

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

WP(C) No. 283/2022

Mohd Qayoom & Ors.

.....Petitioner

Through: Mr. H.A. Siddiqui, Advocate

Vs

UT of J&K & Ors.

.....Respondents

Through: Ms. Nazia Fazal, Advocate vice
Mrs. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
ORDER
(15.10.2025)

1. The petitioners, through the medium of the present petition, have challenged order No. DCP/SQ/1184-87 dated 30.12.2020 issued by Deputy Commissioner, Poonch by virtue of which *inter-alia* mutation No. 400 dated 08.12.1992 in respect of land measuring 49 kanals and 04 marlas in khasra No. 455 situated at village Mankote, District Poonch has been cancelled by declaring the said mutation as void ab-initio.
2. According to the petitioners they are owners of the land in question which has been allotted to them in terms of Government Order No. 394 of 1962 dated 03.10.1962. It has been submitted that mutation No. 400 came to be

attested in favour of the petitioners in respect of the aforesaid land on 08.12.1992. The petitioners have further submitted that the said mutation was challenged before Additional Deputy Commissioner, Poonch by way of an appeal but the appeal was dismissed by the Additional Deputy Commissioner vide his judgment dated 15.09.2004. It has been further submitted that the said order was affirmed by Divisional Commissioner, Jammu as well.

3. According to the petitioners, the impugned order whereby the aforesaid mutation attested in favour of the petitioners has been cancelled by declaring it as void ab-initio, has been made without issuing notice to the petitioners or without giving an opportunity of hearing to them.
4. The writ petition has been contested by the respondents by filing their reply thereto. In their reply, it has been submitted that entry in the name of petitioner No. 1 as illegal occupant was made for the first time in Khasra Girdawari in Kharif 1966 for an area measuring 15 Kanlas out of 49 Kanlas 4 Marlas by the then Patwari Halqa. It has been further submitted that in Kharif 1973, the entry of 15 Kanals was changed in the name of father of the petitioner No. 5 and 6 with half share along with half share of petitioner No. 1 as illegal occupants by then Naib Tehsildar.

5. The respondents have further submitted that in Kharif 1984, an entry for an area measuring 8 Kanals was made by then Patwari Halqa in the name of father of petitioner No. 5 and 6 and Mohd. Qayoom with equal shares as illegal occupants and remaining area of Khasra No. 455 measuring 26 Kanals 4 Marlas was also entered in the name of father of petitioner No. 5 and 6 and Mohd. Qayoom with equal shares as illegal occupants in Rabi 1992 by then Girdawar Circle. According to the respondents there was no entry in the name of petitioners or their forefathers prior to the entry made in Kharif 1966.
6. The respondents have admitted that vide mutation No. 400, the ownership rights under Government Order No. 394/C of 1962 for the land measuring 49 Kanals 4 Marlas have been conferred upon the petitioners but according to them it has been made against the statutory provisions. It has been submitted that the land in question could not have been mutated in the name of the petitioners. It is being urged that the petitioners could have been declared as legal occupants in revenue record only if authorization or approval of 'Notour' of State land would have been accorded in their favour by the Maharaja Bahadur of Poonch. Had it been so, it would have been reflected in the **Records of Rights 1961-62** but in the instant case, the petitioners or

their forefathers have been recorded as illegal occupants in Rabi 1966 and thereafter. Thus, the mutation attested in their favour is against the statutory provisions and has rightly been declared as void ab-initio.

7. It has been contended that the impugned order has been passed after following due procedures of law. It has been further submitted that the land in question has been recorded as “Ghair Mumkin Jungle” in the **Record of Rights 1961-62**, therefore, it could not have been allotted in favour of petitioners or their forefathers. It has been submitted that it would be of no use to grant an opportunity of hearing to the petitioners in the facts and circumstances of the present case as the same would be a mere ritual because the mutation attested in favour of the petitioners is illegal and not recognized under law.
8. I have heard learned counsel for the parties and perused the pleadings of the case.
9. It is not in dispute that Mutation No. 400 of village Mankote, District Poonch was attested in respect of land in question in favour of the petitioners and the said Mutation Order was passed by the competent authority. It is also not in dispute that by virtue of the impugned order, aforesaid Mutation Order has been set aside by respondent No. 4,

Deputy Commissioner, Poonch thereby declaring inter-alia the aforesaid Mutation Order, as void ab-initio. Two issues that arise in the present petition for determination are as to whether respondent No. 4, Deputy Commissioner, Poonch was competent to cancel the Mutation Order without there being an application or appeal from any interested person and secondly, whether the Mutation Order attested in favour of the petitioners could have been set aside without hearing them.

10. Similar questions came up for determination before this Court in another writ petition bearing WP(C) No. 2360/2021 titled **Om Parkash and ors. Vs. UT of J&K and ors., decided on 02.03.2024**, This Court after analyzing the various provisions of the J&K Land Revenue Act, made the following observations:-

“07. If we have a look at the provisions contained in the Jammu and Kashmir Land Revenue Act, 1996 (1939 A.D.), Section 6 of the Act classifies the Revenue Officers and these include the Financial Commissioner, the Divisional Commissioner, the Collector, the Assistant Collector of the first class and the Assistant Collector of the second class. It also provides that the Deputy Commissioner of a District would be the Collector of a District and an Assistant Collector and a Tehsildar would be an Assistant Collector of the first class, whereas a Naib Tehsildar would be an Assistant Collector of the second class.

08. Section 11 of the J&K Land Revenue Act provides that an appeal from an order passed by the Assistant Collector of either class shall lie to the Collector; an appeal from an

order passed by the Collector shall lie to the Divisional Commissioner and an appeal shall lie to the Financial Commissioner from an order passed by the Divisional Commissioner.

09. Section 13 of the J&K Land Revenue Act provides that a Revenue Officer has power to review his own order either of his own motion or on the application of any interested party. Clause (c) of sub section (1) of Section 13 of the Act postulates that while exercising the powers of review, an order cannot be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order.

10. Section 15 of the J&K Revenue Act vests powers of revision with the Financial Commissioner and the Divisional Commissioner. In case, the Divisional Commissioner feels that the order against which revision petition has been filed is required to be modified or revised, he has to send a report alongwith his opinion to the Financial Commissioner. Proviso to Section 15 further lays down that in case an order is required to be reversed, the same cannot be done without giving to the affected person an opportunity of hearing.”

- 11.** In the face of the aforesaid legal position, let us now analyse the facts of the present case. Respondent No. 4, Deputy Commissioner, Poonch has set aside the Mutation Order passed in favour of the petitioners by the Naib Tehsildar concerned. The Deputy Commissioner is vested with appellate powers against an order of Tehsildar/Naib Tehsildar. It is not the case of the respondents that an appeal against the Mutation Order attested in favour of the petitioners had been filed before him. Thus, it cannot be

stated that while passing the impugned order, respondent No. 4 has exercised its appellate powers in terms of Section 11 of the Act. Since the order of mutation was passed by the Naib Tehsildar and not by the Deputy Commissioner, Poonch, as such, it can also not be stated that Deputy Commissioner, Poonch can exercise his suo-motto power of review as contemplated under Section 13 of the Act. The Deputy Commissioner is not vested with powers of revision in terms of Section 15 of the Act as such, it can also not be stated that while passing the impugned order, respondent No. 4 has exercised his revisional jurisdiction.

12. In the present case, respondent No. 4, Deputy Commissioner, Poonch has not spelled out in the impugned order as to under which provision of law, he has passed the impugned order. It appears that respondent No. 4 has exercised the power of review in respect of orders passed by the Naib Tehsildar, who is subordinate revenue officer. The same could not have been done by respondent No. 4. Thus, the impugned order passed by respondent No. 4 is without jurisdiction.

13. Apart from the above, admittedly, no prior notice has been given to the petitioners before passing the impugned order. Thus, the principles of natural justice have been breached by respondent No. 4 while passing the impugned orders

against the petitioners. The power to attest the mutation as also to set aside the mutation is quasi judicial in nature. The said power has to be exercised by revenue officer strictly according to the provisions contained in J&K Land Revenue Act that too after affording an opportunity of hearing to the affected parties by adhering to the principles of natural justice. While passing an order which affects rights of a person, a quasi judicial authority is obliged to give an opportunity of hearing to the affected party.

- 14.** It is being contended by the respondents that giving right of hearing to the petitioners would have been an empty formality as the Mutation Order which is subject matter of the impugned order is void ab-initio and contrary to law because the name of the petitioners does not exist in record of rights of 1961-62 and also because the land in question could not have been allotted to the petitioners as the same was not cultivable land. In this regard, it is to be noted that if the petitioners would have been granted an opportunity of hearing, it is quite probable that they would have been able to convince respondent No. 4 to take a different view. At least, the petitioners should have been given an opportunity to produce the record before respondent No. 4 so as to controvert the ground on which Mutation Order passed in their favour have been set aside. Without

adhering to the principles of natural justice, the impugned order of respondent No. 4 is rendered unsustainable in law.

- 15.** For the foregoing reasons, the writ petition is allowed and the impugned order No. DCP/SQ/1184-87 dated 30.12.2020 issued by respondent No. 4-Deputy Commissioner, Poonch so far as it relates to the petitioners is set aside. It shall, however, be open to the respondents to take recourse to appropriate remedy available under law.

JAMMU
15.10.2025
SUNIL

