

**HIGH COURT OF JAMMU AND KASHMIR**  
**SRINAGAR**

**Case No:** OWP 982/2015

**Dated :** 31<sup>st</sup> May, 2016

**MOHAMMAD AKBAR SHAH & ORS**

**VERSUS**

**STATE & ORS**

**ORDER SHEET**

**CORAM:**

**HON'BLE MR. JUSTICE MUZAFFAR HUSSAIN ATTAR – JUDGE.**

***Whether approved for reporting : yes***

**FOR THE PETITIONERS/s :** MR. KHATEEB SHAKIR

**FOR THE RESPONDENT/s:** MR. N.H.SHAH, AAG.

**01/** The petitioner No.1 executed Sale Deed in favour of petitioners 2 to 5 in respect of land measuring 02 kanals, covered by Survey No. 950 min, Khevat No. 845, situated at Mauza Charar-i-Sharief, Tehsil Charar-i-Sharief, District Badgam. Petitioner No.1 was recorded as Tenant-at-Will (under the State) in respect of land, which was in his occupation, in accordance with the mandate contained in order No. LD-6/C of 1958 dated 05<sup>th</sup> June, 1958 (for short order of 1958). In terms of this order of 1958, petitioner No.1, as occupant, was not authorized to transfer the land or any interest therein. The said order of 1958 imposed some other conditions on petitioner – occupant of the land.

**02/** In terms of Government order No. S-432 of 1966 dated 03<sup>rd</sup> June, 1966 (for short order of 1966), it was provided that proprietary rights be conferred on the cultivators of State land, who

are permanent residents of State and have already been declared as Tenant-at-Will in accordance with order of 1958 subject to certain conditions, which include that the land shall be used for agriculture purposes only and the grantee shall not be entitled to alienate it without previous permission of the Government. Relevant part of orders of 1958 & 1966 are taken note of :

***“Revenue and Rehabilitation Department Order No. LB-6/C of 1958 dated 5<sup>th</sup> June, 1958.***

*It is ordered that the occupants of Stand land including that vested in the State under provisions of the Big Landed Estates Abolition Act, 2007 and that from which ejectment was ordered under Council Order No. 40-C of 1944, but ejectment has not taken place till Kharif 1957-58 be recorded as tenants-at-will (under the State) in respect of the area in their cultivating possession or occupation in Kharif 1957-58, subject to the following conditions, namely:-*

- 1. (a) .....  
      (i) .....  
      (ii) .....  
      (iii) .....  
      (iv) .....*
- (b) .....*
- (c) The occupants shall not-  
      (i) transfer the land or any interest therein; or  
      (ii) sub-let the land for more than two successive harvest or, with the permission in writing of a revenue officer not below the rank of Tehsildar, for more than three years; or  
      (iii) where the land is used for growing paddy, maize or wheat crop, convert it into an orchard or plantation or otherwise render it unfit for the cultivation of such crops; or  
      (iv) fail to cultivate the land for more than one year or neglect to conform to standards of cultivation prevalent in the village.”*

***“Revenue Department Notification, Government Order. No. S-432 of 66 dated 3<sup>rd</sup> June, 1966.***

*It is ordered that proprietary rights be conferred on the cultivators of State lands who are permanent residents of the State and have already been declared as tenants-at-will in terms of Government order No. LB/6-C of 1958 subject to the conditions that:--  
      (1) land is held by them in self cultivation continuously from Kharif 1957-58;*

- (2) *the areas of the land given on proprietary rights should not exceed two acres of Abi and four acres of Khushki in Kashmir Province including the District of Ladakh and four acres of Abi or 6 acres of Khushki in the Jammu Province, in both cases including the land already held in ownership rights;*
- (3) *no right should be conferred in respect of land entered in records or used as Kahcharai or for any common purpose or orchard, tree plantations, shop sites, land under structures used for commercial purposes and residential buildings.*
- (4) *the grantee shall use it for agricultural purposes only and shall not be entitled to alienate it without the previous permission of the Government;*
- (5) *the grantee shall be liable to pay the land revenue including cesses and other dues as provided for in the orders by which they are declared as tenants-at-will.*

*II. Any violation of the condition of the grant as detailed above shall make the grant liable to forfeiture.*

*The recommendations made by the Land Commission in their second interim report in respect of grant of extension in the time limit for filing of applications by land-lords for resumption of land for personal cultivation is hereby rejected.”*

**03/** The land, which the petitioner No.1 intended to transfer in favour of petitioners 2 to 5 and for which Sale Deed was executed, the proprietary rights thereof were conferred upon him in terms of order of 1958 & order of 1966.

**04/** The Sale Deed was presented before the Sub Registrar, Charar-i-Sharief for its registration in accordance with the mandate contained in Registration Act, Svt., 1977. The Sub Registrar, Charar-i-Sharief, vide order dated 14<sup>th</sup> March, 2015, refused to register the document on the ground that petitioner No.1-Vendor had not, despite grant of reasonable opportunity, obtained permission for alienating the land as prescribed in paragraph 4 of the order of 1966.

**05/** Appeal was filed against the order of Sub Registrar, Charar-i-Sharief.

**06/** The Registrar (Principal District Judge, Badgam), vide order dated 11<sup>th</sup> May, 2015, rejected the Appeal. It is these two orders , which are called in question in this writ petition.

**07/** Learned counsel for the petitioners submitted that the learned Registrar (Principal District Judge, Badgam), committed an error in law in not considering the pleadings of the Appeal filed before him as also the submissions made in support of the Appeal. He further submitted that in terms of section 42 (1) of Jammu & Kashmir Agrarian Reforms Act, 1976 (for short Act of 1976), the provisions of Jammu and Kashmir Tenancy Act, Samvat, 1980 ; the Jammu and Kashmir Alienation of Land Act, Samvat 1995 ; the Jammu & Kashmir Land Revenue Act, Samvat 1996 ; the Jammu and Kashmir Big Landed Estates Abolition Act, Samvat 2007 ; the Jammu & Kashmir Consolidation of Holdings Act, 1962 ; and the Jammu & Kashmir Tenancy (Stay of Ejectment Proceedings) Act, 1996 and the rules and standing orders thereunder, shall, as far as they are inconsistent with the provisions of the Act of 1976 and rules framed and instructions issued thereunder, cease to apply to the land to which the said Act applies. Learned counsel submitted that in view of the aforesaid provision of the Act of 1976, the operation of the

provision of the Tenancy Act, 1980 and the condition contained in order of 1966 has ceased to operate, resultantly, the petitioner No.1 is capable of alienating the land without seeking permission from the Government. Learned counsel also, while referring to section 2(11) of the Act of 1976, submitted that the owner means the land holder, as defined in Jammu & Kashmir Land Revenue Act, Samvat 1976 and includes person claiming through him. Submission of learned counsel is that the petitioner No.1 being in personal cultivation of land, as such, is owner of the same. Learned counsel submitted that this being the position in law, the petitioner No.1 would not require seeking permission for alienation of land. Learned counsel also referred to section 31 of the Act of 1976, which has been omitted by Act No. XXXVIII of 1997, which provision prohibited alienation of land as defined in the Act of 1976. Learned counsel also referred to section 32 of the Act of 1976 and submitted that the provisions of the Act of 1976 and rules made and instructions issued thereunder, have to prevail notwithstanding anything contained in any other Law or custom or Usage or in any Contract or in any Instrument inconsistent with the provisions of this Act. Learned counsel, accordingly, submitted that in the aforesaid legal background, there is no requirement of seeking prior permission, as prescribed in paragraph 04 of the order of 1966 for alienation of land. Learned counsel, in

support of his contention, referred to and relied upon judgement of this Court reported in 2004 (II) SLJ 617.

**08/** Mr. N.H.Shah, learned AAG, however, supported the orders passed by the learned Sub Registrar and learned Registrar (Principal District Judge), Charar-i-Sharief, and submitted that until such time, the petitioner No.1 complies with paragraph 04 of the order of 1966, he cannot alienate the land and in absence of such a permission, registration of Sale Deed has been rightly refused. He also referred to the judgements cited at bar by learned counsel for the petitioners.

**09/** Petitioner No.1, admittedly, was recorded as Tenant-at-Will under the State in terms of order of 1958. In terms of the said order, he could not transfer the land or any interest therein. It is also admitted that in terms of order of 1966, the proprietary rights were conferred on the petitioner No.1 and he, in terms of paragraph 04 thereof, was entitled to alienate the land and for that purpose, he had to seek previous permission of the Government.

**10/** The question, which begs for consideration, is whether it is still a requirement of law to seek permission from the Government for alienation of land. Petitioner No.1 was declared to be Tenant-at-Will under the State in terms of order of 1958. In view of order on Mutation No. 1894 (432-S), and the order of 1966, the ownership rights were conferred on petitioner No.1. The petitioner

No.1, thus, got complete domain over the land, which was transferred to him in terms of order of 1966. The orders of 1958 and 1966 were issued under Jammu and Kashmir Land Revenue Act, Samvat, 1996. The order of 1966 was based on Council Decision No. 619 of 04<sup>th</sup> April, 1966. In terms of sub section 1 of section 60 of the Tenancy Act, an occupancy tenant has been authorized to transfer his right of occupancy by Sale, Mortgage or Gift. No permission for such transfer is required in case of occupancy tenant holding the land directly under the State. Petitioner No.1 was holding the tenancy rights directly under the State. This provision of law also support the view taken in this case.

**11/** After the petitioner No.1 was conferred with proprietary rights over the land in terms of order of 1966, the said order outlived its life to the extent of petitioner No.1. His rights thereafter were governed by the Transfer of Property Act, Land Alienation Act and Agrarian Reforms Act. The Act of 1976, in view of the mandate contained in its section 31, did forbid alienation of land defined under it. However, section 31 of the Act of 1976 was omitted in the year 1997. The express provision, forbidding sale of the land, defined in the Act of 1976, was, thus, removed by the Statute itself. The condition contained at paragraph 04 of the order of 1966 for seeking permission for alienation of land, in view of the provisions of the Act

of 1976, more particularly, section 42(1), thus, has ceased to be in operation. Even otherwise, attaching the condition of seeking permission for alienation of land in respect of which, proprietary rights stands conferred, is against the concept of exercising complete dominion over the land, of which proprietary rights were conferred on petitioner No.1. After becoming absolute owner of the land, restriction could not be imposed for its alienation. Such a condition could be imposed only by an act of legislation. Initially a like condition was imposed in terms of section 31 of the Act of 1976 but the said provision was, subsequently, omitted. The land was permitted to be alienated to a limited extent for the purpose of construction of residential house.

**12/** It appears that the condition of seeking previous permission from the Government for alienation of land, in respect of which, ownership rights were conferred by the government as the person was holding the land as tenant under the State, was done with the purpose to ensure that the benefit of land accrues to the grantee and he uses it for agriculture purposes.

**13/** In earlier times, agriculture activity was the backbone of economy of the State. The land, which was given for agriculture purposes to a State subject, was to ameliorate the sufferings of such person/his family. Now the times have changed. The agriculture



activity is no more the main economic activity of the State. The condition of seeking previous permission of the Government for alienation of land, which was given for agriculture purposes, in terms of paragraph 04 of the order of 1966, is rendered otiose and will not effect right of the owner of land to alienate the same provided other statutory requirements are fulfilled for such alienation.

**14/** For the above stated reasons, this petition is disposed of along with connected IAs in the following manner :

*“a) Orders dated 14<sup>th</sup> March, 2015 & 11<sup>th</sup> May, 2015, passed by Sub Registrar, Charar-i-Sharief and Registrar (Principal District Judge, Badgam respectively, are set aside ;*

*b) Sub Registrar, Charar-i-Sharief and Registrar (Principal District Judge, Badgam) are directed to admit the documents, Sale Deed, executed by petitioner No.1 in favour of petitioners 2 to 5, for its registration and register the same in accordance with law without asking for obtaining previous permission from the Government for such alienation ;*

*c) The stamps, purchased for the purpose of sale, at the time of execution of Sale Deed, shall be deemed to be valid for the purpose of this sale.”*

**15/ Disposed** of along with CMPs.

TARIQ Mota  
Srinagar  
31-05 -2016

(MUZAFFAR HUSSAIN ATTAR) J