

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

**Reserved on 27.03.2025
Pronounced on 07.04.2025**

WP(C) No. 2660/2023

Kaka Ram

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

Through: Mr. D. R. Khajuria, Adv. and
Mr. Pawan Kumar Maini, Adv.

vs

J&K Special Tribunal, Jammu and others

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG for Nos. 1 to 3
Mr. P. S. Pawar, Adv. for No. 4

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

JUDGMENT

1. The petitioner has challenged order dated 15.06.2023 passed by the J&K Special Tribunal Jammu(hereinafter to be referred as the Tribunal), whereby the revision petition filed by the petitioner against order dated 04.09.2017 passed by the Additional Deputy Commissioner (with the powers of Commissioner Agrarian Reforms), Jammu (hereinafter to be referred as the Commissioner), has been dismissed. Challenge has also been thrown to order dated 04.09.2017 passed by the Commissioner, whereby the appeal against Mutation No. 295 dated 30.11.1981 under section 4 of the J&K Agrarian Reforms Act filed by respondent No. 4 has been allowed.
2. The facts emanating from the pleadings of the parties are that father of the petitioner and grandfather of respondent No. 4 was recorded as a tenant in khasra girdawari of 1971 in respect of the land measuring 14 kanals 19

marlas comprised in khasra No. 306/276 (khasra No. 314 new) as also land measuring 3 kanals and 6 marlas comprised in khasra No. 299/110 situated at Village Dharmal (Muthi), Tehsil and District Jammu. It appears that Mutation No. 266 dated 01.04.1974 (Sehat Andraaz Girdawari Kharief 1971) was attested by the Consolidation Tehsildar in terms of J&K Consolidation of Holdings Act, 1962 in respect of the aforesaid land in favour of the petitioner and his father Pakhu. Thus both the petitioner as well as Pakhu were shown as tenants in respect of the land in question in khasra girdawari of the year, 1971. The father of the petitioner, Pakhu died on 24.01.1976 and he was survived by the petitioner as his only son. Mutation No. 295 dated 30.11.1981 under section 4 of the J&K Agrarian Reforms Act 1976 came to be attested in respect of the land in question in favour of the petitioner, whereafter Mutation No. 489 dated 16.11.1991 under section 8 of the J&K Agrarian Reforms Act came to be attested in respect of the land in question in favour of the petitioner thereby vesting rights of ownership in respect of the land in question in his favour.

3. An appeal came to be filed by respondent No. 4 against Mutation No. 489 dated 16.11.1991 by respondent No. 4 before the Joint Agrarian Reforms Commissioner Jammu on 24.07.2012. The said appeal was dismissed by the learned Commissioner vide order dated 21.09.2013. Aggrieved of the said order, respondent No. 4 filed a revision petition before the J&K Special Tribunal, Jammu on 10.10.2013 which was dismissed by the said Tribunal in terms of order dated 22.12.2014. After failing in his attempts to assail mutation under section 8 of the Agrarian Reforms Act attested in favour of

the petitioner, respondent No. 4 started another round of litigation by challenging Mutation No. 295 dated 30.11.1981 attested in favour of the petitioner under section 4 of the Agrarian Reforms Act before the Commissioner (respondent No. 2 herein). The said appeal was allowed by the Commissioner and Mutation No. 295 was set aside and the Tehsildar was directed to pass a fresh order. The said order came to be challenged by way of a revision petition by the petitioner herein before the Tribunal (respondent No. 1 herein). The revision petition has been dismissed by the Tribunal in terms of the impugned order dated 15.06.2023.

4. The petitioner has challenged impugned order dated 15.06.2023 passed by the Tribunal and order dated 04.09.2017 passed by the Commissioner on the grounds that the respondent No. 4 had no *locus standi* to challenge the Mutation under section 4 of the Agrarian Reforms Act attested in favour of the petitioner during the lifetime of his father, the petitioner herein. It has been further contended that the petitioner was in personal cultivation of the land in question along with his father as on the crucial date, kharief 1971 as such, there was no ground to set aside the Mutation attested under section 4 of the Agrarian Reforms Act. It has also been contended that once respondent No. 4 had lost challenge which he had made to Mutation under section 8 of the Act attested in favour of the petitioner, it was not open to respondent 2 and respondent No. 1 to reopen the issue that too belatedly without there being any ground to condone the delay.
5. It has also been contended that respondent No. 4 has been disinherited by the petitioner and as such, he is not entitled to inherit any estate of the

petitioner. It has been contended that even if, it is assumed that the petitioner was not recorded as a tenant in kharief 1971, still then upon death of his father in the year, 1976, in terms of section 28 of the Agrarian Reforms Act, he is deemed to have become a prospective owner of the land in question. Thus respondent No. 4 does not have any right to claim any interest in the property in question during the lifetime of the petitioner.

6. The petition has been contested by respondent No. 4 by filling his reply thereto in which it has been contended that the attestation of mutation (Sehat Indraj) in favour of the petitioner along with his father in terms of Mutation No. 266 dated 01.04.1974 is *non est* in the eyes of law because section 42 of the Agrarian Reforms Act clearly provides that the J&K Consolidation of Holdings Act, 1962 would become inapplicable after the commencement of the Agrarian Reforms Act 1976. It has been further contended that the petitioner had filed a suit under section 32 of the Land Revenue Act before the Deputy Commissioner Jammu in which the field agency had reported that it is the respondent No. 4 who has been in possession of the land in question much prior to the kharief 1971 as a result of which, the Deputy Commissioner dismissed the suit of the petitioner. It has also been submitted that the petitioner was a Government employee, who superannuated in the year, 1989 as such, he could not have been in cultivating possession of the land in question in kharief 1971 and it was respondent No. 4 who was always in actual cultivating possession of the said land along with his grandfather, Pakhu. It has also been contended that the petitioner has allegedly managed mutations under sections 4 and 8 of

the Agrarian Reforms Act in respect of the land in question and respondent No. 4 on the basis of his continued possession even prior to kharief 1971 was well within his rights to challenge the mutation attested in favour of the petitioner under section 4 of the Agrarian Reforms Act. It has also been contended that respondent No. 4 had properly explained the delay in filing appeal against the Mutation under section 4 of the Agrarian Reform Act bearing Mutation No. 295 and the same has been rightly accepted by respondent No. 2, which order stands upheld by respondent No. 1.

7. I have heard learned counsel for the parties and perused record of the case.
8. As already stated the first round of litigation was initiated by respondent No. 4 by challenging mutation No. 489 dated 16.11.1991 before the Commissioner Agrarian Reforms Jammu on 24.07.2012. The said appeal was dismissed by the Commissioner and the order of the Commissioner came to be challenged by respondent No. 4 by way of a revision petition before the Tribunal on 10.10.2013. The revision petition was dismissed and the order of the Commissioner was upheld. The order of the Tribunal was challenged by the petitioner by way of a writ petition bearing OWP No. 113/2015. The said writ petition came to be dismissed by this Court for non prosecution on 24.11.2021. In the meanwhile, respondent No. 4 initiated another round of litigation by filing appeal against mutation No. 294 dated 30.11.1981 attested under section 4 of the Act in favour of the petitioner. The appeal was filed before the Commissioner on 06.08.2016 and the same was allowed by the Commissioner on 04.09.2017. The said order has been

upheld by the Tribunal in a revision petition by way of the impugned order dated 15.06.2023.

9. Thus, the petitioner has challenged Mutation under section 4 attested on 30.11.1981 by way of appeal on 06.08.2016 i.e. after about 35 years. A perusal of the impugned order dated 04.09.2017 passed by the Commissioner reveals that regarding the issue of limitation it has been recorded that there is no delay in filing the appeal as the respondent No. 4 herein could not get proper advice for challenging the mutation and he has challenged the same immediately after getting the proper knowledge. According to the learned Commissioner there is no intentional or deliberate delay and that technicalities cannot be pitted against substantial justice.
10. The aforesaid reasoning adopted by the Commissioner is absolutely illogical because respondent No. 4 was well aware of attestation of the Mutation under Section 4 of the Act in favour of the petitioner at the time when he challenged Mutation under section 8 of the Act by way of appeal before the Commissioner which he filed on 24.07.2012. The respondent No. 4 continued to pursue the said challenge right up to the High Court and was represented by lawyers at each level of challenge. Thus, it cannot be stated that respondent No. 4 was not properly advised or that he had no knowledge about the attestation of the mutation under section 4 of the Act in favour of his father. It is only after attestation of Mutation under section 4 of the Act in favour of a prospective owner that mutation under section 8 of the Act is attested thereby conferring ownership rights upon such prospective owner. It does not lie in the mouth of respondent No. 4 to say

while he was aware about the attestation of mutation under section 8 of the Act in favour of the petitioner, but he was not knowing that the mutation under section 4 of the Act had been attested in favour of the petitioner.

11. The ground projected by the learned Commissioner while condoning huge delay of 35 years in filing the appeal is preposterous and cannot be accepted. It is true that substantial justice has to be the focus of adjudication, yet the law of limitation cannot be thrown to winds. A litigant, who sleeps over his rights for more than three decades has to explain as to what prevented him from coming to the court during all these years. In the present case, respondent No. 4 did not whisper any reason much less a cogent reason in his appeal before the Commissioner but in spite of this, the learned Commissioner entertained his appeal and decided the same on merits. This cannot be sustained in law. By upholding such an illegal order of respondent No. 1 has perpetuated the illegality. Thus, the impugned order passed by respondent No. 1 is also liable to be set aside on this ground alone.
12. Apart from the above, it was not open for the learned Commissioner or the learned Tribunal to reopen the issue once the same had been adjudicated and finalised in the earlier round of litigation between the parties. By virtue of the impugned orders, respondent Nos. 1 and 2 have virtually nullified the orders passed by the same very authorities on mutation under section 8 of the Agrarian Reforms Act. The challenge launched by respondent No. 4 to the mutation under section 4 of the Agrarian Reforms Act was barred by principles of *constructive res judicata* inasmuch as the said respondent had

omitted to challenge mutation under section 4 of the Agrarian Reforms Act in the first round of litigation and as such, he was barred from raising the said issue once the earlier round of litigation had attained finality. Recently the Supreme Court has, in the case of **M/s Faima Makers Pvt. Ltd vs. District Deputy Registrar Cooperative Societies (3) Member and others, 2025 LiveLaw (SC), 379**, while holding that the principal of *res judicata* applies to *quasi* judicial authorities observed as under:

11. It has been settled by this Court that the principle of *res judicata* applies to and binds quasi-judicial authorities. This Court in *Ujjam Bai vs. State of U.P.* has taken the view that principles of *res judicata* equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or revision or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or revision or a writ unless the erroneous determination relates to the jurisdictional matter of that body.

12. This position has been further reinforced in *Abdul Kuddus vs. Union of India and others* which relies upon *Ujjam Bai (supra)*. In *Abdul Kuddus (supra)*, this Court held that the opinion by the Foreigners Tribunal is a quasi-judicial order. Therefore, it would be incorrect to hold that the opinion of the Tribunal and/or the consequential order passed by the Registering Authority would not operate as *res judicata*. Further, it was established that any quasi-judicial Authority would not ordinarily have the power to unilaterally take a contrary view taken by a coordinate or predecessor authority at an early point in time.

13. From the foregoing discussion, it is evident that once a Competent Authority (quasi-judicial in nature) settles an issue, that determination attains finality unless it is set aside in accordance with law.

13. In view of the foregoing analysis of law on the subject, it is clear that the principles of *res judicata* are applicable to *quasi* judicial authorities as well. Thus, it was open to respondent Nos. 1 and 2 to entertain challenge of respondent No. 4 to the mutation under section 4 of the Act, once challenge

to mutation under section 8 of the Act had been repelled upto the High Court level in the first round of litigation.

14. Even on merits respondent No. 4 does not have a case in his favour. Admittedly father of the petitioner, Pakhu, who happened to be the grandfather of respondent No. 4, was shown as tenant of the land in question in kharief 1971. Vide Mutation No. 266 dated 08.04.1974, the Consolidation Tehsildar made an entry in the girdawari of kharief 1971 in favour of the petitioner as well. Thus, both the petitioner as well as his father were shown as tenants of the land in question in kharief 1971. The contention of learned counsel for respondent No. 4 that in view of section 42 of the Agrarian Reforms Act, the Tehsildar Consolidation could not have attested Mutation No. 266 dated 01.09.1974 because provisions of J&K Consolidation of Holdings Act had become inapplicable, is also without any merit. This is so because the Agrarian Reforms Act 1976 came into force with effect from 01.06.1978 and as per section 42 of the said Act, J&K Consolidation of Holdings Act became inapplicable with effect from commencement of the Agrarian Reforms Act. Thus, prior to the inapplicability of Consolidation of Holdings Act, the mutation regarding Sehat Indraj in favour of the petitioner was attested on 01.04.1974, which is well before the commencement of J&K Agrarian Reforms Act 1976. Therefore, it cannot be stated that the order of mutation attested by Tehsildar Consolidation in favour of the petitioner is *non est* as has been claimed by the learned counsel for respondent No. 4.

15. Even if, it is assumed that order of Mutation No. 266 dated 01.04.1974 is *non est* in the eyes of law still then in view of the provisions contained in Section 28 of the Agrarian Reforms Act read with Section 67 of the J&K Tenancy Act, after the death of Pakhu in 1976, it is the petitioner, who has stepped into his shoes being his *male lineal descendent* of first degree and consequently became tenant in place of his father. Thus, Mutation under Section 4 of the Agrarian Reforms Act has been rightly attested in his favour on 30.11.1981 by which time Pakhu had already passed away. During the lifetime of the petitioner, who happens to be the father of respondent No. 4, the said respondent has no right to step into the shoes of his grandfather. All these aspects of the matter have not been taken into account either by the learned Commissioner or by the learned Tribunal while passing the impugned orders, as such, the same are not sustainable in law.
16. In view of foregoing discussion, the writ petition is allowed. Impugned orders passed by the Commissioner on 04.09.2017 and by the learned Tribunal on 15.06.2023 (respondent Nos. 1 and 2 herein), are set aside.

(SANJAY DHAR)
JUDGE

Jammu:
07.04.2025
Rakesh PS

Whether the order is speaking: Yes/Nb
Whether the order is reportable: Yes/Nb