HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP(C) 1466/2021 CM(4977/2021) CM(6542/2021 c/w OWP 329/2004

Abdul Majeed Wani

... Petitioner/Appellant(s)

Through: Mr. Rizwan ul Zaman Bhat, Advocate

V/s

UT of J&K and others

Through: Mr. G. N. Shaheen, Advocate for private respondents

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

ORDER 04-08-2022

- 1. The dispute pertains to land measuring 4 kanals and 7 marlas falling in survey nos. 92-min, 93-min and 47-min situate at Qasba Bhagat, Anantnag, (hereinafter referred to as subject land).
- 2. The subject land was originally owned by one Leela Vati and was under cultivating possession of Ramzan Lone in Kharief 1971.
 Leela Vati had filed a resumption form for the resumption of part of the subject property for her personal cultivation. According to mutations attested under sections 4 & 8 of J&K Agrarian
 Reforms Act, 1976 ['the Act'] the subject land came to be vested

in the predecessor in interest of petitioners and land measuring 2 kanals and 4 marlas was given to the ex. Owner i.e. Leela Vati by way of resumption in terms of mutation no. 4559.

- 3. The ex. owner Leela Vati, who was owner in possession of land measuring 2 kanals and 4 marlas left the Valley somewhere in the year 1990 in the wake of the disturbed law and order condition then prevailing in the Valley, and was registered as a migrant. She entered into a sale agreement with the respondent no. 6 and also executed a power of attorney in his favour.
- 4. Ultimately with the permission of Divisional Commissioner, Kashmir, the competent authority under the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 ['the Act of 1997'], the land measuring 2 kanals and 4 marlas which was vested in the ex. owner Leela Vati under section 7 of J&K Agrarian Reforms Act 1976 was formally sold to respondent no. 6 by executing a registered sale deed.
- 5. Out of the total land of 2 kanals and 3 marlas possessed by the petitioners, 1 kanal and 6 marlas were sold by them in favour of one Abdul Majeed Wani who has taken possession of the land in

- terms of decree passed by the civil court. This is how the petitioners herein were left with total land measuring 17 marlas out of the subject land.
- 6. It appears that there was dispute with regard to actual demarcation of the subject property. On the allegation that the petitioners herein had encroached upon 8 marlas of the land purchased by respondent no. 6, an application was filed before the District Magistrate, Anantnag.
- 7. Vide order dated 26.5.2000, the District Magistrate on the basis of a report submitted by the Tehsildar directed the petitioners herein to vacate 8 marlas of land for Leela Vati, which had been subsequently purchased by Abdul Majeed Wani. It further transpires that before the order passed by District Magistrate dated 26.5.2000 could be given effect to, the petitioners herein filed an application before the District Magistrate Anantnag, seeking a declaration that the subject property was not a migrant property and, therefore, no proceedings under the Act of 1997 could be initiated.
- 8. This application of the petitioners was accepted by the District Magistrate, Anantnag, vide order dated 13.6.2002. Feeling

aggrieved, the respondent no. 6 filed an application before the Financial Commissioner, Revenue, on 23.7.2002. The appeal was allowed and vide order dated 1.6.2004 passed by the Financial Commissioner, the impugned order passed by District Magistrate Anantnag, on 13.6.2000 was quashed. It is this order the petitioners have called in question in this petition.

- 9. There is another petition i.e. WP (C) 1466/2021 filed by Abdul Majeed Wani challenging the impugned order passed by Financial Commissioner on 1.6.2004 on the ground that out of the subject land, the petitioner, Abdul Majeed Wani, too had purchased land measuring 1 kanal and 6 marlas and, therefore, had vital interest in the subject land and was aggrieved by the impugned order.
- 10. Having heard learned counsel for the parties and perused the material on record, I am of the view that this petition in the given limited facts and circumstances of the case needs to be decided by providing as under:
 - i) That the impugned order dated 1.6.2004 as also order passed by District Magistrate Anantnag dated 26.5.2000 are quashed.

ii)

- The District Magistrate Anantnag, is directed to constitute a officers of revenue headed by Assistant team Commissioner, Revenue to demarcate the entire subject land and ensure that each of the three parties i.e. the petitioners in OWP 329/2004, petitioner Abdul Majeed Wani in WP (C) 1466/2021, and respondent no. 6 in OWP 329/2004, are put into respective shares as per following: Petitioners in OWP 329/2004 - 17 marlas; petitioner Abdul Majeed Wani in WP (C) 1466/2021 - 1 kanal and 6 marla and respondent no. 6 Ghulam Hyder Zargar, - 2 kanal and 4 marlas.
- iii) While making demarcation the team shall, in the first instance, ascertain whether the entire subject land is available and if the same has been transferred, acquired or taken possession of by any third party, the team shall find it as to from whose possession it has been taken so as to ultimately give effect to the division of shares as stated above.
- iv) On completion of the exercise of demarcation, the parties shall be put in possession of the respective shares. The entire exercise as directed shall be completed within two months from the date copy of this order is served upon the District Magistrate, Anantnag.

- v) Till the entire exercise is undertaken and completed and the parties are put into respective shares, there shall be *status quo* with regard to subject property.
- vi) All proceedings including the partition suit titled as Ghulam Hyder Zargar vs. Abdul Majid Wani, file no. 217/M filed by respondent no. 6 and pending before Sub Judge/Chief Judicial Magistrate, Anantnag shall terminate with the passing of this order.
- 11. It is so ordered.

12.Disposed of.

Srinagar 04-08-2022 N Ahmad (SANJEEV KUMAR) JUDGE