



सत्यमेव जयते

In the Court of Additional Commissioner, Jammu
(With the powers of Divisional Commissioner)
(Rail Head Complex, Jammu)
(0191-2478991, 2478999, Fax-2478997, e-mail: divcomjammu@gmail.com)

File No
LRA/000000055/2021

Date of Institution
13.11.2021

Date of Decision
13.07.2023

Romesh Pandit, Age – 57 years S/o Late Sh. Roop Chand, R/o Village Ramkot, Tehsil Ramkot, District Kathua

....Appellant

Versus

1. Union Territory of Jammu and Kashmir through Additional Deputy Commissioner, Billawar
2. Shiv Kumar S/o Late Sh. Mohan Lal R/o Village Ramkot, Tehsil Ramkot, District Kathua

....Respondents

In the matter of :- An appeal against the order dated 05.10.2021 passed by the Respondent No. 1 in sheer and arbitrary and mechanical manner without application of mind and without having any legal competence;

Prayer for setting aside the same.

With further prayer to direct the Respondent No. 2 to not interfere into the peaceful possession of the appellant over subject land, details whereof given in the main body of the appeal.

ORDER

The present appeal has been filed against the order dated 05.10.2021 passed by Additional Deputy Commissioner, Billawar for setting aside the same and directing the Respondent No. 2 not to interfere into the peaceful possession of the appellant over subject land. The main submissions made by the appellant are as under:-

1. That the appellant is co-owner / co-sharer in land falling under Khasra No. 783, 785 and 786 total measuring 03 kanals 06 marlas situated at Village Ramkot, Tehsil Ramkot, District Kathua. The father of the appellant was in possession of the subject land and after his death, the subject land was developed by the appellant and other co-owners.
2. That the respondent No. 2 having no concern, right or title was making several attempts to trespass and grab the subject land.

3. That the respondent No. 1 himself observed that the respondent No. 2 has miserably failed to produce any revenue record in support of his application.
4. That the respondent No. 1 had gone beyond the relief sought by the respondent No. 2 and asked the Tehsildar Ramkot to enquire into the vague allegations of the encroachment of shamlat land by the appellant. Undoubtedly, the respondent No. 1 in the interest of administration could have passed such directions but only in such circumstances where an appeal is made before him and where the applicant has prima-facie satisfied the respondent No. 1 in light of the revenue record to pass such order.
5. That the impugned order dated 05.10.2021 passed by respondent No. 1 is unsustainable and deserves to be set aside as such.

Despite issuance of summons and publication made in the newspapers, the respondent No. 2 has not caused appearance in the court and as such the respondent has been set ex-parte. Ld. Counsel for the appellant requested that the case may be decided after taking into consideration the memorandum of the appeal filed by him. He further stated that he has the apprehension that in the garb of the order passed by the court below, Tehsildar Ramkot may start proceedings against him without determining his share in the shamlat land.

I have gone through the record placed on the file as well as the record file of the court below. It has been observed that the court below has passed order on the basis of the affidavit filed by the appellant. Nowhere in the order it has been mentioned whether partition of the shamlat land has been made as per the provisions contained in the Chapter 10 of the Land Revenue Act 1996. This court does not find any merit in the appeal with regard to the order for removal of the encroachment from gair mumkin rasta, if any, strictly in terms of law. Further, Tehsildar concerned shall take appropriate necessary action in respect of shamlat land as per the procedure prescribed in chapter 10 of Land Revenue Act 1996 and no encroachment on shamlat land be allowed. Copy of the order shall go to Additional Deputy Commissioner, Billawar, District Kathua along with record file for reference and record. One copy of the order shall also go to Tehsildar Ramkot, District Kathua for necessary action. Status quo order, if any, issued by this court shall stand vacated and the case file be consigned to records after due completion.

Sd/-.

(Pawan Kumar Sharma) KAS
Additional Commissioner, Jammu
[with the powers of Divisional Commissioner]

Announced
13.07.2023

HC website

[Signature]
Reader to
Additional Commissioner
Jammu