

Serial No. 8
Reg. cause list

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

OWP No. 762/2007

Aziz Wani and Ors.

..... /petitioner(s)

Through: -
Mr. M. Ayoub Bhat, Advocate

V/s
J&K Special Tribunal Srinagar and Ors.

..... Respondent(s)

Through: -
Mr. M. S. Reshi, Advocate

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

(ORDER)

19.12.2023

1. In the instant petition, filed under Article 226 of the Constitution, the petitioners herein have prayed for the following reliefs:-

- “ i) *Certiorari, quashing the impugned order of learned Special Tribunal dated 11.09.2007 passed in Revision petition tilted Aziz Wani and Ors. Versus Gani Wani and another along with orders of appellate Court dated 14.1.1999 passed by Additional Deputy Commissioner (Commissioner Agrarian Reforms), Pulwama passed in Revision petition titled Aziz Wani and Ors. Vs. Gani and Anr., and also the order consequent thereupon pass on these orders be declared null and void.*
- ii) *Mandamus, commanding the respondents not to give effect to the above said orders impugned in this writ petition and also not to interfere into ownership and possession of the writ petitioners over the land measuring 14 Kanals and 18 Marlas bearing Survey No. 743/133 situated at village Sindhu, Shirmal Teh. Shopian.”*

2. The facts under the shade and cover of which the reliefs aforesaid have been prayed by the petitioners would reveal that the predecessor-in-interest of respondents 3 and 4 herein, had filed an application before Assistant Commissioner (Collector Agrarian Reforms), Pulwama, under Section 19 of

the J&K Agrarian Reforms Act, 1976 (for short Act of 1976), seeking protection of his possession *qua* the land measuring 04 Kanals and 17 Marlas covered under Survey No. 743/133, situated at village Sindhu, Shirmal, Tehsil Shopian, alleged to have been interfered with by respondent 2 herein, whereupon summoning the non-applicant/respondent 2 herein, an order dated 16.04.1986, came to be passed on the basis of a compromise entered into between the applicant i.e., predecessor-in-interest of the respondents 3 and 4 herein and the respondent 2 herein, in terms whereof the respondent 2 herein admitted the applicant/predecessor-in-interest of respondents 3 and 4 to be the owner in possession of land in question and entitled to have necessary entries made in the relevant revenue records thereto. The petitioner 1 being the brother of the applicant/ predecessor-in-interest of the respondents 3 and 4 herein, filed three appeals along with his another brother namely Naba Wani, wherein, in one appeal questioned the order passed by the Assistant Commissioner (Collector Agrarian Reforms), Pulwama, dated 16.04.1986 supra order dated 19.05.1986 having been passed in other collateral proceedings in other two appeals. The appellate forum upon considering the appeals, including one preferred against the order dated 16.04.1986 supra, dismissed the same on 14.01.1995 on the premise that the parties have admitted that the land measuring 14 Kanals and 13 Marlas covered under Survey No. 743/133, came to be inherited by them through their mother Mst. Zooni, which had been mutated in her name under Section 4 and Section 8 of the Act of 1976 and thereafter in the name of predecessor-in-interest of respondents 3 and 4 herein to the extent of the share he got out of the said land from his mother Mst. Zooni measuring 04 Kanals 17 Marlas and consequently became the absolute owner under the provisions of the Act of 1976.

3. The petitioner 1, herein again along with his brother Naba Wani's legal heirs as he had died in the meantime filed a revision petition before the J&K Special Tribunal (for short the Tribunal) on 19.04.1999, calling in question order dated 14.01.1999 supra almost on the similar grounds on which order dated 16.04.1986 supra, had been challenged.

4. The Tribunal in terms of order dated 11.09.2007, dismissed the revision petition, opining that there is no reason to interfere with the order under challenge dated 14.01.1999 supra.

5. The petitioners herein being aggrieved of the orders dated 14.01.1999 and 11.09.2007 passed by the appellate authority as also the revisional authority, have maintained the instant petition on the grounds urged in the petition.

6. **Objections** to the petition have been filed by the respondents 2 and 3 herein, opposing the petition on the premise that out of the total landed estate of the mother of the parties, namely Mst. Zooni, all the brothers being the petitioner 1 herein, predecessor-in-interest of petitioners 2 to 4 herein and the predecessor-in-interest of respondents 3 and 4, herein inherited land measuring 1/3rd share each, i.e., 04 Kanals and 17 Marlas, which land was upon being interfered with by the respondent 1 herein, necessitated filing of an application under Section 19 of the Act of 1976, before the Assistant Commissioner (Collector Agrarian Reforms), Pulwama, against the respondent 2 herein by the predecessor-in-interest of respondents 3 and 4 herein, which application came to be disposed of in terms of order dated 16.04.1986, on the basis of compromise arrived at between the parties after the respondent 2 herein, admitted that applicant/predecessor-in-interest of the respondent 3 and 4 to be the owner in possession of land measuring 04 Kanals and 17 Marlas with the

direction that the applicant/predecessor-in-interest of respondents 3 and 4 in the light of the admission made by the respondent 2 herein, shall be entitled to have his status as owner of the land recorded in the relevant records.

7. It has been further stated in the objections that consequent to the passing of order dated 16.04.1986, mutation under Section 8 of the Act of 1976, came to be attested in favour of applicant/predecessor-in-interest of respondents 3 and 4 herein and that both the appellate forum as well as the revisional forum correctly and rightly upheld the order dated 16.04.1986.

Heard learned counsel for the parties and perused the record.

8. At the very outset, it needs to be noted that the petitioners in the instant petition have challenged the orders based on concurrent finding of facts passed by the revenue authorities under and in terms of the provisions of the Act of 1976.

9. Having regard to the aforesaid position though the ambit and scope of interference by this Court in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution may not be warranted, yet, in order to dispense justice in the matter, the validity of the impugned orders is decided to be tested particularly owing to the fundamental ground urged by the counsel for the petitioners that the authorities/officers under the Act of 1976, passed the impugned orders without any competence and jurisdiction. However, the determination of the said ground will not detain this Court to address to this basic fundamental ground in view of the law laid down by the Full Bench of this Court in case titled as *Jagtu and Ors. Vs. Badri and Ors.*, reported in AIR 1980 J&K 1, wherein the ambit and scope of Section 19 in general and Section 19 Sub Section (3) Clause (e) being relevant herein has been deliberated and adjudicated upon, and it has been held in para 21 as follows:-

“ 21. Before a categorical answer to this question can be given, it is necessary to find out as to what kind of proceedings before a civil or a revenue court are required to be transferred and decided by the Collector.

Section 19 (3) reads:

The following applications and proceedings shall be disposed of by the Collector:

(a) Proceedings under Section 56 of the Jammu and Kashmir Tenancy Act, Samvat, 1980.

(b) Proceedings under sub-section (2) of Section 68-A of the Jammu and Kashmir Tenancy act, Samvat, 1980.

(c) Proceedings Under Section 24 of the Jammu and Kashmir Big Landed Estates Abolition Act, Samvat, 2007.

(d) Applications by an owner or an intermediary that the person who claims to be cultivating the land as a tenant, is not tenant but a trespasser.

(e) All other cases of dispute including those where the party in possession pleads adverse possession against the recorded owner/intermediary.

It is not disputed that the categories of cases envisaged from (a) to (d) are precisely those in which disputes relating to possession are involved. The words “other cases of dispute” are of wide amplitude and must cover all cases in which right to possess the land is claimed or disputed. These words must receive the ordinary meaning as having reference to all such other disputes or possession relating to land. These words can have no application to disputes of mere title and succession. The words “all other” are significant and are to be read in the background of the scheme of the Act as also sub-clauses (a) to (d). These sub-clauses also refer to questions of possession of land either claimed or disputed under different Acts which were heretofore cognizable by the Revenue courts. Therefore, where in a suit or proceedings right to possession is claimed or disputed, it is referable to the officer or the authority appointed under the Act and the civil Court is debarred from settling such a dispute. This interpretation of the expression receives support from the language used in the latter portion of clause (e) according to which “all other cases of dispute” include those cases as well where the plea of adverse possession is set up in a suit by the adverse party. This dispute which was otherwise triable by the civil court heretofore is now referable to the Collector. The word “including” force and postulates that all other disputes fall under its ambit. The expression is only enumerative and illustrative but not exhaustive. In my view as the scheme of the Act goes no suit for possession can be conceived where the dispute is not either principally collaterally, or incidentally referable to the Act of 1976 as the final adjudication is to be made by the authority consistent with the Act and the rules made thereunder. There is no warrant for the view that the “dispute” envisaged by sub-cl.(e) are those as arise under the Act. If that were the intention of the legislature then it would definitely have added those words as it has done under Section clause, it has manifested its clear intention by bringing all other cases of disputes which may arise under different Acts under the jurisdiction of the new forum created under Section 19. Section 19(3) (e) is an extension on Section 25 (a) enlarging its scope and extent.”

10. Having regard to the aforesaid position of law propounded by the Full Bench of this Court and coming back to the case in hand, indisputably the predecessor-in-interest of respondents 3 and 4 herein, while maintaining the

application under Section 19 of the Act of 1976, before Assistant Commissioner (Collector Agrarian Reforms), Pulwama, alleged interference into his possession and occupation of land measuring 04 Kanals and 17 Marlas covered under Survey No. 743/133 at the hands of respondent 2 herein, without claiming any right either based on succession, inheritance or title and the Assistant Commissioner (Collector Agrarian Reforms), Pulwama, in exercise of the powers enshrined under Section 19 of the Act of 1976, entertained the application being possessed of the power and consequently settled the application on the basis of the admission made in a compromise by the respondent 2 herein, *qua* the title and ownership of the land of the predecessor-in-interest of respondents 3 and 4 and consequently rightly disposed of the said application.

It is not in dispute that the petitioner 1 herein being the brother of predecessor-in-interest of respondents 3 and 4 as also the predecessor-in-interest of petitioners 2 to 4 herein namely, Naba Wani being another brother of predecessor-in-interest of respondents 3 and 4, herein were not party before the Assistant Commissioner (Collector Agrarian Reforms), Pulwama, in the application supra filed by the predecessor-in-interest of respondents 3 and 4 herein under Section 19 of the Act of 1976, for obvious reasons that the alleged interference into the possession and occupation *qua* the land measuring 04 Kanals and 17 Marlas was to the ex-owner of the land being respondent 2 herein.

II. It is only thereafter that the petitioner 1 along with his brother Naba Wani chose to question the order dated 16.04.1986, in the appeal before the appellate forum on 19.05.1986 and though admitted before the said forum that the predecessor-in-interest of the respondents 3 and 4 is owner of the land

measuring 04 Kanals and 17 Marlas having been inherited by him out of the total land measuring 14 Kanals and 13 Marlas as his share from his mother Mst. Zooni, whereupon the said appeal came to be dismissed.

In presence of the dismissal of the appeal on the basis of such admission made by the petitioner 1 herein, and the predecessor-in-interest of petitioners 2 to 4 herein, no further proceedings ought to have been inherited either against the order dated 16.04.1986 or against the order of the appellate forum dated 14.01.1999 supra, yet the petitioners herein questioned both the orders in the revision petition before the J&K Special Tribunal on the same lines, the petitioners have had challenged the order dated 16.04.1986 before the appellate forum though additionally on some other grounds as well.

12. Perusal of the impugned order of the Tribunal would reveal that on the basis of pleadings of the parties and the case set up therein, the Tribunal framed five questions for determination of the revision and while dealing with the validity of the order dated 16.04.1986, alleged to have been passed without jurisdiction, rightly observed and concluded that the order has been passed well within jurisdiction by the Assistant Commissioner (Collector Agrarian Reforms), Pulwama, under and in terms of provisions of Section 19 of the Act of 1976.

In presence of the aforesaid observations and findings recorded by the Tribunal authenticated and endorsed the fact that the predecessor-in-interest of respondents 3 and 4 herein namely Gani Wani was admitted to be the owner of land measuring 04 Kanals and 17 Marlas covered under Survey No. 743/133, by the ex-owner, respondent 2 herein, the Tribunal rightly rejected the revision petition.

13. In view of aforesaid concurrent findings inasmuch as in presence of law laid down by the Full Bench of this Court in the Judgment *Jagtu and Ors. Vs. Badri and Ors.*, supra, both the appellate as well as revisional forums cannot be said to have faulted while passing the orders under challenge.

14. The last contention of the counsel for the petitioners that under Section 19 of the Act of 1976, the application of predecessor-in-interest of respondents 3 and 4 herein, could though assuming to have been rightly entertained by the Assistant Commissioner (Collector Agrarian Reforms), Pulwama and order dated 16.04.1986 validly passed thereon, yet the said proceedings ought to have been dealt with in accordance with Section 20 of the Act of 1976 read with Rule 58 of the Agrarian Reforms Rules, 1977.

A bare perusal of Section 20 supra and Rule 58 supra would manifestly suggest that same relates to the special powers of the revenue officer as also the appellate and revisional authorities, envisaging therein that such revenue officers and appellate/revisional authorities shall have the powers of a civil Court in respect of the summoning and enforcing the attendance of any person and examining him on oath or on solemn affirmation; production and discovery of documents; proof of facts by affidavits and any other matter which may be prescribed and that such an officer or authority shall be deemed to be a civil Court within the meaning of Sections 480 and 482 Cr.PC and under Rule 58 supra , the revenue officer as also the appellate/revisional authorities shall have also powers in respect of the matters namely appointment of next friend and/or each guardian of a minor or a person of unsound mind in accordance with the provisions of Rules (1), (2), (3) and (4) of order

XXXII of the Code of Civil Procedure as also in respect of granting temporary injunction in accordance with the provisions of Rules (1), (3) (4) and (5) of order XXXIX of the Code of Civil Procedure, 1977.

The argument of the learned counsel for the petitioners patently is misconceived, in that the said provisions do not regulate the exercise of power by the revenue officer under and in terms of Section 19 of the Act of 1976, but merely provide for the powers which such revenue officers possess as special powers in nature to be exercised in the course of conducting of proceedings and that such powers be it under Section 20 of the Act of 1976 or Rule 58 of the Rules of 1977, were not even required or warranted to be exercised having regard to the controversy involved between the parties.

15. Viewed thus, for the aforesaid reasons, this Court is not inclined to display indulgence and exercise jurisdiction under Article 226 of the Constitution. Resultantly, the petition, fails and is **dismissed**.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
19.12.2023
"Mohammad Yasin Dar"

Whether judgment is speaking Yes/No

Whether judgment is reportable Yes/No