

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

Case No. WP(C) No. 2157/2022
c/w

WP(C) No. 1994/2022

Date of pronouncement:- 13.10.2025

Date of uploading:- 15.10.2025

Nazir Hussain & anr.

.....Petitioner(s)

Through: Mr. H.R Qureshi, Advocate.

Vs

UT of J&K and ors.

..... Respondent(s)

Through: Ms.Nazia Fazal, Advocate vice
Mrs. Monika Kohli, Sr. AAG

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

(ORDER)

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1. The petitioners, through the medium of present petition, have challenged Order No. DCP/SQ/2022/141-44 dated 23.04.2022 passed by respondent No. 2, Deputy Commissioner, Poonch, whereby Mutation Nos. 340 & 342 in respect of land measuring 09 kanals falling in khasra No. 167 situated at village Janyar Tehsil Haveli District Poonch have been cancelled by declaring them as void ab-initio.

2. According to the petitioners, they are owners in cultivating possession of the aforesaid land and the said land has been shown as Hotar Awal (paddy land) in khasra girdawari. It has been submitted that the petitioners have been recorded as

tenants at will and in this regard, Mutation No. 340 in terms of Government Order No. LB-6/C of 1958 stands attested in their favour whereafter, Mutation No. 342 in terms of Government Order No. S-432 of 1966 has also been attested in their favour in the year, 2012. While Mutation No. 340 was attested on 20.12.2011, the proprietary rights in favour of the petitioners were conferred in terms of Mutation No. 342. It has been submitted that respondent No. 2, Deputy Commissioner, Poonch has passed a general order thereby cancelling as many as 57 Mutation Orders including the aforesaid Mutation Orders attested in favour of the petitioners without issuing notice to the petitioners or without giving an opportunity of hearing to them.

3. The writ petition has been contested by the respondents by filing their reply. In their reply, it has been submitted that the land falling in khasra No. 167 (30 kanals 08 marlas) in which land of the petitioners is also located, is recorded as State land with type Gair Mumkin Rohar in the record of rights of 1961-62. It has been submitted that occupancy rights under Government Order No. LB-6/C of 1958 can only be conferred upon those persons who were in continuous possession of State land since Khariief, 1957 but in the instant case, the petitioners are not recorded as legal occupants in the record of rights of 1961-62. Thus, according to the respondents, occupancy rights under

Government Order No. LB-6/C of 1958 have been conferred upon the petitioner against statutory provisions.

4. It has been further submitted that keeping in view the nature of land falling in khasra No. 167, the same is not permissible for Mutation under Government Order No. LB-6/C of 1958 and S-432 of 1966. On the basis of the aforesaid contentions, it has been submitted that illegal mutations were attested in favour of the petitioners which are void ab-initio and have been declared so in terms of the impugned order dated 23.04.2022. It has been further submitted that it would be of no use to grant an opportunity of hearing to the petitioners in the facts and circumstances of the present case as the same would be a mere ritual because mutation attested in favour of the petitioners is illegal and are not recognized by law.

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

6. It is not in dispute that Mutation No. 340 and 342 of village Janyar Tehsil Haveli District Poonch were attested in respect of land in question in favour of the petitioners and the said Mutation Orders were passed by the competent authority i.e. concerned Tehsildar. It is also not in dispute that by virtue of the impugned order, aforesaid Mutation Orders have been set aside

by respondent No. 2, Deputy Commissioner, Poonch thereby declaring inter-alia the aforesaid two Mutation Orders, as void ab-initio. Two issues that arise in the present petition for determination as to whether respondent No. 2, Deputy Commissioner, Poonch was competent to cancel these Mutation Orders without there being an application or appeal from any interested person and secondly, whether the Mutation Orders attested in favour of the petitioners could have been set aside without hearing them.

7. Similar questions came up for determination before this Court in another writ petition bearing WP(C) No. 2360/2021 titled **Om Parkash and ors. Vs. UT of J&K and ors.** This Court after analyzing the various provisions of the J&K Land Revenue Act, made the following observations:-

“07. If we have a look at the provisions contained in the Jammu and Kashmir Land Revenue Act, 1996 (1939 A.D.), Section 6 of the Act classifies the Revenue Officers and these include the Financial Commissioner, the Divisional Commissioner, the Collector, the Assistant Collector of the first class and the Assistant Collector of the second class. It also provides that the Deputy Commissioner of a District would be the Collector of a District and an Assistant Collector and a Tehsildar would be an Assistant Collector of the first class, whereas a Naib Tehsildar would be an Assistant Collector of the second class.

08. Section 11 of the J&K Land Revenue Act provides that an appeal from an order passed by the Assistant Collector of either class shall lie to the Collector; an appeal from an

order passed by the Collector shall lie to the Divisional Commissioner and an appeal shall lie to the Financial Commissioner from an order passed by the Divisional Commissioner.

09. Section 13 of the J&K Land Revenue Act provides that a Revenue Officer has power to review his own order either of his own motion or on the application of any interested party. Clause (c) of sub section (1) of Section 13 of the Act postulates that while exercising the powers of review, an order cannot be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order.

10. Section 15 of the J&K Revenue Act vests powers of revision with the Financial Commissioner and the Divisional Commissioner. In case, the Divisional Commissioner feels that the order against which revision petition has been filed is required to be modified or revised, he has to send a report alongwith his opinion to the Financial Commissioner. Proviso to Section 15 further lays down that in case an order is required to be reversed, the same cannot be done without giving to the affected person an opportunity of hearing.”

8. In the face of the aforesaid legal position, let us now analyse the facts of the present case. Respondent No. 2, Deputy Commissioner, Poonch has set aside the Mutation Orders passed in favour of the petitioners by the Tehsildar concerned. The Deputy Commissioner is vested with appellate powers against an order of Tehsildar. It is not the case of the respondents that an appeal against the Mutation Orders attested in favour of the petitioners had been filed before him. Thus, it cannot be stated that while passing the impugned order, respondent No. 2 has

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exercised its appellate powers in terms of Section 11 of the Act. Since the orders of mutation were passed by the Tehsildar and not by the Deputy Commissioner, Poonch, as such, it can also not be stated that Deputy Commissioner, Poonch can exercise his suo-motto power of revision as contemplated under Section 13 of the Act. The Deputy Commissioner is not vested with powers of revision in terms of Section 15 of the Act as such, it can also not be stated that while passing the impugned order, respondent No. 2 has exercised his revisional jurisdiction.

9. In the present case, respondent No. 2, Deputy Commissioner, Poonch has not spelled out in the impugned order as to under which provision of law, he has passed the impugned order. It appears that respondent No. 2 has exercised the power of review in respect of orders passed by the Tehsildar, who is subordinate revenue officer. The same could not have been done by respondent No. 2. Thus, the impugned order passed by respondent No. 2 is without jurisdiction.

10. Apart from the above, admittedly, no prior notice has been given to the petitioners before passing the impugned order. Thus, the principles of natural justice have been breached by respondent No. 2 while passing the impugned orders against the petitioners. The power to attest the mutation as also to set aside the mutation is quasi judicial in nature. The said power has to be

exercised by revenue officer strictly according to the provisions contained in J&K Land Revenue Act that too after affording an opportunity of hearing to the affected parties by adhering to the principles of natural justice. While passing an order which affects rights of a person, a quasi judicial authority is obliged to give an opportunity of hearing to the affected party.

11. It is being contended by the respondents that giving right of hearing to the petitioners would have been an empty formality as the Mutation Orders which are subject matter of the impugned order are void ab-initio and contrary to law because the name of the petitioners does not exist in record of rights of 1961-62 and also because the land in question could not have been allotted to the petitioners as the same was not cultivable land. In this regard, it is to be noted that if the petitioners would have been granted an opportunity of hearing, it is quite probable that they would have been able to convince respondent No. 2 to take a different view. In fact, the petitioners have placed on record the revenue record which shows the nature of the land as "Hotar Awal" meaning thereby that it is cultivable in nature. Whether the record produced by the petitioners is authentic or not, the same cannot be decided in these proceedings but at least, the petitioners should have been given an opportunity to produce the said record before respondent No. 2 so as to controvert the

ground on which Mutation Orders passed in their favour have been set aside. Without adhering to the principles of natural justice, the impugned order of respondent No. 2 is rendered not sustainable in law.

12. For the foregoing reasons, the writ petition is allowed and the impugned order No. DCP/SQ/2022/141-44 dated 23.04.2022 passed by respondent No. 2 so far as it relates to the petitioners is set aside. It shall, however, be open to the respondents to take recourse to appropriate remedy available under law.

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13. The petition be segregated. The same be listed on 22.12.2025. The respondents shall file their reply by next date of hearing.

(SANJAY DHAR)
JUDGE

JAMMU
13.10.2025
Tarun/PS

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