

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

OWP No. 1457/2014 IA No. 1975/2014
OWP No. 1458/2014 IA No.1976/2014
OWP No. 1459/2014 IA No.1977/2014

Date of order: 26.03.2019

Som Dutt	vs. J&K Special Tribunal and others
Bodh Raj	Vs J&K Special Tribunal and others
Ram Lal	Vs J&K Special Tribunal and others

Coram:

Hon'ble Mr. Justice Sanjeev Kumar, Judge

Appearing counsel:

For petitioner/appellant (s) : Mr. Vilas Magotra, Advocate.
For respondent(s) : Mrs. Surinder Kour, Sr. Advocate with
Mr. Mohd. Aleem Wani, Advocate.

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| i) Whether approved for reporting in Law Journals etc.: | Yes/No. |
| ii) Whether approved for publication in press : | Yes/No. |
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1. Three revision petitions filed by Som Dutt (petitioner in OWP No.1457/2014), Bodh Raj (petitioner in OWP No. 1458/2014) and Ram Lal (petitioner in OWP No.1459/2014) before the J&K Special Tribunal, Jammu (hereinafter referred to as “the Tribunal”), have been disposed of by a common judgment dated 06.01.2014. Three revision petitioners before the Tribunal have filed three separate writ petitions. Keeping in view the nature of controversy involved in the petitions being identical, all the three petitions which have already been clubbed by this court, are taken up for disposal together.
2. Before adverting to the grounds of challenge urged by the petitioners, it would be necessary to take note of few background facts relevant to the disposal of these petitions.

3. Based on the entries of kharief 1971, Mutation No.470 of village Raipur Satwari was attested by the Tehsildar Settlement under Section 4 of the J&K Agrarian Reforms Act, 1976(for brevity “the Act”). The mutation attested included vesting of ownership rights of the owners (writ petitioners herein) in the State with respect to khasra Nos. 154,155 and 157. Late Dheru Ram, predecessor in interest of the private respondents who was recorded tenant of the land in question during kharief 1971, was declared as prospective owner. The petitioners (erstwhile owners of the property) assailed the aforesaid mutation before the Financial Commissioner (with powers of Agrarian Reforms Commissioner) by way of appeal. The appeal was dismissed on merits on 07.8.1998. The order of Commissioner Agrarian Reforms dated 07.8.1998 was further challenged by way of revision petition before the Tribunal but later on the petitioners did not press their revision petitions. In any case, the order of mutation No.470 attested on 19.12.1983 attained finality. It may be noted that after attestation of the mutation under Section 4 of the Act, the petitioners had also applied for resumption of land under Section 7 of the Act. The application for resumption was, however, rejected on the ground that the petitioners did not fulfil the requisite conditions laid down in the Act for resumption of the land. Accordingly, the Attesting Authority attested the mutation No.473 for khasra No. 157 measuring 2 kanals and 11 marlas and mutation No. 802 for khasra Nos. 154,155 and 157 in terms of Section 8 of the Act. As it reveals from the record and pleadings of the parties, these mutations were not challenged by the petitioners.
4. While the appeal of the petitioners against the mutations attested under Section 4 of the Act was pending adjudication before the Commissioner Agrarian Reforms, the petitioners in anticipation of the result of the appeal, switched over to another channel and

accordingly, moved an application before the Collector Agrarian Reforms for redemption of mortgage based on the entries recorded in Jamabandi prior to 1959-60. The application faced dismissal from the Collector Agrarian Reforms on 30.9.1997 and the challenge made thereto by the petitioners before the Director, Land Records, Jammu (Commissioner Agrarian Reforms) also met the same fate on 29.11.2010.

5. Feeling aggrieved, the petitioners called in question the order of the Director, Land Records dated 29.11.2010 before the Tribunal. Finding no merit, the Tribunal dismissed all the three revision petitions vide its order dated 06.01.2014. It is this order of the Tribunal, which is the subject matter of challenge in these three writ petitions.
6. Having heard learned counsel for the parties and perused the record, this court is of the considered view that the order impugned passed by the J&K Special Tribunal, is in consonance with law and record and does not call for any interference from this Court in exercise of extra ordinary writ jurisdiction.
7. From the sequence of events narrated above, the following admitted factual position emerges :
 - i) That in Jamabandi of the year 1959-60, the land in question is recorded to have been redeemed by the petitioners from respondents.
 - ii) In the Khasra girdwari of kharief 1971, which is relevant for the purpose of vesting of ownership rights of non-cultivating owner in the State and conferment of ownership rights in the tenants in cultivation, private respondents are recorded as tenants under the petitioners.

- iii) That on the basis of entries in kharief 1971, mutation under Section 4 of the Act was attested by the Tehsildar concerned on 19.12.1993 which order on the mutation has attained finality.
- iv) The petitioners had filed resumption forms in terms of Section 7 of the Act seeking redemption of land from the recorded tenant for personal cultivation.
- v) The resumption forms of the petitioners were rejected by the mutation Attesting Authority on 17.8.1998 and 19.8.1998.
- vi) As a consequence of rejection of forms of the petitioners, mutation under Section 8 of the Act were attested by the concerned revenue officer on 19.8.1998.
- vii) That mutation attested on the resumption forms of the petitioner under Section 7 of the Act and the mutation attested under Section 8 of the Act conferring ownership rights on the private respondents too have attained finality.

8. It may be noted that notwithstanding that mutation attested under Sections 4 and 8 of the Act against the petitioners had attained finality, petitioners had filed application purportedly under Section 10 of the Act for seeking redemption of mortgage. The application was found not maintainable by the Collector Agrarian Reforms and accordingly, the same was rejected on 30.9.1997. The Commissioner Agrarian Reforms (Director Land Records) before whom the petitioners challenged the order of the Collector Agrarian Reforms, dismissed their appeals on 29.11.2010. From perusal of the judgment rendered by the Commissioner Agrarian Reforms (Director Land Records), it transpires that the Commissioner

Agrarian Reforms did not accept the challenge of the petitioners to the order of the Collector Agrarian Reforms on the ground that with the decision of the Commissioner Agrarian Reforms dated 07.8.1998 which was upheld by the Special Tribunal on 27.6.2003, the controversy as to whether the private respondents were mortgagees or tenants had been finally set at rest and it was not open to the petitioners to reopen the same by launching parallel proceedings. It is also relevant to note that the Commissioner Agrarian Reforms while dismissing the appeals of the writ petitioners against the mutation attested under Section 4 of the Act, has also returned a categorical finding that the mortgage had been redeemed and the private respondents herein had continued with the possession as tenants under the petitioners qua the land in question. The relevant extract of the order of the Commissioner Agrarian Reforms which is relevant in the context, is reproduced hereunder :

“ The revenue records in the form of Jamabandi reveals that the mortgage has been redeemed. The entries in Jamabandi are conclusive and final. It would not make any difference that the entries so recorded in Jamabandi were not reflected in khasra girdwari. Specific procedure has been devised for seeking correction for the entries in Jamabandi. Since no remedy was sought within prescribed format and in the proper format, it does not stand to reason that entries so recorded in Jamabandi did not reflect the decision obtaining on ground. These entries are conclusive and have attained finality. As such, the status of respondent No.2 in view of redemption of the mortgage is construed to be that of tenant. It is adduced from the revenue records that both the respondents fulfil the attributes of tenancy.”

9. Thus, findings of fact returned by the Commissioner Agrarian Reforms in its order dated 7.8.1998 have also attained finality. That apart, the petitioners by filing resumption forms in terms of Section 7 of the Act have clearly admitted their title qua the

land as tenant and cannot be allowed to turn around and take a position which is not only contrary to the records but is also against their own admission made in the resumption forms submitted by the petitioners to the Collector Agrarian Reforms which were rejected on 17.8.1998 and 19.8.1998.

10. From the aforesaid discussion, the position that emerges is that the land in question had been redeemed by the petitioners prior to kharief 1971 and after redemption, the respondents continued in cultivating possession of the land as tenant. It is this position which finds reflection in kharief 1971, on the basis of which the mutation under Sections 4 and 8 of the Act have been attested in favour of the private respondents. The orders passed on mutations have also attained finality. It is in this view of the matter, it is not open for the petitioners to seek reopening of the orders that have attained finality by initiating parallel proceedings seeking redemption of mortgage which has ceased to exist and has since been redeemed. The private respondents who were earlier mortgagees qua the property in question had later become tenant in cultivation. Reliance placed by the petitioners on the provisions of Section 2 sub Section 12 explanation –VI of the Act read with Section 10(2), is totally misplaced. Since the findings of fact that private respondents were not the mortgagees but were tenants before kharief 1971 have attained finality, as such, there was no occasion for the petitioners to seek redemption of non-existent mortgage. The judgments relied upon by the learned counsel for the petitioners; *AIR1999(SC) 1347*; *AIR2003(SC) 1475*; *1990(1)SCC 19*; *AIR1998(SC) 966*; *2014(14)SCC 77*, *2010(1)JKJ 677(HC)*]; have been rendered in totally different

contexts and, therefore, are not applicable to the fact situation of the instant case. Some of the judgments relied upon by the petitioners deal with the proposition that any concession made contrary to law is not binding on the maker of such concession. In the instant case, it is not only the admission made by the petitioners while submitting resumption forms that have been taken note of by the forums below but also the position as reflected in the revenue record and the concluded proceedings between the parties have been considered for rejecting the claim of the petitioners.

11. In view of the aforesaid analysis and the reasons given above, this court does not find it a fit case for interference with the order impugned. All the three writ petitions, therefore, fail and the same alongwith connected IAs are accordingly dismissed.

Sanjeev Kumar)
Judge

Jammu:
26.03.2019
RSB, Secy,