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Government of Jammu and Kashmir,
In the court of Additional Commissioner, Jammu
[With the powers of Divisional Commissioner]

File No: 45/Appeal & 01/Appeal (2019-20)

Date of Decision: 30.10.21

Chaman Lal S/o Sh. Dharam Chand
R/o Devipur, Tehsil Jourian District, Jammu V/s

1. Deputy Commissioner, Jammu
2. Niab Tehsildar Devipur Jammu.

(Appellant)

(Respondents)

And

Chaman Lal S/o Sh. Dharam Chand
R/o Devipur, Tehsil Jourian District, Jammu.

Versus Naib Tehsildar Devipur, Jammu.

..... (Appellant)

..... (Respondent)

IN THE MATTER OF: Appeal against the order dated 19.01.2019 passed by respondent No. 02 in pursuance to order No. DCJ/Comm/501/TJRS/133/106/2017 dated 23.02.2018 passed by respondent No. 1 whereby the appellant has been directed to demolish the shop constructed by the appellant over land measuring 12 Marlas falling under Khasra No. 8 situated at village Devipur District Jammu. Prayer for setting aside the same.
And;

Appeal against the order dated 19.01.2019 & order No. NTD/2019-20/16 dated 23.04.2019 passed by respondent whereby the appellant has been directed to demolish the shop constructed by the appellant over land measuring 12 Marlas falling under Khasra No. 8 situated at village Devipur District Jammu. Prayer for setting aside the same.

ORDER

Appeals after having being clubbed together, have been heard and are being taken up together for decision, as Subject matter of both these Appeals are essentially and materially same having being preferred by the same party.

These appeals have been transferred to this Court by the Ld. Divisional Commissioner Jammu vide orders dated 05.02.2019 and 25.04.2019.

The Appellant is aggrieved of the orders dated 23.02.2018, 19.01.2019 & 23.04.2019 passed by the respondents whereby the appellant has been directed to demolish the shop constructed by the appellant over land measuring 12 marlas falling under Khasra No. 8 situated at village Devipur Tehsil Jourian District Jammu. The grounds raised in the Appeals are succinctly as under;

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- a) That appellant is owner in possession of the land falling under various Khasra Numbers situated at village Devipur including Khasra No. 40 being village landholder and has raised construction in shape of shop, which is running for the last more than 30 years, shop is enclosed by boundary wall.
- b) That the Deputy Commissioner by virtue of order dated 23.02.2018 directed the Naib Tehsildar for removal of the illegal encroachment from land falling under Khasra No. 8 and 9 by initiating proceedings under Section 133 of Land Revenue Act. The Naib Tehsildar (respondent) issued a notice dated 19.01.2019 whereby the appellant was directed to demolish the construction raised over the land falling under Khasra No. 8 in shape of shop without affording the appellant an opportunity of being heard.
- c) That the order impugned is not maintainable as has been passed at the back of the appellant without providing any opportunity of being heard. Besides, is against law and facts, as such, is liable to be set aside.
- d) That the order impugned has been passed without complying with the requirement of section-133 of Land Revenue Act. As per mandate of section-133 of Land Revenue Act any person is in occupation of land which is to be vacated, and a construction has been raised over the land, the revenue officer before directing the occupant must issue one month's notice whereby directing the occupant of the land to offer an alternative land equivalent to the land under occupation, in exchange. The respondents without issuing the notice for exchange of land, have passed the order whereby directing the appellant to demolish the construction.
- e) That the appellant aggrieved of the order dated 19.01.2019 and 23.02.2018, challenged the same before the learned Divisional Commissioner, Jammu which was by way of an appeal which is transferred to Additional Commissioner Jammu with powers of Divisional Commissioner Jammu which is pending disposal.
- f) That during the pendency of the appeal which is pending before the court of Additional Commissioner, Jammu whereby the order of the Deputy Commissioner and Naib-Tehsildar stand challenged respondent has issued fresh notice dated 23 .04.2019 directing the appellant to remove the construction and in case of failure to remove the construction the same shall be dismantled by the respondent.

In order to consider the Appeals in hand, it would be advantageous to extract hereunder the relevant provision of law contained in section 133 of the J&k Land Revenue Act:

133. Prevention of encroachment on common land:-

(1) – (1) When land which has been reserved for the common purposes of the co-sharers therein has been encroached on by any co-sharer, a Revenue officer not below the rank of an Assistant Collector of the first class or the officer in-charge of the Settlement or an Assistant Collector of the first class subordinate to him may, on the application of any other co-sharer, eject the encroaching co-sharer from the land, and, by order duly proclaimed, forbid repetition of the encroachment.

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(2) (a) when land which has been reserved for grazing ground or any other public purpose or of which the cultivation has been prohibited by a Revenue Officer duly empowered in that behalf has been encroached upon or brought under cultivation;

(b).....

(c)..... a Revenue Officer (empowered in this behalf by the Government) of his own motion or on the application of any person interested, may eject the person so encroaching upon or cultivating such land and take possession of such land without paying any compensation for crops or improvements, and may also, by order duly proclaimed, forbid repetition of the encroachment: Provided that where on any land mentioned in clause (a) any structure stands raised, the person encroaching upon the land shall be ejected there from forthwith leaving an area of 10 marlas under and adjacent to the structure in respect of which the owner thereof shall be given a notice in writing affording him an opportunity to

-(i) dismantle the structure standing on such land and to remove the material from the site; or

(ii) offer suitable equivalent area in exchange from out of his proprietary land or from out of the land which he may acquire or purchase for the purpose, in the same village; within a period of one month from the date of issue of the notice failing which the Revenue officer aforementioned may eject the owner or occupier of the structure and may dismantle or cause to be dismantled the structure and remove or cause to be removed the material from the site and in doing so the Revenue Officer may use such force, as may be necessary.

The person so ejected shall be liable under the order of a Revenue officer not below the rank of a Collector or officer in charge of the Settlement or an Assistant Collector of the first class subordinate to him to a fine not less than Rs.500 per day till the contravention on the land mentioned in section 133 is removed in addition to revenue payable on the land for the period of possession reckoned at village revenue rate."

[(d) the Collector shall be competent to accept or reject the offer made under sub-clause (ii) of the proviso to clause (c) by an order in writing.

The ARA in his para-wise reply has submitted as under:-

1. that the appellant in gross violation of law has encroached upon the state land bearing Khasra No. 8 and has illegally raised the structure on it. The action initiated by the Revenue officers is in accordance with law. The petitioner is misrepresenting the facts and seeking the refuge of law for his illegal acts of encroachment of state land which is property of govt.
2. That the ample opportunity of being heard was granted to the appellant. The appellant has encroached upon the State land and is dragging the respondents on different forums by filing litigations just to escape from the recourse of law.
3. That the appeal is not maintainable and may kindly be dismissed with cost.

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Further, perusal of the file reveals that ample opportunity of being heard has been given to the appellant, and even Do-Parta notices have been issued to him.

The Appellant despite of knowing the fact that the land is state land, has chosen to raise structure on it, in gross violation of law. It is responsibility of the Revenue Officers to see to it that the state land which is property of Government is not permitted to be utilized in contravention to law.

The appellant is neither having any right over the state land nor he can seek protection as contemplated under section-133(2) as it would tantamount to granting premium over illegality committed.

Even otherwise no record has been placed before this court by appellant regarding the factum of having applied for exchange of land. Even if, for an example, it is presumed that the person has applied for exchange of land, but he cannot in the garb of same encroach upon the state land and raise construction on it without waiting for the orders on his exchange application. Besides, it is always for the competent authorities to assess an offer, as envisaged in the above quoted Section 133(2) of the Land Revenue Act and take appropriate decision thereon, in accordance with the attending circumstances.

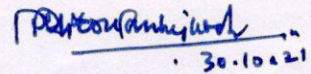
An illegal act would not create any right to the Appellant over the piece of state land, nor can this Court come to his rescue to protect his illegal act under the garb of the provisions of Section 133(2) of J&K Land Revenue Act. The Appeals cannot be allowed to invoke the provisions of Section 133 (2) of the Act to perpetuate illegality.

Similarly prayer made by Girdhari Lal and others in the Application seeking impleadment as party respondent is also declined as their impleadment is not necessary for effective and complete adjudication of the issues involved.

I have gone through the record available on the file and memo of the appeals, heard both the parties and finally come to the conclusion that the Appeals being devoid of merits fail and are, therefore, dismissed along with applications. Interim order, if any, issued by this court shall stand vacated. The Revenue Officers to proceed in the matter under law. File be consigned to records after due completion.

Announced

30.10.2021


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Additional Commissioner,
(With the powers of Divisional Commissioner)
Jammu

No. 801/Addl.Com/P/2021-22/92

Dated: 30.10.2021