

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on : 25.08.2022

Pronounced on: 30.08.2022

WP (C) No.1822/2022

CM No: 4508/2022,Caveat No.1230/2022

Muzaffar Ahmad Dar

....Petitioner(s)

Through: Mr. Mohammad Mubashir Gattoo,Adv.

Vs.

UT Of J&K and Others

Through Mr.Tariq M.Shah,Adv. For Caveator(s).

CORAM:

HON'BLE MR.JUSTICE SANJEEV KUMAR, JUDGE

JUDGEMENT

01. Being dissatisfied and feeling aggrieved by the order dated 20.06.2022 passed by Financial Commissioner, Revenue, Jammu & Kashmir, Srinagar in appeal titled Muzaffar Ahmad Dar Vs Arjun Nath Koul and others, the petitioner has filed the instant petition.
02. The impugned order is assailed by the petitioner only to the extent of upholding the order passed by respondent no. 4, Additional Deputy Commissioner, Shopian, with respect to Mutation No.1815 dated 04.01.2003, consequential orders passed by respondent no.3 dated 11.08.2022 and respondent no.5 Tehsildar Shopian, dated 16.08.2022 are also subject matter of challenge in this petition.
03. Before advertng to the grounds of challenge urged by the petitioner to assail the impugned orders, it is necessary to notice a few facts relevant to the disposal of the controversy raised in this petition. Respondent no. 7 and 8 (hereinafter for short "private respondents") through their power of attorney applied to the Divisional Commissioner, Kashmir for permission to alienate their land measuring 42 kanals

and 16 marlas situated at Estate of Ram Nagri u/s 3 of J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales)Act, 1997 (hereinafter Act of 1997). The Divisional Commissioner, however, granted permission only for 28 kanals of land which include Shamilat Land measuring 06 kanal and 17marla falling under Khasra No. 2903/1056min. Accordingly, sale deed was registered in the name of petitioner for the aforesaid quantum of land followed by attestation of Mutation bearing No.1813. Petitioner after occupying the land purchased by him from the private respondents also managed the attestation of mutation bearing No.1815 dated 04.01.2003 on the basis of Sehat Indraj Girdaawari attested in his favour for partible Shamilat land measuring 12 kanal and 13 marla . This mutation was called in question by the attorney holder of the private respondents in an appeal before the Additional Deputy Commissioner, Shopian, who vide his order dated 12.09.2018 set aside the mutation and directed for restoration of previous position in the revenue records. Subsequently, the attorney holder of private respondents moved an application before the District Magistrate, Shopian, purportedly under Section 4 and 5 of the Act of 1997 for seeking eviction of the petitioner from the said land. The District Magistrate vide his order dated 06.10.2018 directed the Tehsildar Shopian to evict the petitioner from the land in dispute. The petitioner feeling aggrieved by the order dated 12.09.2018 passed by Deputy Commissioner, Shopian, as also the order dated 06.10.2018 passed by District Magistrate, Shopian for eviction of the petitioner, filed a revision and an appeal before the Financial commissioner (Revenue).The Revision and Appeal have been disposed of by the Financial Commissioner in terms of the order impugned in this petition.

04.The Revision petition filed by the petitioner against the order of Additional Deputy Commissioner, Shopian, dated 12.09.2018 has been dismissed while the appeal filed against that order of District Magistrate dated 06.10.2018 has been allowed and impugned order of District Magistrate set aside. The matter has been remanded to the

District Magistrate, Shopian to pass fresh orders. The impugned orders particularly the order passed in the Revision is challenged by the petitioner on the ground that the Financial Commissioner while upholding the order of Additional Deputy Commissioner, Shopian, on mutation attested by Tehsildar, Shopian, should have remanded the matter for de-novo enquiry.

05. It is also contended that the Revision petition filed by the private respondents should not have been entertained and considered without first deciding the question of Limitation. The Financial Commissioner decided the appeal as well as merits of the Revision Petition by a composite order which course is not permissible in law.

06. Having heard learned counsel for the parties and perused the material on record, I am of the view that this writ petition is devoid of any merit and therefore, deserves to be dismissed. Indisputably the petitioner did not have any right on the subject property belonging to the private respondents as also on their share in the Shamilat Deh. It is true that the land measuring 28 kanal including Shamilat land measuring 6 kanal and 17 marla falling in Khasra No.2903/1056 min was purchased by the petitioner from the private respondents by way of registered sale deed which was executed after seeking prior permission of the Divisional Commission under the Act of 1997. The petitioner, therefore, cannot claim even an inch of the land beyond what has been purchased by him from the private respondents. As noticed above, the petitioner has not only purchased the proprietary land of the private respondents but has also purchased their share in the Shamilat land measuring 6 kanal and 17 marla.

07. It appears that after purchasing the afore-mentioned land, the petitioner encroached upon 12 kanal and 13 marla of the adjacent Shamilat Deh. With a view to regularize his possession over the aforesaid land, the petitioner in connivance with the revenue authorities, managed the attestation of mutation on the basis of 'Sehat Indraj Girdawari', which has rightly been set aside by the Additional Deputy Commissioner. The petitioner was not in picture prior to the purchase of land measuring 28 kanals from the private respondents and therefore, could not have

claimed the possession over the adjoining land in question. The attestation of Mutation through 'Sehat Indraj Girdawari,' was thus totally illegal and uncalled for and a mode devised to confer wrongful benefit on the writ petitioner. The acceptance of Revision petition by the Financial commissioner against the order of ADC Shopian dated 12.09.2018 in respect of the mutation dated 04.01.2003 is perfectly legal and does not call for any interference. So far as order passed by the Financial Commissioner, in appeal against the order of District Magistrate, Shopian, dated 06.10.2018, is concerned, this court is at loss to understand as to how the petitioner could file appeal when the Financial Commissioner has allowed the appeal and set aside the order dated 06.10.2018. It is true that the Financial Commissioner has remanded the matter to the District Magistrate Shopian, to conduct a denovo enquiry in the matter and pass the appropriate orders in the matter for protection and preservation of Shamilat land belonging to the Village Community. The petitioner shall have an opportunity to project his case before the District Magistrate, when he takes up the proceedings on remand granted by the Financial Commissioner in terms of the order impugned.

08. In view of the aforesaid analysis, the writ petition filed by the petitioner is totally devoid of any merit and, as a result, is dismissed alongwith connected CM (s).

(SANJEEV KUMAR)
JUDGE

SRINAGAR
30.08.2022
Nuzhat, Jt. Reg/Secy.

Whether the order is reportable? Yes/No

Whether the order is speaking? yes/No

