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

File No.	RCCMS Ack. No.	Date of Institution	Date of Decision
308/FC-AP	RD0050000063683	26-09-2023	30-04-2024

In the case of:

1. Farooq Ahmad Naikoo
2. Showkat Ahmad Naikoo

Sons of Late Gh. Hassan Naikoo

Residents of Babapora Tehsil and Sub-Division Zainapora District Shopian.

..... (Petitioners)

Versus

1. Additional Commissioner Kashmir Srinagar,
   C/o: Divisional Commissioner Kashmir,
   Srinagar
2. Tehsildar Zainapora, District Shopian.
3. Mst. Naseema D/o Late Ghulam Nabi Naik
   R/o Khaniyar Srinagar.

.....Respondents

In the matter of: Revision petition under section 15 of Jammu and Kashmir Land Revenue Act, Svt.1996 (1939 A.D) against order dated 17-03-2016 passed by the Additional Commissioner Kashmir.

Present: - Advocate Bilal Ahmad Malla for petitioners.
Advocate Irfan Hassan Bhat for private respondent.

O R D E R

A brief background of the case in hand is that in terms of order dated 25-11-1983of Hon'ble Revenue Minister, the landed estate left behind by the predecessor- in-interest of the parties herein, Ghulam Nabi Naikoo in the village Babapora Tehsil Zainapora District Shopian was devolved upon

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his son, Ghulam Hassan (father of petitioners herein) 14 shares, daughter, respondent 3 herein, 7 shares and Mst. Zaiba, widow, 3 shares. Subsequently, an application came to be filed on 10.02.2016 by the respondent 3 herein for implementation of the above said order of the Revenue Minister before the Additional Commissioner Kashmir who vide order dated 17.03.2016 directed the Tehsildar Zainapora and Patwari for implementation of the above order of the Revenue Minister, besides, handing over the possession of share to the applicant therein (respondent 3 herein) after deducting 4K of land, which the applicant has sold to other parties. A direction was also passed with regard to mutations attested qua the suit land that all such mutations be treated as having been set aside. This order of Additional Commissioner was called in question by the petitioners herein through a writ petition (OWP No. 783/2016) before the Hon'ble High Court of J&K, which vide order dated 02.09.2022 dismissed the writ petition for being non maintainable. This order of the Ld. Single Judge was put to challenge by the petitioners herein through LPA No. 205/2022 which came to be disposed of through order dated 16.09.2023 by permitting the appellants (petitioners herein) to avail the appropriate remedy as available under law within a period of two weeks and till then, status quo was directed to be maintained qua the property in dispute. Pursuant to this order of the Hon'ble High Court, the petitioners have filed this revision petition against order dated 17.03.2016 of the Additional Commissioner.

2. The parties after service appeared through their respective Counsels and the matter was argued. Ld. Counsel for the petitioners pleads that the order passed by the Hon'ble Revenue Minister has already been implemented, pursuant to which the respondent 3 herein has taken the share. It is said that the respondent 3 has transferred her share in favour of petitioners and others through various modes like sale deed, gift etc. It is further said that the respondent 3 had neither filed an

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appeal nor a revision petition before Additional Commissioner, an officer who can only adjudicate upon cases transferred by the Divisional Commissioner to him and has no jurisdiction to entertain the application filed by the respondent 3.A reference to compromise/agreements arrived at between the parties before the civil court have been given to show that the parties have already settled the matter. Ld. Counsel further pleads that the order impugned was passed by the court below without hearing the petitioners herein, a violation of the Principle of Natural Justice.

3. On the other hand, Ld. Counsel for the respondent 3 questioned the maintainability of revision petition and pleaded that the petitioners have only projected question of facts before this court, while as the revisional jurisdiction can only be invoked where a question of law is involved. It is said that the Additional Commissioner through order impugned has only directed for implementation of order of the Hon'ble Revenue Minister, which is within his jurisdiction. The said court has passed the order after hearing both the parties. Ld. Counsel further pleads that the order passed by the Hon'ble Revenue Minister has not been challenged till date and therefore has attained finality.

   It is further said that the respondent 3 has only transferred 4K of land in favour of other persons, the application was filed for seeking procession of remaining 16K of land inherited by the respondent 3 from her father. The claim of the petitioners that the respondent 3 has gifted remaining portion of the land in favour of the petitioners is vehemently denied.

4. Heard.

5. As mentioned herein above, the inheritance of the common predecessor of the private parties herein, Ghulam Nabi Naikoo has been mutated in favour of his son, Ghulam Hassan (father of petitioners) 14 shares,

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daughter, respondent 3 herein 7 shares and the widow, 3 shares on the basis of order dated 25.11.1983 of the Hon'ble Revenue Minister. Seeking implementation of the above said order of the Revenue Minister, the respondent 3 herein filed an application before Additional Commissioner, who through order impugned directed the Tehsildar for implementation of the order of the Revenue Minister and handing over possession to applicant (respondent 3 herein) of her share after deducting 4K, sold by her.

6. Before any other matter, it is of utmost necessity to address the issue of jurisdiction or otherwise of this court. The Counsel for respondent 3 has questioned the revisional jurisdiction of this court on the ground that there are only matters of fact that have been agitated before this court. It is to be noted that the Financial Commissioner under Section 15 of the Land Revenue Act is empowered to call for the record of any case pending before or disposed off by any Revenue Officer under his control. The powers under Section 15 of the above said Act are without any fetters but shall have to be exercised on some well recognized grounds. The exercise or failure to exercise jurisdiction, acting with material irregularity or illegality in the exercise of jurisdiction or passing of the orders or taking proceedings causing failure of justice are all matters to be read and understood in the context of revisional powers of the Financial Commissioner, though there is no express provision under Section 15 to show on what matters revisional powers shall be exercised ***(1999 KLJ 238: 1999 SLJ 146)***.The preliminary objection questioning the revisional jurisdiction of this court is thus overruled.

7. Next, the preliminary objection raised by the petitioners with regard to jurisdiction of the court below to entertain the application of the respondent 3 herein is required to be addressed. It is relevant to mention here that pursuant to Relief and Rehabilitation department Notification

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SRO-47 dated 06.03.1964, the Govt. by exercising the powers conferred by Sub-section-4 of Section-6 of J&K Land Revenue Act, has vested the Additional Commissioner Kashmir ex-officio with the powers of a Commissioner under the said Act and all other enactments enforced in respect of cases which may be transferred to him by the Commissioner from time to time.

There is nothing on record to show that the matter in hand had been referred to the Additional Commissioner by the Divisional Commissioner. Therefore, without going into other aspects of the case all the proceedings initiated in the matter by the Additional Commissioner being without jurisdiction are non-est in the eyes of law as is the order of the said authority.

8. Since the matter has landed before this court, after going through the records and also the pleadings of the parties who have been litigating since long, this court has decided to take suo moto cognizance, in its supervisory capacity, with regard to the implementation of the order of the Hon'ble Revenue Minister.

9. A cursory examination reveals that the respondent 3 herein has, through mutation no. 875 of estate Babapora, gifted her entire share (*Ta hadi Hisass*) except 4K of the land to the petitioners herein. So, before claiming any share, the respondent 3 is required to challenge the said mutation before a competent forum. There is also on record an agreement (*tasfiyanama*) dated 05.12.2013, wherein the respondent 3 herein in presence of the petitioners and some independent witnesses has acknowledged to have received the possession of 4K of land from the petitioners herein. It is further mentioned therein that 2K from the above said 4K have been transferred by the respondent 3 in favour of the petitioners in lieu of a consideration amount of Rs. 5 Lac. It is also seen

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from the records that the respondent 3 herein has sold the remaining 2K of land through a sale deed in favour of one, Shabir Ahmad S/o Ghulam Ahmad Naikoo, for which mutation no. 904 has been attested.

It is therefore not coming to fore as to what implementation is required of the orders of the Hon'ble Revenue Minister, which stands already implemented and pursuant to which the respondent 3 has either sold or gifted her share. If the respondent 3 is aggrieved of any of these transactions, she needs to approach the competent forum.

10. Thus, for the reasons mentioned herein above, the present revision petition is accepted and the order impugned, i.e. order of the court below, being non-est, is set aside.

11. All the records, of this Court as well as the sub-ordinate Courts are uploaded on RCCMS (https://rccms.jk.gov.in/) for ease of reference in any future litigation.

12. Interim orders, if any, issued by this Court are vacated.

13. File to be consigned to records after due completion.

Announced
30.04.2024

Shaleen Kabra, IAS
Financial Commissioner Revenue
J&K

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