

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

WP(C) No.1940/2021  
CM No.6456/2021

Raj Kumar ...Petitioner(s)

Through:- Mr. Aijaz Chisti, Advocate

V/s

Union Territory of J&K and others ...Respondent(s)

Through:-

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

**JUDGMENT**

1. The petitioner in this petition seeks following reliefs:-
  - i) Mandamus to the respondents to retrieve the land measuring 5 kanal and 14 marlas falling in Khasra No.417 new (238 old) situated at village Gaberpora Hawl District Pulwama from encroachers.
  - ii) Initiate in-depth enquiry viz-a-viz attestation of fraudulent mutation by the revenue authorities, whereby the name of the petitioner, a migrant, has been removed and the nature of land has been changed from Bagh-I-khushki shamlat-deh to Banjar –e-Qadeem at the back of the petitioner.
  
2. The case set up by the petitioner is that mother of the petitioner, namely, Smt. Chanda Devi was owner in possession of subject land and that the petitioner is a migrant registered with the Relief Commissioner,

Jammu. Inhabitants of village Gaberpora Hawl, on the strength of an agreement and an affidavit executed by the mother of the petitioner, got a fraudulent mutation attested in the year 1985, whereby nature of the land was changed from Bagh-I-khushki to Shamilat-deh and ultimately to Banjar Qadeem. The land, which was in the proprietorship of the petitioner, was shown as shamlat-deh on pro-rata basis and ultimately Banjar Qadeem. The petitioner claims that he is a migrant and the property left by him in the valley is protected by Jammu & Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 (hereinafter referred to as “the Act”) and the District Magistrate being *custodia legis* of the property of the migrants is bound in law to take over the possession of such land from the encroachers and hand it over to the petitioner. The petitioner claims that the agreement and affidavit shown to have been made and sworn by the petitioner’s mother cannot result in transfer of the immovable property as the same is in violation of Section 138 of the Transfer of Property Act.

3. The petitioner claims to have approached the District Magistrate with an application to retrieve the land from encroachers but no action has been initiated by the District Magistrate (Deputy Commissioner), Pulwama, hence this petition.

4. Having heard learned Mr. Aijaz Chisti, learned counsel appearing for the petitioner and perused the material on record, I find no merit in this petition.

5. As is apparent from a communication of Assistant Commissioner (Revenue), Pulwama to the Divisional Commissioner, Kashmir dated 08.09.2021, the subject land is recorded as shamilat-deh (maqbooza Ahli Islam). However, prior to 1985 the subject land was recorded in the name of Chanda Devi, the mother of the petitioner, but later on the same was transferred to shamilat deh (maqbooza Ahli Islam) through inhabitants of village Gaberpora vide mutation No.417 dated 24<sup>th</sup> June, 1985. This mutation was attested on the basis of an agreement dated 09.08.1984 and an affidavit dated 11.4.1985. It has also come in the order of mutation that the mother of the petitioner Smt. Chanda Devi had sold the subject land to the inhabitants of village Gaberpora for a consideration of Rs.8,000/- for utilization of the same for religious purposes i.e. Ahli Islam. During settlement operation, new survey number has been given to the subject land and the same has been classified as Banjar Qadeem. The report of Tehsildar, Rajpora to the Deputy Commissioner, Pulwama dated 09.09.2021 also depicts the aforesaid position.

6. In view of this position recorded in the revenue record, the petitioner, if aggrieved of the manner in which the land has been transferred from the name of his mother to Ahli Islam through inhabitants of village Gaberpora by way of mutation No.417 dated 24<sup>th</sup> June, 1985, has to work out his remedy as available under the Land Revenue Act. In the absence of challenge to the mutation attested as far as back on 24<sup>th</sup> June, 1985, the plea of the petitioner that the aforesaid mutation was not in consonance with law cannot be examined by this Court in its extraordinary

writ jurisdiction. The plea of the petitioner that by virtue of an agreement and an affidavit, the immovable property cannot be transferred is a plea, which can be examined by a competent court of civil jurisdiction provided the petitioner approaches it by way of appropriate proceeding. Bypassing the aforesaid remedies, the petitioner being a registered migrant appears to have invoked jurisdiction of Divisional Commissioner, Jammu for retrieving his land by proceeding under the Act and on the directions of the Divisional Commissioner, Kashmir the reports have been prepared by the revenue officers indicating the recorded position and submitted to the Divisional Commissioner, Kashmir.

7. As is apparent from Annexure-V, the petitioner appears to have made an application to the District Magistrate, Pulwama also on 27.07.2021. However, without allowing the District Magistrate to proceed in the matter and take the proceedings to logical end, the petitioner has once again found out shortcut and has approached this Court as if this Court is vested with the powers of the District Magistrate under the Act.

8. Be that as it may, the fact remains that right from the beginning the approach of the petitioner has remained totally misdirected. He does not wish to challenge the mutation attested in the year 1985, which is staring at his face nor is he interested to assail the transaction that has taken place between his mother and the inhabitants of village Gaberpora Hawl resulting into transfer of land in favour of Ahli Islam. The petitioner has left the proceedings, which have been taken by the District Magistrate, Pulwama

and Divisional Commissioner, Kashmir midway and approached this Court by way of instant petition.

9. The course adopted by the petitioner is, therefore, not permissible in law and for all these reasons this Court is not inclined to entertain this petition. Having said that, this Court feels that if the petitioner's application for removal of encroachment on the subject land is pending adjudication before the District Magistrate, Pulwama, the same needs to be considered and decided strictly as per the provisions of the Act. The District Magistrate while considering the application of the petitioner and taking any decision thereon, shall have regard to the position obtaining in the revenue record as detailed in the report of the Tehsildar, Rajpora bearing No.TR-OQ/430 dated 09.09.2021. The District Magistrate, if still seized of the application of the petitioner shall do well to conclude the proceedings within eight weeks from the date a copy of this judgment along with paper-book is served upon him. He shall hear all stake holders before taking any decision in the matter.

10. The writ petition along with connected application shall stand disposed of in the above terms.

**(Sanjeev Kumar)**  
**Judge**

Srinagar.  
28.09.2021  
Vinod.

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