

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

WP(C) No. 1150/2023
CM No. 2682/2023

Mohd Younis Choudhary

.....Appellants

Through: Mr. Meharban Singh, Advocate

Vs

UT of J&K and ors.

..... Respondents

Through: Mrs. Monika Kohli, Sr. AAG with
Ms. Sagira Zaffar, Advocate

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

ORDER

22.09.2025

1. The petitioner, through the medium of present writ petition, has challenged Order No. DCP/SQ/2022/1097-1101 dated 23.08.2022 issued by Deputy Commissioner, Poonch (respondent No. 3) whereby, mutation No. 74 dated 03.10.1973 attested in respect of 20 kanals of land falling in khasra No. 943 situated at village Gohlad, Tehsil Mendhar District Poonch in favour of the petitioner has been set aside.

2. According to the petitioner, the aforesaid mutation came to be attested in favour of father of the petitioner under Government order No. LB-6/C and after his death, mutation of inheritance has been attested in favour of the petitioner. It has been submitted that the land in question was never a forest land and that father of the petitioner was occupying the said land even before 1947. Therefore, the same clearly falls under purview of Government Order No. LB-6/C and Government order No. S-432,

as such, mutation was rightly attested in favour of the petitioner on 03.10.1973 after holding a detailed enquiry.

3. The petitioner has challenged the impugned order on the grounds that the same has been passed without adhering to the principles of natural justice as the petitioner has not been heard nor any notice has been issued to him. It has been further submitted that the impugned order passed by the Deputy Commissioner, Poonch is without jurisdiction and the same has been passed by him in his administrative capacity which is not permissible in law.

4. The respondents have filed their reply to the writ petition in which it has been submitted that the land in respect of which mutation No. 74 dated 03.10.1973 was attested is Gair Mumkin Jhaad as per the record of rights of 1961-62. It has been submitted that the petitioner and his forefathers have occupied the said land illegally. It has been further submitted that mutation in respect of 20 kanals of land under Government Order No. LB-6/C of 1958 has been attested in favour of father the petitioner against the statutory provisions as such, the same has been rightly cancelled by respondent No. 2. It has been submitted that the name of petitioner or his forefathers has not been recorded in the record of rights of 1961-62 and they were not in cultivating possession of the land in question as such, occupancy rights under Government Order No. LB-6/C could not have been

conferred upon them. It has been further submitted that the rules of natural justice even if followed would not make any difference as there is no possibility of any change in the decision even after hearing the petitioner.

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

6. It is not in dispute that mutation No. 74 of village Gohlad was attested in respect of 20 kanals of land under Government Order No. LB-6/C in favour of father of the petitioner and said mutation was attested by the concerned Tehsildar. It is also not in dispute that by virtue of the impugned, the aforesaid mutation order has been set aside by respondent No. 3-Deputy Commissioner, Poonch thereby restoring the land in question to the State. The issue that arises for determination is as to whether the mutation order attested in favour of the petitioner could have been set at naught without hearing the petitioner.

7. It appears that the impugned order has been passed by respondent No. 3-Collector on the basis of an application made by Divisional Forest Officer, Poonch on 22.01.2022. If we treat the said application as an appeal against the order of mutation passed in favour of the petitioner, then as per Section 12 of the Land Revenue Act, limitation period provided for filing an appeal from an order of Assistant Collector to the Collector is 60 days. In the present case, the application has been made by Divisional

Forest Officer, Poonch after about 50 years of attestation of mutation. The issue of limitation has not been dealt with by the Deputy Commissioner, Poonch at all.

8. Apart from the above, the Deputy Commissioner, Poonch, while canceling the mutation of the petitioner has not issued any notice to the petitioner nor he has been heard before setting at naught the mutation order attested in his favour. A quasi judicial authority or even an administrative authority, while passing an order which effects the rights of a person has to follow the principles of natural justice by affording an opportunity of hearing to the affected person or else, the order of said authority becomes arbitrary and illegal.

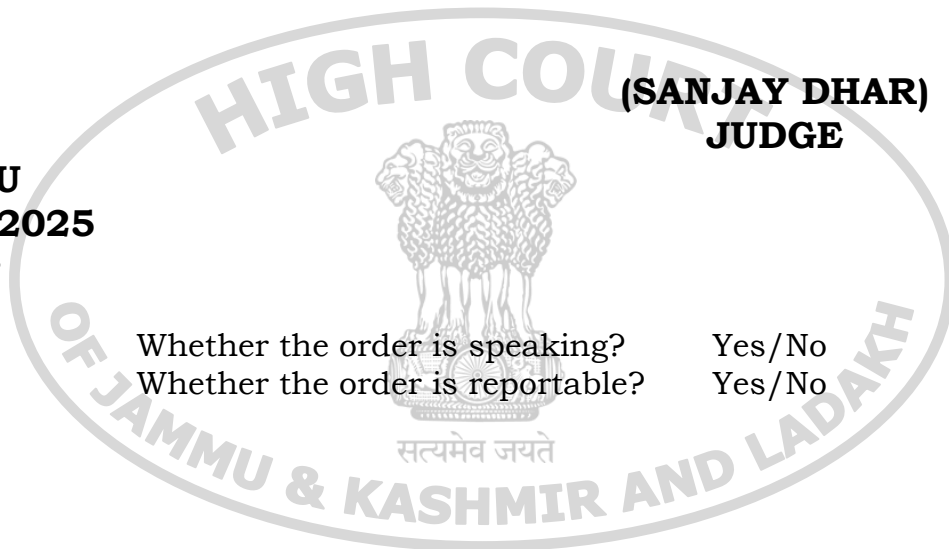
9. The contention of the respondents that giving an opportunity of hearing to the petitioner would not have made any difference to his case, cannot be countenanced in law because it is quite possible that the petitioner may have been able to persuade respondent No. 2 to maintain the mutation order by producing the record to show that he/his father were entitled to be conferred with tenancy rights/proprietary rights in respect of the land in question in terms of Government Order No. LB-6/C of 1958 and Government Order No. S-432 of 1966. The petitioner had also a right to raise the issue of maintainability of the appeal before respondent No. 3 on the grounds of limitation. In the absence of the petitioner having been given an opportunity to

defend his case, the whole exercise undertaken by respondent No. 3-Deputy Commissioner, Poonch has become arbitrary and illegal.

10. For the foregoing reasons, the writ petition is allowed and the impugned order to the extent of the petitioner is set aside leaving it open to respondent No. 3 to pass fresh order after hearing the petitioner.

11. Disposed of.

JAMMU
22.09.2025
Tarun/PS



Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No