

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

OWP N o. 467/2007

1. Ahmedullah age 75 years S/o Habib Bhat Petitioner(s)
2. Mohd. Hussain age 60 years S/o Habib Bhat
3. Mohd. Sharief age 55 years S/o Habib Bhat
4. Mohd. Saleem age 68 years S/o Abdullah Bhat.
5. Ghulam Nabi age 60 years S/o Abdullah Bhat
6. Shokat Ali age 54 years S/o Abdullah Bhat
7. Mohd. Iqbal age 58 years /o Abdullah Bhat
8. Abdullah age 90 years S/o Mohd. Bhat.
All residents of Kaskoot Tehsil Banihal, Distt. Ramban.

Through :- Mr. Irfan Khan, Advocate.

V/s

1. J&K Special Tribunal through Chairman, J&K, Jammu/Srinagar.Resopondent(s)
2. Additional Deputy Commissioner/Commissioner, Agrarian Reforms, Ramban.
3. Tariq Hamid S/o Sheikh Abdul Hamid R/o Magarmal Bagh, Srinagar
4. Riaz Ahmed S/o Sheikh Abdul Hamid R/o Magarmal Bagh, Srinagar
5. Nayer Rikhsan D/o Sheikh Abdul Hamid R/o Magarmal Bagh, Srinagar
6. Mst. Kousar Parveen Wd/o Sheikh Abdul Hamid R/o Magarmal Bagh, Srinagar.
7. Abdul Majid S/o Sheikh Ahmed Din R/o Magarmal Bagh, Srinagar

8. Talat Mahmood S/o Sheikh Ahmed
Din. R/o Magarmal Bagh, Srinagar

9. Abdul Rashid S/o Ahmad Shafi Sheikh
R/o Devgol Tehsil Banihal, Distt. Ramban

Through :- Mr. Virender Dev Singh, Advocate for R-1 & 2.
None for R- 3 to 9.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT(ORAL)
31.10.2023.

1. This petition by the petitioners filed under Article 226 of the Constitution of India is directed against a judgment dated 01.05.2007 passed by the Jammu and Kashmir Special Tribunal, Jammu [“**the Tribunal**”] in a revision petition file No. STJ-339/2003 titled “*Ahmedullah and Ors. v. Tariq Hamid and Ors*” whereby the Tribunal has dismissed the revision petition filed by the petitioners herein in terms of Section 21(2) of the J&K Agrarian Reforms Act, 1996 [“**the Act**”], for want of jurisdiction.

2. Briefly stated the facts leading to the filing of the instant writ petition are that the petitioners herein claim to be the tenant of land measuring 15 kanals 8 marlas falling in different Khasra numbers in village Kaskoot, Tehsil Banihal since the year 2003 BK. They claim that they have been in continuous cultivating possession of the subject land ever since and are also recorded as persons in cultivation in kharif 1971. The respondent Nos. 3 to 9 are admittedly the owners of the subject land and their case appears to be that the tenancy which was created between them and the petitioners in the year 2003 BK was contractual and for a period of one year. After the expiry of period of fixed tenancy, the petitioners became unauthorized occupants liable to be evicted. There is some earlier litigation also between the parties which has gone to the level of Financial Commissioner and order of Financial Commissioner stands upheld by this Court.

3. Be that as it may, the private respondents, with a view to evict the petitioners, filed a suit for possession in the Court of learned Munsiff, Banihal. While the suit was pending, the Act came into force. The Court of learned Munsiff took note of the provisions of Section 25 of the Act and transferred the suit to the Additional Deputy Commissioner, Ramban for adjudication. The Additional Deputy Commissioner, Ramban, who was also conferred with the powers of Commissioner Agrarian Reforms, considered the matter after providing opportunity to both the sides and concluded that the relationship of landlord and tenant between the private respondents and the petitioners had ceased to exist after the expiry of fixed period of tenancy i.e. one year. The Additional Deputy Commissioner, therefore, vide his order dated 03.09.2003, accepted the suit of the private respondents and directed eviction of the petitioners. It is this order of the Additional Deputy Commissioner, Ramban which was called in question by the petitioners before the Tribunal by filing a revision petition under Section 21(2) of the Act. The Tribunal has dismissed the revision petition for want of jurisdiction in terms of order impugned in this petition.

4. The impugned order is assailed by the petitioners on numerous grounds. It was argued by Mr. Irfan Khan, learned counsel appearing for the petitioners that since the order which was assailed before the Tribunal had been passed by the authority under the Agrarian Reforms Act subordinate to the Tribunal, as such, in terms of sub-section 2 of Section 21 of the Act, the revision petition was maintainable.

5. Having heard learned counsel for the parties and perused the material on record, I am of the view that the entire proceedings taken by the Additional

Deputy Commissioner, Ramban with the powers of Commissioner Agrarian Reforms and decided vide order dated 03.09.2003 are nullity in the eye of law.

6. True it is that the Tribunal is competent to hear the revision petition only against the order passed by the Commissioner Agrarian Reforms exercising appellate jurisdiction under the Act. In the instant case, the Additional Deputy Commissioner, Ramban with the powers of Commissioner Agrarian Reforms has proceeded and exercised jurisdiction on the original side. The suit for possession including the one where the opposite party pleads the adverse possession can only be tried by the Collector Agrarian Reforms as is evident from mere reading of Section 19 of the Act.

7. Orders passed by the Collector are made appealable before the Commissioner Agrarian Reforms under Sub-Section 1 of the Section 21 of the Act. I am in agreement with the Tribunal that the suit for possession including the one in which the party in possession claims an adverse possession cannot be decided by the Commissioner Agrarian Reforms which is conferred only the appellate jurisdiction to hear the appeals against the final orders passed by the Collector or a revenue officer. The Additional Deputy Commissioner, Ramban with the powers of Commissioner Agrarian Reforms appears to have entertained the suit pursuant to the directions of the civil Court.

8. Needless to say that civil Court which lacks jurisdiction to entertain and try a suit would be equally incompetent to confer jurisdiction on authority which otherwise does not possess the same under the Act.

9. The order of the civil Court is unfortunately not on record but that cannot come in the way of this Court from determining the lis which is pending in this Court for the last 16 years.

10. As is discussed above, the right course for the Additional Deputy Commissioner with powers of Commissioner Agrarian Reforms was to transfer the suit to the Collector Agrarian Reforms having jurisdiction in the matter for its trial in accordance with law.

11. Having failed to carry out the said mandate, the Additional Deputy Commissioner fell in serious error in trying the dispute as Collector Agrarian Reforms, which jurisdiction he did not have under the Act.

12. In view of the clear provisions of Section 19 and 21 of the Act, I find that the order dated 03.09.2003 passed by the Additional Deputy Commissioner, Ramban is bad in the eye of law and without jurisdiction and, therefore, deserves to be quashed in the exercise of extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India. The order of Tribunal may not be *per se* bad in the eye of law but that shall also cease to exist with the quashing of order dated 03.09.2003.

13. For the foregoing reasons, this petition is **allowed** and by issuance of the writ of certiorari, order dated 03.09.2003 passed by the Additional Deputy Commissioner, Ramban with powers of Commissioner Agrarian Reforms as also the order impugned passed by the Tribunal are quashed.

14. The matter is remanded back and transferred to the Collector Agrarian Reforms, Ramban for adjudication of the suit of the private respondents afresh in accordance with law.

(Sanjeev Kumar)
Judge

Jammu:
31.10.2023.
Neha-1

Whether the order is reportable: Yes/No