

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP No. 1105/2015

Reserved on: 12.05.2023

Pronounced on: 09.06.2023

Mohammad Saleem Ganie

...Appellant/Petitioner(s)

Through: Mr. Rizwan-ul-Zaman, Advocate

Vs.

State of J&K and Ors.

...Respondent(s)

Through: Mr. Lone Altaf, Advocate

Mr. Shah Ashiq, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. This petition is filed against the order dated 29.05.2015, passed by District Magistrate, Kulgam, whereby Tehsildar Devsar, was directed to proceed on spot and evict the illegal occupant and take over the possession of land measuring 02 kanals 17 marlas falling under survey no.1225, khata no.690 & khewat no.356, situated at Chowgam, TehsilDevsar, District Kulgam.
2. The brief facts leading to the filing of this case are that the petitioner has been in continuous peaceful exclusive possession of land measuring 12 kanals and 05 marlas falling under survey no.946 and 947, situated at Chowgam, Tehsil Devsar, District Kulgam, prior to the year 1971. It is averred in the petition that the rights of ex-owner, namely, Sarwanadh Pandith, with respect to the aforementioned land were extinguished under Section 4 of Agrarian Reforms Act and the

petitioner was declared as prospective owner. The said land was later on mutated in favour of petitioner under Section 12 of the Agrarian Reforms Act and the petitioner came to be in absolute possession of the said land. It is also averred in the petition that when the settlement took place in the year 2007, the petitioner was declared owner under Section 12 of Agrarian Reforms Act of the land falling under three different survey nos. The land measuring 10 kanals and 17 marlas falling under survey No.946 and 947, was jointly numbered as survey no. 672 and the land measuring 02 kanals and 07 marlas falling under survey No.1225 Khata No.699 Khata No.356, situated at Chowgam, Tehsil Devsar, District Kulgam, was found to be in exclusive and peaceful possession and cultivation of the petitioner besides the above mentioned.

3. It is also averred in the petition that the entire land measuring 13 kanals and 14 marlas has been in continuous, exclusive and peaceful possession and cultivation of the petitioner prior to the year 1971. It is also averred in the petition that recently respondent no.12, has filed a false and baseless application before District Magistrate Kulgam, wherein it is alleged that land measuring 02 kanals 17 marlas falling under survey no.1225 khata no.699 khewat no.356, situated at village Chowgam Kulgam, belongs to the father of respondent nos.6 to 9, namely, Shubnath. District Magistrate, Kulgam, has passed order impugned under J&K Migrants Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 (hereinafter referred to as "*Act of 1997*").

4. Counsel for the petitioner states that order impugned is without jurisdiction as the land in question is not a Migrant Property within the meaning of Act of 1997. He further states that no enquiry has been conducted by respondent no.5 as to whether disputed property is actually a Migrant Land nor the petitioner has been given an opportunity of being heard, which has resulted in serious prejudice and violation of the fundamental rights of the petitioner. He further states that the private respondents have served in other States of the country prior to the year 1980, therefore, they are not migrants or registered migrants, as such, the property in dispute is not a migrant property. He further states that neither the father of respondents 9 to 12 was ever in cultivation or in possession of the land measuring 02 kanals and 17 marlas falling under survey no. 1225 Khata No. 690 and Khewat No. 356, nor the said private respondents have got any right, interest or claim with respect to the said land.
5. Respondents have not filed objections. However, counsel for private respondents argued that this petition is not maintainable in view of provisions contained in Jammu and Kashmir Migrants Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997, therefore, the same is liable to be dismissed.
6. Heard learned counsel for the parties and perused the material on file.
7. The land in question, as is apparent from perusal of the file, is a migrant property as provided under the Act of 1997, and Rules and Regulations made thereunder and, therefore, has been rightly and

correctly dealt with by the District Magistrate under and in terms of the Act of 1997.

8. The Act of 1997 has been enacted to provide for preservation, protection and restraint on distress sales of immovable property of migrants. Section 2 (e) of the Act of 1997 says that “Migrant” means any person, who has migrated from Kashmir Valley or any other part of Jammu and Kashmir after 1st November, 1989 and is registered as such with the Relief Commissioner and includes a person who has not been so registered on the ground of his being in service of the Government in any moving office, or having left the Valley or any other part of the State, in pursuit of occupation or vocation or otherwise, and is possessed of immovable property at the place where he has migrated but is unable to ordinarily reside there due to the disturbed conditions.

9. Section 2(i) of the Act of 1997 says:

“Unauthorized Occupant” 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.”

10. If a person, as is coming forth from bare reading of Section 2(i), encroaches upon a migrant property or takes possession thereof without written consent of a migrant, such a person is to be taken and treated as unauthorized occupant.
11. Section 4 of the Act of 1997 is worth to be gone through, which, for ready reference, is reproduced hereunder:

“4. Custody of immovable property. - (1) Within 30 days from the commencement of this Act, the District Magistrate shall take over the possession of immovable property, belonging to

Migrants, falling within his territorial jurisdiction and shall, on the expiry of said period of 30 days, be deemed to have the custody of such immovable property.

(2) The District Magistrate shall take all such steps as may be necessary for preservation and protection of such property; Provided that possession of such property shall not be handed to one save with the express consent of the migrant in writing.”

12. Section 4, thus, envisages that District Magistrate shall take over possession of migrant property within 30 days from commencement of Act of 1997. It further goes to provide that even if possession of migrant property is not taken over by District Magistrate within 30 days from commencement of the Act of 1997, District Magistrate, after expiry of 30 days, shall be deemed to have custody of migrant property. District Magistrate is required to take all such steps as may be necessary for preservation and protection of migrant property. Even migrant property shall not be handed over to any person unless there is express consent of migrant in writing.

In that view of matter, if a person is in occupation of any migrant property without there being a written consent from migrant, such a person is to be treated as an unauthorized occupant and is to be removed therefrom and petitioner is no exception thereto. These provisions are squarely applicable to case in hand.

13. As regards Section 3 and 4 of the Act, a Division Bench of this Court in a judgment dated 17th August 2021, passed in *Letters Patent Appeal, bearing LPA No. 16/2021 titled Manzoor Ahmad Mir and another v. Union Territory of J&K and others*, has said that conjoint reading of Sections 3 and 4 of the Act of 1997 would reveal that once District Magistrate becomes *custodia legis* of any property, belonging

to migrant, no one is free to alienate the same without the previous permission of the Revenue and Relief Minister and that any alienation, if made, without such permission or in contravention of the Act, the same shall be null and void.

14. Not only this, the Division Bench has also observed in *Manzoor Ahmad Mir* (supra) that it is not necessary that a person in possession of the immovable property of migrant ought to be in illegal or unauthorized possession as neither Section 3 nor Section 4 contemplates about the nature of possession of immovable property belonging to migrants, meaning thereby that immovable properties belonging to migrants shall be deemed to be in possession of District Magistrate irrespective of the nature of possession of any person other than the migrant himself.
15. Again, if a person, unauthorizedly occupying migrant property, fails or refuses to surrender its possessions, force is to be used by competent authority as is so envisaged in Section 5 of the Act of 1997. For implementation of the Act of 1997, competent authority, as is mentioned in Section 6, can take such steps and force, which in its opinion is necessary. If there is a written complaint by a migrant, competent authority can take or cause to be taken such steps and use or cause to be used such force as may be necessary for eviction from or delivery of possession of migrant property. The competent authority can also enter upon migrant property and make survey including measurement and do any other act which may be necessary for carrying out the purposes of the Act of 1997.

16. Perusal of order impugned reveals that it has been passed with respect to land measuring 02 kanals and 17 marlas falling under Survey No.1225 Khata No.690, Khewat No.356, whereas perusal of revenue papers (Annexures A&B with writ petition) relied upon by petitioner reflect different Khewat and Khata Number, thereby casting doubt on the case projected by petitioner.
17. In the above backdrop, when order impugned is looked into from all angles, it does not warrant or call for any interference inasmuch as it has been passed by competent authority under the Act of 1997 and, therefore, impugned order does not call for any interference as petitioner has no right over the property in question.
18. In view of above, the instant petition is without any merit and is, accordingly, **dismissed**. Interim direction, if any, shall stand vacated.
19. Copy of this order be sent down.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR

09.06.2023

Manzoor

Whether approved for reporting? Yes/No