

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

WP (C) 1015/2022 c/w
WP (C) 878/2021

ABDUL QAYOOM BEIGH AND ANR

...Petitioners

Through: Mr. Irfan Qadri, Advocate with
Mr. Prince Hamza, Advocate

v.

UNION TERRITORY OF J AND K AND ORS.

...Respondents

Through: Mr. B.A Bashir, Sr. Advocate.
Mr. T.M. Shamsi, DSGI
Mr. Shahbaz Sikandar, Advocate.

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
22.12.2023

1. In the instant petition filed under Article 226 of the Constitution, the petitioners have questioned order dated 02.03.2022 being an extension of building permission issued by Respondent 5-Cantonment Board in favour of respondents 8 & 9, whereby the building permission granted earlier in favour of respondents 8 & 9 dated 28.07.2018 read with letter dated 15.10.2018 came to be extended for a further period of one year from the date of issuance of the extension order.

Besides seeking quashment of the extension order dated 02.03.2022 *supra* issued by respondent 5 herein in favour of respondents 8 & 9, the petitioners have also sought a direction against respondents revenue authorities to demarcate the land in issue in the instant petition and handover the possession of the claimed share out of the said land to the petitioners and that till such demarcation is undertaken, respondent be restrained from raising construction over the said land.

2. The aforesaid reliefs are being prayed by the petitioners on the premise that their predecessors in the interest of the petitioners as also of respondents 8 & 9 herein have had jointly purchased land measuring 6 kanals situated at Sonwar, Srinagar, out of which 04 Kanal under Khasra No. 803 belonged to the father of respondents 8 & 9 and 2 kanals along with shamilat land as per *pro rata* basis to the predecessor in interest of the petitioners herein and that a building permission was granted in favour of respondents 8 & 9 herein by respondent 5 herein which came to be challenged by the petitioners before this Court in OWP No. 878/2021 (clubbed with the instant petition) and that the respondents 8 & 9 did not commence construction pursuant to the conditions incorporated in the said permission till it outlived its life, resulting into institution of a suit by the respondents 8 & 9 herein before the Court of Municipal Magistrate, Srinagar, on 29.08.2021 seeking therein a decree against the respondent 5 herein for extending the building permission and that in the said suit in the application for interim relief an interim order came to be passed on 29.08.2021 restraining the defendants in the suit from causing any interference in raising construction by the plaintiffs/respondents 8 & 9 herein. The petitioners herein, aggrieved of order dated 29.08.2021 filed CM No. 136/2021 before this Court as persons aggrieved, wherein this Court passed an interim order on 17.09.2021 directing the respondent 5 herein to decide the application filed by the respondents 8 & 9 herein for extension of the building permission in accordance with law notwithstanding the pendency of the suit or any other litigation. The said

CM along with CM No. 115/2022 again filed by the petitioners herein came to be dismissed by this Court on 21.04.2022.

3. The Revenue authorities during the pendency of the suit supra demarcated the land and a report in this regard came to be furnished by Tehsildar South, Srinagar, to Deputy Commissioner, Srinagar, dated 15.03.2021, reporting therein that the respondents 8 & 9 herein are holding excess land measuring 14 marlas and 25 sqft out of total land owned and possessed by the petitioners and respondents 8 & 9 herein.
4. The petitioners herein prior to the filing of the instant petition also filed a civil Suit titled as “**Habib Ullah Beig and Anr. Vs Shahnaz Akhter and Ors**”. seeking a decree for permanent and mandatory injunction therein against the respondents 8 & 9 herein qua the land stated to be in possession of respondents 8 & 9 in excess to their entitlement, wherein an interim order came to be passed by the Court of Special Mobile Magistrate (PT&E) Srinagar, on 05.12.2022, which however, subsequently came to be vacated upon dismissal of application for interim relief on 13.02.2021. The suit is stated to be pending.
5. The respondents 8 & 9 herein also filed a Civil Suit titled as “**Shahzada Akhter and Ors. Vs. UT of J&K & ors.**” besides impleading therein, the petitioners herein as defendants, also impleaded the Commissioner Secretary (Rev) Srinagar, Tehsildar Concerned and Patwari concerned as party defendants and in the said suit the respondents 8 & 9 herein sought a decree of permanent injunction for restraining the defendants from causing any interference into the suit property being 4 kanals 19 marlas of land including 6 marlas claimed to have been purchased by

respondents 8 & 9 herein from the predecessor in interest of the petitioners herein as also qua 13 marlas land claimed to be shamilat deh having fallen to the share of the respondents 8 & 9 herein, besides having also sought a decree of declaration for declaring the respondents 8 & 9 herein as the lawful owners of the aforesaid land measuring 6 marlas and 13 marlas and in alternative for declaring them to be the owners thereof on the ground of adverse possession.

6. **Objections** to the petition have been filed by official as well as private respondents 8 and 9 except respondent 7.
7. In the objections filed by the official respondents it is being stated that the respondents 8 & 9 herein came to be granted extended building permission on 02.03.2022 after following due procedure of law and having been issued subject to the conditions imposed therein including condition no. 5 reading as: **“that you must be in lawful ownership and possession of the land in question”**
8. In the objections filed by the respondents 8 & 9 herein, it is being stated that the suit land measuring 6 marlas stands purchased by their predecessor in interest from the predecessor in interest of the petitioner against the sale consideration of Rs. 40,000/- long back prior to the issuance of the building permission, and, 13 marlas of land is shamilat deh land having vested unto the predecessor in interest of respondents 8 & 9 under and in terms of the relevant laws and is in possession of the respondents 8 & 9 for the last more than 40 years.

In the objections, the filing of the suits by the petitioners herein is being admitted so is also the filing of suit by them admitted against the

petitioners herein and the official defendants pending adjudication before the Court of 1st Additional District Judge, Srinagar.

It is being further stated in the objections that although the demarcation has been undertaken by the Revenue Authorities of the land in question and the answering respondents 8 and 9 have had been found to be in possession of excess land, the said land, in fact, is aforesaid 6 marlas and 13 marlas respectively having vested unto their predecessors in interest, and, as such, the petitioners have no right to either ask for fresh demarcation as is prayed by them in the petition or else to question the extension of building permission granted in their favour in terms of impugned extension order dated 02.03.2022.

Heard learned counsel for the parties and perused the record.

9. The core issue involved in the instant petition raised by the petitioners is a claim lodged by them qua land measuring 6 marlas as also 13 marlas of shamilat land in possession of respondents 8 and 9 claimed to be in their possession in excess to the share they are entitled to. On account of the said claim lodged by the petitioners herein, challenge is thrown to the impugned building permission extension order dated 02.03.2022 issued by respondent 5 in favour of respondents 8 & 9.
10. It is not in dispute that the claim of the petitioners qua the aforesaid land is subject matter of the Civil Suit filed by the respondents 8 & 9 herein pending before the Court of 1st Additional District Judge, Srinagar, wherein the petitioners herein are also impleaded as party defendants, thus no finding in the instant petition qua the claim of the petitioners in respect of the said land can be given by this Court or arrived at on the

pleadings of the parties in presence of the suit supra, so much so, no decision as well can be rendered by this Court *qua* the extension of permission impugned in this petition dated 02.03.2022 in view of the fact that the said building extension permission has been issued subject to the condition 5 which has been noticed and referred in the preceding paragraphs and thus in presence of the said condition no adjudication *qua* the impugned permission is warranted as the said impugned extension permission issued in favour of the respondents 8 & 9 seemingly has been issued by the official respondents under and in terms of the provisions of the Cantonment Act, 2006 consequent to the power possessed by them which is not being disputed by the petitioners.

11. Be that as it may, as has been noticed in the preceding paragraphs, the Civil Court is seized of the matter *qua* the land whereof rival claims are being lodged by the petitioners and respondents 8 & 9 herein, this Court is not inclined to exercise the discretion in the instant petition lest it may prejudice the rights and interest of the contesting parties in the suit supra.
12. Resultantly the petition fails and is accordingly ***dismissed***.
13. In view of the dismissal of the instant petition, WP(C) No. 878/2021 shall also stand dismissed. Interim directions are vacated.
14. It is made clear that the decision rendered in the instant petition shall not be construed to be an expression of any opinion *qua* the rival claims of the parties made in respect of the land measuring 6 marlas and 13 marlas being subject matter of the suit supra.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
22.12.2023
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