

Jammu & Kashmir High Court

Lal Chand And Others vs Des Raj And Others on 21 December, 2022

HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU

Reserved on : 02.12.2022

Pronounced on: . 21.12.2022

OWP No. 1857/2014(O&M)

Lal Chand and others

.....Appellant(s)/Petitioner(s)

Through: Mr. R. P. Sharma, Advocate

Vs

Des Raj and others

..... Respondent(s)

Through: Mr. D. R. Khajuria, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. The mutation bearing No. 780 was attested on 27.02.1984 under section 8 of the Agrarian Reforms Act (for short the Act) thereby conferring ownership rights in favour of Jeeta S/o Phula-predecessor in interest of the respondents for the land comprising survey No. 385 measuring 2 kanal 9 marlas situated at Village Jagti Morha Karli and prior to the issuance of mutation, the land was escheated in favour of the State and the predecessor in interest of the respondents was declared as prospective owner by virtue of mutation attested under section 4 of the Act.

2. The contention of the petitioners is that there was no relationship of landlord and tenant between Jeeta i.e. predecessor in interest of the respondents and the owners, namely, Durga Dass and Krishna Devi, who were recorded as owners in the revenue record of girdawari of the year, 1969. The said Jeeta had in fact purchased 3 kanal 9 marlas of land comprising survey No. 385 from Beli Ram by virtue of sale deed and he was never inducted as tenant by any of the owners namely, Durga Dass and Krishna Devi over 2 kanals 9 marlas of land comprising survey No. 385. It is stated that the fictitious entry in kharif 1971 and that too without order of competent authority was made in favour of the predecessor-in-interest of the respondents. It was highly doubtful and further the same could not have formed the basis of attestation of mutation under section 4 of the Act, on the basis of which subsequent mutation under section 8 of the Act was attested in favour of the predecessor-in-interest of the respondents.

3. The petitioners claim that the predecessor-in-interest of the petitioners filed an appeal against the mutations under section 4 and 8 of the Act and both these appeals were decided by the appellate authority i.e. Joint Commissioner, Agrarian Reforms Jammu vide order dated 22.05.2004. Against the dismissal of the appeals, revision petition was filed before the J&K Special Tribunal Jammu and the said revision petition too was dismissed vide order dated 23.07.2014.

4. The petitioners have impugned the order dated 23.07.2014 passed by the learned J&K Special Tribunal, Jammu inter alia on the ground that without proper enquiry regarding the status of the persons who were in cultivating possession of the land in question, the mutation under section 4 of the Act was attested and further the predecessor-in-interest of the appellants was in fact the tenant in Kharif 1971, as admitted by erstwhile owners namely Durga Dass and Krishna Devi.

5. Response has been filed by the respondents in which they have raised preliminary objection with regard to the maintainability of the writ petition and further that the finding of facts recorded by the authorities under the Act cannot be challenged through the medium of the writ petition. It is also stated that the predecessor in interest of the petitioners had filed an appeal against the mutation attested under section 4 of the Act which was dismissed for non-prosecution on 24.10.2002 and the same was never restored, thus, mutation under section 4 has attained finality and once the mutation under section 4 of the Act has attained finality, mutation under section 8 of the Act cannot be challenged. It is also stated that the mutation No. 723 under section 4 of the Act was attested on 08.01.1984 and the predecessor in interest of the respondents was declared as prospective owner on the basis of his cultivating possession over 2 kanals 9 marlas of land comprising survey No. 385 in kharif 1971. After the deposit of the levy, the mutation No. 780 was attested by the Tehsildar, Agrarian Reforms Act on 29.02.1984. It is also stated that the father of the petitioners filed an appeal against the order of mutation attested under section 4 of the Act but enclosed copy of mutation No. 721. The respondent filed mutation No. 723 which was mutation attested under section 4 of the Act and this mutation pertains to the entire village Jagti. The said appeal was dismissed for non prosecution on 24.10.2002. In fact, both the appeals filed by the predecessor in interest of the petitioners were dismissed for non-prosecution but the appeal against the attestation of mutation under section 8 of the Act was only got restored by the predecessor-in-interest of the petitioners and the other appeal challenging the mutation under section 4 of the Act was never got restored. It is also stated that the predecessor-in-interest of the petitioners was neither the owner nor tiller/tenant with regard to the land mentioned above and as such, he had no locus standi to file the appeal.

6. Mr. R. P. Sharma, learned counsel for the petitioners laid much stress that the entry of the predecessor in interest of the respondents was wrongly made in the khasra girdawari pertaining to kharif 1971 and as such, the mutations under section 4 and 8 of the Act could not have been attested in favour of the predecessor-in-interest of the respondents.

7. Heard and perused the record.

8. A perusal of the order dated 22.05.2004 reveals that the appellate authority decided the appeal preferred by the predecessor-in-interest of the petitioners against the mutation No. 780 attested under section 8 of the Act in respect of land measuring 2 kanals 9 marlas comprising survey No. 385 situated at Village Jagti Morha Karli Jammu.

9. The appellate authority has returned a finding that the predecessor-in-interest of the petitioners has neither been reflected as owner nor tenant in the revenue record and as such, he has no locus to file the appeal. Before the learned Tribunal, the plea was raised by the petitioners that the appellate

authority has ignored the roznamcha wakyati of 30.09.1987, wherein Jeeta S/o Phola has admitted the factum of the possession of the predecessor in interest of the petitioners over the land mentioned above and it forfeited the claim of the predecessor in interest of the respondents. The petitioners also laid stress over the affidavit sworn in by two of the co-sharers namely, Durga Dass and Krishna Devi wherein they acknowledged that the predecessor in interest of the petitioners was in cultivating possession of the land mentioned above.

10. The learned Tribunal dismissed the revision petition thereby upholding the finding returned by the appellate authority that the predecessor in interest of the petitioners has not been reflected either as owner or tenant/tiller in the revenue record and as such, he has no locus to assail the mutation. It is evident that the appeal challenging the mutation under section 4 attested in favour of the predecessor-in-interest of the respondents was dismissed for non-prosecution and the same was never restored. The said mutation has attained finality.

11. This Court is of the considered view that in absence of any challenge thrown to attestation of mutation under section 4 of the Act, the subsequent mutation under section 8 of the Act conferring ownership rights upon the prospective owner, cannot be assailed as the mutation attested under section 4 of the Act form the very basis for attestation of mutation under section 8 of the Act. This petition deserves to be dismissed on this score alone.

12. Even otherwise as per section 13 of the Act, except as otherwise provided under the Act, no tenancy can be created after the first day of May 1973 in respect of any land and if the same is created, the same is invalid.

13. A perusal of the girdawari for the year 1969 and 1971 reveals that the predecessor-in-interest of the petitioners has not been shown as tiller or tenant and simply the affidavits sworn in by two of the co-sharers in favour of the predecessor-in-interest of the petitioners cannot be considered as a sufficient proof for holding the predecessor in interest of the petitioners to be in cultivating possession as tenant in kharif 1971, more particularly when the said affidavits were sworn on 21.06.1989.

14. I have gone through the orders passed by the appellate authority as well as by the learned Tribunal and both the authorities have dealt with the issues well within the domain of law and it cannot be said that there is any jurisdictional error on part of both the authorities as such, the present writ petition is found to be misconceived and the same is, accordingly dismissed.

(RAJNESH OSWAL) JUDGE Jammu 21.12.2022 Rakesh Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No