

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

Reserved on: 24.07.2025

Pronounced on: 11.09.2025

**OWP No.632/2003
c/w
CPOWP No.163/2007**

MST. HAJIRA & ORS.

...PETITIONER(S)

*Through: - Mr. M. Y. Bhat, Sr. Advocate,
with Mr. Sajid Ahmad,
Advocate.*

Vs.

STATE OF J&K & ORS.

...RESPONDENT(S)

*Through: - Mr. Mian Tufail, Advocate,
with Mr. Baber Bilal Malik,
Advocate.*

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

OWP No.632/2003:

1) The original petitioner, Bakhtawar Bhat, has expired and he was substituted by his legal representatives vide order dated 23.11.2005, as such, for the sake of reference and convenience, the expression "petitioner" shall mean original petitioner. The original respondent No.3 has expired and, as such, the expression "contesting respondents" shall include the original respondent No.3 and 4.

2) The case projected by the petitioner in this petition is that father of the respondent No.3 and 4, namely, Sadiq Bhat, and father of the petitioner, namely, Ghulam Mohammad Bhat, were cousins and they were running joint

business. Out of the said business, they jointly purchased the land measuring 26 kanals at Natipora. After the business was closed, land measuring 06 kanals and 10 marlas comprising Survey No.1398, 1397 and 1399 situated at Natipora was given to the father of the petitioner on account of settlement, whereupon he is stated to have constructed his house. After the demise of cousin of father of the petitioner namely Sadiq Bhat, his son i.e. respondent No.3, raised a dispute and at first instance, he initiated proceedings under Section 145 of Cr. P. C which came to be concluded in favour of the petitioner vide order dated 31st May, 1969, whereby the petitioner was declared to be in possession of the land mentioned above. Three years thereafter, the contesting respondents filed a suit for possession of above mentioned land before the Court of learned Munsiff, Chadoora, which was dismissed vide judgment and decree dated 30.07.1979. The appeal preferred against the said judgment and decree was also dismissed. Thereafter the petitioner sought entry of decree in revenue record which resulted into attestation of mutation No.11986 on 18.01.1997.

3) It is stated that the respondent No.4 filed a revision petition before the Financial Commissioner on 13.06.2000 without seeking condonation of delay and vide order dated

07.12.2001, the mutation *ibid* was set aside and vide order dated 12.08.2003, the revision petition was disposed of.

4) The petitioner has assailed orders dated 07.12.2001 and 12.08.2003 passed by the Financial Commissioner, whereby the mutation *ibid* was set aside, on the following grounds:

- (I) That the impugned orders have been passed without following the principles of natural justice.'
- (II) That the rights of the parties were already determined by the civil court and, as such, it was not open to the Financial Commissioner to upset the mutation which was attested pursuant to the judgment and decree passed by the civil court.
- (III) That the revenue authorities have no authority to restore the position after 12 long years.

5) The respondent No.3 and 4 have filed their reply affidavit stating therein that the land in question was purchased by their father and one Rajab Bhat in equal shares in their own names and out of their own earnings and both of them were closely related to each other as cousins, therefore, there is no question of land measuring 06 kanals and 10 marlas having been given to the father of the petitioner by its owners, namely, Sidiq Bhat and Rajab Bhat. It is further that there existed a gardener shed on the land and since the petitioner was not having any house of

his own, he was allowed by Rajab Bhat to use the gardener shed temporarily for residential purposes and after some time, he was requested to vacate the said shed but he refused to do so, which resulted into various litigations. Taking undue benefit of the militancy prevailing at that point of time, the petitioner raised construction on the land which belonged to the answering respondents. It is further stated that there is no question of the land having been given to the petitioner, allegedly as his share from the joint business. The petitioner was not doing any business and he was a Government employee working in Airforce, wherefrom he retired. The petitioner by illegal and fraudulent means managed to get the mutation order passed in his favour and it was rightly challenged by the answering respondents before the respondent No.1, who was kind enough to set aside the same.

6 Mr. M. Y. Bhat, learned senior counsel appearing for the petitioner, has submitted that in terms of mutation No.11986, only entry in respect of the decree was made in the revenue record, which was passed in a suit preferred by the contesting respondents and once they lost the suit and the rights of the parties were determined by the civil court, it was not open to the Financial Commissioner to set aside the said mutation. He has further argued that no opportunity of

hearing was afforded to the petitioner before passing the order impugned by the respondent No.1. In support of his submissions, learned counsel for the petitioner has relied upon below mentioned judgments:

- (I) **P. Periasami vs. P. Periathmabi**, (1995) 6 SCC 523;
- (II) **R. Chandevaramappa & others vs. State of Karnataka & others**, (1995) 6 SCC 309;
- (III) **T. Anjanappa & others vs. Somalingappa & another**, (2006) 7 SCC 570;
- (IV) **P. T. Munichikkanna Reddy & Others vs. Revamma & others**, (2007) 6 SCC 59;
- (V) **Sawarni vs. Inder Kaur**, (1996) 6 SCC 223;
- (VI) **Balwant Singh vs. Daulat Singh**, (1997) 7 SCC 137

7) *Per contra*, Mr. Mian Tufail, learned counsel for the contesting respondents has submitted that in a suit preferred by the petitioner, while deciding issue No.1, it was conclusively held by the civil court that the contesting respondents are the owners of the land in question, though they failed to get the possession of the suit property, as such, the mutation under Section 121 of the J&K Land Revenue Act could not have been attested in favour of the petitioner. Once the contesting respondents were held to be the owners, it was not open for the Mutation Officer to alter the ownership on the basis of that judgment and decree.

8) Heard and perused the record.

9) The record depicts that the revision petition was preferred by respondent Mst. Aisha against mutation

No.11986 on 13.06.2000 and during the pendency of the same, taking note of the misuse of Section 121 of the J&K Land Revenue Act for the purpose of attestation of illegal mutations and the enquiry conducted by Director, Land Records/Settlement Officer, Kashmir, to find out veracity of questionable mutations, the Financial Commissioner vide order dated 07.12.2001 set aside various mutations attested in different villages including the mutation in question. Thereafter taking note of order dated 07.12.2001 whereby the mutation in question was set aside, the revision petition was disposed of and the position as it existed before attestation of mutation was ordered to be restored.

10) As the whole controversy hinges around Section 121 of the J&K Land Revenue Act, therefore, the same is extracted as under:

121. Procedure to be followed in Settlement proceedings when a question of title arises.— If, in the course of the record-of-rights or of revision of the record-of-rights in any local area in pursuance of notification issued under section 22, any question of title arises it will be decided summarily by the Collector of the first class whose decision, subject to such orders as may be passed in appeal by the Divisional Commissioner shall be binding] on the parties till it is set aside by a decree of the Civil Court.

When such a decree is made the record-of-rights shall be corrected, if necessary in accordance therewith, on an application to the Collector within whose jurisdiction the property affected is situate.

11) Section 121 (supra) vests power with the Collector to decide summarily the issue of title if the same arises in the

course of settlement proceedings. So far as the present case is concerned, the contention of the petitioner is that the rights of the parties were determined by the civil court and the Financial Commissioner could not have upset the mutation attested in favour of the petitioner pursuant to the judgment and decree passed by the civil court. After having gone through the judgment of the civil court, this Court finds that issue No.1 was framed on 04.05.1973 as under:

“Whether the suit property is constructed by the plaintiffs and so the plaintiffs were owners of the property? (OPP)

12) Needless to say that the aforesaid issue was decided in the suit preferred by the contesting respondents against the petitioner. The learned trial court at page No.4 of the judgment has returned a positive finding that the plaintiffs i.e. the contesting respondents are the owners of the suit property i.e. land comprising Survey Nos.1398, 1397 and 1399. There was no declaration in favour of the petitioner regarding the ownership in respect of that property. At the most it was established in the suit that the petitioner was in possession of the property. The title was never decided in favour of the petitioner. It also needs to be noted that no plea of adverse possession was ever raised by the petitioner and decided by the civil court.

13) A perusal of the mutation No.11986 reveals that the same was attested on 19.01.1997 under Section 121 of the Land Revenue Act and the same has been attested pursuant to the judgment and decree passed by the civil court. In terms of the mutation *ibid*, in column No.3, name of the petitioner was entered as owner of the property. Such course was not at all permissible, particularly in terms of Section 121 of the Land Revenue Act and more so, when the civil court had not decided the title of the land in favour of the petitioner. It is evident that the Mutation Officer without perusing the judgment and decree of the civil court attested the mutation under Section 121 of the Land Revenue Act in favour of the petitioner thereby incorporating his name in the ownership column. Otherwise also, it was not open to the Mutation Officer to resort to Section 121 as no question of such title arose before him which he could have decided summarily. It needs to be mentioned that name of petitioner was already mentioned in column 4 in respect of possession. This court has no hesitation to hold that no power was vested with collector to attest mutation under section 121 of J&K Land Revenue Act by placing the reliance upon the judgment and decree, where in there was no declaration of ownership qua the land mentioned above, in favour of the petitioner. The mutation *ibid* is in fact nullity in the eyes of law.

14) It was vehemently argued by learned counsel for the petitioner that no opportunity of hearing was afforded to the petitioner by the Financial Commissioner before passing the order impugned. It is true that vide order dated 7th December, 2001, the mutations attested under Section 121 of the J&K Land Revenue Act in respect of various villages including the mutation under reference were set aside by the Financial Commissioner and thereafter vide order dated 12.08.2003, the revision petition was disposed of and the position as it existed prior to the attestation of mutation was ordered to be restored. It needs to be noted that violation of principles of natural justice can result in upsetting the order when there is possibility of different conclusions but when only one conclusion is possible on the admitted facts, then the non-compliance or breach of principles of natural justice would be inconsequential. It would be profitable to take note of the judgment of Apex Court in **State of Uttar Pradesh v. Sudhir Kumar Singh, AIR 2020 SC 5215**, wherein Apex Court considered the scope of “Audi Alteram Partem” and has observed as under:

39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the

orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the along with connected matters Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.

15) Therefore, this Court is of the considered view that the orders impugned can't be set aside merely on the ground of having been passed without affording an opportunity of hearing to the petitioner because even if the same had been afforded to him, the result would have been the same.

16) Lastly, it was contended by learned counsel for the petitioner that the revenue authorities cannot direct restoration of position after twelve years. The argument, though appears to be attractive, but pales into insignificance in view of the fact that in terms of the impugned mutation,

only the name of the petitioner was entered in column No.3 regarding ownership of the land mentioned above whereas the civil court has already held the petitioner to be in possession of the property which fact is admitted by the contesting respondents by submitting that they had filed a suit for possession but miserably failed in their endeavour to get the possession back. It needs to be mentioned that the land mentioned has already been shown to be in possession of the petitioner prior to attestation of mutation in question.

17) The judgments relied upon by learned counsel for the petitioner, are not applicable to the facts of the present case.

18) In view of the above, the writ petition is dismissed being without any merit. Interim direction, if any, shall cease to be in operation.

CPOWP No.163/2007

In view of the decision in the main writ petition, the order out of which instant contempt petition has arisen, has merged with the final judgment. Therefore, nothing further survives for consideration in this contempt petition. The same is, accordingly, disposed of.

(RAJNESH OSWAL)
JUDGE

Srinagar
11.09.2025
“Bhat Altaf”

*Whether the **judgment** is reportable:* **No**