

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

**OWP 2134/2018 IA(1/2018) CM(163/2022) c/w
i)OWP 1350/2018 IA(1/2018)**

GHULAM AHMAD DAGGA AND ORS

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

Through: Mr. Shafqat Nazir, Advocate with Ms. Heena Baqal, Adv

Vs.

STATE OF J AND K AND ORS

...Respondent(s)

Through: Mr. Gulzar Ahmad Bhat, Advocate
Mr. Ilyas Nazir Laway, GA

CORAM:

HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.

JUDGMENT

11.12.2025.

ORAL:

1. Facts of both the petitions being intertwined in nature, they are being decided by virtue of this common order.
2. As factual narration from the record of the petitions would unfurl, 'Mst. Mala Begum and Ors' ["hereinafter referred to as 'respondents'] preferred a revision petition before Divisional Commissioner, Kashmir, [" the appellate court"], against an order of mutation passed by Naib Tehsildar, Sumbal on 01.12.2015. On 13.12.2017, counsel for the respondents made a statement in the appellate court that petitioners had alienated a portion of the subject land, in violation of the court order dated 01.03.2017, whereby parties were directed to maintain status quo. Pertinently, this statement was made by learned counsel for the respondents in the absence of counsel for the petitioners, though petitioners were present in person. On this statement of learned counsel for the respondents, the appellate court came to conclude that third party interest has been created by the petitioners, by fencing the land and he directed the removal of fencing from the spot. Tehsildar concerned was

directed to appear in person and explain as to how it had happened. This order came to be questioned by the petitioners before Financial Commissioner, Revenue, Srinagar, [“the Revisional court”], on the predominant premise that since appellate court had passed the said order in the absence of their counsel, they were condemned unheard.

3. The Revisional court, vide impugned order set aside the mutation and remanded the matter to Tehsildar concerned for attestation of fresh mutation, in accordance with the Shariat Act.
4. Petitioners are aggrieved of the impugned order primarily on the ground that Revisional Court had exceeded jurisdiction because order of Divisional Commissioner was called into question by them on the solitary premise that they were condemned unheard.
5. Heard arguments and perused the file.
6. A perusal of the record reveals appellate court accepted the statement made by learned counsel for the respondents as a gospel truth that a third party interest has been created on the spot and straightaway directed the concerned Tehsildar to remove fencing. Least which was required in the matter was to verify the authenticity of the statement made by learned counsel for the respondents by constituting a team of revenue officials.
7. The said order of the appellate court was called into question by the petitioners on a limited premise that this was violative of the principles of natural justice because it was passed in the absence of their counsel. However, the Revisional court has not returned any finding on the plea urged by the petitioners in the revision petition and instead, he has embarked upon an uncharted territory by setting aside the mutation, which was questioned before the appellate court. The Revisional court

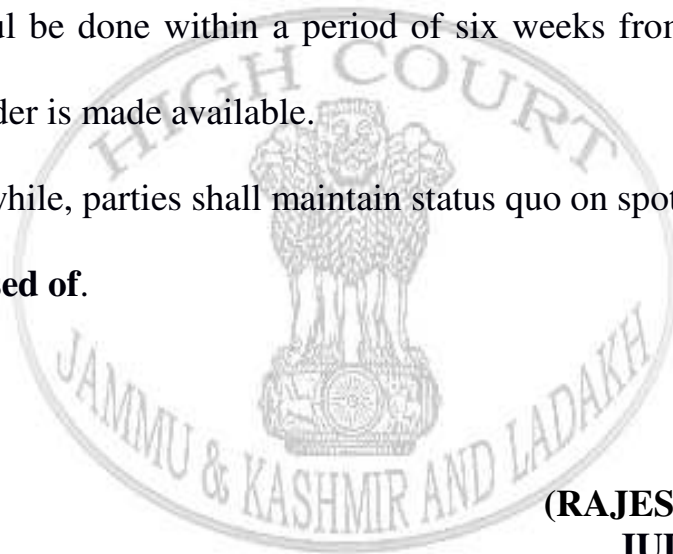
exceeded the jurisdiction and instead of addressing the issue, urged in the petition, decided the petition on merits.

8. In view of the above, present petition is allowed and both the orders dated 13.06.2018, passed by the Revisional court- Financial Commissioner (Rev), Srinagar and 13.12.2017, passed by the appellate court- Divisional Commissioner, Kashmir are set aside. As a consequence, matter is remanded to Divisional Commissioner, Kashmir for consideration afresh and pass a speaking order, in accordance with law, after affording a reasonable opportunity of being heard to both the sides.

9. Needful be done within a period of six weeks from the date a copy of this order is made available.

10. Meanwhile, parties shall maintain status quo on spot.

11. **Disposed of.**



(RAJESH SEKHRI)
JUDGE

Srinagar:
11.12.2025.
Misba