

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP no.646/2012
CMA no.891/2012

Date of decision: 06.06.2014

Kanta Gupta

v.

State of J&K & ors.

Coram:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Appearing counsel:

For Petitioner: Mr. Javed Iqbal, Advocate;

For Respondents: Mr. H. A. Siddiqui, AAG.

Whether approved for reporting:

No/Yes

The petitioner, claiming to be owner and in possession of land measuring 64 Kanals comprised in Khasra no. 62-min, Khewat no.46, Khata no.323; Khasra nos.1115/4 & 118/4, Khewat no.46, Khata no.323 situated at Deeli, Tehsil and District Jammu, has filed this writ petition seeking issuance of writ in the nature of Mandamus to command the respondents to forbear from causing any interference in her possession, occupation and enjoyment of the land in question or from forcibly evicting her therefrom. The petitioner has also prayed for issuance of writ of Prohibition restraining the respondents from installing police post over the land in question.

2. It is averred in the petition that the petitioner purchased land measuring 34 Kanals – 12 Kanals comprised in Khasra no.62-min, Khewat no.46, Khata no.323; another 12 kanals comprised in the same Khasra number; 10 Kanals comprised in

Khasra nos. 1115/4 and 118/4, Khewat no.46, Khata no.323 – situated at Deeli, Jammu, from one Charan Dass son of Sh. Lekh Raj resident of Gadigarh, Jammu, through his attorney Shri Baldev Singh son of Sh. Nanak Chand resident of Sai Tehsil R. S. Pura vide sale deed dated 16.05.2005. It is further averred, that the petitioner also purchased land measuring 14 Kanals comprised under Khasra no.62-min, Khewat no.46, Khata no.323 from one Paras Ram son of Sh. Dayal Chand resident of Gadigarh, Jammu through his attorney named above vide another sale deed dated 16.05.2005. Again, vide an even dated sale deed, the petitioner is also stated to have purchased land measuring 16 Kanals comprised in the same Khasra, Khewat and Khata from one Shri Janak Singh son of Shri Prithvi Singh resident of Jandial, Iabat Bhalwal, Jammu, through his attorney named above.

3. It is further averred that the aforesaid land had vested in the erstwhile owners from whom the petitioner purchased the same, after the same was allotted in their favour in terms of Government order no.254 of 1965 dated 07.07.1965 passed under Allotment of Land to Displaced Persons Rules, 1954 and thus ownership rights had been conferred on the erstwhile owners thereof. It is submitted that on purchase of the land by the petitioner and taking possession thereof, she became the absolute owner of the land in question and, consequently, mutations, too, were attested in her favour.

4. The grievance projected in the petition is that sometime back, respondents 4 to 6 with the assistance of respondents 7 to 10 appeared on the site of the land and started joining issue with the petitioner about her title over the land. The petitioner has, accordingly, filed this writ petition for the reliefs as already mentioned briefly on the grounds taken in the petition.

5. On behalf of respondents 1 to 6, i.e., the revenue authorities-cum-officials, a separate set of objections has been filed; whereas on behalf of respondents 7 to 10, i.e., the Police authorities, another set of objections has been filed.

6. Respondents 1 to 6 in their objections have stated that one Shanti Saroop Gupta, the then Tehsildar, Jammu, along with one Farooq Iqbal Qazi, the then Patwari, Deeli, by misuse of their official position, in connivance with one Baldev Singh, Power of Attorney holder of the displaced persons fraudulently and illegally transferred proprietary rights of State land in terms of Government order no.254-C of 1956. On receipt of the information, the matter was investigated by the State Vigilance Organization against the erring officials and that a charge sheet under Section 5(2) of Prevention of Corruption Act, 2006 has been presented against the then Tehsildar Jammu, Shanti Saroop Gupta, the then Patwari, Farooq IqbalQazi and one Baldev Singh, Power of Attorney holder of displaced persons. It is stated that Tehsildar could not make allotment of the land in question in favour of any displaced person and that, thus, the property in question has not been allotted in favour of any displaced person by a valid order. In this connection, it is submitted that only agricultural land could be allotted in favour of displaced persons, who were having their agricultural holdings in Pakistan Occupied Kashmir. It is averred that the whole exercise in the instant case has been done illegally, by misuse and abuse of official position with a view to rob the State of its land. It is submitted that the basic claim of allotment in favour of the displaced persons and subsequent attestation of mutations under Government order no.254/C of 1965, being fraudulent exercise of power and constituting a criminal conduct, it does not create any right in favour of the petitioner. It is stated that the alleged allotment was made by the Tehsildar at the verge of her retirement by resort to fraud and manipulations.

7. It is submitted that under Cabinet Order no.578/C of 1954 dated 07.05.1954, the State Government has promulgated the Allotment of Land to Displaced Persons Rules, 1954, in terms whereof agricultural land could be allotted to a displaced person for cultivation and the displaced person was supposed to bring such lands under personal cultivation on allotment, failing which the allottee would forfeit his right to occupy such land. However, the allotment claimed in the instant case is stated to be *void ab initio* on the ground that Tehsildar, Jammu, had no competence under law to allot any land to a displaced person in Tehsil Jammu either under Government Order no.254-C or under Cabinet Order no.578 of 1954.

8. Respondents 1 to 6 in their objections have further submitted that the matter was also entrusted by the Divisional Commissioner, Jammu, to the Joint Settlement Commissioner, Jammu, for enquiry, who in turn, after conducting the enquiry, has, vide his report dated 22.03.2010, recommended quashing of mutation no.3929 for the land in question measuring 219 Kanals 01 Marla. He has also recommended that the officials responsible, viz., Shri Shanti Saroop the then Tehsildar, Jammu, and Shri Farooq Iqbal Qazi, the then Patwari are liable for disciplinary action. A copy of this report has been appended to the objections as annexure R1.

9. Respondents 7 to 10 in their objections have, *inter alia*, stated that there is no ill-will on their part; it was only on the request of respondent no.3, Deputy Commissioner, Jammu, and on the directions of the Hon'ble Court that a temporary police post was installed on the land to prevent encroachments in the land in question. It is also submitted that criminal prosecution is pending against the Attorney Holder, Baldev Singh as well as the then Tehsildar and Patwari concerned. These respondents have appended a copy of the charge sheet with the objections as annexure R1.

10. I have heard learned counsel for the parties, perused the records and considered the matter.

11. The precise case of the petitioner is that the land to the extent indicated above purchased by her from its erstwhile owners named above and covered by the sale deeds has validly and legally vested in her and that she cannot be evicted from it without following the procedure established by law. As to the right of the erstwhile owners of the land, it is submitted that the land in question had been allotted in their favour pursuant to Government order no.254 of 1965 dated 07.07.1965. Learned counsel submitted that the petitioner has a fundamental right to hold and enjoy the property in question. To buttress his argument, learned counsel for the petitioner cited and relied upon the judgment of the Supreme Court in ***B. Gangadhar v. B. G. Rajalingam***, AIR 1996 SC 780.

12. On the other hand, the case of the respondents is that the then Tehsildar, Jammu, without any authority of law or power, has conferred proprietary rights on State land measuring 219 Kanals and 01 Marla in favour of seven displaced persons by attesting mutation no. 3929 of village Deeli in connivance with the Patwari concerned and one Baldev Singh, who is also stated to be the power of attorney holder of the aforesaid allottees. It is also submitted that the matter was investigated by the Vigilance Organization and a challan for the commission of offences under Section 5(1)(d) read with 5(2) of Prevention of Corruption Act, Svt. 2006 and Sections 420, 467, , 468, , 471 & 120-B RPC stands filed before the court of competent jurisdiction against the then Tehsildar, Jammu; Patwari, Deeli; and Baldev Singh. The Joint Settlement Commissioner, J&K, Jammu, vide his report dated 22.03.2010 has also, among other things, recommended setting aside the aforesaid mutation to the Financial Commissioner (Revenue), J&K Government, Jammu.

13. Admittedly, the petitioner is claiming her right to the land in question on the basis of the sale deeds executed by the alleged erstwhile owners thereof. It is not in dispute that the land is basically uncultivable State land. It is the positive case of the respondents that, firstly, the Tehsildar, Jammu, did not have the authority or power to transfer the land to any displaced person under the Rules of 1954 or the Government order no.254 of 1965 dated 07.07.1965, and that it was only within the competence of Provincial Rehabilitation Officer (PRO), Jammu, to process any such cases; secondly, that Rules provided transfer of only agricultural land and not the type of land involved herein; thirdly, that, on allotment, a displaced person is supposed to bring such lands under personal cultivation, failing which he shall forfeit his right to occupy such land and in the instant case the land has not been brought under personal cultivation. The conferment of title of the land in question on the vendors thereof is thus disputed by the respondents.

14. In ***B. Gangadhar v. B. G. Rajalingam*** (supra), cited and relied upon by the learned counsel for the petitioner, the Supreme Court has held that ownership is de jure recognition of a claim to certain property. Since the very title of the vendors in the instant case is in dispute, the sale deeds executed by them in favour of the petitioner cannot be relied upon by this Court to grant the reliefs prayed for in this petition. I am not inclined to delve into the question whether the Tehsildar, Jammu, had the authority or power to make the allotments in question or whether the sale deeds are valid or not, lest it should prejudice any of the parties in any pending or future civil litigation, or even in the criminal case which is stated to be pending before the competent court of jurisdiction. In my considered view, the real question that underlies the factual matrix of the case is whether the vendors had a valid and lawful ownership and possession of the land? Determination of this question would need an enquiry and declaration in their favour, which cannot be done by this Court

in the present proceedings and in the peculiar facts and circumstances of the case, that too, at the instance of the present petitioner. It is another thing that such a relief has neither been, nor could have been, prayed for by the petitioner. The petition, thus, is not maintainable.

15. Annexure 'B' appended by the petitioner with his writ petition and relied upon by him, which is a letter dated 14.02.2012 from Deputy Commissioner, Jammu, to the Senior Superintendent of Police, Jammu, indicates that the Tehsildar Settlement, Jammu in his report has stated that the matter is also *subjudice* before the Civil Court. This fact has not been disputed by the learned counsel for the petitioner. That being the case, this petition on that count also is not maintainable.

16. In light of the above, this petition is held to be not maintainable and is, accordingly, dismissed in *limine* together with the connected CMPs.

17. Before parting with this file, I deem it relevant to mention here that respondents 1 and 2 do not seem to have taken any steps to undo the wrong which is stated to have been committed under a criminal conspiracy, though the Joint Settlement Commissioner, Jammu, has already made a recommendation to that effect. It is also noticed that on 08.05.2012 Mr. Gagan Basotra, learned Sr.AAG, had made a prayer before the Court seeking permission to the State to demarcate the land and prosecute its remedies before the available Forums to it under law against the orders obtained by the petitioner in respect of the land in question. The prayers so made stand allowed by interim order dated 08.05.2012. It is not known what steps have been taken by the concerned respondents thereafter to secure the interests of the State. By the said interim direction, respondent no.10, Station House Officer, Police Station, Gangyal, was also directed to ensure that there was no encroachment on the land until further orders from the Court and that the police may pitch its tent at any convenient place in the land to ensure meaningful

compliance of the direction. It is made clear that dismissal of this writ petition would neither preclude the State and its concerned functionaries from undoing the wrong committed by the erstwhile Tehsildar, Jammu, nor relax the binding duty on the police concerned to protect and secure the land in question from any encroachments.

(Ali Mohammad Magrey)
Judge