

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

Reserved on: 24.04.2025
Pronounced on: 09.05.2025

LPA No.236/2023

MOHAMMAD DAR

...APPELLANT(S)

Through: - Mr. Saqib Amin Parray, Advocate.

Vs.

**CHAIRMAN J&K SPECIAL TRIBUNAL
AND OTHERS**

...RESPONDENT(S)

Through:- Mr. G. A. Lone, Advocate.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

JUDGMENT

Per Sanjeev Kumar 'J'

1) The bone of contention between the appellant and respondent No.2 is land measuring 3 kanals and 5 marlas ["subject land"] comprised in Khasra No.112 of Estate Balsoo Kulgam. This land was earlier owned by the appellant. In the entry of Kharif, 1971, the appellant is recorded as owner in self-cultivation of the subject land. The subject land came to be mutated in favour of respondent No.2 under Section 8 of the J&K Agrarian Reforms Act, 1976 ["the Act of 1976"]. The land measuring 2 kanals was mutated in favour of respondent No.2 under Section 8 of the Act of 1976 vide order dated 16th March,

1988 passed on mutation No.250. Similarly, land measuring 1 kanal and 5 marlas out of the subject land was mutated in favour of respondent No.2 under Section 8 of the Act of 1976 vide mutation No.246 dated 13th February, 1988.

2) On 13th April, 2006, the appellant challenged four mutations, i.e. mutation No.247 dated 7th March, 1988 (under Section 4), mutation No.250 dated 16th March, 1988 (under Section 8), mutation No.244 dated 01.01.1988 (under Section 4) and mutation No.246 dated 13th February, 1988 (under Section 8), by filing four separate appeals before the Additional Deputy Commissioner, Anantnag, having powers of Commissioner, Agrarian Reforms. The appeals were highly belated and, therefore, were accompanied by applications for condonation of delay. The Appellate Authority i.e. Additional Deputy Commissioner, Anantnag, vide order dated 11th July, 2006, rejected all the appeals being grossly barred by limitation. Aggrieved, the appellant filed a revision petition before the J&K Special Tribunal [“the Tribunal”] challenging the order dated 11th July, 2006, passed by the ADC, Anantnag. Vide order and judgment dated 6th October, 2006, the Tribunal allowed the revision petition and set aside all the four mutations above

referred. The Tribunal directed restoration of position qua the subject land as it existed before the attestation of impugned mutations. The Tribunal also left it open to the parties to agitate the matter before the civil court for enforcement of agreement of sale, if any, executed between the parties.

3) The order of the Tribunal dated 6th October, 2006, was assailed by the respondent No.2 before the learned Single Judge of this Court [“the Writ Court”] in OWP No.744/2006. The Writ Court, having noticed that there were many factual issues which had not been addressed by the Tribunal, remanded the matter back to the Tribunal for re-consideration. This is how the Writ Court vide its judgment dated 24th August, 2023, quashed the impugned order of the Tribunal with a view to facilitating the latter to re-consider the matter. It is this judgment of the Writ Court dated 24th August, 2023, passed in OWP No.744/2006, which is impugned before us in this appeal.

4) The judgment impugned has been assailed by the appellant on the following grounds:

- (I) That the Writ Court has not appreciated the fact that with a view to attract the provisions of the Act of 1976, the person claiming to be entitled to be conferred the ownership rights under Section 8 of

the Act of 1976 must establish tenant and landlord relationship between the parties in existence during Kharif 1971.

- (II) That the Writ Court has, without indicating as to which legal or factual aspects have not been considered by the Tribunal, remanded the matter to the Tribunal for reconsideration.
- (III) That the appellant was and continues to be the owner in self-cultivation of the subject land and the Khasra Girdawari of Kharif, 1971, bears the testimony of the aforesaid fact. The Tribunal, having regard to all aspects of the matter and the manner in which the mutations stood attested by the revenue officer at the behest of respondent No.2, rightly concluded that there was no evidence to establish that respondent No.2 was a tiller qua the subject land in Kharif, 1971. The Writ Court, without appreciating the clear findings of fact recorded by the Tribunal on the basis of the revenue record, has hasten to hold that there were many other aspects in the matter required to be considered by the Tribunal.
- (IV) That the Writ Court also did not appreciate the fact that in a suit for permanent prohibitory injunction filed by respondent No.2, there is a categorical admission by the said respondent that he had purchased the subject land from the appellant which clearly belies the assertion of the respondent No.2 that he was a tiller cultivating the subject land in Kharif, 1971 and thereafter.

(V) The Revisional Court i.e. the Tribunal, had clearly seen through the manipulations made by respondent No.2 in connivance with the revenue officer and rightly concluded that the mutations were sham and required to be set aside.

5) Mr. Saqib Amin Parray, learned counsel appearing for the appellant, has laid stress on the aforesaid grounds of challenge and submits that the judgment passed by the Writ Court is erroneous both on facts and law and, therefore, cannot sustain.

6) *Per contra*, Mr. G. A. Lone, learned counsel appearing for respondent No.2, would submit that the appeal filed by the appellant under Clause 12 of the Letters Patent is not maintainable against an order of remand passed by the Writ Court. He would argue that the Writ Court has not determined finally any rights between the parties and, therefore, the impugned judgment of the Writ Court cannot be termed as a judgment within the meaning of the expression used in Clause 12 of the Letters Patent of this Court. That apart, Mr. Lone would submit that the Tribunal, exercising its revisional jurisdiction, could not have condoned the delay of more than 18 years, more particularly when the appellant was all along aware that the subject land was under occupation of respondent No.2 who had raised his residential house on the subject land.

Another argument was raised by Mr. Lone that the settlement operations in Village Balsoo Kulgam were completed in the year 1996-97 and all mutations under the Act of 1976 including those challenged by the appellant came to be accepted and incorporated in the record of rights those were prepared pursuant to the settlement operations. The appellant, who was none other than the Lumberdar of the Village, never objected to the entries those were made in the revised record of rights prepared after settlement operations and, therefore, cannot be permitted to assail the entries in the revenue records other than by filing a civil suit before the civil court of competent jurisdiction.

7) Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the impugned judgment passed by the Writ Court is liable to be set aside on the solitary ground that the Writ Court has nowhere indicated in the impugned judgment as to how the matter has not received an appropriate consideration of the Tribunal. There is reference in paragraph (9) of the impugned judgment that during adjudication of the appeals (should have been revision), the Tribunal has not manifestly considered the factual matter appropriately, be it regarding attestation of

mutation Nos.247 and 250 as also in respect of mutation Nos.244 and 246. We have minutely gone into the impugned judgment in its entirety but could not find anything, which, in the view of the Writ Court, was not considered by the Tribunal. The order of the Tribunal is elaborate and has taken note of all aspects of the dispute elaborately.

8) While holding so, we could have straightway accepted the appeal and set aside the order of the Writ Court. However, having regard to the fact that the parties are litigating since the year 2006, remanding the matter to Writ Court for re-consideration would un-necessarily prolong the wait of the parties to the conclusion of their litigation and resolution of their dispute. We have, thus, ventured to consider the matter on merits to put a quietus on the dispute between the parties.

9) Admittedly, the subject land belongs to the appellant. It is the appellant who is recorded as owner in self-cultivation in Kharif, 1971, which is a crucial date for determining the rights of the parties under the Act of 1976. True it is that there is one mutation i.e. mutation No.197 dated 18th June, 1983. This is in reference to land of the appellant measuring 01 kanal and 05 marlas. A perusal of mutation No.197 appended with writ petition as

Annexure-G would indicate that by virtue of this mutation, Khasra Girdawari entry of 1971, which showed the appellant in self-cultivation, was corrected to indicate respondent No.2 as tiller. The appellant is not amongst the persons who were present at the time of attestation of this mutation nor his name appears in the list of signatories. Obviously mutation No.197 dated 18.06.1983 has been attested by Tehsildar, Kulgam, at the back of the appellant. This mutation was neither relied upon nor produced by respondent No.2 before the Tribunal. This mutation was, for the first time, introduced in the amended writ petition filed before the Writ Court.

10) Be that as it may, it is not understandable as to why the follow up action in terms of attestation of mutation under Section 4 of the Act of 1976 in favour of respondent No.2 was not immediately taken. As a matter of fact, mutation under Section 4 of the Act of 1976 in respect of land measuring 01 kanal and 05 marlas falling under Survey No.112 was never attested. We are in agreement with Mr. Lone that mutation No.244, purportedly attested under Section 4 of the Act of 1976, attested under Section 4 of the Act of 1976, does not pertain to any land under Survey No.112. It is, thus, evident that Tehsildar, Kulgam, without attesting any mutation under Section 4,

straightway attested mutation No.246 dated 13th February, 1988, under Section 8 of the Act of 1976 conferring ownership rights in respect of land measuring 01 kanal 05 marlas upon respondent No.2. This obviously is a serious lapse on the part of the revenue officer and speaks volumes about the manner in which the mutations were attested.

11) Regarding mutation No.247 dated 7th March, 1988, attested under Section 4 of the Act of 1976 with respect to land measuring 02 kanals falling under Survey No.112, suffice it to say that the said mutation has been attested without having resort to correction of Khasra Girdawari entry of 1971 in terms of Rule 4 of the J&K Agrarian Reforms Rules, 1977 [“the Rules of 1977”]. From perusal of mutation No.247, it clearly transpires that the appellant has been shown in self-cultivation as per Khasra Girdawari entry of 1971. It is, however, not forthcoming as to how the entry of self-cultivation has been changed to reflect the name of respondent No.2 as tiller without there being any mutation of ‘Sehti Indraj’. We are saying so because mutation No.247 does not refer to any earlier mutation of ‘Sehti Indraj’ attested by competent revenue officer after following the provisions of Rule 4 of the Rules of 1977. Undoubtedly, mutation No.250 dated 16th March,

1988, under Section 8 of the Act of 1976 is attested on the basis of mutation No.247.

12) We are in complete agreement with the Tribunal that the mutating officer has thrown the provisions of the Act of 1976 and the Rules framed thereunder to wind and attested the mutations which are, on the face of it, contrary to the provisions of the Act of 1976 and the Rules framed thereunder. It is true and we agree with Mr. Lone that mutation No.244 dated 01.01.1988 does not pertain to the piece of land measuring 01 kanal and 05 marlas under Survey No.112. We are even ready to accept the contention of learned counsel for respondent No.2 that correction of Khasra Girdawari entry of Kharif 1971 in respect of land measuring 01 kanal 05 marlas stood made vide mutation No.197 dated 18.06.1983, yet we are at loss to understand as to how the mutating officer could straightway attest mutation under Section 8 of the Act of 1976, which ought to have, necessarily, followed a mutation attested under Section 4 of the Act of 1976. As has been held above that there was no mutation under Section 4 of the Act of 1976 attested in respect of land measuring 01 kanal and 05 marlas. This is beside the point that mutation No.197 was attested in violation of the principles of natural justice and without following the procedure laid

down under Rule 4 of the Rules of 1977. We are aware that mutation No.197 has not been challenged by the appellant before any forum. As a matter of fact, mutation No.197 came to light for the first time when amended writ petition was filed by respondent No.2 before the Writ Court. We, therefore, conclude that the manner in which the mutations have been attested by the revenue officer qua the subject land, is contrary to the provisions of the Act of 1976 and the Rules framed thereunder. All the mutations were attested at the back of the landlord (the appellant) and, therefore, are nullity in the eye of law.

13) Regarding delay, we would like to point out that since the mutations challenged by the appellant before the Appellate Forum under the Act of 1976 were all exparte and attested at the back of the appellant, as such, the appellant had no occasion to have the knowledge of such mutation. It is true that on a portion of subject land the respondent No.2 has made certain constructions including the construction of his residential house and that was enough to impute knowledge to the appellant. The appellant has, however, explained that the construction was raised by respondent No.2 on the land measuring 05 marlas which had been sold by him to the said respondent.

At this juncture we would like to refer to the provisions of Rule 52 of the Rules of 1977, which reads thus:

“52. Case where appeal fails on ground of limitation.— Where the appeal is dismissed on the ground of limitation, the appellate authority shall, if he be of the opinion that the order appealed from is one which should be revised, submit the case through proper channel to the revisional authority with a report why the order appealed from needs being revised and what the revised order should be. On receipt of this report, the revisional authority shall act as if an application for revision under the Act had been made to him.

14) From a reading of Rule 52, it clearly transpires that even if the appeal under the Act of 1976 is dismissed on the ground of limitation and the appellate authority is of the opinion that that the order appealed from is one which should be revised, it shall submit the case through proper channel to the revisional authority with a report as to why the order appealed from is required to be revised. It is true that in the instant case the appellate authority has not held such opinion. However, from reading of Rule 52, it can be safely inferred that the revisional authority hearing a revision petition against the order of dismissal of appeal on the ground of limitation passed by the appellate authority has wider jurisdiction and may ignore the delay if it is of the opinion that the order appealed from before the appellate authority is required to be revised. In short, the discretion of the revisional authority to ignore the delay would depend upon the merits of the appeal dismissed by

the appellate authority on the ground of limitation. The Tribunal has, thus, rightly exercised its revisional power and has accepted the explanation tendered by the appellant for filing of belated appeals before the appellate authority. The Writ Court has also not found fault with exercise of such power by the Tribunal but has remanded the case to the Tribunal for re-consideration on the ground that some aspects have remained unconsidered by the Tribunal.

15) For all these reasons, we do not find any fault with the order of the Tribunal which has been set aside by the Writ Court. In the given facts and circumstances and also the reasons given hereinabove, there was hardly any need to remand the matter for re-consideration to the Tribunal. The Tribunal has correctly appreciated the controversy and set aside the mutations, which on the face of it, were contrary to the provisions of the Act of 1976 and the Rules framed thereunder. However, before we conclude, we deem it appropriate to deal with a specious argument raised by Mr. Lone that after the preparation of revised Record of Rights pursuant to the settlement operations started vide SRO 297 dated 9th October, 1991, and completed in respect of Village Balsoo in the year 1996-97, all mutations including the impugned mutations under the Act of 1976

came to be recorded in the revised Record of Rights and, therefore, such entries made in the Record of Rights on the basis of impugned mutations cannot be changed or altered except under due process of law prescribed by Section 32 of the Land Revenue Act i.e. by way of a suit for declaration filed by the party aggrieved before the civil court. Mr. Lone also places reliance on Section 121 of the Land Revenue Act to contend that impugned mutations which led to the making of entries in the Record of Rights could have been objected to by the appellant during the course of preparation of Record of Rights or revision of Record of Rights and the Collector could have disposed of such dispute summarily subject to such orders that may be passed in appeal by the Divisional Commissioner.

16) We have given thoughtful consideration to the argument vehemently raised by Mr. Lone and we find no substance therein. With a view to better appreciate the issue raised by Mr. Lone, we need to understand the nature of 'Record of Rights' (Jamabandi). Section 21 of the Land Revenue Act deals with Record of Rights and documents included therein. For ready reference, Section 21 of the Land Revenue Act is set out below:

“21. Record of rights and documents Included therein. – (1) Save as otherwise provided by this Chapter, there shall be a record-of-rights for each estate.

(2) The record-of-rights for an estate shall include the following documents, namely: —

(a) statements showing, so far as may be practicable—

(i) the persons who are land-holders, tenants or assignees of land revenue in the estate, or who are entitled to receive any of the rents, profits or produce of the estate or to occupy land therein;

(ii) the nature and extent of the interests of those persons; and the conditions and liabilities attaching thereto; and

(iii) the rent, land revenue, rates, cesses or other payments due from and to each of those persons and to the State;

(b) a statement of customs respecting rights and liabilities in the estate;

(c) a map of the estate;

(d) such other documents as the Financial Commissioner with the previous sanction of the Government may prescribe.

EXPLANATION.—*Record-of-rights mentioned above includes record-of-rights and the map prepared and transferred under the provisions of the Jammu and Kashmir Consolidation of Holdings Act, 1962.*

17) From plain reading of Section 21 (supra), it is evident that the Record of Rights for an estate shall include the statements showing the persons who are land holders, tenants or assignees of land revenue in the estate; or who are entitled to receive any of the rents, profits or produce of the estate or to occupy land therein; the nature and extent of interest of those persons; and the conditions and liabilities attaching thereto; and the rent, land revenue, rates cesses and other payments due from and to each of those persons and to the State. It also includes statement

of customs respecting rights and liabilities in the estate; a map of the estate and such other documents as the Financial Commissioner with the previous sanction of the Government may prescribe.

18) Making of special revision of record of rights is referable to Section 22, which confers upon the Government power to direct by way of a notification that record of rights be made or the record of rights be revised, as the case may be. In short, a record of rights prepared at a settlement or its revision, of an estate which gives line of dissent of land-holders, a village map and defines right, interest and liabilities of landholders, tenants and assignees of land revenue, is called record of rights. It, of course, comprises of the documents mentioned in Section 21(2) of the Land Revenue Act. The requisite documents/papers, from which the record of rights are prepared/revised, consist of:

- (I) the last Jamabandi;
- (II) mutations attested since last Jamabandi was framed; and
- (III) the Khasra Girdawari;

19) The changes of rights and cultivation concerning landholders, tenants, mortgagees and lease-holders and change of assignees of the land revenue are given effect to in the record of rights strictly in accordance with the

orders passed on Mutation Register. This is so clearly
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provided in Rule 5 of the Standing Order 23-B issued by the Revenue Minister in the exercise of powers vested in him under the J&K Land Revenue Act.

20) It is true that under Section 32 of the Land Revenue Act, a person aggrieved by an entry in the record of rights is entitled to institute a suit before the Collector (Deputy Commissioner) for correction of record and for possession of the right claimed, if he is not in possession thereof etc. However, in the instant case, the entry made in the record of rights is strictly as per the mutations attested by competent mutating officer under the J&K Agrarian Reforms Act and, therefore, the entry in the revised record of rights prepared pursuant to the settlement operations initiated vide SRO 297 dated 9th October, 1991, cannot be said to be an incorrect entry made in the record of rights which is required to be corrected by way of filing a suit for declaratory decree by the aggrieved person before the Collector (Deputy Commissioner). The basis of the entry in the record of rights are the mutations attested by the competent revenue officer and, therefore, it cannot be said that the entries qua the subject land made in the revised record of rights prepared pursuant to the settlement operations aforesaid are incorrect entries. However, it cannot be said that once an entry in the record of rights

on the basis of a mutation is made, the mutation becomes immune to challenge and the aggrieved party has no remedy except to file a suit for declaration under Section 32 of the Land Revenue Act. The mutations attested under Section 4 and 8 of the Act of 1976 are appealable under Section 21(1) of the Act of 1976 and the person aggrieved by a final order of Collector or a revenue officer of a class lower than that of a Collector is entitled to prefer an appeal to the Commissioner Agrarian Reforms having jurisdiction in the area to which the appeal relates. The entry made in the revised record of rights pursuant to the settlement operations conducted under the orders of the Government cannot take away this statutory remedy of appeal conferred upon the aggrieved person.

21) Needless to say that if the mutations with respect to which the entries already stand made in the record of rights are set aside by the appellate or the revisional forum under the Agrarian Reforms Act or under the Land Revenue Act, as the case may be, a necessary consequence thereof would be updation of the record of rights and the orders of the appellate authority/revisional authority, as the case may be, shall be reflected by revising the record of rights on the commencement of next settlement operation. Neither Section 32 nor Section 121 of the Land

Revenue Act can come in the way of the person aggrieved of a mutation to avail of the remedies provided under the statute. We, therefore, hold that the appeals before the appellate authority and the revision before the Tribunal by the appellant were maintainable, notwithstanding the fact that on the basis of the impugned mutations, the requisite entries stood made in the revised record of rights.

22) Regarding the objection taken by Mr. Lone with regard to maintainability of the appeal under Clause 12 of the Letters Patent, suffice it to say that the impugned judgment passed by the Writ Court is not an order of remand simpliciter for re-consideration by the Tribunal but it also sets aside the judgment of the Tribunal whereby the Tribunal has accepted the revision petition of the appellant and set aside the mutations attested by Tehsildar, Kulgam, against the appellant. Otherwise, also in the given facts and circumstances, the remand of the case was not called for, more particularly when the Writ Court had not spelled out the factual aspects which had escaped the attention of the Tribunal and deserved reconsideration.

23) During the course of hearing the matter and while going through the entire record, we find that there are two vital admissions made by the parties. The appellant has

categorically stated before the appellate authority as well as before us that he had sold only 05 marlas of land to respondent No.2. There is also an admission made by respondent No.2 that the land under his occupation since 1971 is actually purchased by him from the appellant.

24) In view of the aforesaid two admissions, one thing is clearly established that there was never ever a relationship of landlord and tenant between the parties attracting the provisions of Section 4 and 8 of the Act of 1976. Probably with a view to giving legal colour to the illegal transaction between the parties, the manipulations, in connivance with revenue officers, were made. In the absence of any agreement to sell or sale deed on record, it is difficult for us to say as to how much land was actually transferred by the appellant to respondent No.2. It is, however, trite law that after the commencement of the Act of 1976, nobody was entitled to hold the agricultural land for a purpose other than personal cultivation nor was he entitled to transfer the same to some other person for consideration or otherwise. Obviously, if there has been transfer of land from appellant to respondent No.2 or that the appellant has ceased to be in cultivating possession of the subject land owned by him, there is, prima facie, violation of the provisions of the Act of 1976 and the Rules framed

thereunder. This is one issue which needs to be gone into by the revenue authorities.

25) For the foregoing reasons, we find merit in this appeal and the same is, accordingly, allowed. The impugned order and judgment passed by the Writ Court is set aside and the order of the Tribunal is upheld. The Tehsildar, Kulgam, is directed to conduct an enquiry to find out as to how the subject land or a portion thereof has come to be transferred in favour of respondent No.2. He shall also hold a detailed enquiry to find out as to whether there has been violation of the provisions of the Agrarian Reforms Act and the Rules framed thereunder entailing an action for escheatment of the land to the State. The action to be initiated under the provisions of the Agrarian Reforms Act would depend upon the result of such enquiry.

(MOHD. YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
09.05.2025
"Bhat Altaf-Secy"

Whether the JUDGMENT is reportable: **Yes/No**