

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) No.1424/2021

c/w

WP(C) No.1479/2021

WP(C) No.1481/2021

WP(C) No.1705/2021

WP(C) No.1781/2021

Reserved on: 25.07.2024

Pronounced on:13.08.2024

WP(C) No.1424/2021

1. Mst. Hamida Banoo, Aged 74 years
2. Mian Abdul Qayoom, Aged 71 years
3. Mian Rafiq Ahmad, Aged 66 years
4. Mian Mohammad Yousuf, Aged 63 years,
Daughter and Sons of Late Mian Abdul Rahim
R/o Lane No.2 Bulbul Bagh, Barzullah Srinagar

.....Petitioner(s)

Through: - Mr. G.A.Lone, Advocate with
Mr. Mian Tufail, Advocate

Vs.

1. Union Territory of J&K, through
Commissioner/Secretary to Govt.
Revenue Department,
Civil Secretariat, Srinagar/Jammu
2. Financial Commissioner (Rev),
J&K, Srinagar.
3. Divisional Commissioner,
Kashmir, Srinagar
4. Deputy Commissioner,
Srinagar
5. Additional Deputy Commissioner,
Srinagar.
6. Tehsildar, South, Srinagar.
7. Raghu Nath Ji Temple, Estate Barzulla, Srinagar
Through Mahant Hari Om Das
8. Senior Superintendent of Police, Srinagar.

...Respondent(s)

Through: - Mr. D.C.Raina, Advocate General with
Mr. Mubeen Wani, Dy. AG
Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Advocate
Mr. Syed Musaib, Dy. AG

WP(C) No.1479/2021

Manzoor Ahmad Bhat, age 64 years
S/o Late Abdul Khaliq Bhat
R/o Old Barzulla, Srinagar.
And thirteen others

.....Petitioner(s)

Through: - Mr. Nisar Ahmad, Advocate

Vs.

1. Government of Jammu & Kashmir through
Commissioner/Secretary, Revenue Department,
Civil Secretariat, Jammu/ Srinagar
2. Financial Commissioner (Rev),
J&K, Srinagar.
3. Divisional Commissioner,
Kashmir, Srinagar
4. Deputy Commissioner, Srinagar
5. Additional Deputy Commissioner,
Srinagar.
6. Tehsildar, South, Srinagar.
7. Raghu Nath Ji Temple, Estate Barzulla, Srinagar
Through Mahant Hari Om Das
8. Senior Superintendent of Police, Srinagar.

...Respondent(s)

Through: - Mr. D.C.Raina, Advocate General with
Mr. Mubeen Wani, Dy. AG
Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Advocate
Mr. Syed Musaib, Dy. AG

WP(C) No.1481/2021

1. Mst. Zaina, Age 75 years
2. Abdul Ahad, Age 72 years
1 & 2 Daughter and Son of Late Mohammad Dar
3. Abdul Samad Wagay (alias Chopan), Age 69 years
All residents of Old Barzulla, Srinagar.

.....Petitioner(s)
Through: - Mr. Nisar Ahmad, Advocate

Vs.

1. Government of Jammu & Kashmir through
Commissioner/Secretary, Revenue Department,
Civil Secretariat, Jammu/ Srinagar
2. Financial Commissioner (Rev),
J&K, Srinagar.
3. Divisional Commissioner,
Kashmir, Srinagar
4. Deputy Commissioner, Srinagar
5. Additional Deputy Commissioner,
Srinagar.
6. Tehsildar, South, Srinagar.
7. Raghu Nath Ji Temple, Estate Barzulla, Srinagar
Through Mahant Hari Om Das
8. Senior Superintendent of Police, Srinagar.

...Respondent(s)

Through: - Mr. D.C.Raina, Advocate General with
Mr. Mubeen Wani, Dy. AG
Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Advocate
Mr. Syed Musaib, Dy. AG

WP(C) No.1705/2021

1. Mushtaq Ahmad Rafique, aged 68 years
2. Manzoor Ahmad Rafique, Aged 64 years
3. Farooq Ahmad Rafique, Aged 56 years,
Sons of Late Haji Ghulam Mohi-ud-din Rafique
Residents of Barzulla, Srinagar.

.....Petitioner(s)
Through: - Mr. Nisar Ahmad, Advocate

Vs.

1. Union Territory of Jammu & Kashmir through
Commissioner/Secretary to Govt., Revenue Department,
Civil Secretariat, Srinagar/ Jammu

2. Financial Commissioner (Rev),
J&K, Srinagar.
3. Divisional Commissioner,
Kashmir, Srinagar
4. Deputy Commissioner, Srinagar
5. Additional Deputy Commissioner,
Srinagar.
6. Tehsildar, South, Srinagar.
7. Raghu Nath Ji Temple, Estate Barzulla, Srinagar
Through Mahant Hari Om Das
8. Senior Superintendent of Police, Srinagar.
9. Station House Officer,
Police Station Sadder, Srinagar

...Respondent(s)

Through: - Mr. D.C.Raina, Advocate General with
Mr. Mubeen Wani, Dy. AG
Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Advocate
Mr. Syed Musaib, Dy. AG

WP(C) No.1781/2021

Abdul Ahad Malik, age 76 years
S/o Abdul Rahim Malik
R/o Barzulla, Srinagar.
And one hundred twenty three others

.....Petitioner(s)

Through: - Mr. Nisar Ahmad, Advocate

Vs.

1. Government of Jammu & Kashmir through
Commissioner/Secretary, Revenue Department,
Civil Secretariat, Jammu/ Srinagar
2. Financial Commissioner (Rev),
J&K, Srinagar.
3. Divisional Commissioner,
Kashmir, Srinagar
4. Deputy Commissioner, Srinagar
5. Additional Deputy Commissioner,
Srinagar.
6. Tehsildar, South, Srinagar.

7. Raghu Nath Ji Temple, Estate Barzulla, Srinagar
Through Mahant Hari Om Das
8. Senior Superintendent of Police, Srinagar.
9. SHO, Police Station, Sadder.

...Respondent(s)

Through: - Mr. D.C.Raina, Advocate General with
Mr. Mubeen Wani, Dy. AG
Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Advocate
Mr. Syed Musaib, Dy. AG

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE M.A.CHOWDHARY, JUDGE**

JUDGMENT

Sanjeev J

1. The petitioners are aggrieved of and have called in question an order bearing No.18DIVK of 2021 dated 23.04.2021 passed by Divisional Commissioner Kashmir, Srinagar to the extent and insofar as it directs that the entries made in the revenue record of land measuring 159 kanals 10 marlas and 192 sft. covered by Survey No.55 min situate in Estate Barzulla, which includes the land measuring 6 kanal and 10 marlas, as well, be expunged and the possession of the land be handed over to respondent No.7.

2. The case set up by the petitioners is that the grandfather of the petitioners, namely, Mian Mohammad Sultan was in possession of land measuring 8 kanals covered by Survey No.55 situate at Barzulla, Srinagar as tenant thereof. On his death in the year 1958, the said land came in possession of father of the petitioners, namely, Mian Abdul Rahim. In the year 1960, a revenue court, on an application of one

Baba Girdhari Das, Mahant Mandir Raghu Nath Ji, passed a decree of eviction against the petitioners' father and others, which was challenged by them before the higher forums including this Court.

3. A suit also came to be filed by Mahant Baba Girdhari Das in the Court of City Munsiff, Srinagar for grant of a decree of mandatory injunction for evicting father of the petitioners and others from the land in question. There were also proceedings under Section 145 Cr.P.C launched by Mahant Baba Girdhari Das before the Court of City Munsiff (Judicial Magistrate 1st Class), Srinagar, who while passing order under Section 145 Cr.P.C attached the subject land and handed over the same on spurdnama to one Abdul Rehman of Barzulla.

4. With a view to amicably settle the dispute, father of the petitioners and Mahant Baba Girdhari Das entered into a compromise whereunder out of the 8 kanals of land under possession of the petitioners' father, the father of the petitioners got 4 kanals for cultivation and left the other four kanal in favour of Mahant Baba Girdhari Das. On the basis of the compromise entered, a compromise decree was passed by the City Munsiff, Srinagar on 08.12.1970.

5. It is submitted that after the passing of the compromise decree, 4 kanals out of the land which was attached under Section 145 Cr.P.C was handed over to the petitioners' father. After entering into the compromise, Mahant Baba Girdhari Das passed away and in his place one Major Arjun Das, his nephew, took over as Mahant of the temple. On the basis of the Will executed by Mahant Baba Girdhari

Das, a mutation was attested in favour of Major Arjun Dass on 15.03.1971. It is the case of the petitioners that Major Arjun Das, who had succeeded to Mahant Baba Girdhari Das as Mahant of the temple, entered into an agreement to sell with father of the petitioners and one Ahad Dar on 12.04.1973. The petitioners' father was handed over possession of 2 kanal and 10 marlas more subject to payment of Rs.3400/-. The petitioners submit that this is how, their father came in possession of total land measuring 6 kanal and 10 marlas. The father of the petitioners passed away on 04.06.2010 and ever since the aforesaid land belonging to the temple is in possession of the petitioners as tenants thereof.

6. The petitioners further submit that after the death of Major Arjun Das, the entire land belonging to the temple measuring more than 159 kanals came to be mutated vide mutation order No.1058 dated 23.07.1983 in favour of his two sons, namely, B.K.Sharma and Vijay Sharma. This mutation was challenged by respondent No.7 along with Dharmarth Trust before the Financial Commissioner (Revenue). The Financial Commissioner (Revenue) vide its order dated 16.10.2019 rejected the claim of the Dharmarth Trust to take over the properties of the temple but set aside the impugned mutation and referred the matter to the Deputy Commissioner, Srinagar to take appropriate steps to put in place a mechanism to manage the temple in a fair and transparent manner for the benefits of the devotees.

7. In light of the order dated 16.10.2019 passed by the Financial Commissioner (Revenue), Deputy Commissioner, Srinagar

had to put in place a mechanism to manage the temple in a fair and transparent manner. It seems that the Additional Deputy Commissioner, Srinagar directed the Tehsildar, Srinagar to implement order dated 16.10.2019 passed by the Financial Commissioner (Revenue) in letter and spirit and entrust the management and control of the temple to J&K Dharmarth Trust.

8. Aggrieved by the order dated 12.02.2020 passed by the Additional Deputy Commissioner, Srinagar, respondent No.7 filed a writ petition [WP(C) No.536/2021] before this Court seeking quashing of the said order and implementation of the order passed by the Financial Commissioner (Revenue) dated 16.10.2019 in letter and spirit and to evolve a fair and transparent mechanism to manage the temple and its properties. The petitioners also filed an application seeking their impleadment in the aforesaid writ petition. However, when the writ petition was taken up for consideration, respondent No.7 made a statement before the High Court that its grievance stood redressed by order of the Divisional Commissioner, Kashmir and, therefore, it does not wish to pursue this petition. The writ petition was disposed of as settled and no orders were passed. The petitioners submit that this is how they came to know about passing of the order by the Divisional Commissioner, Kashmir.

9. The order impugned to the extent indicated above is challenged by the petitioners primarily on the ground that the petitioners are the protected tenants of the land measuring 6 kanals and 10 marlas, which, of course is part of the land measuring 159 kanals 10

marlas and 192 sft. vested in respondent No.7. It is submitted that the petitioners and their forefathers have been in possession of the subject land since time immemorial and that pursuant to a compromise decree passed, they were allowed to retain peaceful possession of four kanals of the land out of the total land of 8 kanals, which was in their cultivating possession. The further case of the petitioners is that it was pursuant to an agreement to sell executed by Arjun Dass, they were put in possession of 2 kanals and 10 marlas more. The Divisional Commissioner could not have unilaterally, without giving an opportunity of being heard to the petitioners, directed to remove all the encroachments and expunge all the illegal entries made in the revenue record.

10. It is argued that paras 3 and 4 of the impugned order have the effect of depriving the petitioners of their legitimate possession over the land as protected tenants thereof without even affording them an opportunity of being heard. It was argued on behalf of the petitioners that the petitioners having recorded as protected tenants cannot be evicted or thrown out unless due process of law, as envisaged under the J&K Tenancy Act is followed.

11. The petitioners do not deny that the landed property including the land under their possession vests in respondent No.7. The claim of the petitioners, however, is that they are the protected tenants having been inducted by competent persons, who at the relevant time were Mohatamim of the temple and, therefore, cannot, by any stretch of

reasoning, be declared as encroachers and thrown out even without affording an opportunity of being heard to them.

12. The petition is resisted by the respondents. In the reply affidavit filed by the Divisional Commissioner, Kashmir on behalf of respondent Nos. 1 to 6, it is submitted that as per the revenue record of 1976, 1987-88 Bikrami, the land measuring more than 159 kanals situated at Tengpora of Estate Barzulla is recorded under the ownership of Raghunathji Temple Barzulla thorough Mahant Baba Girdhari Das Chella Hardev Das Bairagi. The subject land is recorded under the personal cultivation of the temple and some part under the tenancy of some locals. It is submitted that Mahant Girdhari Das expired in the year 1971 and in terms of the Will Deed executed on 10 chait 1989 Bikrami, Mahant Arjun Das Chela of Mahant Baba Girdhari Dass was appointed as Mohatamim of the temple. Accordingly, mutation No.785 dated 15.03.1971 was attested.

13. Mahant Arjun Das also expired in the year 1989 and thereafter there was militancy in the Kashmir valley. The temple was damaged by the miscreants and the land vested in the deity was encroached upon by the locals. Constructions were raised by them including the petitioners taking undue advantage of their key position in the self-styled "tehreek". Chella of Mahant Arjun Dass, who was supposed to manage the properties of the temple also could not hold the charge of the 'Gaddi'. However, Sadhu Dharam Sathan Surakashi Samiti, Jammu and Kashmir through the medium of 'Mahant Panchnama' executed on 19.02.2014 declared Sh. Hari Om Chella of

deceased Mahant Arjun Das as Mahant of the temple and qualified to hold Gaddi in light of Ailan No.13 dated 13 Asooj 1964 Bikrami (1907).

14. On holding the charge, Mahant Hari Om challenged mutation No.1058 dated 28.07.1983 before the Financial Commissioner, Kashmir, whereby the property of the temple had been mutated in the names of sons of late Mahant Arjun Dass. In short, the stand of the Divisional Commissioner is that with a view to protect the property of the temple from mismanagement and to allow Mahant Shree Hari Om to manage its affairs, passing of the impugned order was necessitated. It is submitted that since the petitioners are only encroachers and, therefore, are not entitled to be heard in the matter. The petitioners have taken the benefit of the situation, encroached upon the property of the temple and raised construction without any authority of law.

15. Having heard learned counsel for the parties and perused the material on record, we find that the grievance of the petitioners in respect of the impugned order is limited only to the extent it directs removal of encroachments and expunction of illegal entries made in the revenue record after proper verification and also for handing over possession of the entire temple property to Mahant Shree Hari Om Das.

16. It is not disputed by the official respondents that the petitioners and some others are in possession of different parcels of land belonging to respondent No.7. How, in what manner and by whom

the petitioners and others came to be inducted as tenants is not forthcoming from the record available in the file. There is, however, no dispute with regard to the fact that the entire landed estate measuring more than 159 kanals vests in the temple, which was being managed by Mohatmims appointed from time to time. The revenue papers placed on record by the petitioners does *prima facie* indicate that the petitioners and before them their father and grandfather were in possession of the land belonging to the temple and have also been recorded as tenants. What was the nature of the tenancy created and who created this tenancy is not forthcoming from the record.

17. Be that as it may, all these issues are such, which are required to be adjudicated upon and determined by a competent revenue court. Needless to say that the Land Revenue Act is a complete Code in itself and provides and delineates detailed procedure for correction of revenue entries and setting aside of mutations etc. etc. However, no such action, as may be envisaged under the Land Revenue Act or other allied legislations, which is adverse to an individual, can be taken without following due process of law and complying with principles of natural justice. The petitioners, who are admittedly under settled possession of the temple property for the last several decades, cannot be termed as rank encroachers and thrown out without following due process of law. If at all, in the opinion of the respondents, the petitioners and other locals are in unauthorized occupation of the temple properties and have managed revenue entries in their favour, nothing stops them from initiating action under law and pass

appropriate orders after affording adequate opportunity of being heard to such persons.

18. So far as management of the temple properties is concerned, Divisional Commissioner has, in terms of the impugned order, directed for devising a mechanism to be put in place to manage and develop the temple properties in terms of Ailan No.13 dated Asooj 1964 Bikrami (1907). But before such mechanism can be put in place, the temple properties cannot be allowed to be squandered by so called Mahants and Babas. It is, thus, high time that the Government steps in and take charge of the temple properties so that these are saved from further encroachments and appropriate action is initiated to free them from encroachments, if any, taken place on such properties.

19. Without returning any finding and rendering our opinion on the merits of the claim of the petitioners and rival contentions of the respondents, as that may prejudice the case of the parties before the appropriate forums, we propose to dispose of this petition by providing as under:-

- i) That the Deputy Commissioner, Srinagar shall take over the management of the temple and its properties immediately and forthwith. He may manage the temple and its properties either himself or through a committee of officers of the revenue and other departments directly responsible to him.
- ii) That henceforth there shall be no mutation attested in the name of any Mahant or his disciple and the properties shall remain in

the name of temple under the management of District Administration and shall be so reflected in the revenue record.

- iii) The Deputy Commissioner or the committee appointed by him as aforesaid, as the case may be, shall demarcate the entire land belonging to the temple and fix boundaries for its proper identification. It shall also take requisite steps for removal of encroachments, if any, in accordance with law.
- iv) Should the Committee be of the opinion that there are certain illegal entries made in the revenue record, which are required to be corrected and the persons in illegal occupation of the land are required to be evicted, procedure laid down in the Land Revenue Act and the allied legislations shall be adhered to in letter and spirit and the affected persons shall be provided adequate opportunity of being heard before passing any such orders.
- v) The committee shall put the properties of the temple to beneficial use and the usufructs and profits derived out of such properties shall only be used for maintenance of the temple and for other charitable and religious purposes. The committee shall open up a bank account in the name of the temple to be operated through the Deputy Commissioner, so that all monies and profits received from the landed and other property of the temple are accounted for.
- vi) This arrangement shall continue to remain in operation till an appropriate mechanism is put in place to manage and develop the

temple properties in compliance of order dated 16.10.2019 passed by the Financial Commissioner (Revenue) or till the Government of Union Territory of J&K comes up with appropriate legislation as suggested by this Court in judgment dated 25.02.2022 passed in PIL No.24/2018 titled Ajay Kumar Sharma v. State of J&K and others, whichever is earlier.

Ordered accordingly.

We, however, make it clear that we have not returned any opinion on the merits of respective claims put forth before us by both the sides.

WP(C) Nos.1479/2021, 1481/2021, 1705/2021 & 1781/2021

Since the issues raised in these writ petitions are similar to those raised in WP(C) No.1424/2021, as such, the judgment passed in WP(C) No.1421/2021 shall apply on all fours to these petitions as well.

These petitions shall also stand disposed of in terms of the judgment passed in WP(C) No.1424/2021.

(M.A.CHOWDHARY)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar
13.08.2024
Vinod

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