



Jammu and Kashmir State Information Commission

شہنیشن کمیٹی انفارمیر اسٹیٹ کنڈ کشمیر جموں ا

(Constituted under the Right to Information Act, 2009)

Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937

Old Assembly Complex, Srinagar, 0194-2506660, 2506661

www.jksic.nic.in

File No. SIC/J/A/35/2017

Decision No. SIC/J/A/35/2017/45

Final Order

(Second Appeal)

- Appellant : Sh. Amit Sharma
- Respondents : First Appellate Authority (FAA)/
Sub Divisional Magistrate (SDM), Jammu (North)
and Public Information Officer (PIO)/
Tehsildar, Jammu (North)
- Date of Registration : 12.06.2017
- Date of Decision : 04.10.2017

Brief Facts:

The appellant Sh. Amit Sharma, S/o. Sh. Shiv Kumar Sharma, R/o. 116, Kachi Chowani, Gali Agnihotri, Jammu while exercising his right to information filed RTI application with PIO/Tehsildar, Jammu (North) on 09.08.2016 seeking information on 07 points in respect of Panchyat Raipur, Tehsil & District Jammu as under:

- (i) *Provide me the Khasra numbers of all the lands recorded as 'Shamlat' in above said Panchyat.*
- (ii) *Provide me the area of land comprised in each such Khasra no. of land recorded as 'Shamlat' in above said Panchyat.*

- (iii) *Provide me the number of the share holders in each such piece of land recorded as 'Shamlat' in above said Panchyat.*
- (iv) *Provide me the names of the share holders and the share (area wise) of each such share holder in each Khasra number of lands recorded as 'Shamlat' in above said Panchyat.*
- (v) *Provide me the Khasra number of each piece of land sold out of above said 'Shamlat' land in the above said Panchyat. Provide me the name of the shareholder who has sold the said piece of land and the area of land sold by him in each such Khasra number.*
- (vi) *Provide me the Khasra Nos. and area of the Shamlat land sold by the following persons in the above said Panchayat:-*
 - A) *Thakur Dass S/o. Shiv Ram R/o. Opp. High School Raipur.*
 - B) *Sh. Barkat Ram S/o. Shiv Ram R/o. Opp. High School Raipur.*
 - C) *Sh. Madan Lal S/o. Shiv Ram R/o. Opp. High School Raipur.*
 - D) *Sh. Krishan Lal S/o. Shiv Ram R/o. Opp. High School Raipur.*
 - E) *Sh. Dev Raj S/o. Shiv Ram R/o. Opp. High School Raipur.*
- (vii) *Provide me the shares of each of the above said persons in the Shamlat land situated in above said Panchayat.*

Aggrieved by the response of the PIO, he filed First Appeal on 29.09.2016 with the FAA/SDM, Jammu (North). The First Appellate Authority also did not provide the requisite information to him. At last, he approached the Commission by filing the 2nd appeal against the above mentioned respondents which was finally admitted in the Commission after completion of deficiencies on 12.06.2017.

Proceedings:

This 2nd appeal was admitted in the SIC on 12.06.2017 but owing to the need for conduct of more hearings for appropriate and final disposal of the appeal, the time period for disposal was accordingly extended by another 60 days up to a maximum of 120 days from the date of admission of the appeal in terms of Section 16 (11) of the J&K RTI Act, 2009.

In compliance to the notice of the Commission dated: 27.09.2017, the appellant attended the hearing (through Video Conferencing from Jammu office of the SIC) today on 04.10.2017, whereas, the respondents FAA/PIO did not attend.

The orders of the PIO and the FAA were perused. The PIO has declined to provide the information partly on technical grounds and partly by invoking the provisions under section 8 of the J&K RTI Act, 2009. As far as technical grounds are concerned he has stated as under:-

"The revenue record is available only in respect of the villages. The revenue record is not maintained on the basis of Panchayat area. This office has no record pertaining to boundaries of Panchayat Raipur, and therefore the information cannot be provided regarding Panchayat Raipur."

As regards the information from paras (iii) to (vi), he has invoked exemptions under section 8 namely personal information and holding of information in fiduciary capacity.

The FAA has issued an order on 16.11.2016 stating as under:-

"Appeal heard. Appellant has submitted that the requisite information has not been provided by PIO till date. A period of 30 days has lapsed since the filing of first appeal in this case and the appellant is hereby advised to file a second appeal before the State Information Commissioner if he so desires. Hence appeal is disposed off."

Both the orders suffer from infirmities.

The PIO/Tehsildar, Jammu (North) has erred in withholding the information invoking exemptions under section 8 of the Act. The land

records of individuals and communities maintained in the revenue department do not fall under the category of personal information as these records are maintained by public authorities and are ordinarily to be placed in the public domain in terms of section 4 of the J&K RTI Act, 2009 and also as part of the transparency regime in the Government. Fiduciary capacity has a different connotation and is not applicable in this particular case. However, the Tehsildar, Jammu (North) would have been within his rights to proceed under section 11 of the Act as the information being sought related to third parties.

The FAA has issued a strange order despite the First Appeal having been submitted well in time on 29th September, 2016 i.e. within 30 days of the order of the PIO which was issued on 31st August, 2016. The non-disposal of the First Appeal by the FAA has unfortunately deprived the appellant of redressal by about a year. The order of the FAA refusing to provide information as 30 days had elapsed and advising the appellant to appear before the SIC in 2nd appeal is self indicting and highly undesirable. In the first place, she should have tried her best to dispose of the First Appeal within the stipulated time as provided under section 16(7) of the RTI Act.

Directions:

The PIO/Tehsildar, Jammu (North) is now directed to obtain the territorial boundaries of Panchayat Raipur from the Rural Development Department and provide the information sought for based on available revenue records for paras (i), (ii) and (iii) and

for paras (iv) to (vii) conduct proceedings under section 11 of the Act before deciding to provide the information sought for.

With these directions the second appeal is disposed of.

Copy of this decision be given free of cost to the parties.

Sd/-

(Khurshid A. Ganai) IAS Retd.
Chief Information Commissioner
J&K State Information Commission

No: SIC/J/A/35/2017

Dated: . . .2017

Copy to:

1. Registrar, J&KSIC for information and necessary action.
2. FAA/Sub Divisional Magistrate (SDM), Jammu (North) for information and necessary action.
3. PIO/Tehsildar, Jammu (North) for information and necessary action.
4. Private Secretary to HCIC for information of the HCIC.
5. Appellant/Sh. Amit Sharma, S/o. Sh. Shiv Kumar Sharma, R/o. 116, Kachi Chowani, Gali Agnihotri, Jammu.
6. Office file.

(Rita Koul)

Deputy Registrar
J&K State Information Commission