

Jammu & Kashmir High Court

Sanjeev Khajuria vs Ut Of J&K And Others on 17 October, 2022

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on : 29.07.2022.

Pronounced on : 17.10.2022.

WP(C) No. 1448/2021

CM No. 5797/2021

Sanjeev Khajuria

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

Through: Mr. D. K. Khajuria, Advocate

Vs

UT of J&K and others

.....Respondent(s)

Through: Mr. S. S. Nanda, Sr. AAG

Mr. Dewakar Sharma, Dy. AG

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

JUDGEMENT

Heard learned counsel for the parties.

01. The petitioner is owner in possession of a plot of land measuring 05 kanal in khewat no. 270, khasra no. 792 min situated in village Ban, Katal Batal, district Jammu. The title of the petitioner as owner of the above said land is by virtue of a duly registered sale-deed dated 30.01.2008. The registration of the sale-deed above mentioned was facilitated by the Fard Intikhab and the site plan as issued by the concerned revenue officials (authority of the team) in favour of the vendor (erstwhile owner Girdhari Lal), who executed the sale-deed dated 30.01.2008 in favour of the petitioner herein.

02. The grievance of the petitioner which has constrained him to file the present writ petition under article 226 of the Constitution of India before this Court, emanates from an Order no. DCJ/SQ/Order/2019- 20/2343-45 dated 28.09.2019, passed by the Deputy Commissioner, Jammu - respondent no. 2. This impugned order of the respondent no. 2 has two aspects to be dealt with. First by virtue of this order the respondent no. 2 has set aside the demarcation report no. 1604/OQ dated 04.09.2013 in respect of khasra no. 792 min of village Ban, submitted by Tehsildar Jammu and directing fresh demarcation in presence of the representatives of the Forest Department. The second aspect is the direction to the Tehsildar Nagrota not to issue Fard Intikhab for alienation of land falling under khasra no. 792 min. This order finds the petitioner in a state of concern in view of the fact that the petitioner's ownership in possession of 05 kanals plot of land falling in khasra no. 792 min.

03. The petitioner questioned the legality and illegality of the said order. The very fact that the petitioner is holding title of ownership qua plot of land falling in khasra no. 792 min is a pointer to the fact that the execution and registration of the sale-deed was effected on the basis of duly issued revenue record in the form of Fard Intikhab Jama Bandhi and site map of the said plot by the revenue officials concerned. Thus the title of the petitioner and the antecedent title of the owners of the land of the said plot of land before the petitioner are unquestionable and undisputed. At no point of time any revenue official or for that matter the officials of the Forest Department ever objected to the claim of the predecessor owners of the plot of land falling in 792 min which has come to be owned by the petitioner. The demarcation report submitted by the Tehsildar Jammu was borne out of an exercise carried out by the supporting revenue officials as a result of which the Tehsildar concerned was unable to submit his demarcation report no. 1604/OQ dated 04.09.2013 to the office of the Collector (Deputy Commissioner) Jammu from September, 2013 onwards till September, 2019 at the time of passing of the impugned order. Thus the said demarcation report had received acceptance from all the quarters concerned including the office of the Collector (Deputy Commissioner), Jammu. The said demarcation report at any point of time was never objected to by the officials of the Forest Department as well. Thus what was the factual basis for the respondent no. 1 to come out with a stroke of pen to set aside the said demarcation report without citing any whisper of reason in the impugned order renders the impugned order ex- facie invalid. Demarcation is not to be done for the purpose that the Deputy Commissioner, Jammu pleases it to be done. Demarcation exercise is done under the provisions of the Land Revenue Act, Svt. 1996 and in case the first demarcation exercise had been done and in terms thereof the status of the petitioner gets confirmed then even for the sake of setting aside the said demarcation report dated 04.09.2013 the petitioner ought to have been heard first by the respondent no. 2 before passing any order to set aside the said demarcation report dated 04.09.2013. The direction given by the respondent no. 2 to the Tehsildar Nagrota not to issue Fard Intikhab for alienation of the land falling under khasra no. 792 min of village Ban is also without any jurisdiction in the eyes of law. There is no such jurisdiction vested in terms of the Land Revenue Act, Svt. 1996 in favour of the Deputy Commissioner, Jammu to order from its own end a ban on issuance of Fard Intikhab Jama Bandhi with respect to the alienation of land or for any other purpose in favour of the owners of the land in any particular khasra number/shed of the district. Testing the said direction of the respondent no. 2 vis-à-vis the case of the petitioner who is the lawful owner in possession of 05 kanal of land in khasra no. 792 min of village Ban on the basis of a duly executed registered sale- deed, the said reaction for freezing the ownership rights of the petitioner qua the plot of land without inviting the petitioner as to the basis on which the very title of the petitioner qua the owner of the land has been subjected to a suspect situation by the respondent no. 2. The order impugned is a product of mechanical application of mind on the part of the respondent no. 2 and as such is bad in the eyes of law. The order impugned no. DCJ/SQ/Order/2019-20/2343-45 dated 28.09.2019, passed by the Deputy Commissioner, Jammu - respondent no. 2 is, accordingly, set aside.

04. Disposed of accordingly.

(Rahul Bharti) Judge Jammu 17.10.2022 Muneesh Whether the order is speaking : Yes / No
Whether the order is reportable : Yes / No