

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

Case:- WP(C) No. 1196/2025
CM No. 2859/2025
Caveat No. 1073/2025

Kuldeep Singh, Age 65 years
S/o Sardha Jogi
R/o Village Smailpur, Tehsil Bari
Brahmana, District Samba.

.....Appellant(s)/Petitioner(s)

Through: Mr. Sachin Gupta, Advocate.

Vs

1. Union Territory of Jammu and Kashmir through Commissioner/Secretary Revenue Department, Civil Secretariat, Jammu.
2. Additional Deputy Commissioner, Samba (with the powers of Commissioner Agrarian Reforms).
3. Tehsildar Bari Brahmana, District Samba.
4. Sangeeta Jaitley, Age 68 years, W/o Late Arun Kumar Jaitley, R/o H. No. 131/AD, Gandhi Nagar, Jammu.
5. Nidhi Sharma, Age 61 years, W/o Shrawan Sharma, R/o H. No. 131/AD, Gandhi Nagar, Jammu.

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG
Mr. S. M. Choudhary, Advocate.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(16.05.2025)

1. The respondents No. 4 & 5 are successors-in-interest of Shakuntla Devi (mother) who in turn is said to have inherited the estate of her father Agya Ram. The estate in reference is in village Samailpur, tehsil Bari Brahmana, district Samba.

2. Mutation No. 705 dated 20.01.1982 purportedly under section 4 of the Agrarian Reforms Act, 1976 came to be attested adverse to the recorded owners of the land in reference forming subject matter of said mutation followed by an attestation of mutation No. 902 dated 14.02.1989 purportedly under section 8 of the Agrarian Reforms Act, 1976 with respect to self same land, thus, involving a gap of more than seven years between the two.

3. In terms of mutation No. 902 dated 14.02.1989, the purported vesting of the land forming subject of said mutation came to be in favour of number of persons one of them being the petitioner herein Kuldeep Singh.

4. These two mutations came to be challenged by the respondents No. 4 & 5, as being the successors-in-interest of Shakuntla Devi (mother), in appeals before the appellate authority of the Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms), Samba on file No. ARA/04/2024 and ARA/09/2024 reckoning said two mutations being illegal in the eyes of law.

5. Two appeals so preferred by the respondents No. 4 & 5 being beyond prescribed period of limitation under the Agrarian Reforms Act, 1976 came to be accompanied with the application/s for condonation of delay with respect to adjudication of which the appellate authority of the Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms), Samba came to pass an order dated 18.04.2025 thereby observing that the condonation of

delay in the matter can be considered only upon the merits of the appeal/s and the pleas made therein on behalf of the respondents No. 4 & 5 as being the appellants.

6. The respondents No. 4 & 5, as being the appellants, in their condonation of delay application/s came forward with the cause/s in the context whereof the condonation of delay was being solicited by them whereas in his objections submitted by the petitioner as the respondent in the appeal to the said condonation of delay application/s, the assertions made by the appellants as the respondents No. 4 & 5 herein seeking condonation of delay came to be negated but by purportedly relying upon the facts and circumstances drawn from the merits of the attestation of two mutations.

7. It is in this context that the appellate authority of the Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms), Samba came up with the take that only upon hearing of the arguments of all aspects of the case a call can be taken even for the sake of condonation of delay be it for allowance or refusal thereof.

8. Though the order dated 18.04.2025 by the appellate authority of the Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms), Jammu may not very satisfactorily worded but by said observation, the appellate authority of Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms), Samba has in fact, saved both

sides to the lis from suffering any unwarranted prejudice and, therefore, the call taken by the Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms), Samba cannot be said to suffer any legal flaw so as to suffer a judicial review evaluation from this Court under article 226 of Constitution of India.

9. Mr. Sachin Gupta, learned counsel for the petitioner submits that Hon'ble the Supreme Court of India in the case of **"Pathapati Subba Reddy Vs. The Special Deputy Collector (LA)"** reported in **2024 SCC Online SC 513**, paragraph-26 submits that in the condonation of delay application merits of the case cannot be adverted to.

10. There is no iota of scope to differ or digress from the proposition of law as cited above by Mr. Sachin Gupta, Advocate for the petitioner but then there are always variables in life and law. A question if posed whether rules of natural justice in hearing "to be affected party" were complied with or not at the time of carrying out statutory function otherwise meant to affect vested rights and interests of a party concerned quo property is always a question, if posed in a time barred appeal preferred by an aggrieved party, which can only be answered by looking into the record of a particular case becoming subject matter of the appeal even though time barred and to that extent an insight into the record of the case, though may seem and sound to be merit related but nevertheless requiring consultation, may better assist an appellate authority to

dispense justice in a deserving cause otherwise time barred, which in the present case is the Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms), Samba, in considering the condonation of delay plea of the prospective appellant/s in fullness of facts.

11. In the case of **“Zakia Ahsan Jafri Vs. State of Gujrat and another”** reported in **2022 AIR SC 3050**, the Hon’ble Supreme Court of India came to deal with as to what extent merits of the case are co-related with the condonation of delay in the very opening paragraph of its judgment has identified scope for making the survey of the main matter in the context of condonation of delay. Para-1 is reproduced herein under:

“1. There is a delay of 216 days in filing of this special leave petition against the judgment and order dated 5.10.2017 passed by the High Court of Gujarat at Ahmedabad (for short “the High Court”) in *Zakia Ahsan Jafri v. SIT*. Even though the explanation offered in the application for condonation of delay is blissfully vague and bereft of any material facts and particulars, keeping in mind the subject-matter involved, we deemed it appropriate to ignore/condone the delay and proceeded to hear the matter on merits.”

12. Similarly, in the case of **“Thirunagalingam Vs. Lingeswaran and another”**, reported in **2025 SCC Online SC 1093** in paragraph-31, the Hon’ble Supreme Court of India has come up with following observation even in the matter of adjudicating an application under section 5 of the Limitation Act, 1963. Para-31 is reproduced as under:

“**31.** It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.”

13. Therefore, bearing in mind and understanding the aforesaid position of law and also the facts and circumstances of the case as are available on the record of this case, this Court disposes of this writ petition without disturbing the order dated 18.04.2025 passed by the Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms), Samba in the case of file No. ARA/04/2024 and ARA/09/2024 by letting the said appellate authority to carry forward the adjudication as envisaged in terms of its order dated 18.04.2025 by keeping in view the position of law attending the condonation of delay as settled in the judgments cited above.

14. *Disposed of.*

**(RAHUL BHARTI)
JUDGE**

**JAMMU
16.05.2025**
Shivalee

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