

Jammu & Kashmir High Court

Raj Kumar Sharma vs Collector Agrarian Reforms And ... on 14 September, 2022

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 29.07.2022

Pronounced on : 14.09.2022

OWP No. 1397/2015

IA No. 1/2015

Raj Kumar Sharma

.....Petitioner

Through: Mr. Vikram Sharma, Sr. Advocate with
Mr. Shiv Dev Singh, Advocate

Vs

Collector Agrarian Reforms and others

..... Respondents

Through: Ms. Monika Thakur, Advocate vice
Mr. S. S. Nanda, Sr. AAG for Nos. 1 & 2.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGEMENT

Heard learned counsel for the parties and perused the pleadings and examined the record.

The present writ petition is addressed for challenging the legality and validity of an Order no. DC/Rsi/15-16/1609-10/SQ dated 25.08.2015 passed by the respondent no. 1- the Collector Agrarian Reforms (Assistant Commissioner Revenue) Reasi.

The petitioner is in use and occupation of 4 kanals 8 marlas of land falling under khasra no. 1462/1314 situate at village Mari, tehsil & district Reasi. The recorded original owner of the said land is said to be one Nikka, son of Sh. Tej Ram, resident of Nai Basti Rassi Mari, tehsil and district Reasi. The petitioner's use and occupation of the said land is by reference to an agreement to sell dated 25.09.2007 executed between him and the said original owner Sh. Nikka. Thus the possession of the petitioner over the said land is free from factual dispute.

However, a sister of the original owner Sh. Nikka filed an application for seeking partition with his brother said Nikka with respect to land measuring 9 kanals under khasra no. 1462/1314 situated in Mari, tehsil & district Reasi. This application for partition was made before the Tehsildar Reasi. In this application for partition, the petitioner had also joined his presence to apprise Tehsildar Reasi about his occupational status qua the said 4 kanals 8 marlas of land, in response whereto the Tehsildar, Reasi had registered his disapproval to the said use and occupation of 4 kanals 8 marlas of land in the hands of the petitioner which resulted in a course of action finally shaping up in the issuance of the above said impugned notice no. DC/Rsi/15-16/1609-10/SQ dated 25.08.2015 by the respondent no. 1.

A perusal of the impugned notice dated 25.08.2015 reveals that it has been issued to the petitioner on the basis of a purported report by the Tehsildar Reasi vide no. 122/Teh/R/P/2015-16 dated 25.08.2015 referring to use of the said parcel of land by the petitioner for the purpose of keeping of scrap material. By reference to said user of land, the respondent no. 1- the Collector Land Reforms, Reasi objected to the petitioner that the actual nature of the land was agricultural in nature as such its use by the petitioner for scrap keeping was against the provisions of section 13(1) of the Agrarian Reforms Act, 1976. The petitioner was asked to show cause against the necessary action under law. This notice's legality and validity is under examination through this writ petition.

This impugned notice is invalid at the first instance. Firstly, this notice to the petitioner was not accompanied with the so called report no. 122/Teh/R/P/2015-16 dated 25.08.2015 of the Tehsildar Reasi for fully apprising the petitioner about the basis on which the respondent no. 1 - the Collector Agrarian Reforms, Reasi enabled and activated himself for the purpose of exercising purported power under section 13(1) of Agrarian Reforms Act, 1976. Thus, the petitioner was called upon to respond only to half of the picture leaving other half blind to him. This was against the very spirit of the Rules of Natural Justice that factual basis upon which an exercise of statutory power is intended to be initiated and exercised against a prospective aggrieved person, he or she is not fully briefed about the factual frame of the case. Any Authority, be it judicial/quasi-judicial/statutory/administrative, initiating any course of action against a person which has the end situation of dealing with said person generating civil consequences at his end, is under a compulsive mandate to make full display and disclosure of facts and the person concerned to be affected ought to know from the very same judicial/quasi-judicial/statutory/administrative authority the factual basis which the person concerned is called upon to respond/show cause. Thus this invalidity accompanied the impugned notice right from its issuance.

The impugned notice was further invalid on the count that the respondent no.1- the Collector Agrarian Reforms Reasi did not set out therein as to which necessary course of action under law was in contemplation with him for which the petitioner was being invited by him to show cause. This shows as if the respondent no .1- Collector Agrarian Reforms Reasi was acting from a situation of suspense in himself not knowing as to which legal end the exercise of power was sought to be set into effect against the petitioner for which the petitioner was being called upon by him to respond.

In addition to the aforesaid aspects which invalidates the impugned notice, the illegality which hits at the impugned notice is that the petitioner was not converting the soil nature of the land by

carrying out such activity like keeping of scrap thereat and as such the said activity could not ever be said to be in violation of section 13(1) of Agrarian Reforms Act, 1976. There is no compulsion for an owner or occupier to carry out an agriculture activity vis-à-vis on agriculture land. The owner concerned has not to change the nature of the agriculture land without following due course of law. The conversion of nature of the agriculture land is held only when the activity thereupon is going to permanently and irreversibly change the very said character and nature of the agriculture land and as such that situation is meant to be cognizable and taken notice of by the concerned statutory authorities acting under relevant statutes vis-à-vis the agriculture land, but here in this case the petitioner was simply putting up his scrap on the said land without doing any violation to the very nature of the soil of the land and as such the respondent no. 1- the Collector Agrarian Reforms, Reasi was factually wrong in making an assumption as if the petitioner was converting the agriculture land into a non- agriculture one.

On the basis of the aforesaid, the impugned notice DC/Rsi/15- 16/1609-10/SQ dated 25.08.2015 issued by the respondent no.1, Collector Agrarian Reforms, Reasi is held and declared to be bad in law, deserves to be quashed and is, accordingly, quashed.

Disposed of accordingly.

(Rahul Bharti) Judge Jammu 14.09.2022.

Muneesh

Whether the order is speaking : Yes / No

Whether the order is reportable : Yes / No