

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

ATJAMMU
THROUGH VC
LPA No. 138/2024

UT of JK Th. Principal Secretary & Ors. ...Petitioner(s)/Appellant(s)

Through: Mr. Raman Sharma, AAG

Vs.

Shweta Bansal & Ors. ...Respondent(s)

Through: Mr. K.L. Pandita, Advocate

CORAM:
HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE (through VC)
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

ORDER
03.02.2025

Per Atul Sreedharan-J (Oral):

1. The present appeal has been filed by the appellants, who are aggrieved by the order dated 11.10.2023. The appeal has been filed belatedly after a delay of about 110 days, however, for the reasons stated therein, the application bearing CM No. 3900/2024 is allowed and the delay is condoned and a cost of Rs. 3000/- is to be paid to the respondent herein. This appeal has been considered on merits.
2. The respondents herein had approached the learned Single Judge by way of OWP No. 1523/2013. The said writ petition was disposed of after ten years on 11.10.2023. The prayer in the writ petition was for compensation or return of the land of the respondent herein which according to the respondent was under the possession of the Prisons Department since May 1998. In the event, the land is not acquired and the same in returned, there was a prayer that rent as per the

market rate prevalent in the area should be paid to the respondent herein.

3. Before the learned Single Judge, opposing arguments of both the sides were heard and in paragraph 5 of the said judgment, this Court has referred to the objections, which were filed by the appellants herein before the learned Single Judge, which discloses that the demarcation was conducted in the year 2013-14, and the ownership of the land was recorded in the name of one Ganesh Charan Singh and others.
4. It further held that the Tehsildar Jammu, North, alongwith the field staff visited the spot and had conducted the demarcation in the presence of the representatives of the Prisons Department and the Advocate of the petitioner and it was found that land measuring 13 kanals and 14 marlas including land measuring 04 kanals of Shoba Bansal D/o Nagar Mal in Khasra No. 701 is under the possession of the Prisons Department and that the Advocate of the respondent herein produced a copy of the registered sale deed and a copy of mutation No. 2495 attested in favour of Shweta Bansal D/o Nagar Lal, the respondent in this appeal and Khasra Nos. 703 (new), 1038/1, 1039, 1041, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1062, 1063, 1064 and 1065, land measuring 109 Kanals and 19 Marlas is recorded as State land under the occupation of Central Jail, Jammu, and thus, it became clear from the said demarcation that land measuring 13 kanals and 14 marlas including 4 kanals of the respondent herein had been occupied by the Prisons Department by erecting poles and boundary wall and that the land measuring 03

Kanals 16 Marlas bearing Khasra No. 536 (03 Kanals 10 Marlas) and Khasra No. 537 (06 Marlas) were also found to be occupied by the Prisons Department.

5. Learned counsel for the appellants herein in all fairness has disclosed that the learned Single Judge hearing the writ petition had considered the first demarcation report and come to the conclusion that the land of the respondent herein was under the occupation of the appellants. The main crux of the arguments put forth by the learned counsel for the appellants is that the said land is not in the possession of the Prisons Department and that the Prisons Department would be called upon to pay compensation for a land not even held by them and that the second report which is of page 49 (Annexure V dated 04.11.2023) to the appeal, clearly shows that the said land is not in the possession of the Prisons Department and that the same should be considered.
6. Learned counsel for the respondent on the other hand have drawn the attention of this Court to the paragraph 13 of the impugned order, where the learned Sr. AAG, who was arguing the case of the appellants before the learned Writ Court (respondents therein) had put forth prayer for fresh demarcation of the land in question, which was declined by the learned Single Judge on the grounds that allowing such an exercise at such a belated stage would be “unfair, unreasonable and unwarranted”. The reason for the learned Single Judge to hold thus, is probably on account of the fact that the writ petition had been pending before this Court for ten years having been filed in the year 2013. Therefore, the impugned order makes it

absolutely clear that it declined the request for a fresh demarcation to be carried out.

7. As regards the decline of permission by the learned Single Judge in paragraph 13, learned counsel for the appellants herein submit that what was not stated before the learned Single Judge was that the process of demarcation had already commenced but not concluded and that the report of the demarcation was prepared by the appellants herein on 30.10.2023 after the order passed by the learned Single declining permission to carry out demarcation was passed earlier on 11.10.2023, by which the writ petition was disposed of.
8. When the permission was declined by the learned Single Judge while disposing of the writ petition, the subsequent preparation of the second demarcation report on 30.10.2023 was absolutely unwarranted. The said exercise technically is contempt of the order passed by the learned Single Judge on 11.10.2023. However, whether the same would constitute a contempt is not to be considered by this Court at this juncture.
9. Thus, having heard the learned counsels for the parties, this Court concludes that the present appeal deserves to be dismissed as the appellants herein had ten years during the time when the case was pending before the learned Single Judge and if it thought it has necessary to measure the entire demarcation afresh, it could have done so when the matter was pending before the learned Single Judge and could have placed the report before the learned Single Judge when the writ petition was still pending before it. However, having not done so and passing the second report subsequently on

30.10.2023 is merely a process to delay the relief granted by the learned Single Judge to the respondent herein.

10. Therefore, the appeal sans merit and is accordingly **dismissed**.

(RAJESH SEKHRI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR:
03.02.2025
ARIF

