



**Jammu and Kashmir State Information Commission**

شہنیشن کمیٹی انفارمیری اسٹیٹ کیٹیجی 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**

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File No. SIC/J/A/213/2018

Decision No. SIC/J/A/213/2018/221

**Final Order**

(Second Appeal)

- Appellant : Sh. Umesh Gupta.
- Respondents : First Appellate Authority (FAA)/  
Sub-Divisional Magistrate (SDM), Katra and  
Public Information Officer (PIO)/Tehsildar,  
Katra.
- Date of Registration : 09.01.2018
- Date of Decision : 16.04.2018

**Brief Facts:**

The appellant Sh. Umesh Gupta, S/o. Late Sh. Subash Gupta, R/o. Resham Ghar Colony, Jammu filed 2<sup>nd</sup> appeal under section 16 (4) of the J&K RTI Act, 2009 with the J&K State Information Commission inter alia stating that he had filed an RTI application with the PIO/Tehsildar, Katra on 12.08.2017 and sought information regarding area of the land/house under Khasra No. 373/125/1 measuring 11 marlas-after bifurcation of land under Khasra No. 482/374/125/1 and other related information on 05 points pertaining to revenue records with entries in favour of Nishat Gupta

S/o. Vipin Gupta, Girdawari, Mutation, Jamabandi and Dasti Khaka of land under Kh. No. 373/125/1 measuring 11 Marlas which fall in the share of Subash Gupta etc.

Feeling aggrieved by the response of the PIO, the appellant preferred First Appeal on 03.10.2017 before the FAA/SDM, Katra. At last, the appellant approached the State Information Commission (SIC) by filing 2<sup>nd</sup> appeal which was admitted on 09.01.2018.

### **Proceedings:**

The 2<sup>nd</sup> appeal came up for hearing before the Commission on 12.02.2018. The hearing was attended by the appellant whereas, the respondents did not attend. The hearing was adjourned with the following directions:

***"In view of the absence of respondents and the submissions made by the appellant through the medium of this 2<sup>nd</sup> Appeal and orally, it is directed that the PIO/FAA shall file a counter statement to the instant 2<sup>nd</sup> Appeal, copy of which has already been despatched to them along with the last notice. In the mean time, the respondents are directed to file compliance report in respect of State Information Commission's order dated: 18.12.2017."***

This 2<sup>nd</sup> appeal was admitted in the SIC on 09.01.2018 and first sixty days expired on 10.03.2018 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.

The 2<sup>nd</sup> appeal came up for hearing before the Commission on 27.03.2018. Neither the FAA nor the PIO attended the hearing whereas the appellant attended the hearing in person. On perusal of record placed on file, it transpired that the FAA and the PIO have not complied with the directions passed by the Commission in the interim order passed in the instant appeal dated: 12.02.2018. The hearing was adjourned with the following directions:

***“The absence of the FAA and the PIO is viewed seriously. The State Information Commission directs the FAA/SDM, Katra and the PIO/Tehsildar, Katra to attend the hearing personally on the next date along with relevant record. They are also directed to file their counter statement to the 2<sup>nd</sup> appeal before the next date of hearing and give reasons separately for not attending the hearing today on 27.03.2018.”***

The 2<sup>nd</sup> appeal again came up for hearing before the Commission today on 16.04.2018. The hearing was attended by PIO/Tehsildar, Katra Sh. Mohit Raina and the appellant, Sh. Umesh Gupta.

The appellant stated that he has not been provided the Dasti Khaka of his share out of 11 Marlas of land under Khasra No. 373/125/1 of village in which he is recorded as a co-owner and co-share in the Revenue Records including Girdawari.

The respondent PIO/Tehsildar, Katra stated that the appellant is not entitled to Dasti Khaka of his share as the land is yet to be partitioned between him and his brother both sons of Subash Chander and that partitioning of land within the Municipal area limits is to be done through a civil suit in a court of law and not by any Revenue Officer like Tehsildar. He also stated that no portion of land in question measuring 11 Marlas was in possession of the appellant and that it was wholly under the possession of his brother/brother's family and, therefore, he (Tehsildar/PIO) cannot issue a Dasti Khaka which will be against the rules.

The appellant however insisted that since he was recorded as a co-owner and co-sharer in the inheritance mutation along with other co-sharers, Dasti Khaka of his share of land should be issued to him, the appellant.

**Directions/Decision:**

**The appellant has sought information pertaining to land earlier recorded in his father's name late Subash Gupta and later recorded in the name of his brother Vipin Gupta, his own name (Umesh Gupta and Nishant Gupta S/o. late Vipin Gupta. Tehsildar/PIO has replied to the RTI application vide his No. dated: 08-07-2017 and provided information available on records and has also quoted Hon'ble Supreme Court's judgment in CBSE v/s Aditya Bandopadhyay to deny the balance information sought which the PIO has claimed as not part of record and, therefore, not givable or disclosable.**

**The issue is decidedly in the nature of a dispute as the appellant is claiming information which according to the PIO can be**

**given only after the partition of the co-owned land is, decided and done through legal proceedings. PIO in the counterstatement has conveyed that he has not invoked Section 8 of the RTI Act, but has conveyed to the appellant that information which is not part of the record cannot be given and that the Hon'ble Supreme Court has also held that the PIO is not expected to give information in the nature of advice or inferences if these are not part of the available record and so he has given the information that was available on record.**

**In the light of the above reply of the PIO, this Commission sees no reason to issue any direction which compels the PIO to provide information that is not available on record.**

**However, it is also a fact that this Commission is not expected to go into specific legal issues and legal disputes as are brought to its notice during the proceedings under the J&K RTI Act, 2009. This 2<sup>nd</sup> appeal has brought to the notice of the Commission an issue which is legal in nature and also in the nature of a land dispute. The PIO as Tehsildar and FAA as SDM should have explained the legal issues to the appellant and convey to him that they cannot provide the information sought for on the grounds that the same is not available on records irrespective of the genuineness of the claim of the appellant to the property, in this case, the land. It is hoped that good sense prevails over the parties in dispute to settle the same between themselves. The SDM and Tehsildar can only explain the legal process as per laid down law but cannot suggest anything contrary to the law. Notwithstanding this, the Tehsildar/PIO will review his original reply dated: 08.07.2017 and see what additional**

**information, if any, can be given in response to the original RTI queries of the appellant as per the available record within a period of one month from the date of receipt of this order.**

With the above observations, this 2<sup>nd</sup> appeal is disposed of.

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

**Sd/-**

**(Khurshid A. Ganai)**

Chief Information Commissioner  
J&K State Information Commission

(P.A. Ajay)

No: SIC/J/A/213/2018\_\_\_\_\_

Dated:

Copy to:

1. FAA/Sub-Divisional Magistrate, Katra for information.
2. PIO/Tehsildar, Katra for information and necessary action.
3. Private Secretary to CIC for information of the HCIC.
4. Appellant/Sh. Umesh Gupta, S/o. Late Sh. Subash Gupta, R/o. Resham Ghar Colony, Jammu for information.
5. Office file.

(Sheikh Fayaz Ahmed)

Registrar

J&K State Information Commission