

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

WP(C) 1165/2014

ABDUL MAJEED MIR

... Petitioner(s)

Through: -Mr.Gulzar Ahmad Bhat, Advocate

Vs.

STATE OF J&K AND ORs

...Respondent(s)

Through: -Mr. Alaudin Ganie, AAG
with Ms. Shaila Shameem, Advocate for
respondents No.1 to 3.
Mr. Munir Ahmad Bhat, Adv. For 4

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

26.12.2023

1. The petitioner has challenged order dated 10.06.2014, passed by Jammu and Kashmir Special Tribunal, Srinagar (hereafter for short "the Tribunal"), whereby the revision petition filed by respondent No.4 against order dated 10.11.1999 passed by respondent No.2 has been set aside with a direction to the said authority to decide the appeal afresh after providing opportunity of hearing to both the parties.
2. It appears that mutation No.295 of Village Saloosa Baramulla was attested by Naib Tehsildar Baramulla in respect of land under the ownership of respondent No.4 under Section 4 and 8 of the Agrarian Reforms Act. Respondent No.4 filed an appeal against the said mutation before the Joint Agrarian Reforms Commissioner Baramulla and vide order dated 17.08.1994 the Joint Agrarian Reforms Commissioner directed the Tehsildar concerned to conduct denovo enquiry. Accordingly, the Tehsildar concerned conducted denovo enquiry and passed mutation No.657 dated

15.07.1996 in favour of father of the petitioner. Against mutation No.657 dated 15.07.1996 respondent No.4 preferred an appeal before the Dy.Commissioner-Commissioner Agrarian Reforms Baramulla (respondent No.2) and the said appeal was dismissed by respondent No.2 by virtue of order dated 10.11.1999, thereby upholding mutation No.657 dated 15.07.1996. Respondent No.4 challenged the aforesaid order of respondent No.2 by way of a revision petition before the Tribunal. The learned Tribunal after hearing the parties allowed the revision petition and set aside the order of respondent No.2, whereafter the appeal was remanded to said respondent for its fresh decision upon hearing the parties.

3. The petitioner is aggrieved of the impugned order dated 10.06.2014 passed by the Tribunal on the grounds that the same has been passed without application of mind. It has been further contended that the Tribunal has not taken into account the fact that father of the petitioner was alive upto the year 2000, as such contention of respondent No.4, that mutation had been attested in favour of a dead person is contrary to the record. It has been further contended that the order passed by respondent No.2 in the appeal against mutation No.657 dated 15.07.1996 is in accordance with law and the same did not warrant any interference by the Tribunal in its revisional jurisdiction. It has also been contended that the learned Tribunal has ignored the material on record and it has also ignored the fact that the matter was posted for arguments at the instance of counsel for respondent No.4.

4. Respondent No.4 has contested the writ petition by filing her reply. In the reply it has been submitted that order impugned passed by the learned Tribunal is in violation of the principles of natural justice, inasmuch as respondent No.4 was not heard before deciding the appeal. It has been further contended that the petitioner or his ancestors were never the tenants of the land in question and in fact they were collaterals of respondent No.4. Therefore, mutation under section 4 and 8 could not have been attested in respect of the land owned by respondent No.4 in favour of the predecessors in interest of petitioner. It has been further contended that there could not have been any private agreement between respondent No.4 and predecessor in interest of petitioner after May 1973, as no fresh tenancy could have been created after the said date. On these grounds it is urged that the impugned order passed by the Tribunal does not warrant any interference.

5. I have heard learned counsel for the parties and perused the record of the case.

6. The contention, that was raised by respondent No.4 before the Appellate Authority i.e, respondent No.2 while impugning mutation No.657 dated 15.07.1996, was that the parties are collaterals, as such they are the joint owners of the land, which is subject matter of the mutation in question. Therefore, mutation under Sections 4 and 8 of Agrarian Reforms Act, in favour of the predecessor in interest of petitioner could not have been attested. It was also contended by respondent No.4 in the appeal that there was no relationship of landlord and tenant between the parties and there

could not be any private agreement creating tenancy between the parties after the year 1973, as no fresh tenancy could have been created after the said date.

7. A perusal of order dated 10.11.1999 passed by the Appellate Authority-respondent No.2 reveals that respondent No.4, the appellant before respondent No.2, was unrepresented at the time of hearing of the appeal. This is clear from the observations of the appellate authority made in its order dated 10.11.1999. The same reads as under:-

“On 3-11-97 respondents 2 and 11, on 31-3-98 respondent 1 and 4 despite knowledge were absent so were set exparte and against other respondents except 5 to 7 on 27-3-99 exparte proceedings were initiated when they did not turn up despite service through daily “Alsafa” dated 7-6-98. On 27-3-99 when learned counsel for the appellant did not appear the case in view of its pendency since long was in the interest of substantial justice fixed for decision on merits to which learned counsel for respondents 5 to 7 agreed to and the case was posted to 1-5-99.”

8. From a perusal of the afore quoted observations recorded by the Appellate Authority, it is clear that respondent No.4 (appellant) was un-represented on 27.03.1999 and the Appellate Authority posted the matter for 1st May, 1999 for decision on merits at the instance of respondents No.5 and 7 to the appeal (predecessors in interest of the petitioner). Thus, the date of hearing of the appeal was fixed on 01.05.1999 without notice to the appellant (respondent No.4). The appeal has been heard and decided by respondent No.2-Appellate Authority in absence of the appellant and the decision has been rendered by the said respondent on merits of the case.

9. Once the Appellate Authority decided to render a decision on merits of the case, it was incumbent upon the said authority to ensure that the appellant is represented before it and incase the appellant was not responding to the notices of the Appellate Authority, the appeal should have been dismissed for non-prosecution but in no case the contentions raised in the appeal could have been decided on merits without hearing the appellant. The learned revisional authority i.e, J&K Special Tribunal has, therefore, rightly set aside the order of the Appellate Court and remanded the appeal for its fresh decision after hearing the parties. The learned Tribunal, while passing the impugned order and remanding the appeal to the appellate authority, has not made any observation as regards to the merits of the appeal in the impugned order. Therefore, the contention of the learned counsel for the petitioner that the Tribunal has not considered the material on record is of no help to the case of the petitioner.

10. In view of the above, I do not find any ground to interfere with the impugned order passed by the learned Tribunal. The writ petition lacks merit and is dismissed accordingly. Interim order, if any, shall stand vacated. The appellate authority-respondent No.2 shall decide the appeal on merits expeditiously after hearing the parties.

(SANJAY DHAR)
JUDGE

SRINAGAR
26.12.2023
Sarveeda Nissar

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