

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (C) No. 29/2023

Reserved on: 14.11.2025
Pronounced on: 28.11.2025
Uploaded on: 28.11.2025
Whether the operative part or full
judgment is pronounced: FULL

Khazir Mohd Mir & 60 others

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

Through: Mr. J. H. Reshi, Adv.

Vs.

- 1. Union Territory of JK Th.
Commissioner/Secretary, Department of
Revenue, Civil Secretariat, Jammu/Srinagar.** ...Respondent(s)
- 2. Financial Commissioner Revenue J&K
Tankipora, Srinagar.**
- 3. Divisional Commissioner, Kashmir, Tankipora,
Srinagar.**
- 4. Deputy Commissioner, Tankipora, Srinagar.**
- 5. Collector Agrarian Reforms/ADC, Srinagar.**
- 6. Tehsildar North, Srinagar.**
- 7. Dewan Badri Nath Truest Amira Kadal,
Srinagar A/P D.B.N School Building, Mubarak
Mandi, Jammu 180001 through Chairman,
Virendar Jit Singh.**
- 8. Rajinder Kumar S/o S. Naryan R/o Mubarak
Mandi, Jammu (Manager Trustee/Attorney
Holder) Dewan Badri Nath Truest Amira
Kadal, Srinagar A/P D.B.N School Building
Mubarak Mandi, Jammu 180001**

Through: Mr. Mohd Younus Hafiz, AC vice Mr. Abdul Rashid Malik, Sr. AAG
Mr Bashir Ahmad Dar, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE M.A.CHOWDHARY, JUDGE

J U D G M E N T

Per Sanjeev Kumar, J

1. The writ petitioners about 61 in number claiming to be the residents of Danihama, Srinagar have invoked the extraordinary writ jurisdiction vested

in this Court under Article 226 of the Constitution of India to assail and throw challenge to an order dated 28th November 2022 passed by the Divisional Commissioner, Kashmir at Srinagar [“the Divisional Commissioner”], whereby the Divisional Commissioner has disposed of an application filed by respondent Nos. 7 and 8 purportedly under Section 32 of the Land Revenue Act, 1966 BK [“the Act of 1966”] with a direction to the Deputy Commissioner, Srinagar to get the illegal entries expunged in revenue records forthwith and restore the position as it existed prior to making the fresh entries in the revenue record in favour of the respondent Nos. 7 and 8.

2. The petitioners claim that they are the successors-in-interest of the recorded protected tenants in respect of land measuring 99 Kanals and 18 marlas comprising of Khasra Nos. 507-522 and 549 situate at Danihama, Tehsil North (Kashmir) Srinagar [“the subject land”].

3. It is contended that on the promulgation of Agrarian Reforms Act, 1976 [“the Act of 1976”], the predecessors-in-interest of the petitioners who were tillers cultivating the subject land in Kharif-1971 were entitled to be conferred the ownership rights in terms of provision 8 of the Act of 1976.

4. It is, thus, argued that before mutation under Section 4 and 8 of the Act of 1976 could be attested in favour of the petitioners, the respondents 7 and 8 filed a complaint with respondent No. 1 under The J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 [“the Act of 1997”] seeking their eviction from the said land. It is submitted that respondent Nos. 7 and 8 through their proxies had also filed a civil suit for their eviction before the Court of Additional District Judge, Srinagar. The suit was dismissed on couple of occasions and was thereafter restored. It is thus the case of the petitioners that while the aforesaid civil suit was pending consideration, the respondent Nos. 7 and 8 approached the Divisional Commissioner, Kashmir, by way of an application under Section 32 of the Land Revenue Act for removal of an illegal and without jurisdiction entries made in Girdawari column in respect of subject land. The Divisional Commissioner, Kashmir without affording any opportunity of being heard to the stakeholders including the petitioners who were in cultivating possession passed the impugned order dated 28th

November 2022 issuing a positive direction to the Deputy Commissioner, Srinagar to expunge the legal heirs and restore the previous position.

5. Feeling aggrieved, the petitioners are before us in this petition filed under Article 226 of the Constitution of India. The impugned order is called in question by the petitioners primarily on the ground that the petitioners being tillers in cultivating possession of the subject land cannot be divested of their right to cultivate the subject land and conferment of proprietary rights without affording them an opportunity of being heard.

6. It was argued by Mr. J. H. Reshi, learned counsel for the petitioners that since their predecessors-in-interest are recorded as a protected tenants in respect of subject land in Kharif-1971, as such, they are entitled to the benefit of conferment of proprietary rights under Section 8 of the Act of 1976. The order impugned which directs the Deputy Commissioner, Srinagar to expunge the revenue entries without even affording opportunity of hearing to the recorded protected tenants is in violation of principles of natural justice and cannot sustain.

7. *Per contra*, learned counsel for the respondents would argue that the impugned order is not an order passed against the petitioners and, therefore, no prejudice has been caused to them by not affording them an opportunity of being heard. It is seriously disputed by the respondents that the petitioners' predecessors-in-interest were ever in cultivating possession of the subject land either in Kharif-1971 or thereafter. It is submitted that the petitioners may be unauthorized occupants of the temple property and, therefore, have no right to be heard before the illegal entries made by some revenue officers in connivance with encroachers are expunged or corrected.

8. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that *prima facie* the petitioners do not seem to have any *locus standi* to call in question the impugned order dated 28th November 2022 passed by the Divisional Commissioner, Kashmir.

9. We have gone through the contents of the writ petition and the accompanying record appended with it, but could not find any material to connect the petitioners with the protected tenants entered in Khasra

Girdawari of Kharif-1971. Whether, the petitioners are related to the recorded protected tenants of Kharif-1971 in any manner is not forthcoming from the record.

10. On the other-hand, it is the stand of the Revenue Department that many of the protected tenants existing in Khasra Girdawari of Kharif-1971 have parted with the possession and put in different persons in possession without consent and permission of the landlords i.e., respondent Nos. 7 and 8. Whether the petitioners herein are the direct descendants of the protected tenants of Kharif-1971 or are the persons who have been subsequently put in cultivating possession by the protected tenants or are rank-trespassers are questions which cannot be determined by us under Article 226 of the Constitution of India, more particularly, when the documentary evidence on record is deficient and incomplete.

11. Viewed thus, we find that the entertaining an application/suit under Section 32 by the Deputy Commissioner, Srinagar was not illegal or untenable in law. The respondent No. 7 and 8 who are aggrieved of several entries made in the Record of Rights in respect of the subject land are entitled to institute a suit for correction of the entries subject to the provisions of Section 32. Although such application was pending adjudication before the Deputy Commissioner, Srinagar, yet, in view of inaction of the Deputy Commissioner, Srinagar, the respondent Nos. 7 and 8 were constrained to approach the Divisional Commissioner, Kashmir to intervene in the matter.

12. Since the suit under Section 32 is to be tried by the Collector [Deputy Commissioner or Additional Commissioner], as such, the Divisional Commissioner Kashmir could have intervened in the matter only to the limited extent of directing the Deputy Commissioner, Srinagar to entertain the suit and disposed of the same in accordance with law. The Divisional Commissioner, Kashmir, in terms of the order impugned, has not only directed the Deputy Commissioner, Srinagar to proceed to dispose of the suit pending before him, but has also directed for correction/ expunging of the entries in the revenue record, so as to restore the previous position. This direction passed by the Divisional Commissioner, Kashmir, in terms of

impugned order, is admittedly beyond his jurisdiction and without any authority of law.

13. For facility of reference, we reproduce the last two paras of the impugned order passed by the Divisional Commissioner, Kashmir hereunder:-

“Since the subject matter is already pending adjudication before Deputy Commissioner, Srinagar and it seems he has done nothing in the matter despite lapse of more than a decade, thus the grievance of applicant has not been redressed/considered by the Deputy Commissioner, Srinagar so far which forced him to knock the doors of this court. Moreover the proprietary rights of the land are lying with the Mandir Authorities/Trustees, however, the cultivation rights at some places as per the revenue records and report of Tehsildar concerned have been changed by the tenants without the consent of the Trustees in revenue records by virtue of Tabadal Nama, Iqrar nama and Notarized documents, therefore, casting shadow in the minds of Trustees that suspects have managed to get the cultivation rights transferred through those farzi documents. The same needs to rectify in the interest of justice and to curb such type of menace in future.

Under the circumstances, explained hereinabove, the application is disposed of with the direction to Deputy Commissioner, Srinagar to get the illegal entries expunged in revenue records forthwith and restore the previous position prior to the effect of fresh entries in revenue record in favour of applicant. Interim order, if any, shall stand vacated. The file shall be consigned to record after due completion.”

14. From the reading of the operative portion of the judgment reproduced hereinabove, it is abundantly clear that the Divisional Commissioner, Kashmir took note of the fact that subject matter was pending adjudication

before the Deputy Commissioner, Srinagar and that the Deputy Commissioner had done nothing in the matter despite lapse of more than a decade.

15. In the aforesaid background, the Divisional Commissioner, Kashmir ought to have called upon the Deputy Commissioner, Srinagar to act in the matter and take a decision in accordance with law and ought not to have issued the directions to dispose of the matter in a particular manner.

16. For the foregoing reasons and without rendering our opinion on any of the contentious issues, if any, between the parties, we are inclined to quash the order impugned dated 28th November 2022 and direct the Deputy Commissioner, Srinagar to take up the application/suit filed by respondent Nos. 7 and 8 before it for consideration and disposal in accordance with law.

17. Needless to say that before correcting any entries in the Record of Rights or elsewhere in the revenue record, the affected parties shall be afforded an adequate opportunity of being heard. The persons who are recorded in cultivating possession of subject land are obviously the affected persons.

18. Let the Deputy Commissioner, Srinagar initiate the proceedings on the matter pending adjudication before it within a period of four weeks from the date a copy of this order is served upon him and take the same to its logical end after affording adequate opportunity of hearing to all the stakeholders within a period of six months thereafter.

19. The writ petition is disposed of.

(M.A.CHOWDHARY)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
28.11.2025
Altaf

Whether approved for reporting? Yes/No