

(2016) 3 JKJ 455

Jammu & Kashmir High Court

Case No: OWP No.1327 of 1999 and MP No. 1437 of 1999

Dayawanti

APPELLANT

Vs

Financial
Commissioner J&K

RESPONDENT

Date of Decision: May 18, 2016

Acts Referred:

- Standing Order No. 22 - Rule 7, Section 13

Citation: (2016) 3 JKJ 455

Hon'ble Judges: Mr. Ramalingam Sudhakar, J.

Bench: Single Bench

Advocate: Mr. D.R. Khajuria, Advocate, for the Petitioner; Mr. G.S. Thakur, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Mr. Ramalingam Sudhakar, J. - The writ petition is of the year 1999. This long battle between the parties is in respect of ownership of land and

it started way back on 26.07.1990.

2. One Dhananter Singh and others filed an application with the Collector - Assistant Commissioner (General) Jammu seeking correction of the

entry in Khasra Girdawari Rabi, 1976 till to date in respect of Khasra No.597 measuring 11 kanals and 3 marlas situated in village Toph

Sherkhanian. The case was filed before District Collector of Agrarian Reforms, Jammu on 26.07.1990 and was transferred to the Collector -

Assistant Commissioner for disposing it of on merits. Amrik Singh the present writ petition was respondent in that application. It appears that

notice was issued to Amrik Singh but he refused the service and, as such, ex parte proceedings were initiated against the present petitioner - non

applicant before the Collector - Assistant Commissioner.

3. Dhanantar Singh and others-the applicants' statement were recorded on 12.09.1990 to support their case for correction of the entry in Khasra

Girdawari Rabi, 1976. They also let in independent evidence through one Ranjit singh. Before the Authority, they deposed that Khasra No.597

measuring 11 kanals and 3 marlas situated in village Toph Sherkhanian is a land which is partly ""Arak"" (grazing or fuel land), Banjar Qadeem

(uncultivated land) and that there is also Gair Mumkin Rasta (Passage) in the said land. It was pleaded that the applicants before the authority as

well as Amrik Singh - petitioner in the instant writ petition are in joint possession of the land without any interruption. It is their case that Amrik

Singh - the present writ petitioner in connivance with the Patwari got recorded in the Khasra Girdawari that Khasra No.597 in his name and the

applicants therein - respondents herein were not informed about the same. It is also the specific plea of the applicant before the authority -

respondents herein that the land in Khasra No.597 is under dispute and same has not been properly and lawfully partitioned among the co-sharers

so far and, therefore, it is jointly held by them.

4. It is alleged that Amrik Singh has got the entry recorded in Girdawari in his own name to deprive the applicants of their rightful share of the land.

The specific plea is that the entry in Girdawari Rabi 1976 till that date should be corrected in five equal shares in the name of the applicants therein

and non-applicant Amrik Singh in the revenue records.

5. The Assistant Commissioner after considering the arguments and the documents produced came to hold that the land does not come within the

purview of Jammu and Kashmir Agrarian Reforms Act because it has been recorded as ""Arak"" (grazing / fuel land), Banjar Qadeem (un-cultivable

land) and it is recorded as in joint possession of Hissadars without interruption. He held that the crucial entry of Kharif 1971 records that the

possession is jointly in the name of Dhananter Singh and others in respect of Khasra No.597. Having noticed the records as above, he came to

hold that the record of the entry in Rabi 1976 by the revenue authorities in favour of Amrik Singh is in violation of Rules and Regulations on the

subject. He accepted the private respondents' application for correction of Girdawari and he ordered that the entry in favour of all the parties, as it

existed in Kharif 1975 from Rabi 1976 to date in respect of Khasra No.597 measuring 11 Kanals 3 Marlas of village Toph Sherkhanian.

6. Amrik Singh aggrieved by this, filed a review before the Settlement Commissioner and the grounds of revision petition reads as follows :

1. That the order impugned under revision is against facts of law and all cannons of natural justice and that the order has been passed at the back

of the petitioner.

2. That in the impugned order it is mentioned that notices were sent to the petitioner but he refused to acknowledge the service. This is incorrect

and false because no notice ever reached to the petitioner.

3. That Assistant Commissioner (G) Jammu has no jurisdiction to change the revenue entry because petitioner was cultivating and in possession of

the land prior to 1976 and he continued to be in possession up to this time.

4. That land is Shamlat land and petitioners here in is the absolute owner of the same and respondents have no concern.'

7. The primary plea taken by Amrik Singh - present writ petitioner is that there is violation of principle of natural justice. The Assistant

Commissioner General (Jammu) has no jurisdiction to change the revenue entry because he is in cultivable possession of the land prior to 1976 and

continues to be in possession thereafter. It is also the specific plea in ground no.4 that the land is Shamalat land and he is in absolute possession of

the same and respondents have no right over it.

8. The present respondents, who are applicants before the Assistant Commissioner, pleaded before the Revisional authority that Amrik Singh as

well as the applicants before the Assistant Commissioner were recorded as co-owners right from 1947. It is only thereafter that Girdawari was

changed in Rabi 1976 in favour of Amrik Singh and therefore, they pleaded that the order of Assistant Commissioner may not be interfered with.

9. The Settlement Commissioner was of the view that the land in question is a Shamlat Deh, Hasab Rasad Khewat, i.e. it is village land meant for

proportionate holding, and Amrik Singh is in possession from Rabi 1976 till to date in respect of the extent in dispute. Amrik Singh has constructed

a house on a piece of that land and therefore, the order passed by the Assistant Commissioner (General) Jammu dated 31.10.1990 is against

physical position prevailing on spot. This appears to be the main ground on which the order of Assistant Commissioner is reversed by the

Settlement Commissioner. He, therefore, allowed the revision petition and reversed the order of Assistant Commissioner.

10. The private individuals aggrieved by the order of the Settlement Commissioner filed a revision No.116/AP of 1995 to the Financial

Commissioner who by its decision dated 07.08.1998 set aside the order of Settlement Commissioner and restored the order of Assistant

Commissioner and that order is under challenge.

11. At the first instance, the writ petition came to be allowed because the present respondent failed to defend the case. However, on appeal, the

Division Bench set aside the order of single Judge and remanded the case for consideration afresh. The writ petition is, therefore, listed today final

hearing.

12. The counsel for the writ petition contended that insofar as Khasra No.597 is concerned, it is Shamlat Land but land is recorded as one to be in

cultivable possession. Stating that writ petitioner is the person who is in possession, Financial Commissioner erred in restoring the order of

Assistant Commissioner reversing the order of Settlement Commissioner, the writ petition is canvassed. To buttress his arguments, learned counsel

for petitioners pleaded that the revenue authorities after verification of spot came to the conclusion that insofar as Khasra No.597 of 11 Kanals

and 3 Marlas, he is in possession from Rabi 1976 till date. That the respondents herein may be co-owners insofar as Shamlat land is concerned

but not in relation to Khasra No.597 in so far as 11 Kanals and 3 marlas.

13. In the writ petition, learned counsel relies upon Rule 7 of Standing Order No. 22. Learned counsel pleaded that the order was passed by the

original Authority as well as the Financial Commissioner is in violation of Rule 7 and Rule 13 which reads as follow:

7. Enquiry into, and entry of, crops and rights during Girdawari-The Patwari should personally see each standing crop and enquire on the spot for

each field if any change has taken place in respect of rights, rents, possession and kind of soil. He should then and there record all changes as are

found to have taken place, in a register called Khasra Girdawari, which is maintained in the sub-joined form:-

The crops will be entered in the Khasra Girdawari, as the inspection proceeds, in the column provided for the purpose. The changes in rights,

rents, and possession will be noted in the appropriate column of the Khasra Girdawari.

All entries to be made in the Khasra Girdawari should be carefully enquired into any fully ascertained by the Patwari on the spot and the result of

such enquiries, which should be complete in all respects in regard to each field number and attested by the Lambardar of the village should be

brought on the Khasra Girdawari.

This work of visiting each field and recording and completing entries on the spot forms one of the chief duties of the Patwari, and non-compliance

with it will render him liable to punishment.

Where the boundaries or area of a field have changed in such a manner as to require the correction of the field map the Patwari will make a rough

measurement. A red cross should be placed by the Patwari in Columns Nos. (8, 10, 13, 15, 18, 20, 23 or 25) according to the harvest in question,

against the number of a field, the boundaries or area of which have changed in such a manner as necessitates a correction of the field map. This is

done with a view to remind the Patwari that a correction of the village map is required. But his applies to changes of permanent nature and not

temporary.

.....

13. Procedure for preventing errors in Khasra Girdawari-Erasing or washing out of entries once made in the Khasra Girdawari is strictly

forbidden. Nothing should be subsequently interpolated between the words or lines. Corrections ordered to be made by a competent officer

should be made in red in the column ""changes in rights, cultivation and rent"" and a note to that effect recorded in the Roznamcha Waqiyati.

Whenever, a Patwari has to alter any entries in the Khasra Girdawari, he must enter it in his diary but no alteration should be made after the Dhal

Bachh paper of the harvest have been drawn out and corrected.

During his usual rounds when the Girdawar goes to a Patwar Halqa, he is bound to inspect the Roznamcha Waqiyati, of the Patwari and he should

also carefully check all the changes and alteration which have been noted by the Patwari in the Khasra Girdawari. All corrections made

subsequently in red ink should be shown to him and got initialed and dated by him. A note to that effect should be made in the Rozenamcha

Waqiyati and such note should also be signed by the Girdawar. If any entry in the Khasra Girdawari is found to be incorrect at the time of preparing

the Jambandi, it will nevertheless be retained unaltered, but the correct entry will be noted in red ink and it will be attested by the Field Qanungo.

14. Though such plea has not been raised in the grounds of the writ petition. Learned counsel pleads that the ground No.D relating to violation of

Sections 24 and 25 of the Land Revenue Act has been raised earlier. Learned counsel is now not pursuing the same as it is not applicable to the

facts of the present case. He would impress, upon this Court that the entries whatever has been recorded in the Girdawari by the Patwari has to be

taken as relevant document for the purposes of determining the rights of the parties in the present case. The Patwari has recorded insofar as Rabi

1976 is concerned in favour of the present petitioner on the basis of spot inspection, that the petitioner - Amrik Singh is in possession of 11 Kanals

and 3 Marlas. This is a question of act and cannot be overturned.

15. Shri G.S.Thakur counsel for the respondents reiterates the reasoning given by Financial Commissioner. The finding of the Financial

Commissioner is on the basis of revenue records, more particularly, the Girdawari entry based on the nature of land. The Financial Commissioner

has come to the conclusion that the claim of possession by Amrik Singh can at best be restricted to 2 Kanals and 14 marlas only and the rest of the

land would be in joint possession of the respondents herein.

16. I have gone through the entire file and the order passed by the original authorities, revenue authorities and Financial Commissioner. The issue

that arises for consideration is that what is the revenue record prior to entry in Girdawari Rabi 1976 and what is entitlement of the respective

parties. The order of the Assistant Commissioner goes on the premise that the entry of Kharif 1971 records the joint possession of Dhananter

Singh and others in respect of Khasra No.597. He also holds that the land here is a ""Arak"" (grazing or fuel land), Banjar Qadim (land not under

cultivation for long period of time). He, therefore, holds that the entry of Girdawari Rabi in 1976 has been made in violation of the earlier entry.

17. The Revisional authority, however, goes on a singular issue and holds that Amrik Singh has constructed a house in 1 kanal of land, therefore,

on spot he is in possession and reverses the decision of the Assistant Commissioner.

18. I do not agree with such finding. Occupation of a certain extent of land by way of house cannot vest the person a right that too on the basis that

a house is constructed on 1 kanal of land. On the contrary, the Financial Commissioner has gone into the entire gamut of the case and come to the

conclusion that Jamabandi of 2001 and 2002 in respect of Khasra No.597 measuring 11 kanals and 3 marlas, it has been recorded as 'State Land'

under occupation of Tribat Singh, Bachan Singh, Bishan Singh, Rattan Singh and Goverdhan Singh as tenants. This admittedly proves that Amrik

Singh's father Bachan Singh as in joint possession with the others. The land in question is classified as Banjar Qadim (un-cultivable land) and Giar

Mumkin Rasta (Passage). It is also described as Bila Lagan (No rent) land. This entry subsisted in the year 1971. This land is also recorded as

Shamlat land that is owned in common by many people. This clinches the issue and makes it clear that prior to 1971, several persons were in joint

possession of the land including the father of present petitioner.

19. Having gone through the records, the Financial Commissioner came to the conclusion that entry of Shamlat Land has been recorded to show

that it is in possession of several persons and this entry subsisted in 1975. It is only thereafter that the name of Amrik Singh has been recorded in

the Khasra Girdawari. It is also on record that from period 1998, 01 kanal 14 marlas is shown to be under plough and separately 01 kanal is

recorded as land on which house has been built. Therefore, the authority comes to the conclusion that what is in possession of Amrik Singh is 01

kanal of land on which house is built and 01 kanal and 14 marlas of cultivable land is under his cultivation. Insofar as 08 kanals and 09 marlas of

land is concerned, it continues to be Banjar Qadim and Gair Mumkin Arak and insofar as this land is concerned it is in possession of all other

cosharers. In the absence of physical possession of Amrik Singh so far as 08 kanals and 09 marlas is concerned, he holds that entitlement of

Amrik Singh will be only in respect of 2 kanals and 14 marlas of land.

20. On this factual finding based on revenue record, I am unable to come to a different conclusion as decided by the Financial Commissioner.

21. Insofar as Rule 7 and Rule 13 are concerned, it may be that the petitioner can have a grievance that the record of the Patwari should not be

disturbed as such. If that be the case, there is nothing on record to show that the respondents herein were heard before such an entry is made.

Therefore, he cannot plead for such a right in the absence of notice to the respondents. They were not heard. In view of the record which has been

considered by the Financial Commissioner in detail showing that several persons have joint possession earlier to the period in dispute the

petitioners' plea is not tenable. Therefore, I reject the contentions raised by the petitioners.

22. In the last, learned counsel submitted that there are subsequent events like Civil Court proceedings which were not placed on record. It is open

to parties to workout their right based on the Civil Court orders as per law. The order of the Financial Commissioner stands confirmed. Writ

petition is dismissed.