

**In the Court of Financial Commissioner (Revenue) and Commissioner  
Agrarian Reforms, J&K, Srinagar.**

<b><u>File No</u></b>	<b><u>Date of Institution</u></b>	<b><u>Date of decision</u></b>
729/FC-AP	15/10/2020	02.06.2022
727/FC-AP	15/10/2020	02.06.2022
728/FC-AP	12/10/2020	02.06.2022

**In the case of:-**

1. Mst. Aisha D/o Ghulam Nabi Reshi
2. Mst. Ameera D/o Ghulam Nabi Reshi Both residents of Veersiran Tehsil Saller District Anantnag.

**.....Appellants.**

**Versus**

Jawhera Akhtar Wd/o Ghulam Nabi Reshi R/o Iqbal Mohalla  
Bijbehera District Anantnag.

**..... Respondent.**

**In the matter of:** Appeal against order No. ADC/PA/20/120-21 dated 30.07.2020 passed by Additional Deputy Commissioner Anantnag and order No. DCA/MC/20-21/267-72 dated 28.09.2020 passed by District Magistrate Anantnag in the application filed by Mst. Jawhera Akhtar Wd/o Ghulam Nabi Reshi R/o Veersiran Tehsil Saller.

**And**

**In the case of:-**

1. Javid Reashi S/o Jalal-Ud-Din Reashi
  2. Ghulam Qadir Reashi S/o Ahmad Reashi
  3. Shabir Ahmad Rather S/o Abdul Aziz Rather
  4. Shabir Ahmad Reashi S/o Bashir Ahmad Reashi
  5. Tariq Ahmad Rather S/o Abdul Majeed Rather
  6. Abdul Qayoom Shah S/o Ama Shah
  7. Ghula Mohi-Ud-Din Shah S/o Ama Shah
  8. Mushtaq Ahmad Mir S/L Ghulam Nabi Reashi
  9. Lateef Ahmad Laway S/o Ghulam Qadir Laway
  10. Ghulam Qadir Reashi S/o Mumma Reashi
  11. Abdul Rashid Reashi S/o Ghulam Qadir Reashi
  12. Fayaz Ahmad Rather S/o Wahab Rather
  13. Ama Reashi S/o Aziz Reashi
  14. Feroz Ahmad REashi S/o Qadir Reashi
  15. Bilal Ahmad Reashi S/o Jabbar Reashi
  16. Fayaz Ahmad Khan S/o Hamid Khan
  17. Mohammad Ashraf Reashi S/o Assad Reashi
- All residents of Veersiran Tehsil Saller District Anantnag.

**.....Appellants.**

**Versus**

Jawhera Akhtar Wd/o Ghulam Nabi Reshi R/o Iqbal Mohalla  
Bijbehera Tehsil Bijbehera District Anantnag.

..... Respondent.

**In the matter of :** Revision petition on behalf of the Residents of Veersiran Tehsil Saller District Anantnag against the order No. 261/SQ dated 21.06.2007 passed by Deputy Commissioner Anantnag.

**And**

**In the case of:-**

1. Mst. Aisha
2. Mst. Ameera Daughter of Late Ghulam Nabi Reshi Both residents of Veersiran Tehsil Saller District Anantnag.

.....Appellants.

**Versus**

Jawhera Akhtar W/o Ghulam Nabi Reshi R/o Veersiran Anantnag

..... Respondent.

**In the matter of:** Revision against the order No. 261/SQ dated 21.06.2007 passed by Hon'ble Deputy Commissioner Anantnag and same may be declared null and void.

**Present:**

**Advocate: M.R Rathore for Appellants/Petitioners.**  
**Advocate: H.R. Salathi for Respondents.**

## **ORDER**

Briefly stated, facts of the case are that a quantum of "Kahcharie" land measuring 5 Marlas covered under Khasra No. 64/1 of village Veersiran Tehsil Pahalgam came to be allotted to the respondent herein by Deputy Commissioner, Anantnag vide order dated 21.06.2007. The said respondent claims to have constructed two huts over the said land. The respondent claiming to be a migrant approached the District Magistrate Anantnag to get above said huts vacated allegedly having been occupied by the appellants who are his step daughters. District Magistrate Anantnag by exercising powers under J&K Migrant Immovable Property

(Preservation, Protection and Restraint on Distress Sales) Act 1997(herein after Act) vide order dated 28.09.2020 directed removal of encroachment from the huts within seven days and also directed Tehsildar concerned to impose fine on the illegal occupants. Earlier Additional Deputy Commissioner Anantnag also vide communication dated 30.07.2020 addressed to Superintendent of Police Anantnag on the same subject matter had directed protection of Migrant Property from illegal encroachment/trespassing. The order of allotment and the communication/order of Deputy Commissioner, Anantnag and Additional Deputy Commissioner, Anantnag referred to above have been challenged in the cases titled above.

2. The parties appeared through their respective Counsels and the matter was argued in detail and written arguments were also advanced by both the parties.
3. All the three cases are taken together for disposal as the subject matter in all the cases is of same nature.
4. Ld. Counsel for the appellants/petitioners at the very outset questioned the legality of the allotment made in favour of the respondent by pleading that the procedure contained in sec. 6 of Common Lands Act, 1956.(now repealed) has not been followed as the allottee not belonging to a weaker section of the society was not eligible for the allotment as has been held by Sub District Magistrate Pahalgam also in his report dated 19.11.2019 which report also has been upheld by the Divisional Commissioner, Kashmir vide order dated 04.04.2022. It is also said that the respondent has no concern with the huts as these have been constructed by the father of the appellants and the land allotted to the respondent is at a different

place which the respondent has sold to one Sahibzada Ghulam Mohi-Ud-Din, resident of Brain Nishat Srinagar. Ld. Counsel also argued that it is only the District Magistrate who under the Migrant Act is empowered to take cognisance of unauthorized occupation of Migrant Property but in the instant case it is the Additional Deputy Commissioner who has taken up the matter with Superintendent of Police Anantnag, which communication, District Magistrate Anantnag has implemented without any enquiry and without any notice to the appellants.

5. Ld. Counsel for the respondent on the other hand justifies the allotment made in favour of the respondent by stating that the allotment has been made in strict adherence of laws, rules and procedure and after proper enquiry. After allotment the respondent is said to have constructed huts over the subject land and documents pertaining to purchase of timber for the construction, water and power connection have been placed on record. It is also said that the respondent being a Migrant is forced to remain generally absent from the property and taking undue advantage of her absence and of the situation prevailing due to abrogation of Article 370, the appellant unauthorized entered and occupied the huts. It is also said that two different orders have been assailed by the way of a single appeal and also that the appeal against the order of Additional Deputy Commissioner will not lie before this Court. Ld. Counsel also argued that the appellants neither have surrendered the possession nor have preferred the appeal within the prescribed period of 15 days and as such the appeal is not maintainable.
6. Heard and perused the records placed on file.

7. The Deputy Commissioner Anantnag vide order dated 21.06.2007 has allotted 5 Marlas of Kahcharie Land under Khasra No. 64/1 of Veersarian Tehsil Pahalgam to the respondent's husband on the basis of recommendation of the then Chief Minister. The allottee at the time of allotment was living with her husband, who was holding land in his name as recorded in Jamabandi 1995-1996. The allottee as such was not eligible for the allotment as rightly pleaded by the Ld. Counsel for the appellants. It is relevant to place on record the explanation appended to proviso to sub section 4 of section 6 of the Common Lands Act 1956:-

*Explanation:- For the purposes of this section person belonging to a weaker section of the society means the person who does not own either in his own name or in the name of any of dependent family member any site of building or built up house in the village.*

Thus the allotment made in favour of the respondent being violative of the above said legal provision is liable to be set aside alongwith the mutation attested on the basis of the said allotment. Furthermore, It is not the mere recommendation of the Chief Minister/MLA that is to be considered for allotment but a proper enquiry to establish the eligibility and strictly follow the rule of law, which in the instant case is missing. The Deputy Commissioner has blindly followed the recommendation of the then Chief Minister.

8. The contention of the respondent that the huts over the allotted land have been constructed by the respondent gets belied by the report of Sub District Magistrate which subsequently has been upheld by Divisional Commissioner as well. In the said report it has been held after proper enquiry and after recording the statements of witnesses that the huts have


been constructed in year 2005 i.e. much prior to the date of allotment and moreover the quantum of land under and appurtenant to the huts is more than 01 Kanal when the allotment in favour of the respondent is only 5 Marlas. It has also been held that the land allotted to the respondent is at a different place bearing some walnut trees and not under the huts in dispute.

9. The argument of Ld. Counsel for the respondent that the appeal is not maintainable being barred by limitation and also the possession has not been surrendered by the appellants, though a valid argument is not relevant to the present case as the appellants reportedly have been evicted from the huts on 06.10.2020 as also admitted by the appellants in their memo of appeal. The issue of limitation in the instant case can be attributed to the Covid Pandemic and by relying upon the judgment of Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020 IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION*, where in it has been held that *"In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020"*, the issue of limitation loses relevance and is accordingly dispensed with, also keeping in view the fact that appellants were condemned unheard by the District Magistrate.
10. The other contention of Ld. Counsel for the respondent that the appeal against the order of Additional Deputy Commissioner will not lie before this Court is also not relevant to the present case as Additional Deputy Commissioner is not an authority under the Act and the order thus being without jurisdiction is void abintio.

11. Thus, viewed in the context, the appeal alongwith both the revision petitions is accepted and the orders impugned are set aside. A copy of this order shall however be forwarded to Deputy Commissioner Anantnag to take cognisance of the encroachments over the Kahcharie land and initiate proceedings for eviction of the same in accordance with law, with a report of compliance to this Court as well.
12. Interim orders, if any, issued by this Court are vacated and the records received from the Deputy Commissioner be returned.

Announced

02.06.2022

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

NO:-186-88/FC-AP/22

Dated:- 06-06-2022

Copy to the:-

1. Deputy Commissioner, Anantnag alongwith his original case file for necessary action.
2. ~~Teheildar~~ Additional Deputy Commissioner, Anantnag.
3. Teheildar Saller DSH-Anantnag for information & r/a.