

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

WP(C) No. 916/2025

Abdul Ghani and others

.....Appellant (s)

Through :- Mr Irfan Khan Advocate

V/s

.....Respondent(s)

UT of Jammu and Kashmir and others

Through :- Ms Monika Kohli Sr. AAG for R-1
to 5
Mr. H. A. Siddiqui Advocate for
R-6

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

JUDGEMENT(ORAL)

1 Through the medium of present petition, the petitioners have challenged order dated 20.03.2025 issued by respondent No.2, the Additional Commissioner, Jammu (with powers of Divisional Commissioner, Jammu), whereby the revision petition filed by the petitioners against order dated 08.08.2023 passed by respondent No.3, the Deputy Commissioner, Poonch, has been rejected. Challenge has also been thrown to order dated 08.08.2023 passed by respondent No.3 whereby permission under Section 13(1)(a) of the Jammu and Kashmir Land Revenue Act, 1996 (hereinafter referred to as the "Act") was granted to respondent No. 5 to review his order dated 27.05.2023.

2 As per case of the petitioners, they along with respondent No.6 happen to be the legal heirs of late Ali Mohd. It has been claimed that after death of Ali Mohd., Mutation No. 214 dated 31.07.1975 was attested in favour of the petitioners and respondent No.6, as well as the widow of the deceased, by the Tehsildar, Haveli. However, respondent No.6, after a delay of 44 years, is stated to have filed an application before respondent No.5 seeking partition

of the property. Upon consideration of the matter, the learned Assistant Commissioner (Revenue), Poonch (respondent No.5 herein), vide his order dated 02.07.2022, dismissed the aforesaid application filed by respondent No.6

3 On 19.07.2022, respondent No.6 is stated to have challenged Mutation No. 214 by filing an appeal before respondent No.5. An application for condonation of delay was also filed by the said respondent. Vide order dated 27.05.2023, the said application was dismissed, and the matter was listed for orders on 10.06.2023. However, despite objections of the petitioners, respondent No.5 allowed the application for condonation of delay in terms of order dated 17.06.2023. On 21.07.2023, respondent No.5 sought permission from respondent No.3 to review order dated 27.05.2023. Respondent No.3 is stated to have passed order dated 08.08.2023, thereby granting permission to respondent No.5 to review order dated 27.05.2023. The petitioners are stated to have challenged orders dated 08.08.2023, 21.07.2023 and 17.06.2023 before respondent No.2 by filing a revision petition. Respondent No.2, vide order dated 06.11.2023, called for record from the Courts of respondent Nos.3 & 5 and, subsequently, vide order dated 20.03.2025, directed the petitioners to appear before respondent No.4 on the ground that the matter could not be agitated through the medium of revision petition.

4 The petitioners have challenged orders dated 20.03.2025 08.08.2023, 21.07.2020 and 17.06.2023 on the ground that respondent No.2 has failed to appreciate the controversy, particularly in not deciding whether the review was permissible under law. It has been submitted that respondent No.2, while passing the impugned order dated 20.03.2025, has not taken into account the fact that the orders under challenge had been passed illegally and

arbitrarily, without following the principles of natural justice as is mandated under Section 13(a)(c) of the Land Revenue Act.

5 It has been contended that order dated 21.07.2023 is liable to set aside as the same is without jurisdiction being beyond the purview of review as contemplated under Section 13 of the Act. It has been submitted that without sanction from the superior revenue officer, it was not open to respondent No.5 to review his order. It has been further contended that order dated 17.06.2023 is also bad in the eyes of law, as there was no occasion for respondent No.5 to condone the delay after having dismissed the application in terms of the earlier order dated 27.05.2023. It has also been contended that respondent No.5 could otherwise not have condoned the delay without there being any proper explanation for the delay.

6 On the basis of the aforesaid grounds, the petitioners have challenged order dated 20.03.2025 passed by respondent No.2, order dated 08.08.2023 passed by respondent No.3, orders dated 21.07.2023 and 17.06.2023 passed by respondent No.5

7 Respondent No.6, the contesting respondent, has filed his reply to the writ petition, in which, it has been submitted that respondent No.5, the Assistant Commissioner (Revenue), Poonch while exercising the powers of the Collector, has condoned the delay in preferring the appeal against Mutation No.214 dated 31.07.1975, as the said Mutation had deprived her of her share in the ancestral property, which is contrary to Shariat law. It has been submitted that the petitioners, in connivance with the revenue officials, had got Mutation No.214 attested *ex parte* on 31.07.1975, thereby divesting respondent No.6 of her share in the ancestral property. According to respondent No.6, she challenged the aforesaid mutation order before the Assistant Commissioner

(Revenue), Poonch who, in turn, in terms of order dated 17.06.2023 condoned the delay and also sought permission to review the observations made in order dated 27.05.2023.

8 It has been submitted that on 27.05.2023, the Assistant Commissioner (Revenue), Poonch did not pass the final order, but only observed that he cannot condone the delay, but the final order was passed by the said authority only on 17.06.2023 thereby condoning the delay. Thus, according to respondent No.6, the Assistant Commissioner (Revenue), Poonch was well within his powers to condone the delay in filing the appeal despite having made an observation to the contrary in his earlier order dated 17.06.2023. It has been submitted that, in fact, no permission was needed for review of order dated 17.06.2023, but, still respondent No.5, Assistant Commissioner (Revenue), as a matter of caution, sought permission, which was duly granted by the superior authority under Section 13 of the Land Revenue Act. It has been contended that respondent No.2 has rightly observed that the order condoning delay is an interim order, and that the permission to review the order is merely to facilitate the parties in presenting their case before the revenue Court. Respondent No.6 has submitted that even after the transfer of the case to the Court of Additional Deputy Commissioner, Poonch, the order was again upheld.

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

10 A perusal of the record reveals that an appeal came to be filed by respondent No.6 against mutation No. 214 dated 31.07.2022 of village Seri Chouhana, Tehsil Haveli, before the Court of Assistant Commissioner, Revenue, Poonch, on 19.07.2022. Along with the appeal, an application for

condonation of a delay of about 47 years was also filed. On 27.05.2023, the Assistant Commissioner (Revenue), Poonch, in the presence of learned counsels for the parties, after hearing their arguments, observed that the appellant had already filed a suit for partition of the land in question on 28.09.2021, which was decided on 02.07.2022 and it appears that the appellant was in knowledge of the impugned mutation. He has further observed that the application for condonation of delay is without any basis, the same has been filed by suppressing the material facts, and that the counsel for the appellant could not offer any justification. The Assistant Commissioner (Revenue), Poonch, went on to observe that the delay cannot be condoned. However, while making these observations, he posted the matter to 17.06.2023 for passing a final order.

11 It appears that on 17.06.2023, the case was taken up in presence of the counsels for the parties and the Assistant Commissioner (Revenue), Poonch, after noting that the arguments of the learned counsels for the parties have been considered, and after noting the submission of learned counsel for the respondent that the application for condonation of delay has been dismissed on 27.05.2023, proceeded to condone the delay on the ground that the appellant had filed the appeal immediately upon gaining the knowledge of the impugned mutation. The Assistant Commissioner (Revenue), Poonch submitted the file to the Deputy Commissioner seeking permission to review of order dated 22.07.2023. The Deputy Commissioner, in terms of the impugned order dated 08.08.2023, granted permission to the Assistant Commissioner to review the said order. This order came to be challenged by the petitioners by way of a revision petition before respondent No.2, who vide impugned order dated

20.03.2025 declined to interfere with the aforesaid order on the ground that no revision lies against an order of review.

12 From the foregoing sequence of events, it is clear that two contradictory orders were passed by the Assistant Commissioner (Revenue), Poonch. Vide order dated 27.05.2023, the Assistant Commissioner declined to condone the delay in filing the appeal, however, vide subsequent order dated 17.06.2023, the said authority has allowed the application for condonation of delay. After reviewing the order, the Assistant Commissioner (Revenue), Poonch sought permission from the Deputy Commissioner, Poonch, who, vide impugned order dated 08.08.2023 granted the requisite permission.

13 Section 13(1)(a) of the Land Revenue Act empowers the Divisional Commissioner, the Collector, or any Revenue Officer of a class below that of Collector to review his own orders. It further provides that if the order proposed to be reviewed is passed by a Revenue Officer of a class below that of Collector, such an officer has to first obtain the sanction of the Revenue Officer under whose control he is immediately placed.

14 In the present case, the Assistant Commissioner (Revenue), Poonch, has passed order dated 17.06.2023 allowing the application for condonation of delay filed by respondent No.6 and only thereafter he sought permission from the superior officer. The requirement of law is that when a revenue officer below the rank of Collector proposes to review his order, he has to seek prior permission/sanction from a superior revenue officer, rather than seeking such permission/sanction after reviewing the order. The order impugned dated 17.06.2023 passed by the Assistant Commissioner (Revenue), Poonch is, therefore, contrary to the provisions contained in Section 13(1)(a) of

Land Revenue Act. Since the basic order passed by the Assistant Commissioner (Revenue), Poonch on 17.06.2023 is bad in law, the subsequent orders passed by the Deputy Commissioner on 18.08.2023 and the Divisional Commissioner on 20.03.2025 are also rendered illegal, because, by virtue of the said orders, they have perpetuated the illegality committed by the Assistant Commissioner (Revenue), Poonch

15 For the foregoing reasons, the instant writ petition is allowed and the impugned orders dated 17.06.2023 and 21.07.2023 passed by the Assistant Commissioner (Revenue), Poonch (respondent No.5 herein), order dated 08.08.2023 passed by the Deputy Commissioner, Poonch,(respondent No.3), and order dated 20.03.2025 passed by the Divisional Commissioner (respondent No.2) are set aside. The case is remanded to the Assistant Commissioner (Revenue), Poonch with a direction to consider the question regarding desirability of reviewing order dated 27.05.2023, after affording an opportunity of hearing to the petitioners and respondent No.6. If the said authority finds it appropriate that order dated 27.05.2023 is required to be reviewed, he shall seek prior permission from the Deputy Commissioner concerned in accordance with the provisions contained in Section 13(1)(a) of the Land Revenue Act and it is only after permission/sanction is granted by the said authority, that the Assistant Commissioner shall proceed to hear the contesting parties before taking a final decision on his proposal to review order dated 27.05.2023.

(SANJAY DHAR)
JUDGE

Jammu
25.04.2025
Sanjeev

Whether order is reportable: Yes/No