

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

Reserved on : 21.05.2026
Pronounced on : 03.06.2026
Uploaded on : 04.06.2026

OWP No.16/2009

Raj Kour and others Petitioner(s)

Through: Mr. M.L.Gupta, Advocate
Versus

State of Jammu & Kashmir and others Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG for R-1 to 4
Mr. J.P.Gandhi, Advocate for R-5
Mr. Bodh Raj Rao, Advocate for R-6 & 7

CORAM: **HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

JUDGMENT

1. By this petition, filed under Article 226 of the Constitution of India, the petitioners are *inter alia* seeking a declaration, declaring that the compromise entered between the parties to the Writ Petition No.823 of 1986 was not in consonance and violative of mandatory overriding provisions of Agrarian Reforms Act, 1976.
2. The petitioners and private respondents are stated to be the descendents and heirs of Late Wadhawa Singh son of Buta Singh. Respondent Nos. 8 and 9 i.e. Avtar Singh and Kartar Singh are sons of Jamna and Wadhawa Singh, born out of their long co-habitation. Melo was Jamna's daughter from her first husband Mool Singh. The case of the petitioners is that while Wadhawa Singh was cultivator of the land of Jamna comprised in Khasra Nos.6, 6/1, 7, 7/2, 1870/114/1, 115 and

128 situated at Kotli Shah Daula Tehsil R.S.Pura, the respondent Karnail Singh and children of Jamna from her husband Mool Singh have partitioned the whole land amongst them by entering into a compromise during pendency of the Writ Petition No.823/1986, contrary to the mandatory and overriding provisions of the Agrarian Reforms Act, 1976, succeeded in getting a direction from this Court to Tehsildar concerned to attest mutation in terms of the compromise agreement but in accordance with law. It is stated that petitioners as well as proforma respondents have been deprived from legitimate inheritance. It is stated that Jamna, mother of proforma respondents Avtar Singh, Kartar Singh and Melo Devi was owner of the land in question and Wadhawa Singh was cultivating the same from the time of death of her husband, Mool Singh and in the year 1971, he was in cultivating possession of the subject land.

3. In order to give undue benefit to Karnail Singh and to deprive heirs of Wadhawa Singh and Jamna, Ranjeet Singh, Sarpanch of the Village manage attestation of mutation under Section 4 of the Agrarian Reforms Act and partitioned the land of Jamna giving lion's share to Karnail Singh and small portions to others. The other heirs of Jamna, who were not summoned at time of attestation of mutation, filed an appeal against the mutation before the Commissioner Agrarian Reforms, which was allowed and consequently mutation was set aside. Aggrieved whereof, respondent-Karnail Singh preferred a revision petition before the Special Tribunal, which came to be accepted and the order of the Commissioner was set aside solely on

the ground that the appeal had been filed after expiry of period of limitation. Against the order of the Special Tribunal, OWP No.823/1986 came to be filed before this Court, during pendency of that writ petition, parties to the writ petition entered into a compromise, on the basis whereof the writ petition was disposed of as settled on 01.03.1991.

4. Petitioners herein, who claim to be the heirs of Wadhawa Singh, aggrieved of the aforesaid compromise on the ground that they were never called or heard in the proceedings, filed an application before the ASO Collector Agrarian Reforms for declaring the compromise agreement as void being contrary to the provisions of the Agrarian Reforms Act, which came to be dismissed. The petitioners preferred an appeal against the order of the Collector before the Commissioner Agrarian Reforms, which also came to be dismissed, against which a revision petition was preferred before the Special Tribunal. The Special Tribunal modified the order of the Collector and Commissioner Agrarian Reforms and directed Tehsildar not only to hear parties in OWP No.823/1986 but to hear all other concerned.
5. *Per contra*, respondent No.5 in his reply has raised a preliminary objection to the maintainability of the writ petition being hit by the doctrine of estoppels. It is stated that the controversy raised in this petition has already been settled by this Court while disposing of OWP No.823/1986, persons who were not party in the writ petition had assailed the finding of compromise before the Collector Agrarian Reforms and started second round of litigation. It is further stated that

the petitioners herein are claiming their right in the subject land being heirs of Wadhawa Singh, who was a party respondent in OWP No.823/1986 and was also a party to the compromise.

6. Mr. M.L.Gupta, learned counsel appearing for the petitioners would argue that the compromise entered during pendency of OWP No.823/1986 is void being in contravention to the mandatory provisions of Agrarian Reforms Act, 1976, as such, the order passed in OWP No.823/1986 is un-executable. To substantiate his argument, Mr. Gupta has relied upon on a judgment of the Supreme Court in **Haji Sk.Shuban v. Madhorao, AIR 1962 SC 1230**, and a judgment of this Court in **Ramzan Baht v. State of J&K and others, 1999 KLJ 801**. With regard to the preliminary objection, reliance is placed on a judgment of the Supreme Court in the case of **Shivdeo Singh and others v. State of Punjab and others, AIR 1963 SC 1909** and it is argued that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review. It is further stated that signatures of Wadhawa Singh on the compromise were obtained by impersonation before the Registrar Judicial.
7. On the other hand, learned counsel appearing for the respondent No.5 would argue that a petition under Article 226 is not maintainable, where the petitioner has an alternative/efficacious remedy. It is stated that the petitioners are virtually aggrieved of the order passed in OWP No.823/1986 against which the writ jurisdiction is not available and the remedy against that order is either to seek review or to assail the same by filing Letters Patent Appeal.

8. Respondent Nos. 6 and 7 have supported the claim of the writ petition by stating that the compromise was in contravention of the provisions of Agrarian Reforms Act, 1976. It is stated that the signatures of the Wadhawa Singh were obtained on the compromise fraudulently by impersonation.
9. Heard learned counsel for the parties and perused the material available on record.
10. The petitioners herein are virtually aggrieved of the order passed in by this Court in exercise of extraordinary writ jurisdiction vested under Article 226 of the Constitution of India for which the appropriate remedy is either to seek review or to file appeal under Clause 12 of the Letters Patent. The well settled principle is that if a remedy is available to a party before the High court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226.
11. The Supreme Court in the case of **Thana Singh v. A Mazid, Superintendent of Taxes, AIR 1964 SC 1419**, has held as under:-

“The jurisdiction of the High Court under [Art. 226](#) of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under [Art. 226](#), where the petitioner has an alternative remedy which,

without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under [Art. 226](#) trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Art. 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up.”

12. Further Supreme Court in the case of **Rikhab Chand Jain v. Union of India and others, 2025 SCC Online SC 2510** reiterated the same principle and in paragraph No.9 of the judgment held thus:-

“While deciding whether to entertain a petition under [Article 226](#) bearing in mind the precedents in the field, a writ court ought to additionally notice the forum designated by the statute for the litigant to approach. This is necessary because the alternative forum that is provided by the statute has to be one which can dispense speedy and efficacious relief. However, as in the present case, **if the statutorily designated alternative forum happens to be the high court itself whose jurisdiction under Article 226 is invoked and not any ordinary statutory functionary/tribunal, refusal to entertain the petition should be the rule and entertaining it an exception.**”

13. The remedy against the order dated 01.03.1991 passed in the OWP No.823/1986 is to seek review of the same or to prefer an appeal, as is

provided under Clause 12 of the Letters Patent, therefore, in view of the settled proposition of law, exercise of extraordinary writ jurisdiction vested under Article 226 of the Constitution is unwarranted. The present case does not fall in the category of exception, warranting exercise of writ jurisdiction.

14. The judgments relied upon by the learned counsel for the petitioners are of no help to the case of the petitioners in the present situation. Insofar as reliance placed on **Shivdeo Singh** (supra) is concerned, in that case the order was reviewed by the same judge while exercising writ jurisdiction. In the present case the writ petition was disposed of on 01.03.1991.
15. It has been informed to this Court that another writ petition being OWP No.245/2009 preferred by respondent-Karnail Singh challenging therein an order dated 19.12.2008 passed by the Special Tribunal has been allowed vide judgment dated 25.04.2023 strictly in terms of the compromise given effect to in OWP No.823/1986 dated 01.03.1991. The operative portion of the judgment reads thus:-

“The order of the J&K Special Tribunal to the extent it super-imposes its own directions is unwarranted and misconceived, as there was no reason and occasion with the J&K Special Tribunal to do editing to the direction as given in the order dated 01.03.1991 of this court, as such, deserves to be set aside and, accordingly, set aside. As a consequence, Tehsildar Agrarian Reforms, R.S.Pura, Jammu is directed to act in terms of the order dated 01.03.1991 of this Court read with the compromise given effect to in OWP No.823/1986.”

16. Keeping in view the above the factual position obtaining in the case and the proposition of law on the subject, present writ petition is held to be not maintainable in view of the alternative statutory remedies available to the petitioners, the order of the Writ Court passed in exercise of writ jurisdiction cannot be upset in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India.
17. Accordingly, this writ petition is dismissed being not maintainable.

(Moksha Khajuria Kazmi)
Judge

JAMMU
03.06.2026
Vinod, Secy

Whether order is reportable: No