



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
78/Revision 2006-07

Date of Institution
23.03.2006

Date of Decision
31/03/2022

1. Mohd. Fazal S/o Jumma R/o Dodasan Bala Tehsil Thanamandi District Rajouri
.....Petitioner
- Versus
1. Mohd. Shafi S/o Ahmad Din R/o Dodasan Bala Tehsil Thanamandi District
Rajouri.
2. Deputy Commissioner, Rajouri
.....Respondents

In the matter of :-

Revision Petition against the order passed by the Deputy Commissioner Rajouri dated 06.02.2006 on file No. AS/50 whereby the appeal filed by the petitioner whereby the appeal filed by the petitioner against the mutation No. 556 dated 15.02.1997 in respect of Survey No. 1275 min., 1297 min, and 1301 situated at Village Dodason Bala Tehsil Thanamandi District Rajouri has been dismissed.

Prayer for setting aside the same.

ORDER

The present revision petition came up for hearing on 31.03.2022. None present from either side. Perusal of the case file reveals that the petitioner as well as the private respondent are not appearing in the matter since 03.02.2020 continuously from which it is inferred that the petitioner has lost interest in the case. From the examination of the record placed on the file, it has been observed that the present revision petition has been filed against the order passed by the Deputy Commissioner Rajouri dated 06.02.2006 in File No. AS/50 whereby the appeal filed by the petitioner against the mutation No. 556 dated 15.02.1997 in respect of Survey No. 1275 min., 1297 min, and 1301 situated at Village Dodason Bala Tehsil Thanamandi District Rajouri was dismissed. The main submissions made in the petition are as follows:

1. That the respondent is a landlord, having more than 100 kanal of agricultural land in his possession, thus is not entitled to conferment of the benefit under LB 6/C of 1958.

g/c website.

[Signature]
Reader to
Additional Commissioner
Jammu

2. That the land comprising khasra No. 1275 min is a forest land, used for grazing purposes by the petitioner, thus cannot be mutated under LB-6/C of 1958.
3. That the land comprising khasra No. 1275 min, 1297 min and 1301 continues to be in possession of the appellant, the land comprising khasra No. 1275 min is used for grazing purposes by the appellant, the respondent forcibly occupied the same and was evicted in pursuance of the order passed by the Deputy Commissioner, Rajouri with respect to khasra No. 1275, the respondent was evicted on the basis of a warrant of eviction issued by the Tehsildar, Thanna Mandi under No. 437/OQ dated 26.2.1993. In the order it has been clearly held that the land though owned by State but is in possession of the Forest Department, a forest land cannot be allotted under LB-6/C of 1958, thus the order impugned is liable to be set aside.
4. That during the course of arguments this fact was brought to the notice of the Deputy Commissioner and even copy of the warrant was also shown to the Deputy Commissioner but he declined to take note of the order passed on file No. 27 decided on 21.8.1990. The order impugned is contrary to the order earlier passed with respect to khasra No. 1275 min. Thus the order impugned suffers from material illegalities and irregularities as such be set aside.
5. That the observation of the Deputy Commissioner that the petitioner was present at the time of attestation of mutation is incorrect and the petitioners signatures have been forged by somebody as the petitioner was not present at the time of attestation of mutation.
6. That the Mutating Officer has shown the presence of Ghulam Hassan and Haji Mohd. Akbar at the time of attestation of mutation but none of them have signed the mutation. In case a person present during the attestation of mutation refuses to sign a mutation then it is obligatory on the part of the Mutating Officer to make a note in the mutation that a person has declined to sign the mutation. No such note has been made in the impugned Mutation alleged to have been attested in favour of the respondent. Thus the Mutating Officer has not followed the procedure laid down in Standing Order 23A for attesting a mutation. The mutation is illegal and is liable to be set aside.
7. That the Appellate Authority too has not examined as to whether the forest land can be allotted under LB-6/C of 1958 before attesting impugned mutation. The Mutating Officer has to ascertain the title of the land in ownership and possession of the person claiming the benefit of LB-6/C of 1958.
8. That the observation of the Appellate Authority that each day's delay has to be explained by the party claiming condonation of delay. The petitioner having

moved the appellate court stating therein that the mutation has been attested behind the back of the petitioner.

I have examined through the record placed on the case file. From the perusal of the Order passed by Deputy Commissioner Rajouri on File No. AS/50 dated 06.02.2006 it has been observed that the court below has dismissed the appeal with the following observations:

“.....Moreover, the delay of each day should be explained by the petitioner for getting the benefit of sec 5 of the limitation Act while invoking that the parties seeking condonation of delay as to why he did not make the application in time. He must explain the delay of each day. Here in this case I find a sheer negligence on the part of the appellant and their counsel as well. Thus the appeal is hopelessly time barred which deserves to be dismissed.

“On the foregoing reasons the appeal of the appellant against the order passed by the Tehsildar Thanna Mandi on mutation No. 556 dated 15-02-1997 in respect of survey No. 1275 Min, 1297 Min and 1301 situated at village Dodason Bala Tehsil Thanna Mandi is dismissed and order under appeal need not to be disturbed. Copy judgment forwarded to the Tehsildar Thanna Mandi for information and necessary action. The file is consigned to records after due completion.”

ARA appeared on behalf of official respondents and put up brief arguments and stated that the mutation No. 556 dated 15.02.1997 pertains to the land belonging to State / Forest department, which is bad in eyes of law and may be set aside.

From the examination of revenue record including Misal Haqiyat 1961-62 a copy of the mutation no. 556 attested under Govt. Order No. LB-6/C, a copy of the Jamabandi 1989-90 of Village Dodasan Bala placed on the case file reveals that the mutation challenged in appeal had been attested in respect of State Land in the ownership column and in some Khasra numbers the possession of the illegal occupants have been entered under the forest department in the possession column.

The Revenue and Rehabilitation Department Order No. LB-6/C of 1958 dated 05.06.1958 mentioned that the provisions of the said order shall not apply to the land as is recorded or used as **Pathway, Grazing ground, Graveyard, Cremation ground, camping ground, Kuhl (Irrigation chanel) or Forest, demarcated or otherwise including Berun line.**

In view of what has been discussed above, it is clear that interest of the State / Forest Department is involved in the present revision petition as well as in the

appeal filed before the Court below. It will not be appropriate to dismiss the present revision petition in default for non-prosecution by the petitioner. The court below has also erred in dismissing the appeal merely citing that the appeal is time barred since such cases need to be decided on merits. In view of above, the order passed by Deputy Commissioner Rajouri dated 06.02.2006 is set aside and the case is remanded to the Deputy Commissioner, Rajouri for denovo enquiry and passing appropriate order after appreciating the merits of the case strictly as per law governing the subject. This is however subject to the confirmation of the Ld. Financial Commissioner (Revenue) J&K Jammu. The case file as well as record file of the court below alongwith the order of this court is submitted to Ld. Financial Commissioner (Revenue) J&K for confirmation. The Petitioners and Respondents shall appear before the court of Ld. Financial Commissioner (Revenue) J&K Jammu on 13.04.2022.

Announced
31/03/2022

Sd/-
Pawan Kumar Sharma, JKAS
Additional Commissioner, Jammu
[with the powers of Divisional Commissioner