

HIGH COURT OF JAMMU AND KASHMIR JAMMU

OWP. No. 984/2012

Date of order: December 06, 2016

**Gulzar Singh and Anr.
Vs.
Santi Devi and Ors.**

Whether to be reported ? Yes

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

Appearing counsel:

For the petitioner(s) : Mr. Rameshwar. P.Sharma, Adv.

For the respondent(s) : Mr. O.P. Thakur, Adv.

Mr. F.A.Natnoo, Adv.

(Oral)

01. The respondents 1 to 3, in a revision petition filed before the Divisional Commissioner, Jammu, called in question the Communication dated 2nd March, 2010 send by Custodian Evacuee Property, Jammu to Tehsildar (Assistant Custodian) Samba, asking him to conduct auction of land measuring four marlas out of Khasra No. 1100 situated at village Trindi Jamura (Ramgarh) Tehsil Samba. The claim of respondents 1 to 3 before the Divisional Commissioner in the revision petition was that they were allottees of the land.

02. The Divisional Commissioner, vide its Order dated 18th March, 2011, dismissed the revision petition, *inter alia*, on one ground viz. that there was no record available on the file, which would show that the respondents 1 to 3 were allottees of the land subject matter of the revision petition. It has been specifically mentioned in the order passed by Divisional Commissioner that respondents 1 to 3, who were petitioners before him, have not produced any

document which would show that they were allottees of the land. The Divisional Commissioner has further observed that since the issues are not becoming clear before him and in absence of any recorded proof, it could not be believed that the respondents 1 to 3 are the legal heirs of the original allottee. He recorded finding that it cannot be believed that Madan Lal was adopted by respondent no. 1, who was petitioner no. 1 before the said authority.

03. The order of Divisional Commissioner was called in question by respondents 1 to 3 before the Jammu and Kashmir Special Tribunal, Jammu (for short ("***Special Tribunal***")). The Special Tribunal, quashed the impugned order of Custodian General and Deputy Custodian General.

04. It appears from the record that after the Communication dated 2nd March, 2010 was issued, the Custodian General passed order on 23rd April, 2010, whereunder, the land, subject matter of this writ petition, which was put to open auction, was allotted to present petitioners. This order was challenged by respondents 1 to 3 before the Special Tribunal. The Special Tribunal, it appears from the order of Divisional Commissioner, send the record of those proceedings to him presumably on the ground that the Divisional Commissioner was already in seisen of the matter.

05. Learned counsel for the petitioners argued at great length. Besides Mr. O.P.Thakur, learned counsel for the respondents 1 to 3, took the maximum time in arguing the case. He referred to the impugned orders and the material available on record to show that the right of the

respondents 1 to 3 to hold the property is justified in law. Learned counsel invited the attention of the Court to series of documents placed on record of the writ petition as also enclosed with the reply affidavit of the respondents 1 to 3 to indicate that the respondents 1 to 3 were holding the land which is subject matter of the writ petition.

06. The Custodian Evacuee Property, Jammu, it is submitted at bar, also filed response. However, copy thereof is not traceable on the record of this writ petition. Copy thereof produced by learned counsel for the respondent no. 4 is placed on record. The Custodian Evacuee Property, Jammu has specifically denied the claim of the respondents 1 to 3 of having right to hold the property being not allottees of the property.

07. Be that as it may, the Divisional Commissioner, Jammu as also the Jammu and Kashmir Special Tribunal, Jammu have dealt with the matter in a casual manner. The Divisional Commissioner though made some efforts to ascertain the actual factual position, but the Special Tribunal has simply glossed over the entire material and in a cryptic slipshod manner has passed the order, which, in law, is unsustainable. The issues raised by the parties were required to be considered by the said authority and it was duty of the Special Tribunal to deal with the issue/documents placed before it and return finding, more so, when stand is taken by the Custodian that no allotment order was issued in respect of land which is subject matter of this petition. The Jammu and Kashmir Special Tribunal has dealt with the legal rights of the parties in a manner which does not behoove of it. Adjudicatory Authority is

duty bound in law to pass a reasoned order. The order impugned in this petition is not only deficient of the legal attributes, but it is passed in a per-functionary manner. The Special Tribunal was not passing the administrative order, which, also requires recording of reasons but was exercising quasi judicial functions.

08. The issues raised are required to be dealt with by the Jammu and Kashmir Special Tribunal, Jammu in the first instance. The said Authority has to consider all the issues involved after affording opportunity of hearing to learned counsel for the parties and pass reasoned order.

09. For the above stated reasons the order impugned being illegal is set-aside. The matter is remitted back to Jammu and Kashmir Special Tribunal. The parties to appear before the Special Tribunal personally or through their counsel on 19th December, 2016. In order to have a proper and reasoned order, it is deemed appropriate to direct for assigning of this case to a Judicial Member. The Chairman of the Jammu and Kashmir Special Tribunal to pass orders for assigning this case to a Judicial Member.

10. It is further provided that the Special Tribunal will take steps for disposing of the case at the earliest.

(Muzaffar Hussain Attar)
Judge

JAMMU
06/12/2016
Shamim Ahmad

