

LPA(OW) no. 08/2001

Date of Decision: **19.08.2008**

Dina and ors.* vs. *Tirlok Singh and ors.

CORAM:

MR. JUSTICE NIRMAL SINGH, JUDGE

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing counsel:

For the appellant (s) : Mr. S. D. Sharma, Advocate.

For Respondents : Mr. Abhinav Sharma, Advocate.

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| i) | Whether approved for reporting
in Press/Journal/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |

J. P. Singh, J :

The dispute between the parties, giving rise to this Letters Patent Appeal, revolves around the Assistant Commissioner Udhampur's order dated 19.07.1990 on Mutation No. 1753, whereby, land measuring 12 kanals comprised in Khasra no. 651/min situated at village Mand Tehsil Udhampur was declared as State Land, for violation of the provisions of Section 13 of the Jammu and Kashmir Agrarian Reforms Act, 1976, hereinafter to be referred to as "the Act" for short.

The Jammu and Kashmir Special Tribunal Jammu, hearing respondent Tirlok Singh's Revision Petition, upset the impugned Assistant Commissioner's Original

and the Director Land Record's appellate order, holding that the provisions of the Act being in-applicable to the land in question, recorded as Gair Mumkin Parat, the orders of the Assistant Commissioner and the Director Land Records with powers of the Commissioner under the Act were un-sustainable, being without jurisdiction.

Upholding the Tribunal's order, a learned Single Judge of this Court, dismissed the appellants' writ petition, aggrieved whereby they have filed this appeal seeking setting aside of the orders passed by the learned Single Judge and the Jammu and Kashmir Special Tribunal.

We have considered the submissions made at the Bar by learned counsel for the parties.

The short question that falls for consideration in this appeal is as to whether the land, Gair Mumkin Parat, i.e., un-culturable, recorded as such, in the Revenue records, would attract the application of the provisions of Section 13 of the Act?

In order to find answer to the question, reference needs to be made to the provisions of Section 2 (9) of the Act, which defines "land" contemplated by the provisions of the Act. Section 2(9), reproduced hereunder, for facility of reference thus needs to be examined:-

"2(9): "land" means land which was occupied, or was let, for agricultural purpose or for purposes subservient to agriculture or for pasture in Kharif, 1971 and includes:

- (a) Structures on such land used for purposes connected with agriculture;
- (b) Areas covered by, or fields floating over, water;
- (c) Forest lands and wooded wastes;

(d) Trees standing on land; and
[but does not include an orchard or] site of a
building or a structure within municipal
area town area, notified area or village abadi
or any land appurtenant to such building or
structure.”

Perusal of the definition of land extracted hereinabove, reveals that the types of land contemplated by the Section, are only those which are, in one or the other way, connected with agriculture.

The exclusion of other kinds of land, from the definition of the land, intended to be dealt with under the provisions of the Act, is amply demonstrated by the description of other types of land, indicated as such, in the last portion of Section 2(9) of the Act, which list, however, is not exhaustive, and would, in our opinion, include all those lands which do not fall within the definition of the land as it appears in rest of the portion of Section 2(9) of the Act and has no connection whatsoever with agriculture.

Gair Mumkin Parat, conceded by learned counsel for the parties at the time of consideration of the petition, being admittedly “un-culturable”, may not thus, looked from any angle, fall within the definition of ‘land’ as defined in the Act.

As the land in question does not fall within the definition of the land under the Act, so, as a necessary corollary, the provisions of Section 13 of the Act too would not apply to it.

The orders passed by the Assistant Commissioner, and the Director Land Records, exercising powers of the Commissioner under the Act, declaring the land to be

State Land, were thus without jurisdiction, which have been rightly set aside by the Jammu and Kashmir Special Tribunal.

For all what has been said above, We do not find any merit in this appeal to interfere with the judgment and order of the learned Single Judge and that of the Jammu and Kashmir Special Tribunal.

Found to be without merit, this appeal is, accordingly, dismissed.

(J. P. Singh)
Judge

(Nirmal Singh)
Judge

JAMMU
19.08.2008
Tilak, Secy.