

In the Court of Financial Commissioner (Revenue)/
Commissioner Agrarian Reform, J&K Srinagar

File No.
348/FC-AP

Date of Institution
12.08.2013

Date of decision
02.06.2022

In the case of:-

1. Aqab Riyaz
 2. Ameer Riyaz, (Sons)
 3. Mst. Tasleema Bano (Widow)
 4. Sameena Riyaz (Daughter)
- of Riyaz Ahmad Wani R/O Kurigam, Qazigund, Tehsil Anantnag.

Versus

.....Appellants

1. District Magistrate, Anantnag
2. Additional District Magistrate, Anantnag
3. Tehsildar, Duroo
4. Naib Tehsildar Qazigund
5. Sub Divisional Police Officer, Qazigund

..... Official Respondents

6. J.L.Pandita s/o Somnath Pandita R/O Kurigam, Qazigund Tehsil Duroo at present Migrant Nagrota, Jammu.

.....Private Respondent

7. Mohammad Shaban Shan S/o Habibullah Shan R/O Kurigam Qazigund, Tehsil Dooru, District Anantnag, Kashmir.

.....Proforma Respondent

In the matter of:- Appeal in terms of section 7 of the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 against the order bearing No. DCA/Lit/013/168-69 dated 27.07.2013 issued by the respondent No.01.

Present:

1. Advocate Momin Salati for appellant
2. Private Respondent in person



O R D E R

1. The brief facts of the case are that the appellant has filed the instant appeal under section 7 of the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 against the order of District Magistrate, Anantnag bearing No.DCA/Lit/ 013/168-69 dated 27.07.2013 with the prayer to set aside the same. The dispute in the appeal is with regard to 10 marlas of land covered under Khasra No. 81 of village Kurigam Tehsil Dooru District Anantnag.
2. Today, the matter came to be listed for arguments. Appellant was present and represented by his Counsel and the Private respondent appeared in person. Counsel for Appellant and Private Respondent argued the case in detail. The contention of the Counsel for appellant is that the Private Respondent has filed a frivolous application before Deputy Commissioner/District Magistrate, Anantnag claiming therein that he has ancestral land measuring 11 Marlas under Survey No. 81 of village Kurigam which has been encroached upon by the Appellant herein. The District Magistrate vide communication No. DCA/Mig/Camp(92)05/194 dated 27.05.2011 asked the Tehsildar concerned to remove the encroachment on the aforesaid land. In compliance, Tehsildar concerned dispossessed the appellant from the land measuring 10 Marlas and filed a compliance report vide No. 139/OQ/D dated 08.06.2012. The Counsel for appellant has alleged that the appellant has been dispossessed without affording him an opportunity of being heard and without enquiry. As a result, the appellant challenged the communications dated 27.05.2011 and 08.06.2012 before the Hon'ble High Court and the Hon'ble High Court vide Order dated 07.11.2012 directed the District Magistrate to hear both the parties, look into the records and pass orders within four weeks after complying with the provisions of J&K

Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 (herein after Act of 1997). However, as per appellant version, the District Magistrate without hearing the present appellant and without considering the records and spot position passed the impugned direction. The Counsel for appellant has also submitted that the provisions of Act of 1997 have not been followed by the District Magistrate and no enquiry had been made to ascertain as to whether land in question is Migrant property or not and whether the appellant is illegal occupant or not. The impugned direction to the Tehsildar concerned to hand over the possession of land measuring 10 marlas under Survey No. 81 situated at Kurigam, Qazigund which was under superdari of Lumbardar and Chowkidar to the Private respondent is in derogation of the Act of 1997. It also violates the principal of natural justice. The appellant is not an un-authorized occupant but has purchased the said land in the year 1984 from the ex-owners who has been arrayed as Proforma respondent.

3. The Private respondent who appeared in person argued that the land in question is recorded in the name of his grandfather and was in his possession till 1990 before migration and his claim over the land is based on genuine grounds which is evident from the report of Naib Tehsildar dated 10.09.2009 depicting Private respondent as co-occupant of the land measuring 1 Kanal 3 Marlas alongwith other owners. It is also submitted that the appellants claim of having purchased the land in dispute is baseless and the land in question has never been sold to him. The respondent further argued that land measuring 01K-13M under Khasra No. 81 was held in equal shares by Dwarka Nath S/o Ragu Nath, Prem Nath and Shambo Nath sons of Shankar Dass and Neela Pandith S/o Gopal Pandith. The other share holders are said to have transferred their share but the shareholder Neela Pandith, (respondent being his grandson) was in possession of his share of 11 Marlas till migration.



4. The appeal was earlier dismissed in default on 28.11.2018 for non-prosecution which came to be restored on 03.12.2021 and by virtue of same order the legal heirs of appellant Riyaz Ahmad Wani who had expired were brought on record.
5. The dispute between the parties after having been looked into by various forums has ultimately landed before the Hon'ble High Court for adjudication and the Hon'ble Court directed the District Magistrate :-

"to give post decisional hearing to the petitioner, entertain and accord consideration to the material/documents, which may be produced by him before the said Authority.

The District Magistrate shall also afford opportunity of hearing to the complainant or his representative and consider any documents or material, which may be produced by them.

The District Magistrate to pass appropriate orders in accordance with the provisions of The Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997. The District Magistrate to consider and take decision, preferably, within four weeks from the date copy of this order is served on him.

The District Magistrate would be at liberty as an interim measure to order for release of the property in favour of the petitioner in case, he would, prima facie, feel satisfied satisfy on the material which may be produced by the petitioner before him.

It is made clear that the impugned communications will not come in the way of District Magistrate to pass fresh orders in accordance with law."

6. After perusing the records placed on file, it is seen that the District Magistrate has neither complied with the directions of the Hon'ble High Court nor has followed the procedure as prescribed under the Act of 1997, as all the relevant parties have not been heard and also proper enquiry has not been made.
7. The instant appeal is accordingly disposed of by setting aside the communication dated 27.07.2013 of the District Magistrate, Anantnag and matter remanded to the District Magistrate,



Anantnag to conduct a denovo enquiry and pass fresh orders by providing a reasonable opportunity of being heard to the parties to the dispute.

8. Parties shall appear before the District Magistrate, Anantnag on 11.06.2022 who shall not issue any fresh summons to the Parties as both are present here. The District Magistrate Shall decide the matter within two months.
9. Interim orders, if any, are vacated. Records received from the District Magistrate shall be returned and the file thereafter consigned to records after due completion.

Announced
02.06.2022


(Shaleen Kabra) IAS
Financial Commissioner, Revenue, J&K

No:- 189-90/EC-AP

Dated:- 06-06-2022

Copy to the:-

1. District Magistrate, Anantnag
alongwith his original Case file.
For n/a.
2. Tehsildar DOORU, Distt. Anantnag
For information & n/a.