

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

**OWP No. 1037/2013
CM No. 1167/2022**

Ghulam Rasool Lone and Others

...Petitioner(s)

Through: Mr. M. S. Reshi, Advocate

Vs.

**Financial Commissioner Revenue
and Others**

...Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

**ORDER
16.07.2026**

1. Heard Mr. M. S. Reshi, learned counsel for the petitioners.
2. The private respondents 5 to 9 are *ex parte* in terms of order dated **25.11.2025**.
3. The institution of this writ petition dates back to **29.07.2013** when the original petitioner Mst. Shamma Begum, who is now deceased, came forward seeking judicial review jurisdiction of this Court to challenge an outcome of revenue reference

made by the Additional Commissioner with powers of Divisional Commissioner, Kashmir to the Financial Commissioner (Revenue), J&K on **File No. 56/FC/AP of 28.03.2011.**

4. The petitioner's father was Ismail Sofi who was having revenue estate in village Wussan Tehsil Kangan District Ganderbal.
5. Said Ismail Sofi died intestate leaving behind his widow and five daughters.
6. Following the death of said Ismail Sofi, Mutation of Inheritance **No. 1093 dated 23.10.1985** came to be attested exclusively in favour of one of the daughters namely **Mst. Sara** of deceased **Ismail Sofi** to the exclusion of his all other daughters and also his widow.
7. The purported basis for attestation of mutation of inheritance of estate of Ismail Sofi in favour of said Mst. Sara was her purported status to be a khana nisheen daughter, inheriting the property on the account of fiction of being a son.
8. The petitioner came to realize that inheritance of her father by virtue of the said mutation is

objectionable one and was prejudicial to her claim of being co-owner/co-sharer of the estate and, thus, approached the Additional Commissioner with powers of Divisional Commissioner, Kashmir with a revision on **File No. 724 of 12.08.2010** assailing mutation No. **1093 dated 23.10.1985** attested by Naib-Tehsildar, Kangan.

9. The Additional Commissioner with powers of Divisional Commissioner, Kashmir, upon perusal of the record, came to find out that Naib Tehsildar had grossly violated **Standing Order No. 23-A** by having done injustice to left out daughters and, thus, accepted the revision filed by the petitioner against impugned mutation No. **1093 dated 23.10.1985** and made reference to the Financial Commissioner (Revenue), J&K, to set aside said mutation and pass on direction to Tehsildar to attest the mutation afresh under Shariat Act.

10. The reference dated **28.12.2010** landed before the Financial Commissioner (Revenue), J&K on **File No. 56/FC/AC of 28.03.2011** which came to be rejected by the Financial Commissioner

(Revenue), J&K by virtue of an order dated **22.08.2012** on the technical point that the petitioner was coming forward to assail mutation after 25 years of its attestation and the mutation was attested on the basis of consent of all the stake holders.

11. A very prominent fact came to be observed by the learned Financial Commissioner (Revenue), J&K in his order dated **22.08.2012** that petitioner was party to the mutation proceedings and, thus, cannot be allowed to resile from the fact of attestation of mutation and its effects with respect to inheritance of estate of her father-Ismail Sofi vesting in her sister Mst. Sara on account being a khana nisheen daughter.

12. After suffering the aforesaid outcome from the end of the Financial Commissioner (Revenue), J&K, the petitioner came to prefer a civil suit on **File No. 44/Numbri of 17.10.2012** before the court of Munsiff, Kangan, thereby seeking declaration, partition, possession, mandatory and prohibitory injunction qua the estate of her father-Ismail Sofi,

comprising **Khewat No. 62** in revenue estate Wussan, Kangan.

13. In her civil suit, the petitioner impleaded her four sisters namely **Mst. Sara, Mst. Rafiq, Mst. Saleema** and **Mst. Raja**.

14. Said suit of the petitioner upon contest came to be decreed by virtue of judgement/decreed dated **07.09.2015** by the court of Munsiff, Kangan, holding the petitioner as one of five legal heirs of estate holder-Ismail Sofi and, thus, entitled to her share of **1/5** viz the suit property and thereby directing its partition and separate share possession to the petitioner.

15. The judgment and decree dated **07.09.2015** is said to have attained finality not being put to any contest by the defendants/judgment debtors who are respondents 5 to 8 herein.

16. The respondent No. 9 herein-Mst. Saaba was widow of Ismail Sofi who did not figure in the array of defendants in the civil suit preferred by the petitioner.

17. It is in the aforesaid backdrop that the adjudication of this petition is coming forward before this Court posing a question as to which adjudication would have the precedence in the context of inheritance of Ismail Sofi. The adjudication as made by the Financial Commissioner (Revenue), J&K by reference to a Mutation No. **1093 dated 23.10.1985** or the adjudication made by the civil court by declaring the petitioner's status as one of five legal heirs to estate of Ismail Sofi.

18. When this Court examines the essential nature of attestation of mutation, the same is admitted to be essentially of fiscal nature without having any inherent declaration with respect to the legal status entitlement of the parties qua the revenue estate.

19. Even if, for the time being, this Court keeps itself distant from the import and importance of the judgment and decree dated **07.09.2015** of the court of Munsiff, Kangan and concentrate on the mutation No. **1093 dated 23.10.1985**, copy

whereof is on record on this petition, the same qualifies to be an order in the eyes of **J&K Land Revenue Act, Samvat, 1996**, thus, being an order in itself, the mutation attesting officer is supposed to have come up with the factual reference which are to be complete in themselves before coming forward with the final take as to how the beneficiary of mutation is entitled to earn the mutation attested in her favour as against the others being deprived of the recognized benefit in the mutation. There is nothing of said sort in three-line order of mutation attestation officer of Naib-Tehsildar, Wussan and, thus, where from the learned Financial Commissioner, (Revenue), J&K came to read a consent on the part of all the daughters of late Ismail Sofi with respect to attestation of mutation in favour of Mst. Sara-respondent No.8 as being the khana nisheen daughter is best known only to the Financial Commissioner (Revenue), J&K, whereas this Court is clueless from the reading of said mutation.

20. Any such factual aspect not coming forth therefrom, Financial Commissioner (Revenue), J&K ought to have been circumspect as being the highest adjudicatory authority under **Jammu and Kashmir Land Revenue Act, Samvat 1996**, in the matter of according his approval to legitimacy and legality of mutation No. **1903 dated 23.10.1985**.

21. Dealing with hardcore subject of inheritance of a deceased estate holder viz-a-viz his/her legal heirs, legal status of a person in the context of heirship is not at the disposal of the stroke of pen of a Patwari/Girdawar/Naib-Tehsildar or a Tehsildar. It is a law recognized status and if a person intends to have that status being acknowledged by a judicial/ quasi-judicial/ administrative /statutory authority, then there has to be proper factual basis before recognition comes to be granted and extended to a person claiming and bearing said legal status viz-a-viz the property or a person.

22. When this Court examines the purported adjudication so made by the Financial

Commissioner, (Revenue), J&K, then same is found to be nothing but very mundane in its nature and was aimed to stump the petitioner by reference to the time lag of coming too late to challenge mutation of **1985 in the year 2010**. If said time factor was being counted by the Financial Commissioner (Revenue), J&K against the petitioner, then the learned Financial Commissioner (Revenue), J&K ought to have posed a query to himself as to after how many years from the date of death of Ismail Sofi, the petitioner claimed for attestation of mutation of inheritance so as to become beneficiary of mutation No. **1093 of 1985**.

23. Mutation order does not bear any whisper as to the time line of the death of Ismail Sofi.

24. Be that as it may, the impugned order dated **22.08.2012** read with impugned mutation No. **1093 dated 23.10.1985** have to take a back seat now in view of the judgment and decree made by the civil court in the civil suit No. 44/Numbri of **17.10.2012** in favour of the petitioner as well as in

favour of all the four daughters of deceased Ismail Sofi, whereby all five daughters have been held entitled to **1/5th** share in the estate which has been directed to be put to partition for enabling separate shareholding by the shareholders / successors / heirs in their own individual right and, thus, **section 118-C** of the J&K Land Revenue Act Samvat, 1996 settles the position of law by giving precedence to the civil court's decree and judgment on the question of title on the context of a co-sharer to a revenue estate.

25. In view of the all aforesaid, this Court allows this writ petition by quashing order dated **22.08.2012** of the Financial Commissioner (Revenue), J&K along with the mutation No. **1093** dated **23.10.1985** of Naib-Tehsildar Ganderbal/Kangan leaving it to the discretion and disposal of Tehsildar, Ganderbal/Kangan to act in accordance with the judgment and decree dated **07.09.2015** of the court of Munsiff, Kangan in the matter of recording the inheritance of Ismail Sofi, the estate holder.

26. Copy of judgment passed by Munsiff, Kangan
in **File No. 44/Numbri dated 07.09.2015** is taken
on record.

27. Disposed of.

(RAHUL BHARTI)
JUDGE

SRINAGAR:
16.07.2026
Imtiyaz

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No

