

Sr. No.13

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 879/2023
CM No. 2115/2023

Sukhdev Kumar & anr. Petitioner/Appellant(s)

Through:- Mr. S. M. Choudhary, Advocate

V/s

Union Territory of J&K & ors.Respondent(s)

Through:-

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

ORDER

The petitioners are aggrieved of Government Order No. 79/JK (Rev) of 2020 dated 24.07.2020 issued by respondent No. 1 to the extent of land measuring 32 kanals which has been transferred in favour of the Industrial Department falling under Khasra No. 979-min situate at Village Kartholi, Tehsil Bari Brahmana, District Samba for establishing Industrial Estate.

Mr. S. M.Choudhary, learned counsel appearing on behalf of the petitioners has vehemently argued that the predecessor-in-interest of petitioners namely Sandokhu and Desu sons of Late Sunder were the landless and homeless persons and belong to weaker section of the society having no source of livelihood and in order to sustain themselves and their families, they have occupied state land measuring 32 kanals falling under Khasra No. 979-min situate at Village Kartholi, Tehsil Bari Brahmana, District Samba, prior to 1973 and started cultivating the same. Learned counsel further argued that the predecessor-in-interest of petitioners have been recorded as tenant-at-will and possession of forefathers of the petitioners have been continuously

recorded in the revenue record and with the view to substantiate his claim, the petitioners have place on record Khasra Girdawri for the year 1973 and Rabi-2019.

Learned counsel appearing on behalf of the petitioners submits that on 07.09.2021, the petitioners have already preferred the suit for passing of a declaratory decree declaring the petitioners as owners of the above land and the said suit at present is pending at adjudication before the court of CJM/Sub Judge Samba for disposal under law. Since learned Sub-Judge/CJM Samba has dismissed the application of the petitioners vide order dated 17th September 2022 and feeling aggrieved of the same, the petitioners have preferred First Civil Appeal before the Court of learned Principal District Judge Samba which has been transferred to the Court of learned Additional District Judge Samba for adjudication.

The admitted case of the petitioners is that since in the aforesaid suit which has been filed by the petitioners, respondent Nos. 4 & 5 were not the parties and they started interfering with the peaceful, uninterrupted, actual physical cultivating possession of the land in question, the petitioners were constrained to file yet another suit for injunction against respondent Nos. 3 to 5 before the Court of learned Principal District Judge, Samba which has been transferred to the Court of learned CJM, Samba for disposal under law.

The short submission which has been made by learned counsel appearing on the behalf of the petitioners is that since rights of the petitioners have been affected by virtue of aforesaid land transferred to the Industrial Department and the petitioners being effected persons, an opportunity of being heard was required to be given before passing the aforesaid order detrimental to the rights of the petitioners and that has not been done in the

instant case. Feeling aggrieved of the same, the petitioners have filed the present petition calling in question the order dated 24.07.2020.

Learned counsel appearing on behalf of the petitioners, with a view to fortify his claim, has relied upon the judgment of Hon'ble Supreme Court in **AIR 2017 SC 2450** titled **Govt. of NCT of Delhi v. Manav Dharam Trust** wherein it has been held that any person whose primary source of livelihood is likely to be adversely affected falls within the ambit of person interested, thus, have locus to call in question the said order.

Learned counsel relied upon another judgment rendered by the Hon'ble Division Bench of this Court in **Krishana vs. State of J&K and ors.** reported as **2022 (2) JKJ 377 [HC]** in which it has been held that '*a person interested*' or a '*person aggrieved*' is a person who is injured or who is adversely affected in a legal sense. *If he is able to establish that he had any interest of his own in the land in any manner, he would be a 'person interested'*.

In the background of the aforesaid principle which has been laid down by the Apex Court and Hon'ble Division Bench of this Court, it can *prima facie* be concluded in the aforesaid case that if a person may not be the owner of the property and the land belongs to the State but the petitioner by way of his long possession of the aforesaid land falls within the ambit of person interested, even though he may not be the owner of the property and is in possession of the State land.

Heard learned counsel appearing on behalf of the petitioners at length and perused the record and the judgments relied upon the learned counsel for the petitioners.

Prima facie case for indulgence is made out.

Issue notice to the respondents in the main petition as well as application. Requisite steps for service within one week.

Subject to petitioners taking steps, Registry to issue notice to the respondents, returnable within four weeks.

List on 29.05.2023.

Meanwhile, subject to objections and till next date of hearing before the Bench, status quo with respect to the land in question, as it exists today, shall be maintained. Alteration/modification on laying motion.

JAMMU
17.04.2023
RAM MURTI



(Wasim Sadiq Nargal)
Judge