

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

Reserved on: 21.12.2024
Pronounced on: 27.12.2024

OWP No.676/2004

MST. AZIZI & ORS. ...Petitioner(s)

Through: - Mr. Hilal Ahmad Wani, Advocate.

Vs.

STATE OF J&K & ORS ...Respondent(s)

Through: -Mr. Sheikh Hilal, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

JUDGMENT

1. The petitioners have challenged order dated 12.07.2004 passed by the J&K Special Tribunal, Srinagar, whereby the learned Tribunal, while setting aside order dated 22.03.2003 passed by the Commissioner Agrarian Reforms (ADC), Budgam, has remanded the appeal to the said Authority with a direction to decide the same afresh after providing opportunity to the parties to produce the documents and the witnesses.

2. The facts giving rise to filing of this petition are that the petitioners were recorded as tenants in respect of the land measuring 5 kanals comprised in khasra No.761/6 situated in village Naroo District Budgam since Rabi 1971 and the said position continued to be so till 1999. It has been submitted that mutations under Section 4 and 8 of the

Agrarian Reformers Act (hereinafter referred to as “the Act”) were attested in respect of the aforesaid land in favour of the petitioners and they were declared as owners of the land in question. According to the petitioners, mutation under Section 4 of the Act came to be challenged by the respondents by way of an appeal before the Joint Agrarian Reforms Commissioner (ADC) Budgam, who, vide order dated 06.07.2001, dismissed the appeal of the respondents. Against the said order, the predecessor-in- interest of the respondents filed a revision petition before the J&K Special Tribunal, Srinagar. Vide order dated 13.05.2002, the learned Tribunal allowed the revision petition and after formulating two questions for determination, remanded the case back to the Appellate Authority for its decision on the said two questions.

3. The appeal was again heard by the Appellate Authority i.e. Joint Agrarian Reforms Commissioner (ADC) Budgam, who vide order dated 22.03.2003, dismissed the appeal of the respondents. The said order came to be challenged by the respondents by way of a revision petition before the learned Special Tribunal Srinagar. By virtue of the impugned order dated 12.07.2004, the revision petition filed by the respondents has been allowed and the matter has been again remanded to the Appellate Authority for its decision.

4. According to the petitioners, the learned Special Tribunal, without appreciating the factual and legal aspects of the matter, has decided the revision petition in favour of the respondents. It has been submitted that the petitioners are continuously and uninterruptedly in possession of the land in question since and prior to 1971 and, therefore, the same has been mutated in their favour correctly in terms of Sections 4 and 8 of the Act. It has been further submitted that the Appellate Authority had meticulously examined and analysed the material on record and had given full opportunity to the parties to produce evidence and the documents before it, prior to passing of the order, which came to be set aside by the learned Tribunal.

5. The petitioners have further contended that they had filed a suit in respect of the land in question before the Court of Sub Judge, Budgam, and an ex parte decree came to be passed in their favour by the said Court on 13.06.2001, whereby the petitioners were declared as owners in possession of the land in question. Even the application of the respondents for setting aside of the said decree has been dismissed by the learned Sub Judge, Budgam. It has also been submitted that the appeal against the said judgement and decree passed by the Sub Judge has been dismissed by the learned appellate court and, therefore the civil court has

declared the petitioners as owners in possession of the land in question. It is being contended that in these circumstances there is no scope for the revenue authorities to interfere with the mutations attested in favour of the petitioners.

6. The petitioners have further contended that in terms of Section 21 of the Act the revisional jurisdiction can be exercised by the Special Tribunal only if a question of law or of public importance is raised but in the instant case no such question arose in the revision petition which called for determination by the Tribunal. On these grounds it has been contended that the impugned order passed by the learned Tribunal is beyond its jurisdiction.

7. The respondents have filed their counter affidavit to the writ petition in which it has been submitted that they are owners in possession of the land in question and that the petitioners in connivance with the revenue authorities have got the land in question mutated in their favour in terms of Sections 4 and 8 of the Act behind the back of the respondents. According to the respondents, the land in question has been in personal cultivation of respondent No.2 since and before kharif 1971. It has been claimed that the land in question has fallen to the share of respondent No. 2 in terms of compromise decree passed by the learned Sub

Judge, Budgam, on 6th April 1976 in a suit titled Gh. Muhammad and others vs. Mst. Raja and others. It is being submitted that Mst. Raja happens to be the predecessor-in-interest of the petitioners who was a party to the said suit. It has been contended that the Appellate Authority had passed order dated 22nd March 2003 in a clandestine manner without giving opportunity to the respondents to produce evidence which prompted the learned Tribunal to set aside the said order. It has been submitted that the judgement and decree passed by the learned Sub Judge in favour of the petitioners is subject matter of challenge before this Court and that the same has been stayed by this Court in terms of order 01.03.2024 passed in RSA No.02/2024.

8. I have heard learned counsel for the parties and perused the record of the appellate authority as well as the revisional authority.

9. Before dealing with the rival contentions of the parties, it would be apt to understand the scope of power of this Court under Article 226 of the Constitution in issuing a Writ of Certiorari against an order passed by a quasi-judicial authority. It is trite law that the High Court, while exercising its writ jurisdiction, cannot interfere into the order of a quasi-judicial authority unless the order of such authority is arbitrary or perverse or based upon wholly untenable

grounds. The Supreme Court in the case of **Syed Yakoob vs K. S. Radhakrishnan & Others**, AIR 1964 SC 477, has discussed the scope of Writ of Certiorari in the following words:

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was 'insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that

the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmed Ishaque), Nagendra Nath Bora v. Commissioner of Hills Division and Kaushalya Devi v. Bachittar Singh.

10. From the foregoing analysis of the law on the subject, it is clear that a Writ of Certiorari can be issued against an order passed by a Tribunal if it is shown that the Tribunal had erroneously refused to admit admissible and material evidence or has erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, a Writ of Certiorari can be issued where the Tribunal has acted illegally or improperly and has decided a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by the Tribunal is in violation of principles of natural justice. In short, jurisdiction of the High Court is only supervisory in nature and it cannot act as an appellate authority against an order passed by the Tribunal.

11. With the aforesaid legal position in mind, let us now advert to the facts of the present case. According to the impugned order passed by the learned Tribunal, the manner in which the statements of the witnesses were recorded by the Appellate Authority after remand of the appeal to it in terms of the earlier order passed by the Tribunal on 06.07.2001, is absolutely illegal, inasmuch as a single

statement of all the ten witnesses produced by the respondents was recorded without giving any opportunity of cross-examination to the respondents herein. It has also been recorded by the learned Tribunal in the impugned order that the respondents herein were not given any opportunity of producing the documents, particularly the document relating to compromise decree dated 06.04.1976 and even the Patwari concerned had not produced the relevant record before the Appellate Authority. On this basis, the learned Tribunal has concluded that the Appellate Authority has acted irresponsibly so as to give undue advantage to the petitioners. Accordingly, the order passed by the Appellate Authority has been set aside.

12. If the aforesaid findings of the learned Tribunal are not borne out from the record of the learned Appellate Authority, only then this Court, in exercise of its writ jurisdiction, would be justified in interfering with the impugned order passed by the Tribunal.

13. Before coming to the issue as to whether the aforesaid findings of the Tribunal are borne out from the record of the appellate authority, it would be apt to mention here that in the first round of litigation between the parties, the learned Tribunal, while remanding the case to the Appellate Authority vide its order dated 13.05.2002, had directed the

said authority to record clear and positive findings on the following two issues:

- a. who was in possession of land in dispute in Kharif 1971 and in what capacity? O.P Parties
- b. whether land in dispute was mortgaged by Ab. Samad Bhat to the respondents, if so, what is its legal effect in so far the mutation No.627 dated 31.1.29184 attested U/S 4 of A. r. Act? O.P. appellant.

14. It was directed by the Tribunal that before rendering finding on the aforesaid two issues, the Appellate Authority shall afford an opportunity to the parties to produce evidence while holding spot trial. The case was remanded by the Tribunal to the Appellate Authority in terms of its order dated 13.05.2002 after observing that the Appellate Authority has dealt with the points arising in the appeal in a slipshod manner, as a result of which the important questions arising in the appeal had remained un-answered and unresolved. It was in the light of these observations, that the Appellate Authority was directed by the Tribunal to decide the appeal by recording clear and positive findings on the afore-quoted issues.

15. If we have a look at the order dated 22.03.2023 passed by the Appellate Authority in the second round of litigation between the parties, in the said order it has been observed

by the said Authority that it has recorded statements of some land owners who have stated that the land in question is in possession of the petitioners herein for the last about 35 years and that the respondents have been paying the land revenue in respect of the said land. It has been further recorded by the Appellate Authority that upon perusal of the Jamabandi and Girdawari for the year 1971, it was found that the land in question was entered in the name of the respondents from the year Rabi 1971. The Appellate Authority has further recorded that the respondents herein were given opportunity to produce their witnesses but they failed to do so.

16. Now coming to the record of the Appellate Authority. It appears from a perusal of the same that a joint statement of as many as ten witnesses produced by the respondents has been recorded but the cross-examination of these witnesses has not been recorded at all. The minutes of the proceedings do not reflect that any opportunity of cross-examining these witnesses was given by the Appellate Authority to the respondents. It is quite unknown to law that a joint statement of as many as ten witnesses would be recorded by a judicial or quasi-judicial authority. Adopting such a procedure would be opposed to the principles of natural justice and would deprive the opposing party of a chance to

cross-examine the witnesses individually. Therefore, the procedure adopted by the Appellate Authority was definitely contrary to law. The findings of the Tribunal recorded in the impugned order on this aspect of the matter cannot be termed either perverse or illegal.

17. The minutes of the proceedings do not suggest that the Appellate Authority has, at any point of time, directed the respondents herein to produce evidence/documents in support of their claim. The minutes of the proceedings also reveal that on 24.12.2002, the Patwari concerned was asked to produce Form 4 in respect of the land in question and the matter was adjourned to 08.02.2003. On the same date i.e. on 24.12.2002, counsel for the appellants (respondents herein) was directed to produce copy of the decree sheet in respect of mutation No.474. On the next date i.e. on 08.02.2003, the Presiding Officer was not available and the matter was adjourned to 11.03.2003, on which date also, the Presiding Officer was not available and the matter was adjourned to 22.03.2003. On the said date the final order came to be passed by the Appellate Authority and the appeal was dismissed.

18. From a careful perusal of the minutes of the proceedings of the Appellate Authority, it is clear that the arguments in the appeal were never heard by the said

Authority nor the respondents herein were given an opportunity to produce copy of the decree sheet and even the Patwari concerned was not given opportunity to produce the relevant record. After passing direction dated 24.12.2002, calling upon the respondents herein to produce copy of the decree sheet and the Patwari to produce Form-4 in respect of the land in question, the Presiding Officer, on subsequent two dates of hearing, was not available and thereafter without closing right of the respondents/appellants to produce the documents and without posting the matter for final arguments of the parties, the final order came to be passed by the Appellate Authority on 22.03.2003. This approach of the Appellate Authority is clearly in violation of the principles of natural justice and the procedure established under law. Therefore, the findings of the learned Tribunal in this regard are based upon the record of the Appellate Authority, as such, the same do not deserve any interference from this Court in exercise of its writ jurisdiction.

19. In fact, a perusal of the record of the Appellate Authority reveals that after remand of the case by the Tribunal in terms of the impugned order, the respondents/appellants have produced the witnesses who have been cross-examined by the petitioners herein. It appears that the Appellate Authority has now proceeded in

the matter in the manner as is expected of a quasi-judicial authority which was not the case when the appeal was dealt with by the Appellate Authority on the earlier occasions.

20. So far as the contention of learned counsel for the petitioners that the revision petition did not raise any question of law or of public importance as contemplated under Section 21 of the Agrarian Reforms Act, is concerned, the same is without any merit, for the reason that once the Tribunal, on the basis of the record of the Appellate Authority, found that the proceedings were conducted by the Appellate Authority in breach of the principles of natural justice, it gave rise to a question of law as to whether such a procedure could be countenanced in law. The same has been correctly answered by the Tribunal in terms of the impugned order.

21. Another contention that has been raised by learned counsel for the petitioners is that Civil Court has passed a decree of declaration in respect of the suit land which has been upheld by the Appellate Court, therefore, there is no scope for the Revenue authorities to attest mutation in favour of the respondents contrary to the decree of civil Court. In this regard it is to be noted that the respondents have challenged the decree of Civil Court by way of 2nd appeal before this Court which is still pending and an interim order

of stay is in operation. Therefore, the decree of Civil Court in favour of the petitioners has not acquired finality as yet. In any case, the mutation order that may be attested by the Revenue authorities after the remand case is decided by the Appellate Authority would remain subject to the decree of Civil Court that may ultimately be passed after the disposal of the 2nd appeal.

22. For the foregoing reasons, I do not find any ground to interfere with the well-reasoned and lucid order passed by the learned Tribunal. The writ petition lacks merit and is dismissed accordingly. The Appellate Authority is directed to proceed further in the matter in accordance with the directions passed by the learned Tribunal by virtue of the impugned order and conclude the proceedings most expeditiously, preferably within a period of six months from the date a copy of this order is made available to the said Authority.

(Sanjay Dhar)
Judge

SRINAGAR

27.12.2024

"Bhat Altaf-Secy"

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