

**Before Shaleen Kabra, IAS Financial Commissioner(Revenue)/
Commissioner Agrarian Reforms, J&K.**

File No.
205/FC-AP

Date of Institution
24/11/2004

Date of Decision
8/04/2022

In the case of :

Mst.Mukhta Begum(now dead) through 1) Abdul Rashid Bhat 2) Mohd Afzal Bhat, Sons of Gh Mohd Bhat R/o Feteah pora Anantnag (Attorney holder of Brij Lal Bhat, Roshan Lal Bhat and Pran Nath Bhat Sons of Kashi Nath R/o Jammu.

VERSUS

..... Appellants

1. State through: District Magistrate Anantnag.
2. Gh. Mohd Rather. S/o Ab Aziz R/o Duroo.
3. Gh Ahmad Malik. S/o Abdul Ahad R/o Feteah pora.

.....Respondents

In the matter of : Appeal against the order dated 30.10.2004 of District Magistrate Anantnag passed in case titled Mohd Afzal Bhat versus Gh Mohd Rather and another.

Present:

1. **Advocate Sajad for Appellants**
2. **Respondent in person**

ORDER

Briefly stated facts of the case are that the land owners (Migrants) namely Hirday Nath and others Ss/O Sarvanand and Brij Lal and others Ss/O Kashi Nath were owners/co-sharers of land measuring 27 kanals 3 marlas covered under different kharsa no's of estate Fatehpura Tehsil Anantnag. One of the co-sharers has executed power of attorney in favour of appellant No. 2 and the other co-sharers have executed power of attorney in favour of respondent No.2. Mutation




No. 1529 for land measuring 11 kanal 12 marlas has also been attested in the name of mother of appellants on the basis of a decree issued by Assistant Settlement Officer, Srinagar. A dispute arose between the attorney holders and matter ultimately came before District Magistrate Anantnag who vide order dated 30.10.2004 set aside mutation No. 1529 and also directed eviction of both parties from the migrant land after determining the share of each migrant as per records and after establishing whether or not the share of each migrant exceeds the share for which power of attorney has been executed.

2. Appellants caused presence before this court through their counsel while respondents appeared in person. Ld Counsel for the appellants in his arguments pleaded that the parties to the dispute have been put in possession with the consent of the owners (migrants) and as such cannot be held as un-authorized occupants and referred to clause (i) of section 2 of J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 (herein after Act of 1997). Ld Counsel also objected to the direction of eviction of the District Magistrate. Respondents on the other hand stated that they have amicably settled the issue after having arrived at a compromise with the appellants.

3. " Unauthorized occupant as defined under section 2(i) of the Act of 1997 means any person who has encroached upon or taken possession of any immovable property of a migrant without his written consent and authority of law." Although the parties admittedly are attorney holders but the alienation of migrant property requires previous permission of the Prescribed authority (Divisional Commissioner) and none of the parties as admitted by them have complied with this statutory requirement and





resorted to transfer of migrant land without authority of law. It is relevant to mention here that section 3(a) of the Act of 1997 provides that alienation of immovable property of a migrant by act of parties or a decree or order of a court or of a Revenue Officer except under such conditions as may be prescribed and with previous permission of Revenue and Relief Minister or such officer as may be authorized by him in this behalf, is forbidden. The District Magistrate therefore has rightly held the parties as unauthorized occupants.

4. The appellant No. 2 as is evident from the impugned order has managed the transfer of land measuring 11 kanal and 12 marlas in favour of his mother for which mutation No. 1529 has been attested. The said mutation is undated and shown to have been attested on the basis of a decree against the mandate of law and rightly set aside by the District Magistrate.

5. There is also a reference of the report of Naib Tehsildar in the impugned order which shows that the appellant No. 2 has un-lawfully taken over the possession of survey No. 499 and again in survey No. 500, the said appellant is said to have taken over the possession of the portion of the land which is against the entry recorded in the Revenue Records. It is also mentioned therein that the appellant No. 2 has managed a power of attorney in 2003 for 5 kanals of land under survey No. 499 from one of the share holders only when other co sharers had already executed a power of attorney for this piece of land in year 2000. The District Magistrate thus rightly has directed Tehsildar concerned to determine the share of each migrant as per records and establish whether or not the share of each migrant exceeds the share for which power of attorney has been executed. The District Magistrate by issuing such a




direction can in no way be said to have faulted and thus need not to be interfered with.

6. Thus, for the reasons mentioned herein above, the appeal being devoid of any merit is dismissed. Interim orders, if any, issued are vacated. File shall be consigned to records after due completion.

Announced

8.4.2022


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

NO. 127/FC-AP

Date. 18/4/2022

Copy to.

1. District Magistrate Anantnag
for information and n/a.
2. Tehsildar Anantnag for
info and n/a.