing in the Record of Rights was to file a suit for declaratory decree and for possession of the right claimed, therein, if it was not in possession thereof.

The petitioner community, having opted not to go in for the suit contemplated by Section 32 of the Act, could not thus seek adjudication of its claims regarding entries appearing in the Record of Rights. Filing of an application by the petitioner community, cannot, in my opinion, be thus a substitute for a suit contemplated by Section 32 of Act. It hardly needs to be emphasized that such a suit is to be decided after hearing the parties concerned in the dispute pertaining to the entries appearing in the Record of Rights and affording them requisite opportunity to substantiate their respective claims regarding the entries on the basis of such material as they may opt to rely upon in support of their respective claims.

Order passed by Director Land Records (Settlement Officer) Collector, Jammu on petitioner's application was thus without jurisdiction as he had no jurisdiction to entertain petitioner's application in the absence of any suit filed under Section 32 of the Act because the petitioner

community wanted adjudication of its rights pertaining to entries which had appeared after the preparation of the Record of Rights.

In view of the above discussion, it is thus apparent that the Learned Settlement Commissioner had erred in commenting upon the merits of the entries without hearing the parties in whose favour the entries stood recorded in the Record of Rights and in remanding the case to Deputy Commissioner, Jammu for de novo inquiry when admittedly no suit as contemplated under Section 32 of the Act had been filed by the petitioner.

Although learned Financial Commissioner's conclusion of setting aside the Settlement Commissioner's order may not require any interference yet like the Settlement Commissioner, he too had fallen in error in entering into unnecessary discussion and holding petitioner's application barred by time when there was no occasion for his so doing as the petitioner had not filed any suit in terms of Section 32 of the Act seeking declaratory decree.

I am, therefore, of the view that the Revenue Authorities have erred in addressing the core issue regarding the forum which was competent to take cognizance of the petitioner's grievance and had entered into unnecessary

discussion on the merits of the controversy and the issues which had yet to arise in the event of petitioner's filing requisite suit for declaration for correction of entries appearing in the Record of Rights.

For all what has been said above, the orders passed by Director Land Records and the Settlement Commissioner are, therefore, required to be set aside.

While setting aside the orders of Director Land Records, and Settlement Commissioner and upholding the Financial Commissioner's conclusion, this writ petition is, accordingly, disposed of by holding that entries appearing in the finalized Record of Rights can be questioned only by a suit contemplated by Section 32 of the Act and petitioner's application before Director Land Records (Settlement Officer) Jammu seeking correction of entries appearing in the Record of Rights of 1998-99 was untenable.

**(J. P. Singh)
Judge**

JAMMU:
20.11.2008
Pawan Chopra