Serial No. 11
Regular Causelist

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

OWP 909/2007
CM(4267/2022)

Suhail Ahmad Bhat and Others …Petitioner(s)

Through: Mr. M. A. Qayoom, Advocate

Vs.

State of J&K and Others. ...Respondent(s)

Through: Mr. Alla-ud-din Ganai, AAG.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

ORDER
28.05.2024

1. Impugned in this petition, filed by the petitioners under Article 226 of the Constitution of India, is an order dated 12th September, 2007, passed by the Financial Commissioner (Revenue), J&K Srinagar, in a reference titled *"State Vs. Ahamdullah*", whereby the recommendation made by Additional Commissioner, Kashmir, exercising the powers of Divisional Commissioner, Kashmir, for setting aside the Mutation No. 210 attested under LB-6/C and Mutation No. 211 attested under Government Order No. 432 C of village Boniyar ,Tehsil Uri, District Baramulla, in the year 1989, has been accepted.

2. The impugned orders are assailed by the petitioners primarily on the ground that the Additional Commissioner, Kashmir, who considered and disposed of a revision petition against Mutation Nos. 210 and 211 of 1989, did not provide any opportunity of being heard to the petitioners. It is submitted that during the pendency of the aforesaid revision petition, the predecessor- in-interest of the petitioner, namely, Ahamdullah, had died, and a mutation of inheritance had been attested in favour of the petitioners, yet no effort was made to substitute the deceased Ahamdullah with his legal representatives i.e., the petitioners herein, nor was any notice served upon them so as to provide them an opportunity of being heard in the revision petition.

3. It is further submitted that when the reference was made by the Additional Commissioner, Kashmir, to the Financial Commissioner (Revenue), J&K Srinagar, the same was also against the deceased Ahamdullah. The petitioners were again not served with any notice, and the reference was accepted in terms of the order impugned in this petition.

4. Having heard learned counsel for the parties and perused the material on record, including the record of the Financial Commissioner (Revenue), J&K Srinagar, it clearly transpires that the reference was heard by the Financial Commissioner, Kashmir, against deceased Ahamdullah. Neither the petitioners, who were legal heirs of Ahamdullah, were substituted before the Additional Commissioner, Kashmir, nor were they made party in the reference.

5. From the reading of the impugned order, it seems that some notice was published in the newspaper in respect of the petitioners, requiring their presence in the reference. However, there is no record made available to this Court from the office of the Additional Commissioner, Kashmir, which would indicate that similar steps have been taken by the court of Additional Commissioner, Kashmir, also to serve the petitioners.

6. As is apparent from the reading of the impugned order, as well as the order passed by the Additional Commissioner, Kashmir, there was no effort made before either of the forums to formally array the petitioners as party respondents in place of deceased Ahamdullah. There is also nothing on record to show that notice of hearing was ever served to the petitioners by the Additional Commissioner, Kashmir, in the revision petition, which was disposed of by the Additional Commissioner, Kashmir, vide order dated 28th June, 2005.

7. Even if the Court were to believe that the petitioners were put to notice in the reference before the Financial Commissioner (Revenue), J&K Srinagar, yet the fact that they were not heard by the Additional Commissioner, Kashmir, while deciding the revision petition will go to the root of the matter. The recommendation for setting aside of the impugned mutations attested in favour of the petitioners was made by the Additional

Commissioner, Kashmir, apparently at the back of the petitioners and, therefore, was of no consequence.

8. Viewed from any angle, it is a case where the Court finds that the petitioners have been condemned unheard. The order passed by Additional Commissioner, Kashmir, is therefore, rendered unsustainable in law, and so is the fate of the order passed in the reference by the Financial Commissioner (Revenue), J&K Srinagar.

9. For the foregoing reasons, the writ petition is allowed, and the impugned order dated 12th September, 2007, passed by the Financial Commissioner (Revenue), J&K Srinagar, in reference titled "*State Vs. Ahamdullah",* and the order dated 28th June, 2005, passed by the Additional commissioner, Kashmir, are set aside. The matter is remanded to the Divisional Commissioner, Kashmir, for fresh adjudication. Both the parties shall appear before the Divisional Commissioner Kashmir, on 12th June, 2024. The Divisional Commissioner, Kashmir, shall do well to provide an adequate opportunity of being heard to both the sides and pass appropriate orders in accordance with law.

10. **Disposed of**.

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
28.05.2024
"Mir Arif"

MIR ARIF MANZOOR
I attest to the accuracy and
authenticity of this document

29.05.2024