

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2433/2022 CM(6161/2022)

GHULAM MOHI UD DIN LONE AND ORS ...PETITIONER(S)

Through:
Mr. S.N. Ratanpuri, Advocate

V/s.

MST. ZEBA AND ANR ...RESPONDENT(S)

Through:
Mr. N.H. Shah, Sr. Advocate, with
Ms. Suwaiba, Advocate, and
Ms. Saima Ghulam, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

ORDER

03.09.2026

01. An appeal assailing mutation Nos. 210 dated 20.12.1985 and 252 dated 22.02.1991, attested under Sections 4 and 8 of the Agrarian Reforms Act, (for short, "the Act") was preferred by respondent No. 1 before the Joint Agrarian Reforms Commissioner, Baramulla, (for short, "the Appellate Authority"), along with an application seeking condonation of delay. The application seeking condonation of delay was allowed by the Appellate Authority in terms of order dated 09.02.2019. Thereafter, vide order dated 10.08.2022, the Appellate Authority allowed the appeal, thereby setting aside the aforesaid mutations. and remitted the matter to the Tehsildar concerned for further course of action in accordance with law.

02. Aggrieved of the orders dated 09.02.2019 and 10.08.2022 (supra), the petitioners, through the medium of this petition filed on 31.10.2022, have assailed the same, primarily on the ground that the appeal preferred by respondent No. 1 was hopelessly time-barred. It is also contended that the learned Appellate Authority has lost sight of the fact that setting aside of the mutations would not be of any benefit

to respondent No. 1, inasmuch as it would result in vesting the land to its original owner, who is neither related to the petitioners or respondent No. 1.

03. Respondent No. 1 has filed the reply, stating therein that the present petition deserves to be dismissed on the ground of delay and laches. Besides, it is contended that the petitioners got the mutations attested under Sections 4 and 8 of the Act (supra) in utter disregard of the provisions of the Act. It is also urged that the mutations were attested behind the back of respondent No. 1, and it is settled law that the possession of one co-sharer is the possession of the other co-sharer.

04. Mr. Ratanpuri, learned counsel appearing for the petitioners principally contended that the appeal preferred by Respondent No. 1 against the mutations was hopelessly barred by limitation. He further adverted to the order dated 10.08.2022 to demonstrate that Respondent No. 1 had full knowledge of the impugned mutations.

05. *Per contra*, Mr. N. H. Shah, learned Senior Counsel, appearing for the respondent No. 1, has submitted that the petitioners, having acquiesced in the order dated 09.02.2019 whereby the delay in filing the appeal against the aforementioned mutations was condoned, submitted to the jurisdiction of the Appellate Authority to adjudicate the appeal on merits. The petitioners took a calculated risk of participating in the proceedings with the expectation of a favorable outcome; only upon the eventual allowance of the appeal on merits by the Appellate Authority have they chosen to assail the underlying order dated 09.02.2019. Senior Counsel appearing for Respondent No. 1, has further submitted that the order dated 09.02.2019 was immune from challenge, the petitioners having assailed it after an unexplainable delay of over three years and eight months. He further urged that Respondent No. 1, being a co-sharer in the subject land, could not have been excluded from the attestations of mutations sanctioned under Sections 4 and 8 of the Act (supra). It was also submitted that a perusal of the impugned order dated 10.08.2022 manifestly demonstrates that the said mutations were secured by the petitioners through manipulation.

06. Heard learned counsel for the parties and perused the record.

07. The principal ground of the petitioners is that the appeal preferred by respondent No. 1 was hopelessly time-barred, as such, this Court would first determine the said contention of the petitioner.

08. Admittedly, respondent No. 1 is a co-sharer. It is not the case of the petitioners that respondent No. 1 was present at the time of attestation of the mutation (supra). Further, the Appellate Authority in terms of the impugned order dated 09.02.2019, while condoning the delay, has categorically observed that the mutations impugned were attested at the back of respondent No. 1.

09. Be that as it may, the petitioners never chose to assail the order dated 09.02.2019 for a period of more than three years and eight months, and learned Senior Counsel appearing for the respondent No. 1 is right in his submission that the petitioners, in effect, acquiesced in the order dated 09.02.2019 by taking a calculated chance and permitting the Appellate Authority to decide the appeal on merits, harboring the expectation that the appeal would be decided in their favor and ultimately dismissed.

10. The petitioners have failed to demonstrate due diligence in seeking timely recourse against the order dated 09.02.2019. This Court is, therefore, of the considered view that the challenge to the said order is barred by the doctrine of delay and laches. Having acquiesced in the order dated 09.02.2019 for over three years and eight months and permitted the Appellate Authority to proceed to final adjudication on merits, the petitioners are precluded from assailing the order dated 09.02.2019 through the present writ petition. Consequently, this submission on behalf of the petitioners stands rejected.

11. Next, it was contended that impugned order dated 10.08.2022 clearly reflects that the respondent No.1 was having knowledge of the mutation. The Appellate Authority has observed that the petitioners before the Appellate Authority have relied upon an affidavit and an agreement, pursuant to which an inquiry was conducted, and it was found that the petitioners had obtained the land in question from respondent No. 1.

12. While the petitioners claim to have entered into possession pursuant to an agreement with Respondent No. 1, such possession could not, under any circumstances, form the basis for attestation of mutations under the Act. The Appellate Authority rightly concluded that upholding the mutations in question would amount to placing a seal of approval on the gross irregularities committed by the field revenue functionaries under the garb of the J&K Agrarian Reforms Act. The findings recorded by the Appellate Authority are, therefore, unexceptionable.

13. Even otherwise, the Appellate Authority has exercised its discretion for cogent and discernible reasons. While exercising jurisdiction under Article 226 of the Constitution, this Court cannot act as an appellate or revisional authority to determine the validity of an order passed by a statutory authority. In exercise of its writ jurisdiction, this Court is required to examine only whether the procedure established by law has been followed or whether the order impugned suffers from any jurisdictional error or perversity warranting interference in exercise of the extraordinary jurisdiction of this Court.

14. Having perused the order dated 10.08.2022 passed by the Appellate Authority, this Court does not find any reason/ground warranting interference. The present petition, being devoid of merit, is, accordingly, dismissed.

15. The Tehsildar concerned shall proceed in accordance with law.

(RAJNESH OSWAL)
JUDGE

SRINAGAR:
03.09.2026
Junaid