

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

Reserved on: 07.11.2024

Pronounced on: 26.11.2024

OWP No. 1448/2017

IA No. 1/2017, 1/2018

c/w

OWP No. 2083/2018

IA No. 1/2018

**CM No. 6933/2019, 4021/2020,
4022/2020**

CCP(S) No. 288/2020

- 1. Chajju Ram**Appellant(s)/Petitioner(s)
Age 71 years
S/O Tastru Ram, R/O Village
Chak Bhagwana, Tehsil Jourian,
District Jammu.

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Ankesh Chandel, Advocate.

vs

- 1. State of Jammu and Kashmir** Respondent(s)
Th. Commissioner/Secretary Revenue
Department, Civil Secretariat,
Srinagar.
- 2. Divisional Commissioner, Jammu**
- 3. Deputy Commissioner, Jammu**
- 4. Sub Divisional Magistrate,
Akhnoor, District Jammu.**
- 5. Tehsildar, Jourian, District Jammu.**
- 6. Sumeet Sharma**
S/O Bishan Dass, R/O Village Maira
Tehsil Jourian, District Jammu.
Proprietor M/s Krishna Brick Kiln,
Chak Bhagwana Jourian, Tehsil
Jourian, District Jammu.

Through: Ms. Monika Kohli, Sr. AAG with
Ms. Priyanka Bhat, Advocate for R- 1 to 5
Mr. Y. E. Tak, Advocate for R-6

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

OWP No. 1448/2017

1. Through the medium of this petition, the petitioner has impugned the order dated 26.07.2017 passed by the respondent No. 2, whereby the appeal filed by the respondent No. 6 against the order dated 20.04.2017 passed by the respondent No. 3, has been allowed resulting into setting aside of the order dated 20.04.2017 and also for quashing the brick kiln license issued in favour of the respondent No. 6.
2. The petitioner has sought the aforesaid reliefs on the ground that one Sanjay Kumar applied to the competent authority for issuance of license for establishing a brick kiln in the name and style of M/s Krishna Brick Kiln and accordingly, a license was issued in his favour for establishing and running the brick kiln over the land measuring 4 Kanals comprising Survey No. 326 min situated at Village Chak Bhagwana, Jourian. Later, the said Sanjay Kumar sold the brick kiln along with the land to the respondent No. 6 and accordingly his name was entered in the license issued by the licensing authority. It is stated that in fact the aforesaid brick kiln in fact has been established on the land comprising survey No. 421 and not on the land comprising in Survey No. 326 min. The petitioner claims to have submitted various complaints to the various authorities in respect of establishment and running of brick kiln over the land different than the one mentioned in the license thereby endangering the land adjacent to the said brick kiln, but there was no response. The petitioner approached the revenue authorities, and in the demarcation report it is clearly mentioned that the brick kiln has been established by the respondent No. 6 in survey no. 421 instead of 326 min, for which

permission was granted and as per the record, survey No. 326 measuring 4 Kanal 6 Marlas was Shamlat Deh land under possession of the petitioner and others which was recorded as Gair Mumkin Bhatta. The petitioner, Raju, Desraj, Rashpal Chand and father of the respondent No. 6 stand entered in the record of Khasra Girdawari. It has also come in the report that the respondent No. 6 has purchased the land measuring 20 Kanals comprising survey No. 947/421 and as per the sale deed, the land is Gair Mumkin Khad. Being aggrieved of the inaction on part of the official respondents to take action against the respondent No. 6, the petitioner had filed a writ petition bearing OWP No. 304/2016, wherein after taking note of the compliance report submitted by the Deputy Commissioner, Jammu, the petition was disposed of vide order dated 05.10.2016 by directing the respondent No. 2 therein to conduct fresh enquiry in the matter by associating the petitioner as well as the respondent Nos. 6 and 7 therein. The respondent No. 3 in compliance to the order dated 05.10.2016 issued by this Court, directed the respondent No. 4 i.e. SDM, Akhnoor to conduct enquiry. The respondent No. 4 in turn got the inquiry conducted through Tehsildar, Jourian i.e. the respondent No. 5. Enquiry report was submitted by the respondent No. 5 to the respondent No. 4, who in turn submitted the same to the respondent No. 3 and the respondent No. 3 vide its report dated 22.03.2017 stated that the license was issued to M/s Krishna Brick Kiln in the year 2003 by then Tehsildar for establishing a brick kiln over the land comprising survey No. 326 situated at village Chak Bhagwana and later a sale deed was executed on 11.01.2005 between the Sanjay Kumar through attorney Sumeet

Sharma and Bishan Dass for land measuring 4 Kanals comprising survey no. 326 min situated at village Chak Bhagwana. In the sale deed, the land was stated to be in the possession of brick kiln, namely, M/s Krishna Brick Kiln. During the demarcation, it was found that the brick kiln was not established in survey No. 326 min but in survey No. 421. The respondent No. 3 on the basis of the report, vide order dated 20.04.2017 directed the respondent No. 4 to seal the premises of M/s Krishna Brick Kiln and submit compliance report. The respondent No. 6 being aggrieved of the order dated 20.04.2017 filed an appeal before the Divisional Commissioner, Jammu i.e. the respondent No. 2 and the respondent No. 2 vide order impugned in this petition set aside the order passed by the respondent No. 3.

3. The petitioner has impugned the order dated 26.07.2017 passed by the respondent No. 2 on the following grounds:

- i. That once it was established beyond doubt that the brick kiln had been established by the respondent No. 6 in survey No. 421 instead of survey No. 326 min, in violation of Section 10 read with Section 21 of the J&K Brick Kiln (Regulation) Act, 2010, then the respondent No. 2 ought to have revoked the brick kiln license of the respondent no. 6.
- ii. That the respondent No. 2 has wrongly and erroneously assumed the appellate jurisdiction, as the order dated 20.04.2017 was passed by the respondent No. 3 in pursuance to the directions issued by this Court and the respondent No. 3 has not passed an order either under the J&K Brick Kiln

(Regulation) Act, 2010 or any other statutory provision of any legislation but as per the command and direction of this Court.

- iii.** That the respondent No. 2 while passing the order impugned has failed to appreciate that the respondent No. 3 had ordered the sealing of the brick kiln after the full-fledged inquiry held into the matter by the Tehsildar, Jourian, wherein the respondent No. 6 also participated, and revenue records were properly scrutinized, and spot was also inspected.
- iv.** That the respondent No. 2 vide order impugned has given a premium to the respondent No. 6 for establishing and running a brick kiln over a land for which no permission or license has been granted in his favour.
- v.** That by virtue of order impugned, the petitioner who is lawful and absolute owner of the land has been denied/deprived of his land and his land has been allowed to be used by the respondent No. 6, who as a matter of fact is not the owner of the land over which brick kiln has been established and being run by the respondent No. 6, which has been admitted by the respondent No. 6 before the respondent No. 3 and the respondent No. 2.
- 4.** The respondent Nos. 1 to 5 have filed the response thereby narrating the factual aspects of the case and have stated that the respondent No. 2 was well within its appellate jurisdiction to hear the appeal against the order dated 20.04.2017 passed by the respondent No. 3.
- 5.** The respondent No. 6 has filed the response stating therein that the petitioner had executed a sale deed on 14.11.2003 alongwith his three

brothers in favour of one Sanjay Kumar in respect of the land measuring 4 Kanal comprising survey No. 326 min situated at village Chak Bhagwana and the said Sanjay Kumar executed a power of attorney in favour of respondent No. 6 on 28.04.2004. The general power of attorney specifically mentions that Sanjay Kumar had already installed a brick kiln in the name of M/s Krishna Brick Kiln in the said land. On the basis of general power of attorney, the respondent No. 6 executed a sale deed on 11.01.2005 in favour of his father Sh. Bishan Dass regarding the land along with brick kiln namely M/s Krishna Brick Kiln. Revenue record shows that the brick kiln was existing in survey No. 326 min and the respondent No. 6 for the first time came to know with regard to the actual existence of brick kiln on the land comprising survey No. 421 min only, when the demarcation was done in terms of directions dated 05.10.2016 issued by this Court. It is further stated that fortunately enough the respondent No. 6 had purchased 20 Kanal of land situated at Village Chak Bhagwana, Tehsil Akhnoor comprising survey No. 421 on 28.04.2010 from one Kharyati Lal, as this land was adjacent to the land comprising survey No. 326 min as was believed by the respondent No. 6, his father as well as revenue authorities that the brick kiln was existing on the said land. It is stand of the respondent No. 6 that the brick kiln stood established and started functioning from the year 2003 and for the first time, complaint was raised by the petitioner only by filing the writ petition bearing OWP No. 304/2016 and before that no complaint was ever made with regard to existence of brick kiln in the wrong survey No. or that the same was causing nuisance in the area. It is further averred that the

petitioner has admitted that the brick kiln was installed by one Sanjay Kumar in whose favour, the competent authority had issued the license, who in turn after its installation sold the land to the father of the respondent No. 6. The mistake, if any, has been committed by the Revenue Authorities while recording the existence of brick kiln in survey No. 326 min instead of 421 min and the same cannot be attributed to the respondent No. 6 or his father by any stretch of imagination. The respondent No. 6 has completed all the formalities required under the rules for the establishment/functioning of brick kiln and even the mining plan of the brick kiln of the respondent No. 6 stands approved vide order dated 04.08.2017 by the Director, Geology and Mining. It is also stated that enquiry was conducted by the SDM Akhnoor, who submitted the report to the Deputy Commissioner, Jammu and a perusal of the same shows that the same is in favour of the respondent No. 6 and in no manner whatsoever, the respondent No. 6 has been implicated. However, acting on the said inquiry report, then ADDC, Jammu directed the sealing of the Brick Kiln of the respondent No. 6 vide order dated 20.04.2017, which was impugned by the respondent No. 6 through the medium of an appeal and was subsequently set aside vide order dated 26.07.2017 by the respondent No.2. The respondent No. 6 has denied that the Divisional Commissioner, Jammu has wrongly assumed the appellate jurisdiction but the same has been conferred upon him in terms of Section 5 of the J&K Brick Kiln (Regulation) Act, 2010 by the Government vide SRO No. 94 dated 23.03.2011. It is further stated that local people of the area along

with Sarpanch of Panchayat Chak Bhagwana have issued a No Objection Certificate in favour of the respondent No.6.

6. Mr. Sunil Sethi, learned senior counsel for the petitioner has argued that the brick kiln has been established in utter disregard and violation regulation 3(4) of the J&K Brick Kiln (Regulation) Act, 2010 and rules made therein. He has further argued that the respondent No. 2 has exercised jurisdiction which was never vested in him and further that he could not have directed the appellant therein to approach the competent authorities for necessary corrections in the revenue record and the license.
7. Mr. Y. E. Tak, learned counsel for the respondent No. 6 has argued that the respondent No. 6 and his father believed in bonafide that the brick kiln was established by Sanjay Kumar on the land measuring 4 Kanal comprising survey No. 326 situated at Village Chak Bhagwana, Akhnoor and that is why in the sale deed reference to brick kiln was also made along with the land. He has vehemently argued that this land was sold by the petitioner and his brothers to Sanjay Kumar only and when Sanjay Kumar started operating the brick kiln in the year 2003, no objection was raised by the petitioner till filing of the writ petition bearing OWP No. 304/2016 in the year 2016. He has further argued that the petitioner has concealed the material facts from this Court with regard to filing of a suit whereby the petitioner has challenged the sale deed dated 28.04.2010 executed in favour of the respondent No. 6, before the court of learned City Judge, Jammu.
8. Heard learned counsel for the parties and perused the record.
9. Following facts emerge from the pleadings of the parties:

- a. That the petitioner alongwith his other brothers sold land measuring 4 Kanal comprising survey No. 326 min situated at village Chak Bhagwana, Tehsil Akhnoor to Sanjay Kumar S/O Parkash Chand.
- b. Sanjay Kumar established the brick kiln over the land sold by the petitioner alongwith his brothers to Sanjay Kumar. The license in respect of the brick kiln was issued in the year 2003 and the same was renewed from time to time. Sanjay Kumar had sold the land measuring 4 Kanal alongwith the brick kiln to the father of the respondent No. 6 vide sale deed dated 11.01.2005.
- c. During demarcation conducted pursuant to the directions dated 05.10.2016 issued by this Court, it was found that the brick kiln was established not on the land comprising survey No. 326 min, but on the land comprising survey No. 421. In the inquiry report dated 22.03.2017 submitted by the respondent No. 4 to the respondent No. 3, it was stated that the land comprising survey No. 421 is owned by Sumeet Sharma i.e. respondent No. 6 and he is the owner of M/s Krishna Brick Kiln..
- d. The respondent No. 6 had purchased the land measuring 20 Kanal comprising survey No. 947/421 situated at village Chak Bhagwana, Tehsil Akhnoor from Kharyati Lal. Subsequently, the rectification dated 03.11.2016 was also executed between the respondent No. 6 and Kharyati Lal in respect of sale deed dated 28.04.2010.

e. Director, Geology and Mining Department has issued the approval for mining plan in favour of the respondent No. 6 vide order dated 04.08.2017.

- 10.** Thus, it is evident that the brick kiln was established in the year 2003-04 by Sanjay Kumar, believing it to be on the land comprising Survey No. 326 min situated at village Chak Bhagwana, Tehsil Akhnoor but from the demarcation report it was found that it was established on the land comprising survey No. 421 min situated at village Chak Bhagwana, Tehsil Akhnoor i.e. the land which was owned by the respondent No. 6.
- 11.** The contention of Mr. Sunil Sethi, learned senior counsel for the petitioner is that there is violation of Section 4 of J&K Brick Kiln (Regulation) Act, 2010, as no brick kiln could be established on any land which is agricultural land or which is fit for cultivation of any agricultural produce or has not been declared as Banjar Karim in the revenue records but this contention has never been raised in the writ petition. Be that as it may, it needs to be noted that land comprising survey No. 421 on which the brick kiln has been found to be established has been recorded as 'Gair Mumkin Khad' as is evident from the sale deed dated 28.04.2010. It cannot be said that there is violation of Section 4 of the J&K Brick Kiln (Regulation) Act, 2010, as the purpose of Section 4 of the J&K Brick Kiln (Regulation) Act, 2010 is only to ensure that no agricultural land or any land which is capable for cultivation of agricultural produce is utilized for establishment of a brick kiln.
- 12.** It is further evident that the petitioner has already assailed the sale deed dated 28.04.2010 executed in favour of the respondent No. 6 by Kharyati

Lal in respect of the land measuring 20 Kanal comprising Khasra No. 947/421 situated at village Chak Bhagwana, Tehsil Akhnoor and the suit is sub-judice before the learned City Judge, Jammu and the said suit was filed on 12.08.2017 and this writ petition was filed on 05.09.2017, therefore, this Court does not want to comment upon the validity of the sale deed, particularly when the matter between the contesting parties is already sub-judice before the court of learned City Judge, Jammu.

- 13.** It was next contended by Mr. Sunil Sethi, learned senior counsel for the petitioner that the respondent No. 2 has assumed the jurisdiction which was not vested in it. It is the stand of the respondent Nos. 1 to 5 that the respondent No. 2 has acted as an appellate authority in terms of J&K Brick Kiln (Regulation) Act, 2010 and, as such, this Court does not find any substance in the submission made by Mr. Sunil Sethi, particularly in view of Section 20 of the Act (Supra). There is also no force in the submission made by learned senior counsel for the petitioner that the respondent No. 2 could not have directed the respondent No. 6 while deciding the appeal to approach the authority concerned for making necessary corrections in the revenue record and license accordingly. A perusal of the record reveals that the respondent No. 2 had left the respondent No. 6 free to approach the competent authority to make necessary corrections in the revenue record and license. The license has been rectified as on date.
- 14.** It appears that the writ jurisdiction of this Court is being used by the petitioner to settle the property dispute with regard to the sale deed already impugned by the petitioner before the civil court, as such, this Court does

not find any reason to show indulgence. This court says so because the petitioner in ground (g) of the writ petition has specifically raised the plea that by virtue of the order impugned, the petitioner who is the lawful and absolute owner of the land has been denied/deprived of his land and his land has been allowed to be illegally and unlawfully used by the respondent No.6, who in fact is not the owner of the land over which the brick kiln has been established by the respondent No.6.

15. In view of what has been considered, discussed and analysed hereinabove, the present petition is found to be misconceived and the same is accordingly **dismissed alongwith the connected applications.**

OWP No. 2083/2018

16. Fate of this petition is dependent on the outcome of OWP No. 1448/2017. In view of dismissal of the petition bearing OWP No. 1448/2017, **the instant petition along with the connected applications, is dismissed.**

CCP(S) No. 288/2020

17. In view of the dismissal of the main petition, **the contempt proceedings are closed, and the contempt petition is accordingly disposed of.**

(RAJNESH OSWAL)
JUDGE

Jammu
26.11.2024
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.