

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

Case:- OWP No. 384/2012

1. Satpal, aged 66 years
S/o Amarnath
R/o Krishna Nagar, Maralia Miran Sahib,
Tehsil, R. S. Pura, District Jammu.
2. Ashok Kumar, aged 64 years
S/o Amarnath
R/o Krishna Nagar, Maralia P.O. Miran Sahib,
Tehsil, R. S. Pura District Jammu.
3. Jeeto Devi, age 68 years
D/o Amarnath
R/o Chak Avtara, Bishnah.
4. Santosh Kumari, aged 59 years
D/o Amarnath
R/o Krishna Nagar, Maralia P.O. Miran Sahib,
Tehsil R. S. Pura, District Jammu.
5. Darshana Devi aged 60 years
D/o Amarnath
R/o Ward No. 4 House No. 75,
Shaheedi Chowk, Kali Road, Kathua.

.....Petitioners

Through: Mr. S. A. Malik, Advocate
Mr. Anuj Dewan Raina, Advocate.

Vs

1. Ashok Malhotra,
S/o Late Narinder Nath Malhotra,
R/o F-1, Karan Nagar, Jammu.
2. Dr. Surinder Mohan Malhotra,
S/o Late Narinder Nath Malhotra,
R/o F-1, Karan Nagar, Jammu.
3. Tehsildar, R. S. Pura,
Tehsil R. S. Pura,
District Jammu.
4. Smt. Rajni Malhotra,
Widowed Daughter-in-law of deceased Raj Devi.
5. Dr. Sheetal Malhotra
6. Miss Netu Malhotra
7. Miss Neha
All Granddaughters of deceased Raj Devi,
R/o F-1, Karan Nagar, Jammu
(respondent 4 to 7 Legal heirs)

8. J&K Special Tribunal, Jammu

.....Respondents

Through: Mrs. Monika Kohli, Sr. AAG.
Mr. R. K. S. Thakur, Advocate.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
ORDER
(29.07.2025)

01. Attestation of mutation No. 498 dated **30.10.1986** of correcting khasra girdawri with respect to land measuring 4 kanals falling under khasra No. 5 min in village Maralia tehsil R. S. Pura came to be questioned in a revenue appeal on file No. 393 dated **22.12.1986** before the Joint Financial Commissioner Agrarian Reforms with powers of Commissioner Agrarian Reforms, Jammu by one Narinder Nath Malhotra wherein he named the petitioner herein Amar Nath (now deceased) as a sole respondent.

02. In the meantime, same very Narinder Nath Malhotra also preferred an appeal on file No. 468 of **12.01.1987** before the Joint Financial Commissioner Agrarian Reforms with powers of Commissioner Agrarian Reforms, Jammu thereby challenging a mutation No. 501 dated **15.11.1986** attested by the Assistant Commissioner whereby the petitioner – Amar Nath (now deceased) came to be declared as owner under section 8 of the Agrarian Reforms Act, 1976.

03. Said two appeals came to be *disposed of* by a common order dated **21.08.1987** by the appellate authority of Joint Financial Commissioner, Agrarian Reforms by setting-aside respective orders on said two mutations and remanding the case back to Assistant Commissioner (G), Collector Agrarian, Jammu for fresh enquiry and appropriate orders in presence of the parties by taking into consideration the observations as made in its order dated 21.08.1987 by the appellate authority.

04. Against the aforesaid order dated **21.08.1987** of the Joint Financial Commissioner Agrarian Reforms with powers of Commissioner Agrarian Reforms, Jammu, said Narinder Nath Malhotra came to prefer a revision under section 21(2) of the Agrarian Reforms Act, 1976 before J&K Special Tribunal on file No. ST/65 of 1988-89 of **05.05.1988** with petitioner – Amar Nath (now deceased) as sole respondent therein.

05. Said revision came to be *disposed of* by the Jammu & Kashmir Special Tribunal, Jammu (in short, “**Tribunal**”) by virtue of a judgment dated **28.08.1989**.

06. In its said judgment dated **28.08.1989**, the Tribunal came to recite that it is an admitted case on facts that said two mutations No. 498 and 501 attested by the Assistant Commissioner (Revenue), Jammu, acting under sections 4 & 8 of

the Agrarian Reforms Act, 1976, were attested at the back of Narinder Nath who was condemned unheard, thus, violating principles of natural justice and further that the Assistant Commissioner Revenue, Jammu was having no jurisdiction with respect to the land comprised in tehsil R. S. Pura on account of the fact that the jurisdiction of the Assistant Commissioner (G), Jammu was obtaining instead of the Assistant Commissioner (Revenue), Jammu. It came to be further recited in the judgment dated **28.08.1989** by the Tribunal that from the revenue record the position was forthcoming that said Narinder Nath had purchased the land forming subject matter of two mutations on the basis of a registered sale-deed for residential purposes for which mutation No. 125 was attested on **30.01.1965** thereby entering the transaction of sale into revenue record *qua* the land forming subject matter of the two mutations. However, it is an admitted fact that it is only in *khasra-girdawari* of 1986 that reference of a mutation No. 125 dated **30.01.1965** came to be first time reflected whereas the petitioner – Amar Nath (now deceased) was being mentioned as ‘*gair marusi*’ tenant paying rent @ $\frac{1}{2}$ of the produce.

07. The Tribunal came to reject the revision petition of said Narinder Nath upholding the remand of the case for *de novo*

enquiry to be done by the Assistant Commissioner General (Collector), Jammu.

08. Acting upon the said command of the Tribunal, in terms of its order dated **28.08.1989** read with the directions of the Joint Financial Commissioner with powers of Commissioner, Agrarian Reforms, Jammu in the order dated **21.08.1987**, the Assistant Commissioner (G) (Collector Agrarian Reforms), Jammu commenced proceedings on file No. 9/ACG/87-88 of **01.09.1987** whereby the matter was enquired into in detail with passing of order dated 04.01.1980 thereby upholding the attestation of mutation Nos. 498 and 501 in favour of the petitioner – Amar Nath (now deceased) being rightly attested and the orders dated **30.10.1986** and **15.11.1986** passed in relation thereto being correct to be upheld.

09. Application dated **11.09.1989** made by said Narinder Nath was held to be without any merit.

10. By virtue of said order dated **04.01.1990**, the Collector Agrarian Reforms (Assistant Commissioner General), Jammu *disposed of* the inquiry, the end result of which came to be upholding of mutation Nos. 498 & 501.

11. Against of said order dated **04.01.1990** of the Collector Agrarian Reforms (Assistant Commissioner General), Jammu, an

appeal came to be preferred on file No. 1498/DLR on **22.07.1997** by said Narinder Nath before the appellate authority of Director Land Records with powers of Commissioner Agrarian Reforms, Jammu.

12. During the course of pendency of said appeal, the original litigation originator – Narinder Nath expired on **14.12.2002** as a result whereof an application for bringing on record his legal representatives, namely, **Raj Devi Malhotra** (wife), **Dr. Balraj Malhotra** (son), **Ashok Malhotra** (son) and **Dr. Surinder Mohan Malhotra** (son) came to be preferred which application was afflicted with delay of two and a half months upon expiry of 6 months being filed on **18.08.2003**.

13. The appellate authority of the Director Land Records with powers of Commissioner, Agrarian Reforms Jammu, by virtue of an order dated **29.11.2003**, came to hold that on account of delay in bringing on record the legal representatives of the deceased appellant – Narinder Nath, the appeal had abated, as such, consigned the said appeal as abated by virtue of an order dated **29.11.2003**.

14. Against said outcome of the matter from the end of the Director Land Records with powers of Commissioner Agrarian Reforms, Jammu in terms of its order dated **29.11.2003**, above

named legal representatives of Narinder Nath came to prefer a revision petition on file No. STJ/470/2004 of **15.01.2004** before the Tribunal which, by virtue of an order dated **09.03.2012**, came to upset the entire legal proceedings which had resulted in passing of order dated **04.01.1990** passed by the Assistant Commissioner General, Jammu thereby upholding two mutation Nos. 498 & 501 by holding that all the proceedings held under the Agrarian Reforms Act, 1976 were actually ultra-vires and liable to be quashed so as to restore the residential plot to the purchaser - Narinder Nath through his legal heirs and the Tehsildar came to be directed to handover the subject land to said Narinder Nath as being the owner but deceased and consequently to his legal heirs.

15. It is against this outcome from the end of the Tribunal that the petitioner – Amar Nath (now deceased) came forward with the institution of the present writ petition filed on **19.03.2012** assailing the Tribunal order dated **09.03.2012** *inter-alia* on the grounds that the Tribunal exceeded its jurisdiction on revisional side by literally becoming an appellate authority unto itself and setting aside the mutations as also the order of the Assistant Commissioner (G), Jammu passed pursuant to the remand order of the Tribunal itself in first round of litigation which had reached

the Tribunal at the instance of the original aggrieved person Narinder Nath.

16. From the bare perusal of the impugned order passed by the Tribunal, there is no *iota* of doubt that the Tribunal lost sense of the scope of revision preferred by the legal representatives of the Narinder Nath who was the appellant in appeal before the Director Land Records with powers of Commissioner Agrarian Reforms, Jammu under section 21 of the Agrarian Reforms Act, 1976 which was held to have been abated on account of the death of Narinder Nath and delay on the part of his legal representatives in coming forward with application for bringing on record themselves to pursue the appeal.

17. The only option available at the *disposal* of the Tribunal was to hold whether the order dated **29.11.2003** passed by the Director Land Records with powers of Commissioner Agrarian Reforms, Jammu was legal or not with respect to the abatement of the appeal preferred by the appellant – Narinder Nath.

18. Having exceeded its jurisdiction, the Tribunal fell in serious error of law rendering its order dated **09.03.2012** liable to be interfered with by this Court under judicial review jurisdiction under article 226 of the Constitution of India.

19. This is not going to suffice the purpose as another illegality is that of the order dated **29.11.2003** of the Director Land Records with powers of Commissioner Agrarian Reforms, Jammu in holding the appeal abated is also erroneous.

20. This Court is having no *iota* of hesitation in observing that the Director Land Records with powers of Commissioner, Agrarian Reforms Jammu acted with a very hyper-technical mind set in holding the appeal on file No. 1498/DLR of 1997 having abated relatable to a litigation which commenced in the year 1986 and reached upto highest level of adjudicatory ladder of the Tribunal.

21. The death of the appellant-Narinder Nath in appeal on file No. 1498/DLR had taken place on **14.12.2002** from which date onwards six months' period was available for bringing on record the legal representatives.

22. After six months expiry in the event of legal representatives of the deceased appellant not coming on record, the appeal was liable to abate and was meant to be abated but as said abatement had not taken place by any express order, as such, the application filed by the legal representatives for bringing themselves on record along with application for condonation of delay preferring the said application for bringing themselves on

record as legal representatives was to be dealt with by the Director Land Records with powers of Commissioner Agrarian Reforms, Jammu.

23. In its order dated **29.11.2003**, the Director Land Record with powers of Commissioner Agrarian Reforms, Jammu did not advert himself that how could delay of two and half months on the part of the legal representatives was so fatal who otherwise would be heard to say that they were not aware of any such appeal proceedings having been initiated by their predecessor-in-interest – Narinder Nath. The omission was not too fatal to be condonable.

24. It is at this stage where this Court finds that the Director Land Records with powers of Commissioner Agrarian Reforms, Jammu had fallen in error of law and judgment and that also warrants setting aside of order dated **29.11.2003**.

25. The end result of this adjudication of the present writ petition is, thus, that the legal representatives of the appellant – Narinder Nath on file No. 1498/DLR of 1997 as named in the application as named below:-

(i) Raj Devi Malhotra (wife);

(ii) Dr. Balraj Malhotra (son);

(iii) Ashok Malhotra (son) and

(iv) Dr. Surinder Mohan Malhotra (son).

shall be deemed to have been brought on record as legal representatives of the appellant - Narinder Nath for pursuing the appeal on file No. 1498/DLR of 1997 to its logical end, therefore, this Court while setting aside the Tribunal's order dated **09.03.2012** read with order dated **29.11.2003** of the Director Land Records with powers of Commissioner Agrarian Reforms, Jammu remands the matter back to the appellate adjudicatory authority which is now Additional Deputy Commissioner (with powers of Commissioner Agrarian Reforms) Jammu to decide the appeal on merits within bound frame of nine months which this Court is setting from the date of receipt of certified copy of this order without any exception and dispose of the appeal within time granted. Any extension of time for doing the needful, as directed, to be solicited by the appellate authority from this Court by laying a motion to said effect.

26. The Additional Deputy Commissioner, Jammu with powers of Commissioner Agrarian Reforms, Jammu to solicit the record of the appeal from the office of the Director Land Records of file No. 1498/DLR of 1997 titled – ***“Narinder Nath Malhotra vs Amar Nath”***.

27. Parties are directed to appear before the Additional Deputy Commissioner, Jammu with powers of Commissioner Agrarian Reforms, Jammu through their respective counsel on **30.11.2025** and nine months time period shall start running from 30.11.2025.

28. Since this Court has upset the order dated **28.08.1989** of the Tribunal whereby the Tehsildar concerned was directed to retrieve the possession of the land forming subject matter of the mutation Nos. 498 & 501 and hand it over to the legal representatives/heirs of Narinder Nath, as such, there shall be no disturbance of *status-quo* with respect to the possession of the land forming subject matter of mutation Nos. 498 & 501 being subject to the outcome of the appeal and the adjudication therein.

(RAHUL BHARTI)
JUDGE

JAMMU
29.07.2025

Bunty

Whether the order is speaking: **Yes**

Whether the order is reportable: Yes/No