

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

Pronounced on: 29.06.2026

Uploaded on: 01.07.2026

LPA No.118/2023

GHULAM AHMAD CHAKU

... APPELLANT(S)

*Through: - Mr. Z. A. Qureshi, Sr. Advocate, with
Mr. Anurag Verma, Advocate.*

Vs.

ABDUL MAJEED CHAKU & ORS.

...RESPONDENT(S)

*Through: - Mr. G. A. Lone, Sr. Advocate, with
Mr. Mujeeb, Andrabi, Advocate.
Mr. Shuja-ul-Haq, Advocate.*

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

JUDGMENT

Sanjay Dhar 'J':

1) The appellant has called in question order dated 12.06.2023 passed by the learned Writ Court, whereby writ petition bearing OWP No.1296/2018/2025 filed by one Haji Ghulam Rasool Chaku, the predecessor-in-interest of respondent Nos.1 to 5, has been allowed and order dated 04.07.2018 passed by the J&K Special Tribunal, Srinagar, has been set aside.

2) The facts giving rise to the filing of the present appeal are that mutation Nos.3655 dated 02.12.1988 and 3677

dated 16.02.1989 under Section 4 and 8 of the Agrarian Reforms Act (for short “the Act”) with regard to land measuring 3 kanals and 4 marlas falling under Survey Nos.1217-min, 1222-min and 1232-min situated at Ishber Nishat, Srinagar, came to be attested in favour of Haji Ghulam Ahmad Chaku (the appellant herein). The predecessor-in-interest of respondent Nos.1 to 5 assailed the said mutation orders by way of an appeal before the Commissioner Agrarian Reforms, J&K. The appeal was allowed by the Commissioner vide his order dated 27.12.2017 and the mutations order Nos.3656 and 3677 passed in favour of the appellant herein were set aside and the matter was remanded to the Assistant Commissioner, Revenue, concerned for passing of fresh order on spot after affording an opportunity of being heard to all the stakeholders including the ex-owners.

3) The aforesaid order passed by the Commissioner Agrarian Reforms was challenged by the appellant herein by way of a revision petition before the J&K Special Tribunal. The learned Tribunal vide order dated 04.07.2018 allowed the revision petition and set aside the order passed by the Commissioner Agrarian Reforms.

4) The predecessor-in-interest of respondent Nos.1 to 5, Haji Ghulam Rasool Chaku, filed a writ petition throwing

challenge to the order passed by the learned J&K Special Tribunal on the grounds that that the mutation orders could not have been passed in favour of the appellant herein because he was not a tiller of the land in question prior to Kharif 1971. It was contended that the mutation orders have been passed in violation of Standing Order No.23-A Instruction 104 and, as such, the same were contrary to the provisions of the Act. It was also contended that the learned Tribunal has not appreciated the controversy properly and has, without any cogent reasoning, proceeded to set aside the order passed by the learned Commissioner.

5) The learned Writ Court, after hearing the parties and after considering the material on record, passed the impugned order dated 12.06.2023, whereby the writ petition was allowed and, while upholding the order passed by the Commissioner Agrarian Reforms on 27.12.2017, the order passed by the learned Tribunal on 04.07.2018 was quashed. The learned Writ Court observed that the Commissioner had considered the entire controversy in right perspective and the conclusion drawn by the Tribunal is not based upon any cogent reasoning.

6) The appellant has challenged the impugned order passed by the Writ Court on the grounds that he was not

allowed by the learned Writ Court to file detailed objections to the writ petition. It has been contended that the appellant had only filed a short reply to the writ petition wherein he had raised a preliminary objection with regard to maintainability of the writ petition as the writ petitioner had filed the petition under Section 104 of the Constitution of J&K and not under Section 103 of the Constitution of J&K.

7) It has been contended that the learned Writ Court, without dealing with the objection with regard to maintainability of the writ petition and rendering a finding thereon, proceeded to deal with the merits of the case without obtaining a reply on merits from the respondents. On this ground, it is being submitted that the version of the appellant on merits of the case has not been considered by the learned Writ Court while passing the impugned order. It has been further contended that the writ petitioner had suppressed the material fact with regard to pendency of the civil suit in respect of the land which was subject matter of the writ petition, as a result of which the said aspect of the matter has not been considered by the learned Writ Court while passing the impugned order. It has also been contended that mutations under Section 4 and 8 of the Act were attested in favour of the appellant after adhering to

the procedure prescribed under the Act and the rules framed thereunder, as such, the mutation orders attested in favour of the appellant could not have been set aside by the Commissioner Agrarian Reforms, which order has been upheld by the learned Writ Court.

8) We have heard learned counsel for the parties and we have also gone through the grounds projected in the appeal as also the record of the Writ Court.

9) A perusal of the writ record would reveal that the writ petitioner had initially filed a petition under Section 104 of the Constitution of J&K, which corresponds to Article 227 of the Constitution of India. It seems that, during pendency of the writ petition, when an objection was raised by the appellant before the Writ Court about maintainability of the petition, the writ petitioner filed an application with the prayer that the petition may be treated as one under Article 226 of the Constitution of India read with Section 103 of the Constitution of J&K. The said application was objected to by the appellant by filing reply thereto. On 08.05.2023, the learned Writ Court, while taking note of the objection raised by the appellant with regard to maintainability of the petition as also with regard to application of the writ petitioner for treating his petition as a writ petition under Article 226 of the Constitution, posted the matter for 12th

June, 2023 for the purpose of hearing the application as well as the main writ petition.

10) A perusal of the impugned order dated 12.06.2023 passed by the learned Writ Court would reveal that the petition has been treated as one under Article 226 of the Constitution, which is clear from the first para of the impugned order, wherein it has been noted that the petitioner has invoked the extraordinary jurisdiction of the Court under Article 226 of the Constitution of India. Keeping in view the fact that the learned Writ Court has treated the petition filed by the writ petitioner as one filed under Article 226 of the Constitution of India, the issue with regard to maintainability of the petition has lost its significance.

11) That takes us to the question as to whether any prejudice has been caused to the appellant by not permitting him to file objections to the writ petition on merits. In this context, if we have a look at the impugned order passed by the learned Writ Court, vide the said order, the order passed by the Commissioner Agrarian Reforms on 27.12.2017 has been upheld and the order passed by the Tribunal on 04.07.2018 has been quashed. As already stated, the Commissioner has, vide his order dated 27.12.2017, without deciding the issues raised on their

merits, simply remanded the case to the Assistant Commissioner, Revenue, Srinagar, for conducting enquiry on spot after affording an opportunity of being heard to all the stakeholders including the ex-owners.

12) Thus, the appellant herein has all the opportunity to put forward his contentions, claims and material in support thereof before the Assistant Commissioner, Revenue, Srinagar, during the course of enquiry. It is always open to him to raise all the issues that have been raised by him in the present appeal which would include the effect of pendency of the suit on the subject matter of the dispute. Therefore, the impugned order passed by the learned Writ Court does not in any manner prejudice the right of the appellant to present his case before the learned Assistant Commissioner, Revenue, Srinagar.

13) One thing is clear from the record of the case that the mutations under Section 4 and 8 of the Act in respect of the land in question have been attested in favour of the appellant and the correction in the cultivation column of subject land in Kharif 1971 has been effected without hearing the ex-owners and other stakeholders. This is clear from a bare perusal of the mutation orders passed by the Tehsildar concerned. Therefore, learned Commissioner Agrarian Reforms was right in remanding the case back to

the Assistant Commissioner, Revenue, to hold an enquiry and affording an opportunity of hearing to all stakeholders including the ex-landowner before proceeding to pass appropriate orders under rule 4 of the J&K Agrarian Reforms Rules. Thus, there is no infirmity in the impugned order so far as it upholds the aforesaid order passed by the Commissioner Agrarian Reforms.

14) The learned Writ Court is also right in setting aside order dated 04.07.2018 passed by the learned Special Tribunal as the learned Tribunal has not given any cogent reasoning for allowing revision petition against the order of Commissioner Agrarian Reforms. A perusal of the order passed by the learned Tribunal would reveal that the learned Tribunal has, while observing that the Commissioner has not gone into and adjudicated the issues which were presented before him, instead of remanding the matter to the Assistant Commissioner for adjudication of these so-called issues, proceeded to set aside the order of the Commissioner without rendering any finding on the issues, which according to the learned Tribunal were not gone into by the Commissioner Agrarian Reforms. The order passed by the learned Tribunal is clearly unsustainable in law and, as such, the finding recorded by the learned Writ Court in this regard is also perfectly in accordance with law.

15) For what has been discussed hereinabove, we do not find any ground to interfere in the well-reasoned and lucid order passed by the learned Writ Court. The appeal lacks merit. The same is dismissed accordingly.

(Mohd. Yousuf Wani)
Judge

(Sanjay Dhar)
Judge

Srinagar,
29.06.2026
"Bhat Altaf-Secretary"

Whether the **ORDER** is reportable: **YES/NO**

