HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2694/2022

Reserved on 07.02.2024
Pronounced on 29. 02.2024

1. Bhagmal son of Gian Chand resident of Village Padyari Tehsil and District Kathua
2 Mohinder Pal son of Tej Ram alias Tej Paul resident of Muthi Jagir Ward No. 13 Kathua District Kathua

..... petitioner(s)

Through :- Mr.V.B.Gupta Advocate

V/s

1 UT of Jammu and Kashmir th. Commissioner/Secretary to Govt. of Jammu and Kashmir Revenue Department, Jammu
2 Financial Commissioner (Rev) J&K Jammu
3 Additional Deputy Commissioner with powers of Commissioner Agrarian Reforms, Kathua
4 Assistant Commissioner with powers of Collector Agrarian Reforms Kathua
5 Tehsildar-Assistant Collector 1st Class Kathua
6 Rajinder Singh son of S. Surjan Singh resident of village Chak Nanak, Tehsil and District Kathua

.....Respondent(s)

Through :- Ms. Sagira Zaffer Advocate vice
Ms. Monika Kohli Sr. AAG
Mr. Ajay Sharma Advocate

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

JUDGMENT

1 The petitioners are aggrieved of and have assailed an order dated 19.04.2022 passed by the Commissioner Agrarian Reforms (Additional Deputy Commissioner), Kathua ['the Commissioner'] whereby the Commissioner has

dismissed the appeal filed by the petitioners herein along with others against an order dated 19.12.2019 passed by the Assistant Commissioner with powers of Collector Agrarian Reforms, Kathua.

2 Brief facts leading to filing of the instant petition can be summed up in the following manner:

(a) Land measuring 46 kanals, 14 marlas falling under khasra No. 100/90 situate at village Chak Gokal, Tehsil and District Kathua [‘the subject land’] is an evacuee land and was allotted to father of respondent No.6, namely S. Surjan Singh, a displaced person. Since the subject land was shown in personal cultivation of the displaced allottee in kharief 1971, as such, a mutation under Section 3-A of the J&K Agrarian Reforms Act, 1976 [‘Act of 1976’] bearing No. 109 came to be attested in favour of respondent No.6. Though the revenue record continued to reflect S. Surjan Singh and after his death, respondent No.6 in personal cultivation of the subject land, yet, the actual position on the spot was different. The petitioners along with others were in actual physical possession and personal cultivation of the subject land

(b) With a view to evicting the petitioners from the subject land, respondent No.6 filed an application before the Collector, Agrarian Reforms, Kathua, who, vide his communication No.DCK/ACR/2019-20/209 dated 06.11.2019, forwarded the application of respondent No.6 to Tehsildar, Kathua for furnishing a factual report. In response to the communication of the Collector Agrarian Reforms, the Tehsildar, Kathua vide his communication dated 03.12.2019 furnished his factual report indicating therein that the subject land was an evacuee land recorded in the name of respondent No.6 as occupancy tenant in terms of mutation No. 109 attested under Section 3-A of the Act of 1976. Tehsildar, Kathua also reported that the subject land was in occupation and cultivating possession of Hari Ram, Ashok Kumar and Bhaagmal etc. Tehsildar further reported that there was no revenue entry in regard to their possession. On the basis of the factual report submitted by the Tehsildar, Kathua, the Collector Agrarian Reforms, Kathua vide his order dated 19.12.2019 accepted the application of respondent No.6 and directed

restoration of possession in his favour after eviction of the petitioners and others who were found to be in an unauthorized occupation of the subject land.

(c) Feeling aggrieved by the order of the Collector Agrarian Reforms, Kathua, the petitioners herein along with ten others, filed an appeal before the Commissioner, Agrarian Reforms, Kathua. Apart from taking other grounds of challenge, the petitioners also took a specific plea that they were in cultivating possession of land falling under Khasras No. 84 , 87, 88 and 89 and have no interest in or concern with land falling under khasra No. 100/90. The Commissioner did not find any merit in the appeal filed by the petitioners and, accordingly, vide his order dated 19.04.2022 dismissed the appeal of the petitioners and upheld the order of Collector Agrarian Reforms, Kathua.

3 It is in the above backdrop, the petitioners, being aggrieved by the order of the Commissioner dated 19.04.2022, have preferred the instant petition invoking the extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India. The impugned order is challenged by the petitioners, *inter alia*, on the following grounds:

(i) That the Authorities under the Act of 1976 have no power or jurisdiction to order restoration of possession. An unauthorized occupant can be evicted and a person having title to the property can be restored possession only by a decree of possession passed by a Civil Court of competent jurisdiction;

(ii) That the Forums below have not appreciated the fact that respondent No.6 had since abandoned the possession of the land allotted to his father and had ceased to be in cultivating possession prior to kharief 1971. The petitioners and their predecessors-in-interest, who were in actual possession and personal cultivation of the subject land had acquired title by prescription; and,

(iii) That the Collector Agrarian Reforms, Kathua passed an order of eviction of the petitioners and restoration of possession in favour of respondent No.6 without affording any opportunity of being heard to the petitioners.

4 *Per contra,* learned counsel appearing for respondent No.6 would argue that the petitioners were given ample opportunity by the Appellate Authority to show any proof by way of an oral or documentary evidence that they had a legal right to retain the possession of the subject land, but they miserably failed. He would submit that the defect, if any, in the order of the Collector came to be removed when the petitioners were given full opportunity to put forth their case before the Appellate Authority. Learned counsel for respondent No.6 would also press into service the 'useless formality theory' and submit that any amount of opportunity of being heard given to the petitioner would not have changed the position.

5 Heard learned counsel for the parties and perused the material on record.

6 Before I advert to the grounds of challenge urged by Mr. Gupta learned counsel for the petitioners, it would be in place to take note of few admitted facts.

7 Indisputably, the subject land is an evacuee land and was allotted to father of respondent No.6, namely S. Surjan Singh, a displaced person in terms of Government Order No. 578-C of 1954 dated 07.05.1954. There is also no dispute that as per the Girdwari entries recorded by the Revenue Authorities from time to time, respondent No.6 and before him, his father S. Surjan Singh has been entered in personal cultivation of the subject land. The position was same in kharief 1971. It is because of respondent No.6 being in personal cultivation of the subject land in kharief 1971, a mutation under Section 3-A of the Act of 1976 conferring occupancy rights on respondent No.6 was attested. This mutation has remained unchallenged, though the

petitioners plead ignorance of attestation of such mutation. The petitioners claim to have applied for correction of entries, but there is nothing on record to demonstrate that any such correction was ordered by the competent Revenue Authority. It is amply proved by the un-rebutted report of Tehsildar, Kathua that the petitioners and their other co-sharers were in actual cultivating possession of the subject land. As a matter of fact, the petitioners themselves admit that right from the year 1993 onwards, they were not in possession of the subject land. It is also a fact that the Collector, who directed restoration of possession in favour of respondent No.6 and eviction of the petitioners from the subject land, did not provide any opportunity of being heard to the petitioners. They were, as it appears, were given adequate opportunity by the Appellate Authority to put forth their case and substantiate the same by providing evidence, documentary or otherwise.

8 In the backdrop of admitted facts narrated above, the arguments of learned counsel for the petitioners are required to be analysed.

9 The argument of Mr. Gupta, learned counsel appearing for the petitioners, that there is no provision in the Act of 1976 which empowers a Revenue Officer to restore possession of land, is without any substance. Section 19 on which strong reliance is placed by Mr. Gupta only deals with applications, suits and proceedings that are required to be disposed of by the Collector Agrarian Reforms. Amongst the different type of suits, a suit or an application for eviction of unauthorized occupant and restoration of possession is not specifically provided. To the aforesaid extent, Mr. Gupta may be right. However, we cannot ignore the provisions of Section 27 which confers power and jurisdiction on Revenue officers to take requisite steps to implement the

transfer of, eviction from or delivery of possession of land as defined under the Act of 1976. The power conferred upon the Revenue officers to evict an unauthorized occupant or a person in wrongful possession of the land is to be exercised by holding summary proceedings. For facility of reference, Section 27 of the Act of 1976 is set out below:

> *"**Section 27. Implementation of the provisions of the Act:***
>
> *(1) A Revenue Officer may take or cause to be taken such steps and use or cause to be used such force as may, in the opinion of such officer, be necessary to implement the transfer of, eviction from or delivery of possession of, land under this Act, notwithstanding anything contained in any other law for the time being in force.*
>
> *(2) Any person unauthorisedly occupying, or wrongfully in possession of any land:*
>
> *(a) the transfer or acquisition of which, either by the act of parties or by the operation of law, is invalid under the provisions of this Act ; or*
>
> *(b) to the use and occupation of which he is not entitled under any provision of this Act may be summarily evicted by a Revenue Officer.*
>
> *(3) At any time after the commencement of this Act it shall be lawful for a Revenue Officer or authority to enter upon any land and make or cause to be made any survey including measurements and do any other act which he considers necessary for carrying out the purposes of this Act".*

10 From a plain reading of Section 27, it clearly transpires that if any person is found un-authorizedly occupying or wrongfully in possession of any land defined under the Act of 1976, a Revenue Officer may evict him by conducting summary proceedings. The Collector is, undoubtedly, one of the Revenue officers in the hierarchy enumerated in Section 18 of the Act of 1976.

11 A conjoint reading of Sections 19 and 27 of the Act of 1976 would make it abundantly clear that there are some specific type of

applications, suits and the proceedings which can be disposed of only by a Collector. Obviously, the application for eviction and restoration of possession is not amongst the applications, suits and proceedings enumerated in subsection (3) of Section 19 of the Act. The eviction of an unauthorized occupant and restoration of possession to a person entitled thereto is clearly covered by Section 27 and under Section 27 of the Act, any Revenue Officer can entertain an application and pass appropriate orders summarily evicting an unauthorized occupant, if any.

12 In so far as the argument of Mr. Gupta that the petitioners were not heard by the Collector Agrarian Reforms before ordering their eviction is concerned, suffice it to say that in the absence of any prejudice caused to the petitioners, the order of the Collector Agrarian Reforms as upheld by the Appellate Authority cannot be said to be vitiated. True it is, that eviction of the petitioners from the subject land without affording them an opportunity of being heard can in itself be claimed as a serious prejudice to the petitioners. However, if we view the matter in correct perspective, we will find that the petitioners have not been to subjected to any prejudice because of non-compliance of principles of natural justice, Firstly, it is the case of the petitioners, as set up by them before the Appellate Authority, that they have no concern with or interest in any land falling under khasra No. 100/90 and that they are in cultivating possession of land falling under Khasras No. 84, 87, 88 and 89. If that stand of the petitioners is accepted, it would mean that they were not, at any time, claiming to be in possession of the subject land and, therefore, their eviction from such land cannot be said to be prejudicial to their interest.

13 That apart, in the appeal preferred by the petitioners against the order of Collector, the Appellate Authority appears to have given adequate opportunity to the petitioners to substantiate their claim to retain the possession of the subject land. Before the Appellate Authority, the petitioners categorically denied being in cultivating possession of the subject land and claimed that they were in cultivating possession of land falling under Khasras No. 84, 87, 88 and 89. They could not show any legal authority to justify their entry into the possession of the subject land, nor have they been in a position to indicate the exact the date when they came in occupation of the land found to be under their unauthorized occupation. Admittedly, there is not even a single entry reflecting the cultivating possession of the petitioners over the subject land.

14 In view of the aforesaid admitted facts on record, as is rightly contended by Mr. Ajay Sharma, learned counsel appearing on behalf of respondent No. 6, no amount of opportunity of hearing given to the petitioners by the Collector Agrarian Reforms would have changed the position. Even if, I were to agree with learned counsel for the petitioners that the petitioners were condemned unheard by the Collector Land Acquisition, I am of the opinion that in the absence of *de facto* prejudice pleaded and demonstrated by the petitioners, no relief could be given. The justification to hold the possession of the subject land has already been demonstrated by the petitioners before the Appellate Authority. Mr. Gupta, learned counsel for the petitioners could not convincingly demonstrate as to how providing of an opportunity of being heard to the petitioners by the Collector would have improved the position of the petitioners or changed the complexion of the case.

15 Before I close, I deem it appropriate to refer to a judgment of the Hon'ble Supreme Court rendered in the case of **Aligarh Muslim University and others vs. Mansoor Ali Khan, (2000) 7 SCC 529** in which the Supreme Court has clearly held that there can be certain situations in which an order passed in violation of principles of natural justice need not be set aside. For example, where no prejudice is caused to the person concerned, order passed in violation of principles of natural justice need not be interfered with under Article 226 of the Constitution of India. Paras (21) to (24) throw considerable light on this aspect and, therefore, are set out below:

> *21. As pointed recently in M.C. Mehta v. Union of India (1999)6 SCC 237, there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example, where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao v. Govt. of A.P., AIR 1966 SC 828: (1966) 2 SCR 172 it is not necessary to quash the order merely because of violation of principles of natural justice.*
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> *22. In M.C. Mehta it was pointed out that at one time, it was held in Ridge v. Baldwin 1964 AC 40: (1963)2 All ER 66 (HL) that breach of principles of natural justice was in itself treated as prejudice and that no other 'defect' prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In S.L.Kapoor v. Jagmohan (1980) 4 SCC 379 Chinnappa Reddy, J. followed Ridge v. Baldwin and set aside the order of suppression of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.*
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> *23. Chinnappa Reddy, J. in S.L. Kapoor's case, laid two exceptions namely,"if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not*

> *apply. In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.*
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> *24. The principle that, in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi v. State Bank of India (1984) 1 SCC 43: 1984 SCC (L & S) 62 Sabyasachi Mukherji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed: quoting Wade Administrative Law, (5th Ed.PP.472-475) as follows: (para 31) " it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent ...There must have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth."*

16 In view of the aforesaid admitted position of law and facts, I do not find any reason or justification to interfere with the concurrent findings of facts returned by two Revenue Courts i.e the Collector and the Commissioner. In the premises, this petition is dismissed.

(SANJEEV KUMAR)
JUDGE

Jammu
29 .02.2024
Sanjeev

Whether order is speaking:Yes

Whether order is reportyable:Yes