

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

Case:- WP(C) No.2087/2025
CM No. 4761/2025

**Jagdev Singh, Age 60 years
S/o Late Sh. Dhian Singh
R/o Village Amuwala, Tehsil Ramkot
District Kathua**

.....Petitioner(s)

Through: Mr. Sunil Dutt Sharma, Advocate

Vs

1. **UT of J&K through Secretary, Revenue Department, J&K Govt. Jammu/Srinagar.** Respondent(s)
2. **Additional Deputy Commissioner (Agrarian Reforms) Billawar, District Kathua.**
3. **Sub-District Magistrate, Basholi, District Kathua.**
4. **Hans Raj S/o Bhagtu, R/o Village Amuwala, Tehsil Ramkot, District Kathua.**
5. **Laxman Singh S/o Late Sh. Dhyan Singh, R/o Village Amuwala, Tehsil Ramkot, District Kathua.** Performa Respondent(s)
6. **Mukhtiar Singh S/o Late Sh. Dhyan Singh, R/o Village Amuwala Tehsil Ramkot, District Kathua.**
7. **Jai Singh S/o Late Sh. Dhyan Singh, R/o Village Amuwala Tehsil Ramkot, District Kathua.**
8. **Hukam Singh S/o Late Sh. Dhyan Singh, R/o Village Amuwala Tehsil Ramkot, District Kathua.**
9. **Kamal Singh S/o Late Sh. Dhyan Singh, R/o Village Amuwala Tehsil Ramkot, District Kathua.**
10. **Jagdish Singh;**
11. **Anant Singh;**
12. **Bachhiter Singh, All sons of Sarnu;
All residence of Village Amuwala Tehsil Ramkot, District Kathua.**

Through:

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
(04.08.2025)

01. The petitioner through the medium of instant petition has sought the following reliefs.

i) **Writ of Certiorari:** thereby quashing the order passed by respondent No.2 dated 11.04.2023 in File No. ADC/Blr/Agr/245 and Order dated 07.04.2025 in File No. ADC/Bir/14/2024 with respect to the land measuring 04 Kanal and 16 Marla comprising in Khasra No. 553 situated at Village Amuwala, Tehsil Billawar, District Kathua, thereby the appeal of an order passed by Sub-Divisional Magistrate, Basohli dated 14.06.2006 was dismissed by the respondent No.2 in a File No. ADC/BLR/AGR/245 and application of the restoration of the abovesaid appeal in a File No. ADC/BLR/14/2024 dated 07.04.2025.

ii) **Writ of Mandamus:** thereby directing the respondent No.2 for providing an opportunity to the petitioner and proforma respondents No.5 to 12 of being heard and for deciding the appeal filed by the petitioner and proforma respondents No.2. 5-12 against the order passed by respondent No.2. A further direction be passed to the respondent No.2 that in view of the submissions made above and till the appeal is not restored after the acceptance of the restoration application, not to issue the directions for the eviction of the petitioner and proforma respondents No. 5 to 12 from the land measuring 04 Kanal and 16 Marla comprising in Khasra No. 553 situated at Village Amuwala, Tehsil Billawar Now Ramkot.

02. The case, as projected in the instant petition, is that the mother of the petitioner and proforma respondents 5 to 12 together with one Late Sarnu and Dhian Singh, the father of proforma respondents 11 to 13 were the

owners of a piece of land measuring 04 Kanal and 16 Marla comprising Khasra No. 553 situated at Village Amuwala, Tehsil Billawar, District Kathua as the aforesaid land remained under the cultivating possession of the father of respondent No.4 as occupancy tenant before 1967.

03. It is further pleaded that the aforesaid land came under the physical cultivating possession of late Smt. Achhru W/o Late Dhian Singh and proforma respondents 5 to 12 and since then, the aforesaid land is in continuous physical settled actual cultivating possession of the mother of the petitioner along with proforma respondents 5 to 12. It is further pleaded that at the time of the death of Late Bhagtu, the age of the respondent No.4 was just one year and despite of the physical possession over the aforesaid piece of land was with Achhru, the petitioner and proforma respondents 5 to 12, but entry of the Khasra Girdwari for the said land was continued to be recorded in favour of respondent No.4 as Maroosi, whereas the petitioner along with his deceased mother late Achhru and the proforma respondents 5 to 12 were continuously occupying and cultivating the land.

04. It is further pleaded that respondent No.4 taking the benefit on the strength of Khasra Girdwari entry, wherein his name has been entered as “Maroosi”, is claiming his right and have started compelling the petitioner and the proforma respondents 5 to 12 to handover the possession of the said land despite of the fact that the Khasra Girdwari of the village Amuwala for the aforesaid land had also attested in favour of the father of the petitioner and proforma respondents 5 to 12 with 50% share of the aforesaid land in favour of one Sarnu S/o Chagra as protected cultivator.

05. It is further pleaded that respondent No.4 had approached the Sub-Divisional Magistrate Basohli under Section 27 of the Agrarian Reforms Act by virtue of which he sought the eviction of the mother of the petitioner and the performa respondents 5 to 12 and to get the vacant possession of the land as stated above. Upon which, the Sub-Divisional Magistrate Basohli has passed the order dated 14.06.2006 by virtue of which Tehsildar Billawar was directed to ensure for the handing of the possession of the land to the respondent No.4. The mother of the petitioner and performa respondents 5 to 9 and mother of performa respondents 10 to 12 have challenged the order of SDM Basohli dated 14.06.2006 before the Commissioner Agrarian Reforms (Additional Deputy Commissioner, Kathua) in the appeal by virtue of which SDM Basohli had ordered the restoration of the possession of the land measuring 04 Kanals 16 Marlas comprising Khasra No. 553 situated at Village Amuwala, Tehsil Billawar, District Kathua in terms of Section 27 of the Agrarian Reforms Act 1976 and made a prayer for setting aside the same. However, after the transfer of the appeal to the office of ADC Billawar, in absence of the proper service of the petitioner and performa respondents 5 to 12 and respondent No.2, dismissed the appeal in default of non-appearance on 11.04.2023 without affording an opportunity of being heard.

06. Feeling aggrieved of the impugned orders, the petitioner has challenged the same by way of the instant petition on the following grounds:

- a) That the order impugned dated 11.04.2023 have been passed by the respondent no. 2 in a very haste manner and no enquiry was conducted so as to ascertain whether the summons for the

appearance of petitioner and performa respondents no. 05-12 was properly and legally effected.

- b) That the respondent no.2 did not follow the provision under order 5 of CPC for the service of the petitioner and performa respondent No.05-12. Thus, the order dated 11.04.2023 deserves to be set aside.
- c) That the petitioner and performa respondents no. 05-12 are the residents of village Ammuwala, Tehsil Billawar District Kathua but the Tehsildar Ramkot instead of sending the summons for the service of the petitioner and performa respondents no. 05- 12 to the chowkidar of village Amuwala but the summons were deliberately send to a chowkidar of the village i.e., Galak which was against the legal position for the service and thus, there could arose no occasion for the petitioner and performa respondents no. 05-12 to get the information with regard to the pendency of the appeal before the respondent no.2.
- d) That the order impugned dated 11.04.2023 against the petitioner and performa respondent nos. 05-12 without affording an opportunity to them for being heard and the order have been passed against the principal of natural justice and therefore requires to be set aside.
- e) That the respondent No. 2 in view of the submissions made above, wrongly held that the petitioner and performa respondents no. 05-12 are not interested in pursuing the appeal but it was all due to the fact that the petitioner and performa respondents nos. 05-12 had not been served and had no knowledge about the pendency of the appeal.
- f) That the order impugned dated 11.04.2023 seems to have been passed in a very haste manner in which the respondent no. 2 had dismissed the appeal in default of appearance of the appellants (petitioner and performa respondents no. 05-12 herein), meaning thereby, that the petitioner and performa respondents no. 05-12 (Appellants therein) were present at the time of the passing of the order impugned.
- g) That the order impugned dated 11.04.2023 indicates that the respondent no. 2 have held that the appellants(petitioner and performa respondents no. 05-12 herein) are not attending the appeal and remained absent right from 25.06.2019, which incidentally is the date of the institution of the appeal against the order of SDM Basholi dated 14.06.2006 is absolutely not possible because no appeal in absence of the appellant could be filed.
- h) That the order impugned dated 07 .04.2025 have been passed without affording an opportunity to the petitioner and performa

respondent nos. 05- 12 to adduce the evidence to the fact to prove the delay in filing the application for the restoration of the appeal.

- i) That the court dismissed the restoration application vide its order dated 07.04.2025 only on the ground that there was no separate application for the Condonation of delay for filing the restoration application for the appeal but in a pronouncement by the Apex Court that if the grounds for Condonation of delay is made in the application for restoration, then there is no need to file a separate application for the Condonation of delay.

07. Learned counsel for the petitioner has argued that it has come to the knowledge of the mother of the petitioner that no notice was served upon the applicants, which has been reflected in the dismissal order dated 11.04.2023 that the parties were summoned through Tehsildar Ramkot and the service was effected through Ganesh Kumar Chokidar of village Galak (Ramkot) but the said Chokidar never served any notice nor obtained any signature or thumb impression of any applicants/appellants, which was very much evident from the record of this file.
08. It has also been urged by the learned counsel for the petitioner that due to the non-service of the notice, the appellants herein could not plead their appeal and the Court vide order dated 11.04.2023 dismissed the appeal in default of non-appearance of the applicants.
09. It is also the specific case of the petitioner that they got knowledge of the passing of the order, when Tehsildar Ramkot served the notice of execution of impugned order under appeal on the application filed by the respondent and directed the appellants to appear on 28.05.2024. After service of notice of Tehsildar Ramkot for execution of impugned order of SDM Basohli, the appellants therein came to know about the appeal being dismissed in

default by the Court vide order dated 11.04.2023 and thereafter the application for restoration of the said appeal was filed.

10. I have heard the learned counsel for the petitioner and perused the record.
11. The record reveals that the restoration application which was filed on 27.05.2024 by the mother of the petitioner was bereft of any merit and the applicants could not make out a case for restoration of the appeal, which was dismissed in default on 11.04.2023 after following proper procedure of service of the applicants.
12. Record further reveals that the mother of the petitioner filed the restoration application after a lapse of more than one year from the date of dismissal order without filing any application for condonation of delay and the restoration application was not accompanied with the condonation of delay application. Even the averments which have been pleaded in the restoration application proves beyond any shadow of doubt that the applicants therein had the knowledge about the appeal, as the file was received before the said Court on 25.06.2019 but despite knowledge of the appeal, the applicants did not appear knowing fully well that the appeal has been transferred from ADC with the powers of Commissioner Agrarian Reforms Kathua before the Court on 25.06.2019 and was pending disposal before the said Court and the service of the applicants was also effected.
13. Since the mother of the petitioner failed to make out any plausible reason for restoration of the said application, which was filed after a lapse of one year and that too without condonation of delay and was rightly dismissed. Since, the restoration application was not accompanied with the application for condonation of delay and the service was also effected upon the

appellants therein, so the application for restoration was rightly dismissed and the status quo was vacated. The petitioner could not satisfy this Court any compelling reason or such justification, which could be basis for interfering the order impugned. The order passed by the Additional Deputy Commissioner exercising the powers as Commissioner Agrarian Reforms cannot be faulted, which is perfectly legal, justified and in accordance with law. This Court do not find any legal infirmity with the same and challenge thrown to the same is devoid of any merit and the writ petition which is utterly misconceived deserves dismissal and the same is, accordingly, *dismissed in limine.*

JAMMU
04.08.2025
Mihul



(WASIM SADIQ NARGAL)
JUDGE

सत्यमेव जयते
Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No