

INTHE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP 550/2019 [WP(C) 1424/2019]

GHULAM NABI BHAT AND ORS.

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

Through: Mr. Kaiser Ali, Advocate

Vs.

STATE OF J AND K AND ORS.

...Respondent(s)

Through: Mr. Jehangir A Dar, GA
Mr. Sheikh Mushtaq, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER
03.03.2025

Impugned in this petition is Order of Financial Commissioner (Revenue)/Commissioner Agrarian Reforms, J&K, Srinagar, dated 29.01.2019, allowing application of respondents and extending time by condoning delay in filing the Appeals. The order impugned reads as under:

“...The appellants who claim to be the absolute owners of the and measuring 02 Kanal and 03 marls failing under survey no. 1383 of village Nowgam, Tehsil Srinagar have invoked the appellate jurisdiction of this court through the present appeals stating therein that the land in question was inherited by them from their father Samad Dar. The land in question is “Baghi Khushki” and is recorded as such in revenue records including the Girdawari of Kharief 1971. However, the father of respondents, Gaffar Bhat in league with revenue agencies managed to get the recorded entries changed in his favour by way of mutation order 1382 dated 16.05.1983 (through change of nature of soil from “Baghi Khushki” to “Maidani”) and 1392 dated 18.07.1983 (by effecting a “Sehat-i- Kasht” entry in his favour as the tenant of the land in question). On the bais of these, mutations, the land in question has been vested to the respondents under section 4 and 8 of Agrarian Reforms Act by way of impugned mutations 2426 and 2429 dated NIL.

Aggrieved, the appellants have assailed the mutation orders 2426 and 2429 passed under Section 4 and 8 of the Agrarian Reforms Act mainly on the grounds that the land in question is “Bagi Khushki” and provisions of Agrarian Reforms Act have no application in the case. The appellants further submit that they had earlier challenged the mutation order 1383 and 1382 before Joint Agrarian Reforms Commissioner, Kashmir who had stayed the operation of same. However, in violation of stay order the impugned mutation orders have been attested in favour of respondents. It has also been contended that the impugned orders have been passed in absence and at the back of the appellants after presentation.

The summons were issued to respondents who caused their presence through their counsel and filed objections to the application for condonation of delay. During the course of proceedings, the respondent no. 1 and 3 got expired and application for bringing on record their legal representatives were filed. By virtue of interim order dated 11.07.2017, the legal representatives of respondent no. 1 Abdul Majid were brought on record. However, the other application for bringing on record the legal representatives of respondent no. 3 could not be decided for the reason of non-submission of address particulars of legal representatives of respondent no. 3 if any.

While perusing the copies of impugned mutation orders, it is found that the date of attestation on the both mutation has not been mentioned which gives rise to doubts as to actual happenings. Moreover, the certified copies of mutations placed on record are merely parat-i-Patwar counter foils. The order on the said Parats are usually not written in detail and only give reference to contents of Parat-i-Sarkar. As such there is no detail as to whether all the parties were present at the time of passing of orders or has any effort been made to summon/call them. In addition, there are certain triable issues involved in the case like issue of change of Kasht and nature of soil and procedure adopted therefor. On the fact of it, there appears to be substance and merit in the appeals filed in this court and refusing to condone delay may result in miscarriage of justice.

On account of what has been discussed hereinabove, a lenient view is taken. The application for condoning of delay in filing the appeals is allowed and the delay is condoned. The matter shall come up on 16.4.19 for further proceedings.

The counsels for the parties are directed to furnish the certified copies of Parat Sarkars of all mutation order involved in the case as asked earlier. Record of court proceedings in Joint Agrarian Reforms Commissioner be also called for so that this count arrived at the just conclusion of the case. The parties are further directed to give the fresh particulars of legal representatives of deceased respondent no. 3”.

Record on the file would reveal that the mutations challenged before the Authority do not contain any date when the mutations were attested. The said mutations were attested by the Naib Tehsildar vide Mutation no. 2426 and 2429 regarding the land measuring 02 Kanlas and 03 Marlas respectively falling under Survey no.1383.

The Authority while considering the application has observed that no date on the both the mutations is mentioned which gives rise to doubts as to actual happenings.

Record has been perused. No date is mentioned in the mutations. Thus, it has been rightly observed by the Authority that it is not coming to fore from plain reading of mutations that when the mutations have been attested, which casts doubt about its happenings. In such circumstances, it has also been rightly observed by the Authority that issues have been raised in the appeals.

Having regard to the grounds in the petition and having gone through the record on the file and after considering all the submissions made by learned counsel for the parties, I am also of the opinion that there are sufficient grounds which warrant that the delay in filing the appeals should be condoned, which has rightly been done by the Authority, whose orders have been challenged in this petition.

In view of above, this petition is without any merit and is, accordingly, **dismissed** along with connected CM(s).

The Authority shall proceed with the appeals and decide the same expeditiously, having regard to the fact that the appeals are pending since long.

Both the parties shall approach the Financial Commissioner (Revenue)/ Commissioner Agrarian Reforms, J&K, Srinagar, which according to the counsel for the petitioner has already been fixed on 01.04.2025.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
03.03.2025
"Imtiyaz"