

AND KASHMIR AT JAMMU

OWP No. 181/2002

Date of Decision : 02-01-2009

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Kaka Ram and another Vs. State and others.

Coram:

Hon<sup>ble</sup> Mr. Justice Sunil Hali, Judge

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Appearing counsel

For the petitioner(s) : Mr. S.S. Lehar, Senior Advocate with  
Mr. Niten Bhasin, Advocate.

For the respondent(s) : M/s A.H. Qazi, AAG and R.S. Thakur,  
Advocate.

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| i)  | Whether to be reported in<br>Press, Journal/Media | Yes/No |
| ii) | Whether to be reported in<br>Journal/Digest       | Yes/No |

This writ petition has been filed by two petitioners. Petitioner -1 Kaka Ram died during the pendency of the writ petition. Vide Order dated 1-5-2007, legal heirs of petitioner -1 have been brought on record.

Petitioner was allotted two kanals one marla of land comprising Khasra No. 96 being displaced persons of 1947. This allotment to the petitioner was made in pursuance to Cabinet Order No. 578-C of 1954 dated 7-5-1954. It is pertinent to mention that the Government was pleased to make the rules for allotment of the land to the displaced persons, which are called as Allotment of Land to Displaced Persons Rules, 1954. Vide order dated 26-9-1987 passed by the Custodian General , Evacuee Property , the said land was leased out to one Majeed Khan, respondent herein at a premium of Rs. 1000/- and ground rent of Rs. 26/- per month for a period of one year in the Ist instance. This lease was extended vide order dated 22-2-1989 by the Custodian General. The premium was raised from

kanal and the ground rent was raised from Rs. 26/- to Rs. 50/- per month. This order came to be challenged by the petitioner before the Special Tribunal, Jammu in revision petition. The petitioner took the following grounds in the revision petition :

- a) That the land was in possession of the petitioner and the allotment has been cancelled without notice to him.
- b) That there is no provision of cancellation of the land nor there is any provision for allotting the same to a local. It is further stated by the petitioners that out of two kanals and one marlas of land allotted to them, 1 kanal and 11 marlas of land has been acquired by the Munsiff Court, Mendhar for which compensation has been paid to them.

The respondents on the other hand, claimed that there is no allotment order in favour of the petitioner. It was further averred that the petitioner has not taken possession of the land nor has he complied with the provision of Rule 5 of the aforesaid Rules. It has also been admitted by the respondent that he has constructed a shop on the said land and has continuously been running a medical shop and occupying whole of it.

The Tribunal after hearing the parties, set aside the order of the Custodian General dated 18-6-1989 vide its order dated 5-3-2001 and directed to hear the petitioner-1 afresh giving him an adequate opportunity to represent his case.

It is under these circumstances, the matter came to be heard by the Custodian General, Jammu and after hearing the parties, the Custodian General disposed of the case after holding the following:

1 was allotted land under Khasra No. 99 measuring 3 kanals two marlas but he failed to take possession of the said land and bringing it under cultivation within a period of six months from the date of allotment and as such he has forfeited his right to hold the land.

- b) That on the basis of report submitted by the Tehsildar concerned, it has come to the notice that petitioner was holding excess land as permissible vide Cabinet Order No. 578-C of 1954. It is further reiterated that since there is no report contrary to the one produced by the Tehsildar concerned, it is presumed that the petitioner has disintitiled himself to the allotment of the land in question.
- c) That the allotment of the said land to petitioner was made in pursuance to Rule 13-C of SRO dated 5-4-1985.

According to the finding of the Custodian General, the said land was vacant. The Custodian General as such has the power to allot this land by auction to a local also. He has found that the allotment of lease in favour of private respondent, is strictly in consonance with law. It is this order of the Custodian General dated 18-2-2002 as also the initial allotment order made in favour of private respondent, which is the subject matter of challenge before this Court.

I have heard the learned counsel for the parties.

It is not in dispute that the land was allotted to the petitioner being displaced person of 1947. The allotment of the land had to be made strictly in consonance with Allotment Land Rules of 1954. The allotment of land as revealed from the rules was to be done only for cultivation purpose. For purpose of resolving controversy involved, Rule -5 of the aforesaid Rules is

the basis for cancellation of the land in favour of the petitioner. Rule-5 of Allotment of Land to Displaced Persons Rules, 1954 is quoted below:

5. Liability to cultivate allotted land personally and consequences of failure to do so.-(1) A displaced family, who may hereafter be and such family as has already been allotted land, shall be bound to bring such land under personal cultivation within six months of the date of delivery of possession on allotment or the date of this Order, as the case may be, failing which such family shall forfeit its rights to occupy such land;
- (2) the land, of which the right to occupy is forfeited under clause (1), may be re-allotted to other displaced family, which shall not have been settled on land by that time and failing it shall continue with the person, who has been in actual cultivating occupation thereof; provided such person is a landless tiller, and otherwise will be let out to a landless tiller, to the extent of the unit permissible.
- Explanation.-Personal cultivation includes cultivation by any member of the family.

The import of aforesaid rule reveals that a displaced family who has been allotted the land shall be bound to bring the said land in personal cultivation within six months from the date of delivery of possession of allotment. In case the same is not done, he forfeits the right to the said land and the said land has to be allotted to any displaced family, which has not been settled on land by that time. The visible feature of aforesaid rule provides a mechanism for re-allotment of the land to only those persons who are displaced or having under cultivation of the land prior to its allotment to displaced persons provided they are landless tiller.

The aforesaid discussion of the rule clearly reveals that if the petitioner had failed to cultivate the land within the time prescribed, his allotment would stand cancelled and the said land had to be allotted to the

indicated hereinabove and to none else. As

a matter of fact, the essence of the aforesaid rule is that the land had to be allotted to a person, who was to cultivate the land and to none other. It was to be allotted only for agricultural purposes. The private respondent had admitted that he has raised construction on the said piece of land and is running a medical shop on the said land. In the face of this provision, he was not entitled to the allotment of the land. Coming to the second question as stated by the Custodian General that this land was allotted to the private respondent by invoking Rule 13-C of the aforesaid rules issued under SRO dated 5-4-1985, the said rule is quoted hereinbelow:

**“ 13-C Fixation of premium and rent in respect of vacant land**

Notwithstanding anything contained in rule 13, the Custodian shall put to an open auction lease of any evacuee land for a period not exceeding 40 years for determination of premium to be charged from the lessee to whom such land is leased out or may charge the premium and ground rent annually after taking into consideration the market value of such land of the locality in which it is situate. The different rates of premium and ground rent shall be fixed for the lands put to use for residential, commercial, or industrial as the case may be. ॐ

A plain reading of the rules states that vacant evacuee land could be allotted by putting it to a open auction for a period of 40 years on a premium to be determined by the Custodian. The learned Custodian General has quoted the rule but has not bothered to indicate as to whether in the present case, any auction had been taken place before allotment was made to respondent-6. In order to ascertain as to whether any auction of this evacuee land was conducted, the same would be revealed by the order of allotment issue by the Custodian General. The order which has been impugned in this writ petition does not make mention of any auction having been conducted

before leasing out the land to the private respondent. The order clearly reveals that on the recommendations of Assistant Custodian, the land has been allotted to the private respondent.

Another aspect of the matter is that purport of the scheme/rule was to allot the land to displaced persons who had already land in PoK territory of the State and whose source of livelihood was from the said land. The object and purpose of the Act and Rule was that the land was to be used only for agriculture purpose and not for commercial purpose. The private respondent has admittedly utilized this land for commercial purpose, which is not what the rules provide. The Custodian General seems to have ignored this aspect of the matter while confirming his order of granting extension of the lease to the respondent. I accordingly hold that the lease granted in favour of private respondent was done in violation of the law and the same is hereby quashed.

Now coming to the question as to what the petitioner is entitled to retain this land. It is not in dispute that the petitioner has been allotted this land in terms of Rule 1954. The only question which is required to be determined, as to whether he has forfeited his right to the said land on account of his failure to take possession of the land and brining it under cultivation within six months from the date the possession was delivered to him. In this aspect this Court is confronted with the observations of the Custodian General based on the report of the Assistant Custodian General that the petitioner was never in possession of the land. This fact has been countered by the petitioner by placing on record the extract of Khasra Girdawari upto 1998 which is Annexure-G to the petition. Private respondent-6 in his objections has filed extract of Khasra Girdawari (Annexure K6-1) in which the petitioner has all along been shown in possession of the property. It stated in the Khasra Girdwari produced by

allotment was cancelled in 1987 and allotted to respondent-6 on lease initially for a period of one year. Objections filed by respondent-6 belies the stand of the Custodian General that the petitioner has never taken possession of the property nor has cultivated the same.

The other aspect which has been found in the judgment of the Custodian General is that the petitioner is holding surplus land in terms of the Cabinet Order No. 578 3C of 1954. Reliance has been placed by the Custodian General on the report of Tehsildhar, which is not in the knowledge of the petitioner. It was incumbent on part of the Custodian General to have heard the petitioner in respect of report prepared by Assistant Custodian General stating that he was holding surplus land and that he was not in possession of the land. I say so because the revenue record produced by the petitioner as also by respondent No.6 clearly reveals that the petitioner was in cultivating possession of the said land upto 1998. The finding of the Custodian General is not passed on the basis of any material. Reliance placed by the Custodian General on the report of the Assistant Custodian General has been done without a notice to the petitioner.

I accordingly hold that the petitioner is entitled to the land allotted to him in terms of the aforesaid SRO and order of cancellation passed against him shall stand quashed, as the same has been passed without affording him an opportunity of being heard. In case respondents choose to hold enquiry into the matter, they are at liberty to do so but the same shall be done only after affording an opportunity of being heard to the petitioner.

I, therefore, allow this petition and set aside the order of cancellation of the allotment in favour of petitioner. I also direct that allotment order issued in favour of respondent -6 shall stand quashed. Respondent-4 shall



6 from the lease in question and handover the possession to the petitioner.

Jammu: 02-01-2009.  
RSB, Secy.

(SUNIL HALI)  
Judge