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HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No. 50/2003
CMP No. 1129/2007, CMP No. 50/2003

Date of Order: 24-09-2010

Om Parkash

V.

State & Ors.

Coram:-

Hon'ble Mr. Justice Mansoor Ahmad Mir, J.

Appearing Counsel:-

For the Petitioner(s)	: Mr. U.K. Jalali, Sr. Advocate along with Ms. Neha Bakshi, Advocate.
For the Respondents	: Mr. A.H.Qazi, AAG for official respondents Mr. S.C.Gupta, Sr. AAG for private respondents.

WHETHER APPROVED FOR REPORTING: YES

The dispute between the petitioner and private respondents is with respect to land measuring 01 Kanal & 14 Marlas, comprised in Khasra No. 269, situated at village Channi Himmat, Jammu and are in lis from a pretty long time. The dispute is vis-à-vis entries made in Rabi 1971, which were made in favour of one Assa Nand. Feeling aggrieved, an appeal came to be preferred questioning the Mutation No. 868 of 1981 and 1119 of 1982, came to be dismissed by the Joint Financial Commissioner-Agrarian Reforms Commissioner, Jammu vide order dated 15th of December' 1986. The said order came to be questioned before the J&K Special Tribunal, Jammu by the private respondents in a revision petition,

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came to be allowed by the Tribunal vide its judgment dated 10th of July¹ 1990 and all the Girdawari entries for Rabi-1971 came to be quashed and both the mutations came to be set aside and the *lis* came to be remanded to the Tehsildar (Settlement), Jammu for *De novo enquiry* and passing order afresh after affording opportunity to all the necessary parties. It is apt to reproduce the appropriate portion of para no. 5 of the said order herein:-

"5. I feel that a conspiracy has been hatched to change the girdawari entries with the active connivance of the revenue staff which is detrimental to the interest of the applicants. Moreover, no opportunity of being heard has been afforded to the applicants which is against the principle of natural justice. This is, therefore, a fit case in which a de novo enquiry and fresh orders are called for. The revision petitions are, therefore, accepted, impugned order of Mr. S.M.Andrabi dated 21.4.1984. Joint Financial Commissioner with powers of Agr. Reforms Commissioner Dated 15.12.1986 and order of Tehsildar passed on mutation no. 868 and 1119 are set aside. The case is remanded to the Settlement Tehsildar Jammu for de novo enquiry and fresh orders after affording sufficient opportunity of being heard to all the necessary parties."

The parties have not questioned the said order and thus it has attained finality. Tehsildar (Settlement), Jammu, in pursuance of the said order, conducted spot inquiry and heard the parties at length and thereafter, passed the order dated 25th of March¹ 1991 holding that the entries made in Rabi-1971 were not correct. He has further held that all four sons of Brij Lal were cultivating the land in dispute. Feeling aggrieved, writ petitioner

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preferred an appeal before the Commissioner-Secretary, Agrarian Reforms-Financial Commissioner, came to be dismissed vide order dated 12th of November' 1998. It is apt to reproduce the relevant para of the said order herein:-

". . . . I therefore, find that the Settlement Tehsildar has carried out proper enquiry as stipulated under law and has ascertained the position obtaining on ground with specific reference to the recorded position. It is only after examining the prominent residents of the village and reading consistently the entries that he has reached the cogent finding that all the brothers of Assa Nand were in cultivating possession of land. That there was no justification for changing the entry in Rabi 1971 in favour of Assa Nand through exclusion of other brothers. The entries being notbeing borne out from the previous records and as per the physical possession on spot, the same can not be relied upon. Mere assertion of the counsel of Om Parkash that other brothers of Assa Nand died in 1964 and 1969 respectively would not materially change the position because the legal heirs are deemed to have been substituted. There is no evidence to detract from the enquiry conducted by the Tehsildar Settlement nor there is any cogent reasoning to decry the analysis presented by him on the basis of position obtaining on record and ground. The procedure followed by the Tehsildar can not be faulted on any account. I therefore find myself in agreement with the order of Tehsildar Settlement . . ."

Feeling aggrieved petitioner questioned the order of

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Financial Commissioner by way of a revision petition, came to be dismissed by the J&K Special Tribunal vide order dated 27th of August¹ 2002, which is the subject matter of this writ petition. It is apt to reproduce the last para of the impugned order herein:-

"Ld. Court below has for very cogent reasons come to the conclusion that change in the entry Rabi 1971 in favour of Assa Nand alone was not justified. For making the entry of Kharif 1971, entry of Rabi 1971 has been relied upon and as such the same is also vitiated. The basis on which the petitioner claims his rights has been found to be defective and faulty and there are no reasons available to justify interference with the view of the Court below. Therefore exclusion of his other brothers. Therefore, there is no merit in the revision petition of the petitioner and as such is dismissed. The record of this Court shall go to records after due completion and the record of court below shall be returned with a copy of this judgment."

The Tribunal while dismissing the revision petition has held that the Tehsildar/Appellate Court have cogent reasons for passing the detailed orders and held that the change of entries in Rabi 1971 in favour of Assa Nand was not justified. The appellate Court as well as the Revisionary Courts have upheld the findings of fact returned by the Tehsildar. Thus, there are concurrent findings on the facts.

Learned counsel for the appellant-writ petitioner

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argued that the Tehsildar-learned Court of first instance has not taken into consideration the evidence, affidavits and other material which were available while mutation no. 868 of 1981 and 1119 of 1982 came to be attested/made. The Tehsildar, without considering the said evidence, has passed the order which came to be upheld by the Appellate Court and the Tribunal.

The arguments of the learned counsel for the petitioner are devoid of force for the following reasons.

That the mutation came to be set aside and the entries made in Rabi 1971 came to be quashed by the learned Tribunal vide its judgment dated 10th of July' 1990 while commanding the Tehsildar concerned to conduct fresh de novo enquiry and pass appropriate orders after hearing the parties, meaning thereby the evidence, which was made basis for passing the said mutation, was not in existence at the time of conducting enquiry and the Tehsildar had to only go for fresh enquiry.

It is beaten law of the land that the writ Court cannot interfere with the findings unless it is perverse, illegal or came to be passed without jurisdiction or is against the basic principles of law.

As discussed above, Apex Court in a case titled **Jugal Kishore versus State of Maharashtra and others**, reported in **AIR 1989 SC 159**, has held that it is only the

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revenue authority who has to determine the issue.

A perusal of the record and the judgments of the Court below indicate that the Tehsildar has conducted detailed enquiry as well as spot inspection and has heard the parties at length and thereafter passed the order, which came to be upheld by the Appellate Court as well as the revisionary Court. Thus, it can safely be said that the orders came to be passed legally by the Courts below and were having jurisdiction to determine the issues involved.

In the given circumstances, this writ petition is not maintainable, dismissed as such.

**(MANSOOR AHMAD MIR)
JUDGE**

Jammu:
24-09-2010
Sanjay