

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

WP(C) No.2482/2022

GHULAM MOHAMMAD RESHI & ORS. ...PETITIONER(S)

Through: Mr. Waseem Ramzan Lone, Advocate.

Vs.

UT OF J&K & OTHERS

...RESPONDENT(S)

Through: Mr. Allau-ud-din Ganai, AAG, with
Ms. Shaila, Assisting Counsel-for R1 to R4.
Ms. Zeenaz Bashir vice Mr. T. M. Shamsi, DSGI-for R5 to R7

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

(ORDER)(ORAL)

27.12.2023

1) The petitioners have sought a direction upon the respondents to release the rent of the land measuring 68 kanals 12 marlas (orchard) and 6 kanal 5 marlas (Class-IIIrd) falling under Khasra Nos.93 to 101, 132 to 141, 141/1, 142, 143, 573 and 574 situated at Village Sangritop Watlab Tehsil Sopore District Baramulla.

2) As per case of the petitioners, land measuring 74 kanals and 17 marlas falling under aforesaid Khasra numbers belonging to them has been requisitioned and acquired by the respondents since the year 1994 and the rent in respect of the same was being paid to the owners on continuous basis. It has been submitted that official handover and takeover of the said land took place in the year 2006. From 1994 till 2013, the rent was being paid by the respondents to the petitioner as per the classification of the land and as per official

handover/takeover document. It is being claimed that the rent for 68 kanals and 12 marlas was being paid under the classification “orchard” whereas rent for 6 kanals and 05 marlas was being paid under the classification “Class-IIIrd” as per applicable rates. However, since the year 2013 till date, the respondents have not disbursed the rent to the petitioners.

3) According to the petitioners, respondent No.7 has raised some dispute as regards the classification of the land from Orchard to Class-IInd and for this reason, he has withheld rent of the petitioners. It is being contended that the land in question is basically an Orchard land and when the respondents took over possession of the same, it had fruit bearing trees planted over it but the respondents have cutdown the apple trees from the said land after taking over possession of the same. It is being submitted that even in the document relating to handing over/taking over of the land, the classification of the land measuring 68 kanals and 12 marlas is shown as “orchard”.

4) It has been submitted that the Central Government has released an amount of Rs.72.00 lacs for being paid to the petitioners but respondent No.7 is not releasing the same in their favour by raising unnecessary disputes as regards the classification of the land. It has been submitted that respondent No.7 has addressed many communications to the Assistant Commissioner, Revenue, and Deputy Commissioner concerned seeking change of classification of

the land in question but they have totally declined to do so and in spite of this, the respondents are not releasing rent in favour of the petitioners. It has been further contended that on the basis of the applicable rates for orchard, the petitioners are entitled to rental compensation @Rs.16,500/ per kanal per year and @Rs.12,500/ per kanal per year in respect of the land classified as “Class-IIIrd”.

5) Respondents No.5 to 7 i.e. Union of India, General Officer Commanding Kilo Force and Assistant Defence Estates Officer, Baramulla, have filed a joint reply to the writ petition in which it has been admitted that the land in question is under the occupation of Rashtriya Rifles with effect from 01.04.1994. It has been submitted that the rent has been paid upto 31.03.2020 vide cheque No.670706 dated 25.08.2020. It is submitted that the formal handing over/taking over was carried out on 21.06.2006, whereafter initial payment of rentals amounting to Rs.10,14,359/ was released for the period 01.04.1994 to 31.03.2007 @2nd Class in respect 68 kanals and 12 marlas and @3rd class in respect of 06 kanals and 05 marlas of land. It has been submitted that a sum of Rs.1,10,626/ was released for the period 01.04.2007 to 31.03.2008 @orchard (68 kanals and 12 marlas) and @3rd class (06 kanals and 05 marlas). Thereafter payment of rentals with effect from 01.04.2008 to 31.03.2020 amounting to Rs.5,04,740/ was released @2nd class (68 kanals and 12 marlas) and @3rd class(06 kanals and 05 marlas) and Rs.50,474/ was released with effect from 01.04.2013 to 30.09.2013 @2nd class

(68 kanals and 12 marlas), @3rd class (06 kanals and 05 marlas).

Lastly, a sum of Rs.76,96,714/ was erroneously released in favour of the petitioners instead of Rs.11,23,069/ for the period 31.03.2013 to 31.03.2020 and Rs.40,658/ is the arrears with effect from 16.02.2013 to 30.09.2013. Thus, according to respondents No.5 to 7, an excess amount of Rs.65,73,645/ has been released in favour of the petitioners.

6) According to respondents No.5 to 7, the matter has been taken up with Deputy Commissioner, Baramulla, and Divisional Commissioner, Kashmir regarding excess payment made to the petitioners. It is being submitted that the orchard rate is to be paid only in respect of the land having fruit bearing trees but at the time of handing over and taking over of the land in question, there were no fruit bearing trees on the land in question. Thus, the petitioners are not entitled to rent at orchard rates. It has been further contended that the Defence Estates Officers, Srinagar, and SDO-III visited the site on 14.09.2006 and it was found that the location of the area is hill top and there is no evidence of any orchard and even in the document evidencing handing over and taking over of the land, there is no mention of trees. It has been submitted that the matter has been taken up with the Deputy Commissioner, Baramulla and Tehsildar, Sopore, as also with Horticulture Department for clarification but no response has been received so far. It has also been submitted that regular rentals are being paid to the land owners and the last rent has been paid upto 31st March, 2020.

7) The respondent Revenue Authorities have filed their reply to the writ petition in which it has been submitted that the rent from 2013 to 2020 was released to the tune of Rs.79,96,714/ as per the previous classification i.e. 68 kanals and 12 marlas as orchard and 06 kanals 05 marlas as Class-IIIrd but immediately thereafter, an amount of Rs.65,73,645/ was withdrawn by respondent No.7 in terms of his request made to Deputy Commissioner, Baramulla, vide his communication dated 26.11.2020. The remaining amount i.e. Rs.11,23,069/ has been disbursed to the land owners. It has been submitted that the classification of the land in question has not been changed. These respondents have also placed on record copies of the revenue extracts relating to the land which has been occupied by respondents No.5 to 7.

8) I have heard learned counsel for the parties and perused record of the case.

9) There is no dispute to the fact that land measuring 74 kanals and 17 marlas under aforementioned Khasra numbers situated at Village Sangritop Watlab Tehsil Sopore District Baramulla is under the occupation of Security Forces since the year 1994. It is also not in dispute that the petitioners/land owners are entitled to rental compensation/occupation charges in respect of the land in question. The dispute that has been raised by respondent No.7 is that the petitioners are not entitled to claim rental compensation for the land measuring 68 kanals 12 marlas at the rates fixed for orchard land.

According to respondent No.7, the aforesaid land measuring 68 kanals 12 marlas has been wrongly classified as orchard land and, in fact, there was no tree available on the land in question at the time it was taken over by the Security Forces. On the other hand, the petitioners claim that the land in question is orchard land and it was having fruit bearing trees at the time when it was taken over by the Security Forces. The petitioners have also placed heavy reliance upon the revenue record annexed to the writ petition as also on the revenue record produced by respondents No.1 to 4 along with their reply, which shows that land measuring 68 kanals 12 marlas has been classified as “Bagh-i-Khushki” i.e. “orchard”.

10) If we have a look at the document styled as ‘formal handing over and taken over certificate’, that is being relied upon both by the petitioners as well as by respondent No.7, it evidences the handing over of the land in question to the Security Forces. As per this document which has been executed in June, 2006, the land in question is under the occupation of Rashtriya Rifles with effect from 01.04.1994. The Schedule to the said document gives the particulars of the Khasra numbers and the measurement of the land as also the classification of the land in question. As per this Schedule, land measuring 68 kanals 12 marlas has been classified as “orchard”. Though it is recorded in the Schedule that no trees were found on the land, yet the fact that the formal handing over and taking over of the land has taken place in June, 2006 i.e. after more than 12 years of

actual taking over of the land by the Security Forces has to be taken into consideration. It is impossible that during this period of 12 years, the fruit bearing trees on the land in question would have survived, particularly in the absence of watch and ward and care which is required for fruit bearing trees. Therefore, the contention of respondent No.7 that when formal handing over and taking over of the land was done in the year 2006, no tree was found over there, cannot be taken as an evidence that the land in question was not having any fruit bearing trees.

11) As against this, the revenue record placed on record by respondents No.1 to 4 along with reply clearly shows that land measuring 68 kanals 12 marlas, that has been taken over by the Security Forces, is classified as “Bagh-i-Khushki” i.e. “orchard”. Section 31 of the Land Revenue Act attaches a presumption of correctness in favour of the entries in the Record of Rights and Annual Records. Therefore, in the absence of any material in rebuttal, the revenue entries which depict the kind of land under the occupation of the Security Forces as “orchard land”, cannot be discarded, rather the same have to be relied upon. Therefore, it can safely be stated that out of the land occupied by the Security Forces, land measuring 68 kanals 12 marlas is “orchard land”.

12) Apart from the above, the matter has been considered and deliberated upon by Additional Deputy Commissioner, Baramulla, in great detail at the instance of respondent No.7. In his note dated

09.01.2021, the Additional Deputy Commissioner, Baramulla, has made reference to a large number of documents including (i) revenue extracts which show the type of land as “Bagh-i-Khushki”, (ii) the proforma pertaining to the land which depicts 68 kanals 12 marlas of land as “orchard land” which has been duly authenticated by the Indenting Department through its ADO, (iii) the letter of acceptance duly signed by the then ADO, Baramulla, showing that the land mentioned in the revenue documents is correct, whereafter these revenue have been duly authenticated, (iv) the requisition order issued by the Deputy Commissioner, Baramulla, on 19.01.2006 effecting the requisition of land in possession of Army authorities at Watlab from 01.04.1994 to the extent of 74 kanals 17 marlas, which also shows the kind of land as Bagh-i-Khushki, (v) the administrative sanction for requisition issued by GOC Kilo Force which shows land measuring 68 kanals 12 marlas as “orchard”, (vi) the report of the Horticulture Department dated 23.11.1995 indicating that at the time of occupation in 1994, the land was Bagh-i-Khushki and finally the apportionment statement prepared by Tehsildar, Sopore, showing land measuring 68 kanals 12 marlas as “orchard”.

13) In the face of all these documents, there is not manner of doubt in holding that out of the land occupied by the Security Forces, land measuring 68 kanals 12 marlas belonging to the land owners falls under the category of “Bagh-i-Khushki” i.e. “orchard” land.

Therefore, the respondents are bound to pay rent to the land owners in respect of the aforesaid portion of land at the rates specified for orchard land. The action of respondent No.7 in denying the release of rent in favour of the petitioners at the rate specified for orchard land is absolutely illegal and irrational and the same cannot be justified under any circumstances whatsoever.

14) For the foregoing reasons, the writ petition is allowed and the respondents are directed to release the arrears of rent in favour of the land owners by calculating the same at the rates specified for orchard land in respect of land measuring 68 kanals 12 marlas and in respect of the balance land, at the rate specified for Class-IIIrd land. The respondents shall further continue to pay the rent to the land owners as aforesaid till such time the land in question is in their occupation. The entire exercise shall be completed by the respondents within a period of thirty days from the date a certified copy of this order is served by the petitioners upon respondent No.7, failing which the arrears of rent shall carry interest @6% per annum from the date of filing of this writ petition till its realization.

(SANJAY DHAR)
JUDGE

Srinagar
27.12.2023
“Bhat Altaf, PS”

Whether the order is reportable: Yes/No