

Sr. No.11
Regular List

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

OWP No.23/2012

SHRI TEJ BAHADUR

...PETITIONER(S)

Through: Mr. M. Ashraf Bhat, Advocate.

Vs.

STATE OF J&K AND OTHERS

....RESPONDENT(S)

Through: Mr. Rouf Parray, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER(ORAL
31.10.2023

1. The petitioner has challenged order dated 29.12.2011 passed by the Financial Commissioner (R) in an appeal under J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 (hereinafter referred to as “the Act of 1997”). A further direction has been sought upon respondents No.15 to 18 to handover possession of the land measuring 3 kanals covered by Khasra Nos.964/884 and 745 Khewat Nos.485 and 496 situated at Damodar Karewa Tehsil and District Budgam.

2. Briefly stated, case of the petitioner is that he had purchased land measuring 03 kanals under Khasra No.2682/2563/885 Khewat No.485 by virtue of two sale

deeds executed on 02.09.1988 and registered on 22.11.1988. Vide one sale deed, the petitioner had purchased 01 kanal 10 marlas from Malla Mohammad and vide another sale deed, he had purchased 10 marlas from Malla Ismail and 01 kanal from Malla Mohammad. It is case of the petitioner that Malla Mohammad, Malla Ismail and Malla Samad are sons of one Ahmad Malla who owned huge landed property in common Khewat Nos.485, 495, 550, 493, 490, 494, 502, 506 and 513. According to the petitioner the land under Khewat No.485 was in joint possession and ownership of Samad, Ismail and Mohammad Malla.

3. In short, case of the petitioner is that the whole land in Khewat No.485 under different Khasra Nos. was under the joint possession and ownership of the persons from whom he has purchased the land in question, which is measuring 03 kanals. It is submitted by the petitioner that on account of his migration and due to abnormal situation in the Valley, the mutation in respect of the land that was subject matter of the sale deeds could not be attested in his favour in the revenue record. It is being submitted that after the migration of the petitioner, during enquiry it was found that the land under Khasra No.2682/2563/885 had been re-sold by the erstwhile owners. It is submitted that land

measuring 01 kanal 10 marlas under Khasra No.2682/2563/885 was sold by the erstwhile owners to Mohammad Amin and another portion of land measuring 10 marlas was sold by Ismail S/o Mohammad Malla out of the same Khasra Number. Another legal heir of Mohammad Malla namely Abdul Rashid sold 01 kanal 15 marlas of land in the same Khasra number whereas one Mst. Jani sold 01 kanal 15 marlas in the same Khasra number.

4. On a complaint made by the petitioner before the District Magistrate, Budgam, an enquiry was initiated under the Act of 1997 and on the basis of the report of the Patwari and Tehsildar concerned, it was found that the land purchased by the petitioner to the extent of 03 kanals under Khasra No.2682/2563/885 was re-sold to different persons by the erstwhile owners. The District Magistrate, Budgam thereafter proceeded to pass order No.21/SQ dated 05.05.2007, whereby, while exercising powers under Section 4 of the Act of 1997, the Tehsildar, Budgam, was directed to attach 03 kanals of land out of Khasra No.694, 884 and 745 belonging to the re-sellers Abdul Rashid Malla and Mst. Jani in village Karewa Damodhar and take possession of the same.

5. The aforesaid order of the District Magistrate, Budgam, came to be challenged by private respondents

No.3 to 11 by way of an appeal before the Financial Commissioner, Kashmir, Srinagar. The Appellate Authority allowed the appeal and passed the impugned order whereby order of the District Magistrate, Budgam, was set aside and he was directed to hold a *de novo* enquiry into the matter and pass appropriate orders under the provisions of the Act of 1997.

6. The petitioner has challenged the impugned order passed by the Appellate Authority on the grounds that the land that was re-sold by the erstwhile owners was joint and unpartitioned property, as such, the District Magistrate was well within his jurisdiction to attach the land which, though not falling in the same Khasra numbers, was part of the joint khewat. It has been further contended that in terms of the provisions of the Act of 1997, the District Magistrate was well within his powers to protect the rights and interests of the petitioner who is a migrant and to pass any order that was necessary for carrying out the purpose of the Act of 1997.

7. I have heard learned counsel for the parties and perused the material on file.

8. The case of the petitioner, as is clear from the pleadings, is that he had purchased 03 kanals of land

under Khasra No.2682/2563/885 Khewat No.485 at Village Karewa Damodhar. The mutation in his favour could not be attested as he had to migrate from the Kashmir Valley and in the meanwhile, the erstwhile owners of the land re-sold the same. The petitioner through his attorney approached the District Magistrate, Budgam, the competent authority under the Act of 1997 for preservation and protection of the immovable migrant property. The District Magistrate instead of attaching and taking into custody the land under Khasra No.2682/2563/885 that had been purchased by the petitioner, proceeded to attach the land belonging to the private respondents in different Khasra numbers, though in the same Khewat. The contention of the petitioner is that the land comprised in Khewat No.485 is joint and unpartitioned property of its erstwhile owners, therefore, the District Magistrate was right in attaching the property belonging to the erstwhile owners out of the joint khewat.

9. If we have a look at the sale deeds vide which the petitioner has purchased the land in Khasra No.2682/2563/885 in Khewat No.485, the dimensions of the land in question have been clearly mentioned therein. There are specific covenants in both the sale deeds which delineate and identify the land which is subject matter of these sale

deeds. The District Magistrate instead of identifying the land that was subject matter of the sale deeds in question, has proceeded to attach the land belonging to the erstwhile owners in different Khasra numbers.

10. Learned counsel for the petitioner while placing reliance upon the judgment of this Court in **Mohd. Rafiq and Ors. Vs. Ram Lal and Ors**, SLJ 1988 J&K 1, according to which a co-owner has no right to possess a particular Khasra number or a particular portion of joint land unless the land is partitioned and that portion falls to his share, contended that the description of the land given in the sale deeds is immaterial as the land in Khewat No.485 was joint and unpartitioned.

11. The ratio laid down by this Court in the aforesaid judgment is not applicable to the facts of the instant case for the reason that it has been nowhere stated by the District Magistrate, Budgam, in his order dated 05.05.2007 that the land in Khewat No.485 was joint and unpartitioned. This contention has been raised by the petitioner for the first time in this writ petition. There is no finding of the District Magistrate, Budgam, in his order dated 05.05.2007 that the land in Khewat No.485 is joint and unpartitioned. In the presence of definite dimensions and specifications of the land purchased by the petitioner

as given in the sale deeds and in the presence of covenants in the sale deeds that the erstwhile owners were in possession of the said land as absolute owners, there was no material before the District Magistrate to presume that the land in question was joint and unpartitioned. In any case, no enquiry in this regard has been made by the District Magistrate.

12. The land that has been attached by the District Magistrate vide his order dated 05.05.2007 is, admittedly, not the land that was purchased by the petitioner who is a migrant. The power to protect and preserve the property vested with the District Magistrate in terms of Section 4 of the Act of 1997 is with respect to the immovable property belonging to the migrants. Admittedly, the land which has been attached by the District Magistrate does not belong to the petitioner who is a migrant. Further the possession of the land owners of the said land cannot be termed as 'unauthorised'. Therefore, the action of the District Magistrate in attaching the property, which does not belong to a migrant, is beyond his jurisdiction and, as such, not sustainable in law.

13. The learned Financial Commissioner taking note of the aforesaid legal position has rightly set aside the order of the District Magistrate and remanded the case for *de novo*

enquiry into the matter and to pass appropriate orders under the Act of 1997. The said order is perfectly in accordance with law and does not call for any interference by this Court.

14. For the foregoing reasons, the instant petition lacks merit and is dismissed accordingly. Interim direction, if any, shall cease to be in operation.

(Sanjay Dhar)
Judge

Srinagar,
31.10.2023
“Bhat Altaf, PS”

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

