

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

**LPA 208/2024
In[WP(C) 3011/2023]
CM(4910/2024)**

Abdul Rahim Malik

...Petitioner(s)

Through: Mr. Mohammad Amin Bhat, Advocate

Vs.

Union Territory of J&K and Ors.

...Respondent(s)

Through: Mr. M.Y. Lone, Advocate
Mr. Mubeen Wani, Dy. AG.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.
HON'BLE MR. JUSTICE MOHAMMAD YOUSUF WANI, JUDGE.**

**JUDGMENT(ORAL)
23.08.2024**

Sanjeev Kumar:J (Oral)

1. This intra-court appeal is directed against the order and judgment dated 8th July, 2024, passed by the learned Single Judge [“the writ Court”], in WP(C) 2454/2023 titled “*Habib Ullah Malik and Another Vs. Union Territory of Jammu & Kashmir and Others*”, whereby the writ Court has accepted the writ petition and set aside the order dated 26th August, 2023, passed by the Commissioner, Agrarian Reforms, Budgam, and remanded the matter back to the Appellate Authority for according fresh consideration.

2. Briefly stated, the facts leading to the filing of this appeal, are that as per the recorded position in Khasra Girdawari of Kharief 1971, the appellant, along with the respondent No. 7 and 8, were recorded as owner in self-cultivation. However, in terms of the mutation No. 1256 attested by Tehsildar Budgam, under Section 4 of the Jammu and Kashmir Agrarian

Reforms Act, 1976 [“the Act”], the Khasra Girdawari of Kharief 1971 was corrected and the respondents 7 and 8 were shown as tenants qua the land owned by the appellant and, accordingly, a composite mutation was attested. This was followed by mutation No. 1286 attested under Section 8 of the Act. Both the mutations came to be challenged by the appellant before the Commissioner, Agrarian Reforms (Additional Deputy Commissioner), Budgam. The appeals were allowed and the orders on both the mutations were set aside.

3. Feeling aggrieved, the respondents 7 and 8 filed WP(C) No. 2454/2023 challenging the order of Commissioner, Agrarian Reforms, Budgam. The writ petition bearing WP(C) No. 2454/2023 was taken up, along with WP(C) No. 3011/2023 by the learned Single Judge, and in terms of judgment dated 8th July, 2024, the writ Court, after hearing the rival contentions, came to the conclusion that the Appellate Authority had not considered the matter in correct perspective and had arrived at its conclusions without application of mind. This is how, vide order and judgment impugned, the order dated 26th August, 2023 passed by Commissioner, Agrarian Reforms, Budgam was set aside by the writ Court and the matter was remanded for fresh consideration.

4. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that both the mutations which were subject matter of challenge in appeals before the Commissioner, Agrarian Reforms, Budgam, are not sustainable in law. Needless to say that there is a presumption of correctness of Khasra Girdawari entry made in the revenue record. So far as the Khasra Girdawari entry of Kharief 1971 is

concerned, the same is also presumed to be correct, unless proved otherwise by the aggrieved party.

5. Rule 4 of the Jammu and Kashmir Agrarian Reforms Rules, 1977, provides elaborate procedure for correction of Khasra Girdawari entry of Kharief 1971. At least what is required to be done by the Revenue Officer is to provide an opportunity of being heard to the affected person. It is not in dispute that in the instant case, the appellant who was recorded as owner in self-cultivating possession of the subject land in Kharief 1971 was the affected person and was required to be heard in the matter. It is also clear, from the record and as has been correctly noted by the writ Court in the judgment impugned, that neither at the time of attestation of mutation under Section 4 nor at the time of attestation of mutation under Section 8, was the appellant ever heard. The mutations were attested in violation of principles of natural justice and, thus, deserve to be set aside. The Commissioner, Agrarian Reforms, Budgam, was thus correct in accepting the appeals and setting aside both the mutations. However, since the respondents 7 and 8 are claiming to be in cultivating possessing of the subject land as tenants, as such, an opportunity needs to be given to them to go before the concerned Revenue Officer and demonstrate that they were the tenants in actual cultivation of the subject land in Kharief 1971.

7. The appellant, who is otherwise recorded as owner in self-cultivation of the subject land, is equally entitled to be heard in the matter, so that he can show to the concerned authority that the recorded position in Khasra Girdawari of Kharief 1971 is correct and does not call for correction.

8. For all these reasons, we allow this appeal and set aside the judgment of the writ Court and upheld the order dated 23rd August, 2023, passed by the Commissioner, Agrarian Reforms, Budgam. The matter is, however, remanded to the Tehsildar Budgam for considering the matter afresh. He shall hear both the parties and conduct the requisite enquiry in terms of the Act and the Rules framed thereunder before passing appropriate orders.

9. **Disposed of.**

(MOHAMMAD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

23.08.2024

“Mir Arif”

