

Jammu & Kashmir High Court

Bodh Raj And Others vs J&K Special Tribunal And Others on 23 November, 2022

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 879/2003
Reserved on 03.11.2022
Pronounced on 23.11.2022.

Bodh Raj and others

..... petitioner (s)

Through :- Mr. Roop Lal Advocate

V/s

J&K Special Tribunal and others

.....Respondent(s)

Through :-

Mr. P.N.Raina Sr. Advocate with
Mr. J. A. Hamal Advocate

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

JUDGEMENT

1 The petitioners are aggrieved and have called in question order dated 27.08.2003 passed by the J&K Special Tribunal [„the Tribunal] in the revision petition titled „Bodh Raj and others vs. Naresh Kumar and another, whereby the Tribunal has dismissed the revision petition filed by the petitioners and upheld the order passed by the Director Land Records (with powers of Commissioner Agrarian Reforms), Jammu dated 28.09.1996 in the appeal titled „Naresh Kumar vs. Bodh Raj.

2 Briefly put the facts projected by the petitioners in this petition are that the land measuring 17 kanals, 12 marlas comprising of khasra No. 28 min (5 kanals) and Khasra No. 30 min (12 kanals, 12 marlas) situated at Gopala Chak, Hiranagar, District Kathua [„the subject land] was owned by one Ram Lal and was under the cultivating possession of father of the petitioners late Sh. Buddha as tenant thereof. It is submitted that the subject land remained under the tenancy of father of the petitioners till his death and after the demise of said Budha, the father of the petitioners, the petitioners stepped into his shoes and became the tenants in cultivating possession of the subject land. It is the allegation of the petitioners that respondents No.2&3 [„the private respondents] manipulated a fraudulent document purported to have been executed by father of the petitioners during his life time. As per the said document, the father of the petitioners allegedly surrendered the possession of the subject land in favour of Mulk Raj and Gouri Shanker, in the year 1971. It is, on the basis of this document, the private respondents managed mutation No.104 attested in their favour. The petitioners, however, deny that any such document was executed by their father during his life time. They assert that, notwithstanding the execution of the document and attestation of mutation, the petitioners are in continuous and interrupted possession of the subject land and have been

cultivating the same for the last several decades. The petitioners, however, submit that mutation No. 115 of Sehat Indraz from kharief 1972 was also later attested indicating the possession of late Sh. Budha, the father of the petitioners. It is, thus, submitted that, with the coming into operation of J&K Agrarian Reforms Act, 1976 [„the Act of 1976], the petitioners, who were in cultivating possession of the subject land in kharief 1971 got a right to be declared as prospective owners and, accordingly, they were so declared by attestation of mutation bearing No. 221 dated 04.12.1986 under Section 4 of the Act of 1976. It is also pleaded by the petitioners that earlier also, a suit came to be filed by the private respondents for injunction and possession against Budha before the Collector, Agrarian Reforms which was dismissed on 29.12.1980. It is submitted that, against the aforesaid order, an appeal was preferred by Mulk Raj, the father of respondent No.2, but the same abated in view of failure to bring on record the legal heirs of Mulk Raj, who had died during the pendency of that appeal. There was, however, an application for restoration filed by the respondent No.2 on 05.09.1992 after about five years of abatement and the said application too was dismissed for non-prosecution on 08.11.1993. Respondent No.2 filed another application for restoration of the application dismissed for non-prosecution and the learned Collector vide order dated 30.07.1994, allowed all the applications filed by respondent No.2 against which petitioner No.1 has preferred a revision petition before the Tribunal. The said Revision Petition has been allowed and the case has been remanded to the Court of Additional Deputy Commissioner, Kathua for conducting a detailed enquiry and for returning a finding in regard to possession and status of Budha Ram. These proceedings are still pending before the Court of Additional Deputy Commissioner, Kathua and have not been taken to logical end. It is submitted that, against the mutation attested by Tehsildar, Hiranagar bearing No. 221 dated 04.12.1986 whereby the petitioners were declared as prospective owners under Section 4 of the Act of 1976, respondent No.2 alone filed an appeal before the Commissioner, Agrarian Reforms (Director Land Records). The said appeal was allowed and the impugned mutation was set aside. 3 Feeling aggrieved and dissatisfied with the judgment dated 28.09.1996 passed by the Commissioner, Agrarian Reforms, the petitioners preferred a revision petition before the Tribunal which has been dismissed by the Tribunal vide order impugned dated 27.08.2003 upholding the order of the Commissioner, Agrarian Reforms.

4 On being put on notice, the writ petition has been contested by the private respondents. The order of the Commissioner, Agrarian Reforms is sought to be supported by submitting that late Budha, the father of the petitioners, was a tenant of subject land up to rabi, 1971 and surrendered his possession voluntarily and relinquished his tenancy in May 1971 in favour of father of the private respondents. It is submitted that the learned Tehsildar, Hiranagar, relying upon the affidavit submitted by Budha and after recording his statement, issued a certificate of relinquishment. As a consequence of relinquishment of tenancy, mutation No. 104 dated 27.09.1971 was attested by the Tehsildar concerned. Vide this mutation, the subject land was reflected in possession of owners instead of Budha. It is submitted by respondent Nos. 2 and 3 that the land was reflected in possession of owners instead of Budha vide mutation No. 104. However, due to procedural irregularity and oversight by the Patwari concerned, correct entry in kharief 1971 could not be effected. This made father of respondent No.2 Mulk Raj to make an application for correction and, as a consequence whereof, mutation No. 106 was entered on 06.11.1971 and attested on 22.01.1972. In terms of this mutation, the subject land was recorded under personal cultivation of owners w.e.f kharief 1971 on the basis of order of relinquishment passed in mutation No. 104.

5 In short, the stand of the private respondents is that the relinquishment of tenancy by late Budha was voluntary and prior to kharief, 1971 and, therefore, Budha could not have been conferred the rights of a prospective owner under Section 4 of Agrarian Reforms Act and, thus, the mutation attested by the Tehsildar, Hiranagar bearing No. 221 dated 04.12.1986 was not sustainable. This was so held by the Commissioner Agrarian Reforms in the appeal that was preferred by respondent No.2 against the said mutation.

6 The petitioners have also filed rejoinder affidavit to rebut the assertions made by the private respondents in their reply affidavit. 7 Having heard learned counsel for the parties and perused the material on record, it is necessary to first take note of few material facts that are not disputed by the parties.

8 Late Budha, the father of the petitioners was recorded as protected tenant of the subject land till rabi, 1971. It was in the month of May, 1971, as alleged by the private respondents, late Budha relinquished his tenancy and cultivating possession voluntarily in favour of the owners i.e late Mulk Raj and Gouri Shanker, the fathers of the private respondents. The owners moved an application before the Tehsildar, Hiranagar along with an affidavit duly sworn in and executed by late Budha acknowledging the relinquishment of tenancy by him in favour of the owners. As is evident from reading of the impugned orders, the statement of late Budha was also recorded in confirmation of his affidavit regarding relinquishment of tenancy in favour of the owners. It is on the basis of these documents, mutation No. 104 was attested by the Tehsildar on 27.09.1971 indicating the cultivating possession of the owners instead of late Budha.

9 It seems that, notwithstanding the attestation of mutation No. 104 in favour of owners, there was no change reflected in khasra girdwari of kharief 1971 by the Revenue Authorities. The father of respondent No.2, one of the owners of subject property, made an application whereupon mutation No. 106 was attested on 22.01.1972. It was by virtue of this mutation, the owners i.e the private respondents came to be recorded in personal cultivation w.e.f kharief,1971. As is gatherable from the record, i.e., the Girdwari entries of the year 1972, mutation No.115 was attested by the concerned Tehsildar with respect to the subject land and late Budha, the father of the petitioners was entered in cultivating possession as "bila lagan bewajah bila razamandi malikan". Pursuant to this mutation, relevant entry in the khasra girdawari was recorded by the Patwari concenred in the year 1972.

10 Having regard to the developments that had taken place qua the subject land and on the request of the petitioners, the Tehsildar, Hiranagar attested mutation No. 221 by correcting khasra girdawari entry of kharief, 1971 and declared the petitioners „the prospective owners qua the subject land under Section 4 of the Act of 1976. It is this mutation that was called in question by the private respondents before the Commissioner, Agrarian Reforms. The impugned mutation was set aside by the Commissioner, Agrarian Reforms primarily on the following two grounds:

(i) That the father of the petitioners late Budha was in cultivating possession of the subject land in kharief, 1972 without there being any relationship of tenant and landlord existing between him and the owners;

(ii) That mutation No. 221 was attested by the Tehsildar Hirnagar at the back of the owners i.e the private respondents and, therefore, bad in the eye of law.

11 The Commissioner, Agrarian Reforms, however, declined to remand the case back to the Tehsildar, Hiranagar for conducting fresh enquiry and passing fresh mutation after providing an opportunity of being heard to the appellants before him. The revision petition filed by the petitioners against the order of the Commissioner, Agrarian Reforms also met the same fate. The Tribunal fell in line with the reasoning of the Commissioner, Agrarian Reforms and, accordingly, dismissed the revision petition.

12 From the above narration of facts, it clearly emerges that father of the petitioners late Budha was all along in cultivating possession of the subject land and was even so in rabi, 1971 and thereafter. However, an affidavit purportedly executed by late Budha relinquishing his tenancy rights and cultivating possession in favour of the owners surfaced in May, 1991. On the basis of this affidavit, the owners approached the Tehsildar concerned for attestation of mutation in their favour. Mutation No. 104 was attested by the Tehsildar on 27.09.1971 reflecting possession of the petitioners instead of late Budha. This did not suffice the purpose as the owners wanted to be shown in cultivating possession in kharief, 1971 i.e the date relevant for determining the rights of the parties under the Agrarian Reforms Act. This made the owners yet again to approach the Tehsildar, Hiranagar for reflecting their names in the column of cultivating possession in khasra girdawari of kharief, 1971. The Tehsildar obliged the owners and corrected the girdwari entry of 1971. Instead of late Budha, the owners, the predecessors-in-interest of the private respondents, were shown as owners in self cultivation. This mutation enabled the owners to save their rights from being escheated to the State being owners not in cultivating possession. It seems that late Budha, who felt tricked by the owners approached the Revenue Authorities asserting his cultivating possession of the subject land, however, the Revenue Authorities only entered his name in the cultivation column as person in "unauthorized cultivation without the permission of the owners". This was done by the Tehsildar, Hiranagar vide mutation No. 115 dated 25.10.72. This mutation attested on 25.10.72 irked the owners who filed a suit for possession before the Collector, Agrarian Reforms. The said suit is stated to be still pending after its remand from the Tribunal. In the meanwhile, there was further development in the matter. The petitioners, on the basis of their continuous cultivating possession, moved the office of Tehsildar, Hiranagar for correction of girdawari entry of kharief 1971 and also for attestation of mutation under Sections 4 and 8 of the Act of 1976. The Tehsildar, after conducting the requisite enquiry and finding that the petitioners and their predecessor-in-interest late Budha, were in actual cultivating possession of the subject land before, during and after kharief 1971, corrected the girdawari entry showing the father of the petitioners late Budha in cultivating possession in kharief 1971. As a consequence of the correction of girdwari entry, mutation No. 221 dated 04.12.1986 under section 4 of the Act of 1986 came to be attested in favour of the petitioners.

13 The sequence in which the developments took place in the year 1971-72 and the manner in which the Revenue Authorities acted from time to time leaves no manner of doubt that the proceedings conducted by the Revenue Authorities were not aimed to get the true position reflected in the revenue records. The mutations, one after another, were obviously entered for considerations unrelated to the implementation of the provisions of the Act of 1976. The Tehsildar, Hiranagar, who

attested the mutations, has not bothered to enquire into the circumstances that led to the execution of an affidavit of relinquishment of tenancy by late Budha. Obviously and without any manner of doubt, the alleged relinquishment of tenancy was without any consideration nor the same was evidenced by any document executed before any competent authority. The Tehsildar was under an obligation to ascertain, after conducting proper enquiry, the circumstances that may have led late Budha to relinquish his tenancy rights. The date, month and the year when the alleged relinquishment of tenancy rights took place, also assumes importance. It is during those days when the Government was contemplating to come up with the J&K Agrarian Reforms Act, 1972 (later repealed and replaced by the Act of 1976) providing for conferment of ownership rights in favour of the tillers in cultivating possession of land during kharief 1971. The possibility of manipulation of the documents in these circumstances was not ruled out. Neither the Commissioner, Agrarian Reforms, nor the Tribunal went into these aspects of the matter. Both the Forums below have not considered another vital aspect of the matter, i.e, attestation of mutation Nos. 104 and 106, one in September, 1971 and another in January, 1972. In the mutation No. 104, there is only a mention of relinquishment of tenancy rights by late Budha in favour of the owners, but there is no consequent correction in the khasra girdawari of kharief 1971. Obviously, this would not have served the purpose and, therefore, another mutation No. 106 was attested to record the owners in self cultivation in kharief, 1971. The circumstances which led to attestation of these mutations have also not been gone into by both the Forums below. 14 It is true that when mutation No. 221 was attested in favour of the petitioners by correction of khasra girdawari and the petitioners were recorded prospective owners under Section 4 of Agrarian Reforms Act, the private respondents were not heard in the matter. As a matter of fact, respondent No. 3 was never aggrieved of mutation under section 4 of the Act of 1986 attested in favour of the petitioners. This is evident from the fact that he never preferred any appeal against mutation No. 221 before the Commissioner, Agrarian Reforms. The Commissioner, Agrarian Reforms did not take into consideration this aspect and set aside the entire mutation though respondent No.2 was only entitled to half of the land.

15 In view of the aforesaid facts and circumstances, I have arrived at a conclusion that ends of justice would meet by allowing this petition and remanding the matter back to Tehsildar, Hiranagar to look into all these aspects and attest the mutation afresh. Accordingly, this petition is allowed. Orders impugned are quashed. Mutation No. 221 dated 04.12.1986 having been found attested at the back of the private respondents is also set aside. The matter is remanded back to the Tehsildar, Hiranagar to conduct a de novo enquiry into all the aspects highlighted hereinabove in the judgment and pass fresh mutation under the provisions of the Act of 1976 after providing opportunity of being heard to all the stakeholders, in particular, the petitioners and the private respondents. Till fresh mutation is attested, there shall be status quo in respect of the subject land.

(SANJEEV KUMAR)
JUDGE

JAMMU
23 .11.2022
Sanjeev

Whether order is speaking:Yes
Whether order is reportable:Yes