

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2720/2024

1. Showkat Ahmjad Bhat
S/O. Ghulam Nabi Bhat
R/O. Athwajan, Srinagar. **...Appellant(s)/Petitioner(s)**
2. Shahnawaz Ahmad Reshi
S/O. Abdul Qayoom Reshi,
R/O. Bagander Lasjan

Through: Mr. Danish Majid Dar, Adv.

Vs

1. Union Territory of JK through
Commissioner/Secretary
Revenue Department, Civil
Secretariat Srinagar **...Respondent(s)**
2. Deputy
Pulwama. Commissioner,
3. Tehsildar
Shahoor, Litter, Pulwama.
4. Naib Tehsildar
Shahoor, Litter, Pulwama.

Through: Mr. Jahangeer Ahmad Dar, Adv.
Mr. A.Haqani, Senior Advocate with
Ms. Muneeba, Advocate for Caveator(s).

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

ORDER
26.11.2024

Oral:

Caveat stands discharged.

1. Heard learned counsel for the Petitioners at length.
2. The petitioner through the medium of instant petition has called in question the impugned notice dated 9th November, 2024 issued by the respondent no. 3 on the ground that the same is arbitrary, illegal and violative of principles of natural justice and the statutory provisions of the Land Revenue Act, SVT.

1996 [“the Act”]. Besides, the petitioner has sought a Writ in the nature of Mandamus directing the respondent no. 2 to expeditiously consider and decide the representation dated 20th November, 2024 submitted by the petitioners requesting for exchange of alleged encroached land with their proprietary land in accordance with the provisions of Section 133 (2) (c) of the Act with a further direction to the respondent no. 2 to take a reasoned decision thereon within a stipulated period of time.

3. The instant petition was instituted before this Court on 22nd November, 2024, on which date, the Court after hearing learned counsel for the petitioners, was pleased to direct for maintaining status quo on spot existing on that day till next date of hearing. In addition, Mr. Jahangir Ahmad Dar, learned GA, appearing for the respondents was directed to file reply or to have instructions in the matter.
4. Today, when the instant petition was taken up for consideration, it has been brought to the notice of this Court by the learned counsel for the respondents that the claim of the petitioners with regard to exchange of their proprietary land against the kacharai land rests on the provisions contained in Section 133 (2) (c) of the Land Revenue Act which was existing prior to its amendment vide S.O.No. 3808 (E) dated 26th October, 2020. As per the said provision, before removing encroachment on a kahcharai land, the occupier has to be given a notice in writing affording him an opportunity, *inter alia*, to offer an equivalent suitable area in exchange from out of his

proprietary land. As per the said provision, the Collector was the competent Authority to accept or reject the offer made for exchange of land and the aforesaid statutory provision on which reliance has been placed by the petitioner has since been amended.

5. Mr. Jahingeer Ahmad Dar, learned counsel appearing for the respondents submits that the issue raised in the instant petition has already been dealt with by a Coordinate Bench of this Court in case titled *Mehraj ud Din Malik Vs. UT of J&K and Ors.* reported in 2022 LiveLaw (JKL) 245 decided on 25th November, 2022.
6. The reliance placed by the learned counsel for the petitioner on Sub-section (2) (c) of Section 133 of the aforesaid Act, on the basis of which, the petitioners have filed the instant petition and have projected their claim regarding offer of proprietary land in exchange of kahcharai land, has been substituted by an entirely new provision, which reads as under:- Section 133 (1) for Sub Section (2) , substitute:-

“(2) Prevention of encroachments on or cultivation of common land, or land reserved for public purposes or of which cultivation has been prohibited or is objectionable, or, by person, not entitled to, bring it under cultivation.

(a). Subject to any law, agreement custom, usage or any decree or order of any Court or other authority, for the time being in force, every person shall exercise the right of user in

respect of any road, street, lane, path, water channel, water course and water source and other common land defined as such in any law or declared as such by the Government or the Board;

(b) The right of user permitted by clause (a) shall not be deemed to include or otherwise confer, create or assign any right of encroachment, whether by means of construction, including fencing, walling or putting any barrier or by breaking up of land, diversion or otherwise.”

7. From a bare perusal of the aforesaid amended provision, there is no power vested in any Revenue Authority to offer suitable equivalent area in exchange from out of his proprietary land or from the land which he may acquire or purchase for the purpose. Thus, this Court is of the considered view that in absence of any explicit power to the Revenue Officer to accept the offer of such exchange in lieu of proprietary land and thus, this Court is precluded from issuing any such direction
8. At this stage, learned counsel for the petitioners has drawn the attention of this Court to the impugned notice, which, according to him, is not a notice of show cause and instead, a direction has been issued to the petitioner-Stone Crusher to remove such encroachment within three days of issuance of the said notice and restore the land to its original position, failing which, necessary action under law shall be initiated against him.

9. With the view to fortify his submission, Mr. Danish Majid Dar, learned counsel appearing for the petitioners has drawn the attention of this Court to Section 133-C (1) of the Act. For facility of reference, the same is reproduced as under:-

“133- C If any person contravenes the provisions of section 133-A or section 133-B, the Collector or any other officer not below the rank an Assistant Collector of the first class, as he may authorize, may, by notice in writing served in the manner hereinafter provided, direct such person to show cause within the time specified in the notice as to why he should not remove the contravention and restore the land or water surface or water field or floating field, as the case may be, to his original condition by a particular date and if such person fails to show cause to the satisfaction of the Collector or such officer, within that time,, the Collector or such officer, may, after informing the person of his decision remove or cause to be removed the contravention and in doing so may use such force as may be necessary. ”

10. From a bare perusal of the aforesaid statutory provision, it is amply clear that any person if contravenes the provisions of Section 133-A or Section 133-B, the Collector or any other officer not below the rank of Assistant Collector of the first Class, as he may authorize, may, by notice in writing served in the manner provided, direct such person to show cause within the time specified in the notice as to why he should not remove the contravention and restore the land or water surface or water field or floating field, as the case may be to its original condition by a particular date and if such person fails to show

cause to the satisfaction of the Collector or such officer within that time, the Collector or such officer may, after informing the person of his decision remove or cause to be removed the contravention and in doing so, may use such force as may be necessary.

11. Thus from a bare reading of aforementioned statutory provisions, as per the learned counsel for the petitioner, a show cause notice was required to be issued to the petitioner. However, the notice, which is impugned in the present petition, falls within realm of final notice and not show cause notice as required under law whereby, direction has been issued to remove such encroachments and restore the land to its original position.

12. This Court in the peculiar fact and circumstances is of the considered view that the petitioner cannot seek protection contemplated under the aforesaid provision of law as it would tantamount to give premium to the petitioner to legalize his illegal action in encroaching the State land and would serve no fruitful purpose even if, show cause notice was issued to him as the result in either case would be same. The “*doctrine of useless formality*” is clearly applicable in the instant case.

13. Since, the representation filed by the petitioners in this regard on 20th November, 2024, has not been accorded due consideration till date by the respondents and in view of the aforesaid observation, this Court deems it proper to direct the

respondent no. 2 to decide the same within a period of one week from the date a copy of this Order is served upon him in the light of the amended provisions referred supra which is in vogue. It is further directed that till the decision is taken by the respondent no. 2 on the said representation, the notice, which is impugned in the instant petition, shall not be given effect to. However, the respondents are at liberty to initiate appropriate action against the petitioner in the light of the amended provision by following due process of law after the disposal and outcome of the said representation.

14. Accordingly, this petition along all connected CM(s) is disposed of in the aforesaid terms.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:

26.11.2024

"Siamim Dar"

Whether the Order is reportable? Yes/No
Whether the Order is Speaking? Yes/No