

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No.271/2006

Date of Decision: 30.05.2011

Vaishno Devi and ors. Vs Financial Commissioner & ors.

Coram:

Mr. Justice J.P.Singh

Appearing Counsel:

For the Petitioner(s) : Mr. Anil Mahajan, Advocate.

For the Respondent(s) : Mr. A.H.Qazi, AAG for R-1 & 12.
Mr. O.P.Thakur, Advocate for R-2 to 10.

i) Whether approved for reporting
in Press/Journal/Media : **Yes/No**

ii) Whether to be reported
in Digest/Journal : **Yes/No**

The dispute between the parties in respect of land measuring 82 kanals 7 marlas comprised in Khasra No.51 of village Saketar-Reasi has a chequered career.

Shorn of details, facts necessary for disposal of this Writ Petition are as follows:-

Ghulam Mustafa-respondent No.11's Application under Section 56 of the Jammu and Kashmir Tenancy Act was allowed by the learned Deputy Commissioner, Udhampur, aggrieved whereby, Roop Chand and Shri Chand questioned it before the Divisional Commissioner, Jammu. Ghulam Mustafa changed his stance before the Divisional Commissioner stating on oath that though he was in possession of the land in 1971

but it was only as a labourer and not as a tenant. Acting on the statement of Ghulam Mustafa, the Divisional Commissioner set aside the Deputy Commissioner's order vide his order dated 16.08.1975. This order was questioned before the Financial Commissioner, who remanded the case vide his order of 19.6.1976 to the Divisional Commissioner, Jammu. The Divisional Commissioner, Jammu upheld his predecessor's order additionally recommending that Mohammad Hussain and Mohammad Din be given benefit of possession along with Roop Chand and Shri Chand.

The recommendations made by the Divisional Commissioner were, however, not accepted by the learned Financial Commissioner(R), who, referring to the simultaneous litigation between the parties under the provisions of the Jammu and Kashmir Agrarian Reforms Act, 1976 and relying on the decision of this Court in Writ Petition OWP No.352/1987, which had been preferred by M/s Shri Chand, Sansar Chand and Roop Chand against the order of the Special Tribunal dated March 3, 1987 in Revision No.681 of 1983 whereby allowing the Revision, the orders passed by the Joint Agrarian Reforms, Jammu on February 23, 1983, upholding the order of the Sub-Divisional Magistrate(Collector, Agrarian Reforms), dated January 3, 1981 and Mutation No.323 of village Saketar had been set aside, dismissed the petitioners' Claim to the land

in question vide his order of 14.2.2006.

The petitioners have approached this Court again questioning the learned Financial Commissioner's order of 14.2.2006.

Petitioners' learned counsel submitted that in view of the findings of the Criminal Court in proceedings under Section 145 of Code of Criminal Procedure affirming petitioners' possession over the land in question, the order passed by the learned Financial Commissioner cannot be sustained.

Per contra, the respondents' learned counsel would submit that in view of the judgment of this Court delivered in Writ Petition OWP No.352/1987, the petitioners cannot derive any benefit of the simultaneous proceedings, which they were pursuing under the Tenancy Act, in view of the categorical finding by this Court in Shri Chand and others' Writ Petition that they had lost their rights in the property in question.

I have considered the submissions of the learned counsel for the parties and perused the documents placed on records.

The question that falls for consideration in the case is as to whether or not the authorities under the Jammu and Kashmir Tenancy Act had any jurisdiction to dwell on the issue projected before them in view of the concluded findings of the authorities under the Jammu and Kashmir Agrarian Reforms Act.

Before dealing with the issue, reference needs to be

made to what was held by this Court while disposing of Shri Chand and other's Writ Petition OWP No.352/1987. It reads thus:-

".....5. After hearing the learned counsel for the petitioners at length and on perusal of the order impugned passed by the learned Tribunal in the light of the provisions of Section 10(2) of the Act, we find the arguments advanced by the learned counsel for the petitioners have no legs to stand. The fallacy lies in the interpretation of the provisions of Section 10(2) of the Act. The argument ignores the words, "subsists on the date of commencement of this Act." These words are of great significance for the disposal of the present writ petition. It is implicit in the words that the right to redemption must subsist on the date of the commencement of this Act. Whereas in the instant case the rights extinguished immediately after the expiry of 60 years period and the period provided for redemption. Learned counsel for the petitioners was unable to point out that the right of redemption in the light of the provisions of section 28 and Article 148 of the Limitation Act existed in favour of the petitioners on the date of the commencement of the Act. Learned Tribunal has discussed all the pros and cons of the provisions in detail and in our opinion have rightly come to a conclusion that the Joint Agrarian Reforms Commissioner and the collector acted without jurisdiction in holding the mortgage subsisting merely on the basis of the revenue entry. They have ignored the legal position. It is well settled that revenue entries are only meant for fiscal purposes, which do not confer any right on a party. Thus after the extinction of the right much prior to the enforcement of the Act, if a right extinguished to redeem the mortgage, petitioners cannot take the shelter of the provisions of section 10(2) of the Act. Thus in our opinion, the Tribunal acted quite within its jurisdiction in setting aside the orders passed by Collector and the Joint Agrarian Reforms Commissioner and also the Mutation based on the order of the Collector.

6. For the reasons stated herein above, we do not find any substance in the Writ Petition, which is hereby dismissed in limine. It also disposes of CMP No.878 of 1987 and the caveats 45 and 53 of 1987."

In view of the findings returned by this Court in OWP No.352/1987, the petitioners cannot be permitted to re-agitate

the issue that findings recorded by the authorities under the Land Revenue Act and the Tenancy Act would survive despite the findings to the contrary recorded by the authorities under the Jammu and Kashmir Agrarian Reforms Act.

The view taken by the learned Financial Commissioner(R) that in terms of Section 19(4) of the Jammu and Kashmir Agrarian Reforms Act, the Collector and other authorities under the Tenancy Act had no jurisdiction to deal with the matter and the findings returned by them in proceedings pending before them were without jurisdiction, cannot, therefore, be faulted.

Petitioners' learned counsel's plea that in view of the findings of the Criminal Court, the order of the Financial Commissioner cannot be sustained, may not be tenable, in that, the findings returned by a Criminal Court in proceedings under Section 145 Cr.P.C. are always subject to the findings of the Civil Court and in this view of the matter, the findings of the Criminal Court regarding petitioners' possession over the land cannot deprive the respondents of their rights in the land to which they had been found entitled by this Court when the petitioners' Claim to the property was negated.

In view of the findings returned by this Court in OWP No.352/1987, no merit is found in the petitioners' Writ Petition warranting interference with the view taken by the learned Financial Commissioner (R), Jammu and Kashmir Government,

whereby he had quashed the proceedings taken by the petitioners and their predecessors-in-interest under the provisions of the land Revenue Act and the Tenancy Act.

There is, thus, no merit in the Writ Petition, which is, accordingly, dismissed.

(J.P. SINGH)
JUDGE

JAMMU
30.05.2011.
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