

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

OWP No. 780/2011
CM. No. 2586/2022

Ghulam Rasool Wani

...Petitioner(s)

Through: Mr. N.A.Malik, Adv.

Vs.

State of JK and Ors.

...Respondent(s)

Through: Mr. Bhat Fayaz, Advocate

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE

J U D G M E N T

Oral:

01. This petition under Article 226 of the Constitution of India filed by the petitioner is directed against an Order dated 16th April, 2013, passed by the Financial Commissioner (Revenue) J&K, Srinagar in Reference titled *Mst. Sara vs. Jabar Wani and Ors.*

02. Before adverting to the grounds of challenge urged by learned counsel for the petitioner, it is necessary to give a brief resume of the factual antecedents leading to the filing of this petition. One, Lala Wani, an estate holder in village Sumbler Tehsil and District Bandipora, passed away somewhere in the year 1972 and his mutation of inheritance bearing no. 171 was attested by the Tehsildar Bandipora vide its Order dated 27th March, 1972 and half of the estate of late Lala Wani was mutated in favour of respondent no. 3-Mst. Sara and rest half was mutated in favour other two co-sharers i.e., sons of Habibulla and Mahmood, the two brothers of late Lala Wani. As is projected by the petitioner throughout, the mutation no. 171 of 1972 came to be challenged by the petitioner along with other co-sharers

before the Collector, Deputy Commissioner, Baramulla. The respondent-Mst. Sara also filed cross objections/appeal against the said order. Before the Collector, Deputy Commissioner, Baramulla, both the parties purportedly entered into a settlement. A compromise deed was drawn and presented before the Collector, Deputy Commissioner, Baramulla. The Collector disposed of both the appeals in the light of settlement arrived at between the parties. The respondent no. 3 was held entitled to 5 Kanals of Abi Awal Land falling in Khasra No. 1002, 3 Kanals and 6 Marlas Abi Awal Land and 1 Kanal and 14 Marlas falling in Khasra No. 1757 min situate in Sumbler Shokebaba. The rest of the land was directed to be mutated in favour of the petitioner and his co-sharers.

03. This order, which does not bear any date, claims to have attained the finality. Acting upon the aforesaid order of the Collector passed in Revenue Appeal No. 131/1972, a fresh mutation bearing no. 7181 dated 3rd September, 1975, came to be attested by Naib Tehsildar, Bandipora. Respondent no. 3 challenged the said mutation by way of revision petition before the Divisional Commissioner, Kashmir, Srinagar, which came to be transferred to Additional Commissioner, Kashmir, Srinagar. The revision petition was contested by the petitioner along with his co-sharers. The argument which was raised on behalf of the petitioner herein and his co-sharers was that the mutation no. 7181 of 1975 was not assailable on the ground that the same had been attested to give effect to the order passed by the Collector, Deputy Commissioner, Baramulla, on the basis of a written settlement arrived at between the parties. The Additional Commissioner did not agree with the petitioner and his co-sharers and found merit in the revision petition filed by the respondent on 3. The Additional Commissioner

came to the conclusion that mutation no. 7181 attested by Naib Tehsildar, Bandipora was not genuine for the reason that mutation no. 171 attested in the year 1972 correctly represented the legal position that both the parties were entitled to half share each to the estate left behind by late Lala Wani.

04. Vide Order dated 28th May, 2011, the Additional Commissioner, Kashmir, recommended the setting aside of the fresh mutation to the Financial Commissioner (Revenue) J&K, Srinagar, who concurred with the view taken by the Additional Commissioner and, accordingly, accepted recommendation. While setting aside the mutation no. 7181 of 1975, the Financial Commissioner remanded the matter to the Tehsildar Bandipora to hold denovo enquiry and pass fresh orders, after affording an opportunity of being heard to all legal heirs of the deceased estate holder Lala Wani in accordance with Muslim Personal Law (Shariat) Application Act, 2007. It is this order of the Financial Commissioner which is called in question in this petition.

05. The impugned order is assailed by the petitioner, *inter alia*, on the ground that both the forums i.e., Additional Commissioner, Kashmir, and Financial Commissioner (Revenue) J&K, Srinagar, have not correctly appreciated the controversy in right perspective. It is submitted that mutation no. 7181 of 1975 was attested by Naib Tehsildar, Bandipora only to give effect to a final order passed by the Deputy Commissioner in Revenue Appeal No. 131 of 1972 and, therefore, could not have been challenged by either of the parties. Learned counsel appearing for the petitioner submits that the order was passed by the Collector (Deputy Commissioner), Baramulla, on the basis of written settlement arrived at between the parties. He, therefore, finds fault

with the impugned order passed by the Financial Commissioner on the aforesaid aspect of the matter.

06. *Per contra*, Mr. Bhat Fayaz, learned counsel appearing for the respondent no. 3, submits that the genuineness of the order passed by the Deputy Commissioner in Revenue Appeal No. 131 of 1972 is in serious doubt, inasmuch as, the order does not bear any date or year of passing of the order. He submits that it is because of this reason the Financial Commissioner too has expressed his doubt in such order passed by the Collector-Deputy Commissioner, Baramulla. He, however, submits that respondent no. 3 has no reason to oppose the direction passed by the Financial Commissioner to the Naib Tehsildar to attest the mutation afresh as per the Muslim Personal Law (Shariat) Application Act, 2007.

07. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the order passed by the Financial Commissioner (Revenue), J&K, Srinagar, does not call for any interference. However, the observations made by the Additional Commissioner, Kashmir, Srinagar, as well as Financial Commissioner on the merits of the controversy are required to be ignored by the Tehsildar Bandipora, while attesting the mutation on merits. There is no doubt about the fact that the order passed in Revenue Appeal No. 131 of 1972 does not bear any date, month and year of passing of the order and in the absence of such date, month and year of passing of the order, it is difficult for any court or forum to rely upon such order. It is because of this reason only that both the forums i.e., Additional Commissioner, Kashmir and Financial Commissioner, J&K, Srinagar have come to the conclusion that the mutation no. 7181 of 1975

cannot be said to have been attested in compliance with the orders of Collector with sufficient amount of certainty.

08. Be that as it may, since none of the forums have finally decided the rights of the parties, as such, it would be appropriate to uphold the order of Financial Commissioner (Revenue), J&K, Srinagar, and allow the Tehsildar, Bandipora to attest a fresh mutation in accordance with the Muslim Personal Law (Shariat) Application Act, 2007, after affording an adequate opportunity of being heard to the petitioner. It would be appropriate to place on record that the relationship of the parties with the deceased Lala Wani is not in dispute as well.

09. In view of the aforesaid, this petition is **disposed** of with a direction to the Tehsildar, Bandipora, to hold a denovo enquiry into the matter and pass a fresh mutation in respect of estate left behind by late Lala Wani at the time of his death, after affording an opportunity of being heard to all the legal heirs of deceased estate holder Lala Wani, strictly in accordance with the Muslim Personal Law (Shariat) Application Act, 2007. The Tehsildar, Bandipora, after attestation of mutation, shall put the parties in possession. Let the needful be done by the Tehsildar within a period of two months from the date a copy of this Judgment is served upon him.

(SANJEEV KUMAR)
JUDGE

SRINAGAR
19.12.2023
"Shamim Dar"

Whether the Judgment is reportable?	Yes/No
Whether the Judgment is speaking?	Yes/No