

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP 48/2005

GHULAM HASSAN AND OTHERS

...Petitioner/Appellant(s)

Through: Mr. Syed Sajad Geelani, Advocate

V/s

JK SPECIAL TRIBUNAL SRINAGAR AND OTHERS

...Respondent(s)

Through: Mr. G.A. Lone, Advocate for R-3.

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
21.12.2023

ORAL

1. Petitioners in the instant petition filed under Article 226 of the Constitution are seeking following reliefs:-

- a. *By issuing a writ, order or direction including a writ in the nature of certiorari the judgment dated 31.12.2004 delivered by respondent 1 and also the judgment dated 09.08.2004 delivered by respondent 2 may be quashed.*
- b. *By issuing a writ, order or direction including a writ in the nature of mandamus, the respondents be directed to consider the matter afresh and examine the validity of the mutation 171 and 172 which were under challenge before the respondents.*

c. By issuing a writ, order or direction including a writ in the nature of mandamus directing the respondent 3 not to change the nature of the land measuring six kanals falling under survey No. 461 of village Mazhama and not to alienate the same.

2. The reliefs aforesaid are being prayed on the premise that one Ghulam Qadir Waza brother of the petitioners herein owned and possessed land measuring 6 kanals falling under survey No. 461 situated in village Mazhama and after his death, the petitioners took over the charge of the property left by said Qadir Waza, except the land in question in respect whereof the respondent 3 herein had claimed that the said land has vested unto him under section 4 and 8 of the J&K Agrarian Reforms Act, 1976, whereupon the petitioners on inquiry found that the respondent 3 has got the land in question recorded in his name pursuant to two mutations bearing No. 171 and 172, aggrieved whereof the petitioners challenged the said mutations in a time barred appeal before Joint Agrarian Reforms Commissioner/respondent no. 2 herein, and during the consideration of the said appeal, the respondent 3 herein admitted that he had purchased land in question from the owner as a consequence whereof, the appeal came to be allowed by respondent 2 in terms of order dated 25.10.1999 and while setting aside the mutations, remanded the case to Tehsildar Agrarian Reforms for a de novo inquiry to be held in presence of the parties in accordance with law.
3. The order dated 25.10.1999 supra came to be called in question by respondent 3 herein in a revision petition before J&K Special Tribunal respondent 1 which revision petition came to be allowed by

the respondent 1 herein in terms of order dated 09.10.2003, setting aside the order dated 25.10.1999 remanding the case for de novo inquiry to respondent 2 herein with a direction to the parties to appear before respondent 2, requiring the respondent 2 herein to conduct an inquiry in terms of Rule 50 of the Agrarian Reforms Rules 1977.

4. The respondent 2 herein in compliance to the order of the respondent 1 herein dated 09.10.2003 reconsidered the matter and passed an order on 09.08.2004 upholding the validity of mutations being mutation No. 171 dated 20.02.1988 attested under section 4 of the Act of 1976 and mutation No. 172 dated 02.03.1988 attested under section 8 of the Act of 1976.
5. Aggrieved of the order dated 09.08.2004 supra, the petitioners herein preferred a revision petition before the respondent 1 herein calling in question the validity of the said order whereupon the Respondent 1 herein, in terms of the order dated 31.12.2004 dismissed the revision petition holding the same to have no merit, while upholding the order passed by respondent 2 dated 09.08.2004.
6. The impugned orders being 09.08.2004 and 31.12.2004 passed by the Respondent 2 and Respondent 1 respectively are being challenged by the petitioners in the instant petition, *inter alia*, on the grounds that the said impugned orders came to be passed against the provisions of the Act of 1976 and that the land in question was owned and possessed by the late brother of the petitioners in 1971 as the said fact was even recorded in the relevant revenue records which continued till the year 1988, however, taking advantage of his old age, the respondent 3 managed the attestation of mutations 171 and 172 in

his favour and that the respondent 1 was supposed to examine the validity of the impugned order dated 09.08.2004 passed by respondent 2 in the light of the provisions of the Act of 1976 in which the respondent 1 failed and dismissed the revision petition on technical grounds and in the process declined to exercise the jurisdiction under the provisions of the Act of 1976 and that the respondent 1 exceeded his jurisdiction while upholding the impugned order dated 09.08.2004 passed by respondent 2, who too had acted without jurisdiction in the matter while passing the said order and had over-looked the statement having been made by respondent 3 that he had purchased the land making the Act of 1976 inapplicable qua the land in question and, as such, no mutations could have been attested either under section 4 or 8 in favour of respondent 3 herein and that the respondent 3 passed the impugned order without providing an opportunity to the petitioners to argue the matter and that the petitioners thus in the process came to be deprived of their property without following procedure prescribed in law.

7. **Objections** to the petition have been filed by respondent 3 herein, wherein contentions raised and the grounds urged are being opposed and controverted on the premise that the land in question had remained under the possession and occupation of respondent 3 herein as its tenant for the last more than four decades and in fact much before coming into being the Act of 1976 and after coming into being the Act of 1976 during the lifetime of the owner of the land, namely, Ghulam Qadir Waza- the predecessor in interest of the petitioners, the land in question came to be vested unto the

respondent 3 herein under and in terms of sections 4 & 8 of the Act of 1976, to the knowledge of the landlord, namely, Ghulam Qadir Waza.

It is further stated in the objections that the land though was being possessed as a tenant by respondent 3 prior into coming into being the Act of 1976, same came to be owned and possessed by the respondent 3 after vesting of ownership rights unto him in terms of attestation of mutation under sections 4 & 8 of the Act of 1976 and during the said period by virtue of mutation 171, the entry made in the khasra Girdawari was also corrected which had wrongly reflected the name of ex-landlord, namely, Ghulam Qadir Waza. It is further stated that during his life time the ex-landlord, Ghulam Qadir Waza did not join any issue with regard to the attestation of the mutations in question having been attested on 20.02.1988 and 02.03.1988 respectively, during his life time till he died in the year 1998 and that it has been only after his death the petitioners challenged the said mutations before respondents 1 & 2.

It is further stated in the objections that pursuant to the order of the tribunal in the earlier round of litigation between the parties dated 09.10.2003, the respondent 2 conducted an inquiry in tune with the directions passed by the tribunal inasmuch as in line with the provisions of Rule 50 of the Agrarian Reforms Rules, 1977 and consequently passed order dated 09.08.2004 upholding the validity of the mutations in question which order as well came to be upheld by the respondent 1 upon being questioned by the petitioners herein, in terms of order dated 31.12.2004.

Heard learned counsel for the parties and perused the record.

8. The counsel for the petitioners while making his submissions would insist that the impugned orders have been passed by the respondents 1 & 2 in breach of the provisions of the Act of 1976 inasmuch as the impugned order dated 09.08.2004 was passed in absence of the petitioners without affording them an opportunity of hearing which fact was even overlooked by respondent 1 while passing impugned order dated 31.12.2004.
9. On the contrary the counsel for the respondent 3 would contend that the impugned orders have been passed validly and legally and that the findings of facts arrived at by the respondents 1 & 2 in the matter are being questioned by the petitioner before this Court while seeking a writ of certiorari which writ having regard to the law governing and regulating the exercise and grant of said writ of certiorari is not available to the petitioners herein.
10. Admittedly, the petitioners herein have questioned the impugned orders dated 09.08.2004 and 31.12.2004 having been passed in 2nd round of litigation *inter se* the parties by respondents 1 & 2 qua the mutations 171 and 172 attested in favour of respondent 3 herein on 20.02.1988 and 02.03.1988 respectively in respect of land measuring 6 kanals situated at Beerwah under and in terms of the provisions of section 4 & 8 of Agrarian Reforms Act of 1976.

It is significant to note here that the Act of 1976 came into being with an object to extinguish the relationship between a landlord and a tenant and under the scheme of the Act of 1976, it came to be provided as to how and in which manner the relationship between the landlord and tenant should come to an end and in order to get the benefit of section 4 & 8 of the Act of 1976, it had to be established in

the first instance that there was a relationship between the parties as that of a landlord and a tenant and that the tenant who was in possession of the land in kharief 1971 and was paying rent to the landlord would become entitled to get the benefits under the provisions of the Act of 1976 which would include the benefits that would flow from sections 4 & 8 of the Act of 1976.

11. Perusal of the record reveals that respondent 3 herein admittedly had availed the benefits under the provisions of the Act of 1976 as a tenant claiming to be in possession of the land in question not only on the relevant date being kharief 1971, but before that said date not having been disputed and denied by any credible or cogent material by the petitioners herein before the respondents 1 & 2 herein.
12. Record also reveals that indisputably the mutations in question came to be thrown challenge to by the petitioners after the death of the ex-landlord of respondent 3 namely Ghulam Qadir Waza the brother of the petitioners herein who is not denied to have died in the year 1998 and only after his death, the petitioners questioned the said mutations and the said landlord during his life time also admittedly did not question the said mutations.
13. Perusal of the record manifestly tends to show that the respondent 2 upon receipt of the matter for holding of a de novo inquiry in terms of order of the Respondent 1 herein dated 09.10.2003 conducted an inquiry on spot in terms of Rule 50 of J&K Agrarian Reforms Rules 1977, which order manifestly show that the respondent 3 and the general village body along with subordinate revenue functionaries were present on spot, and the petitioners herein did not remain present despite having knowledge and information of such inquiry/hearing.

A closure examination of the impugned order dated 09.08.2004 passed by respondent 2 suggests that the respondent 2 had visited the spot on 14.06.2004 and during the holding of the inquiry/hearing had examined number of villagers present on spot who deposed that the land had never remained in possession of ex-landlord Ghulam Qadir Waza, but had remained continuously in cultivating possession of respondent 3 herein even prior to 1971, whereupon the respondent 2 in terms of the impugned order dated 09.08.2004 upheld the mutations in question.

14. Perusal of the impugned order dated 31.12.2004 passed by the respondent 1 would also reveal that the respondent 1 has taken cognizance of all these facts and has rightly concurred with the conclusions drawn by respondent 2 in the impugned order dated 09.08.2004 notwithstanding the plea, that the respondent 3 have had at one point of time stated that the land had been purchased by him from the ex-land-lord which plea has been rightly not taken into consideration by the respondents 1 & 2 in presence of an undisputed fact that respondent 3 had claimed to be in possession of the land as tenant even prior to the coming into being of the Act of 1976. The said plea being heavily relied upon by the counsel for the petitioners pales into significance even on a plain reading of section 4 of the Act of 1976 which in explicit terms provide that all rights, title interest in the land of any person not cultivating personally in kharief 1971 shall be deemed to have extinguished and vested in the state.

15. For the aforesaid reasons, this Court is not inclined to examine discretion in the instant petition, firstly on the ground that the impugned orders seemingly have been passed by respondents 1 & 2 in

accordance with law and secondly that the findings recorded by both the respondents 1 & 2 on facts are concurrent in nature and under these circumstances, writ of certiorari otherwise also is not available warranted to be issued.

16. Resultantly the petition fails and is accordingly **dismissed.**

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
21.12.2023
“S.Nuzhat”

<i>Whether the order is speaking:</i>	<i>Yes</i>
<i>Whether the order is reportable:</i>	<i>No.</i>