HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 25.04.2024
Pronounced on: 22.05.2024

OWP 462/2008

1. Updesh Kour
   W/O Late Tirath Singh,
2. Manjeet Kour, Aged 52 Yrs D/O Late Tirath Singh
3. Manmohan Singh Aged 50 Yrs. S/O Late Tirath Singh
4. Ramanjeet Singh, Aged 45 Yrs, S/O Late Tirath Singh
   All residents of Rangreth Tehsil & District Budgam

… Petitioners/Appellant(s)

Through: Mr. G. A. Lone, Advocate with
Mr. Mujeeb Andrabi, Advocate

V/s

1. State of J&K through Secretary to Government,
   Revenue Department, Civil Secretariat, Srinagar/Jammu.
2. Financial Commissioner Revenue, Jammu and Kashmir, Srinagar.
3. Divisional Commissioner, Kashmir Srinagar.
4. Tehsildar, Budgam.
5. Kulvant Singh.
6. Nirmal Singh
   Respondents 5 & 6 Sons of Rangeel Singh
   Residents of Rangreth Tehsil and District Budgam.

… Respondent(s)

Through: Mr. T. H. Khawaja, Advocate

OWP 2309/2015

1. Updesh Kour
   W/O Late Tirath Singh,
2. Manjeet Kour, Aged 52 Yrs D/O Late Tirath Singh
3. Manmohan Singh Aged 50 Yrs. S/O Late Tirath Singh
4. Ramanjeet Singh, Aged 45 Yrs, S/O Late Tirath Singh
   All residents of Rangreth Tehsil & District Budgam

… Petitioners/Appellant(s)

Through: Mr. G. A. Lone, Advocate with
Mr. Mujeeb Andrabi, Advocate

V/s

1. State of Jammu & Kashmir through Commissioner/Secretary to Government
   Revenue Department Civil Secretariat Srinagar/Jammu.
2. Financial Commissioner (Revenue) J&K, Srinagar.
3. Divisional Commissioner Kashmir Srinagar.
4. Tehsildar, Budgam.
5. Kulwant Singh
6. Nirmal Singh
   Sons of Rangil Singh
   Residents of Rangreth Tehsil & District Budgam.

… Respondent(s)

Through: Mr. T. H. Khawaja, Advocate

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

O R D E R
22-05-2024

1. The issues involved in the instant petitions are akin and analogous to each other, as such, are decided by this common judgment.

2. Facts emanating from the record which are not in dispute in the instant petitions are that land measuring 3 kanals situated in estate Rangreth, Budgam had jointly vested in favour of three brothers namely Tirath Singh [the original petitioner in the petitions in hand having been substituted by his legal heirs upon his death], Kulvant Singh and Nirmal Singh (respondents 5 and 6 herein) under the Agrarian Reforms Act, 1976 (for short the Act of 1976) upon attestation of mutation bearing no. 696 dated 10.3.1996 under section 8 of the Act of 1976 whereafter a period of around nine months another mutation bearing no. 727 dated 27.1.1997 in terms of section 121 of the Land Revenue Act, Samvat 1996 (hereinafter referred to as the Act of 1996) came to be attested in respect of two kanals of land out of the aforesaid 3 kanals of land in favour of the original petitioner Tirath Singh excluding his above named other two brothers/respondents 5 and 6 herein, by the Tehsildar Settlement as the whole area where the land in question is situated was under settlement operation at that point of time.

3. The said mutation no. 727 dated 27.1.1997 came to be challenged in a revision petition by the above said brothers of the original petitioner Tirath Singh before the Divisional Commissioner, Kashmir on 2.6.2003 mainly on the ground that the mutation in question has been attested in *ex parte* without serving any notice on them even though the land in question had already vested in them in terms of section 8 of the Act of 1976 supra and that there was no scope to raise any dispute *qua* the title of the land and, as such, no occasion to take recourse to section 121 of the Act of 1996 *supra* and that since the mutation in question had been attested surreptitiously without any notice to them, they got knowledge thereof only on 28.03.2003 and immediately thereafter filed the revision petition on 2.6.2003.
4. The Divisional Commissioner agreed with the contentions raised in the revision petition and consequently made a reference/recommendation vide order dated 28.7.2003 to the Financial Commissioner for setting aside mutation no. 727, however, the Financial Commissioner rejected the reference and the recommendation in terms of order dated 10.10.2006 on the ground that no notice had been issued to the respondents in the revision petition [being the original petitioner herein] before making the recommendation and that since the area was under settlement operations, the Divisional Commissioner did not have the jurisdiction in the matter in view of section 6(6) of the Act of 1996 supra which section provides that during settlement

operations the jurisdiction of the Divisional Commissioner gets vested in the Settlement Commissioner.

5. Dissatisfied with the order of the Financial Commissioner dated 10.10.2006 the revision petitioners respondents 5 and 6 herein filed a review petition before the Financial Commissioner seeking review of the aforesaid order dated 10.10.2006 on the ground that failure to serve notice in the revision petition to other side by the Divisional Commissioner before making recommendation to the Financial Commissioner did not vitiate the proceeding of revision petition as the Divisional Commissioner had only made recommendation and the affected party [i.e. the original petitioner herein] had a sufficient opportunity to present his case before him i.e. the Financial Commissioner and qua the ground of exclusion of jurisdiction of the Divisional Commissioner it came to be contended in the review petition *supra* that if it was so then the proper course was to return the revision petition for its presentation before the proper forum i.e. Settlement Commissioner as the revision petitioners, respondents 5 and 6 herein could not be non-suited in consequence to order under review dated 10.10.2006 whereby the reference/recommendation made by the Divisional Commissioner came to be rejected by the Financial Commissioner.

6. The Financial Commissioner upon considering the revision petition at the joint request of the parties, instead of returning the

revision petition for its presentation before the Settlement Commissioner decided the same himself and consequently passed order dated 7.5.2008, which order came to be challenged by the original petitioner, being respondent before the Financial Commissioner, before this court in OWP no. 462/2008 supra.

7. The said OWP 462/2008, however, came to be dismissed by this court for non-prosecution on 22.11.2013, whereafter the record summoned by this court came to be sent back to the Financial Commissioner and though the record had been again summoned by this court on 2.4.2014, during the pendency of a restoration application filed for the restoration of the petition *supra*, the Financial Commissioner, however, proceeded with the consideration of the revision petition and consequently allowed the same in terms of order dated 2.9.2015 holding that mutation no. 727 dated 27.1.1997 had been attested without notice to the affected parties in the matter and that the land in question had got vested in the parties in terms of section 8 of the Act of 1976 supra and, as such, no mutation could have been attested under section 121 of the Act of 1996 supra.

8. The said order of Financial Commissioner dated 2.9.2015 came to be separately challenged by the original petitioner in OWP 2309/2015 supra.

9. The aforesaid orders dated 7.5.2008 and 2.9.2015 have been challenged in the instant petitions mainly on the grounds that since the proceedings under section 121 of the Act of 1996 supra

are special proceedings and provide for the special remedy by way of an appeal under the said section itself, therefore, the power of revision vested in the Financial Commissioner under section 15 of the Act of 1996 supra against the orders of subordinate revenue officers is deemed to be excluded, to be more specific, according to the petitioners, section 121 of the Act of 1996 supra is a standalone provision and only remedy available to an aggrieved person against an order passed under section 121 of the Act of 1996 *supra* is to file either an appeal or a civil suit under the said section as provided in the said section, and it being so, according to the petitioners power of revision enshrined under section 15 supra could not be invoked or exercised by the Financial Commissioner and it is in this background that the petitioners contend that the impugned orders are without jurisdiction.

10. **Objections** to the petition OWP 462/2008 supra have been filed by the respondents 5 and 6 herein, wherein the petition is being opposed and the contentions raised and grounds urged are being controverted and resisted *inter alia* on the premise that the petitioners as well as the replying respondents in fact requested themselves the Financial Commissioner to decide the matter himself, and, as such, the petitioners cannot challenge the impugned order(s).

Heard learned counsel for the parties and perused the record.

11. Mr. G. A. Lone, learned appearing counsel for the petitioners while making his submissions reiterated the contentions raised and grounds urged in the petition and would insist for grant of reliefs prayed in the petitions, whereas on the contrary Mr. Tassaduq H. Khawaja, learned counsel for respondents 5 and 6 herein would pray for dismissal of the petitions while opposing submissions of Mr. Lone.

12. Having regard to the aforesaid contentions of the parties raised in their respective pleadings coupled with the submissions made by their appearing counsels, the moot question that emerges for consideration of this court would be as to whether section 121 of the Act of 1996 supra would be deemed to have excluded the revisional power of the Financial Commissioner enshrined in section 15 of the said Act.

13. Before proceeding to advert to the said question, it would be appropriate to refer to the following provisions of the Act of 1996 hereunder being relevant to the controversy:

> **Section 8. Control** —
>
> (1) The general superintendence and control over all Revenue offices shall be vested with the Government.
>
> (2) The Divisional Commissioner, the Collectors and Assistant Collectors shall be subordinate to and under the control of the Financial Commissioner.
>
> (3) Subject to the control of the Financial Commissioner, the Collectors shall be subordinate to and under the control of a Divisional Commissioner.

(4) Subject as aforesaid and to the control of the Divisional Commissioner, all other Revenue officers in his district shall be subordinate to and under the control of a Collector.

(5) Subject as aforesaid and to the control of Collector, an Assistant Collector of the second class shall be subordinate to and under the control of an Assistant Collector of the first class.

Section 10. Power to withdraw and transfer cases —

The Financial Commissioner or a Divisional Commissioner or a Collector may withdraw any case pending before any Revenue officer under his control and either dispose of it himself, or by written order refer it for disposal to any other Revenue Officer under his control.

10-A. Exercise of powers by Revenue officers, — An order under section 9 or section 10 shall not empower any officer to exercise any powers or deal with any business which he would not be competent to exercise or deal with within the local limits of his own jurisdiction.

Section 15. Power to revise orders —

(1) The Financial Commissioner may at any time call for the record of any case pending before or disposed of by any Revenue Officer under his control.

(2) The Divisional Commissioner may call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him.

(3) If in any case in which, the Divisional Commissioner has called for a record he is of opinion that the proceedings taken or order made should be modified or revised he shall report case with his opinion thereon for the orders of the Financial Commissioner.

(4) The Financial Commissioner may, in any case called for by him under sub-section (1) or reported to him under sub-section (3), pass such order as he thinks fit:

> Provided that, he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate officer affecting any question of right between private persons without giving those persons an opportunity of being heard.

> **Section 121. Procedure to be followed in Settlement proceedings when a question of title arises** –
>
> If, in the course of the record-of-rights or of revision of the record-of-rights in any local area in pursuance of notification issued under section 22, any question of title arises it will be decided summarily by the Collector of the first class whose decision, subject to such orders as may be passed in appeal by the Divisional Commissioner shall be binding] on the parties till it is set aside by a decree of the Civil Court. When such a decree is made the record-of-rights shall be corrected, if necessary in accordance therewith, on an application to the Collector within whose jurisdiction the property affected is situate.

14. Before proceeding further in the matter, a reference to the judgment of the Apex Court passed in case titled as **Bihar State Cooperative Marketing Union Ltd. vs. Uma Shankar Sharan and another** reported in **(1992) 4 SCC 196** would be appropriate being germane herein, wherein section 40 of a particular Act gave special powers to the Registrar to order recovery after inquiry in addition to section 48 which also provided for arbitration between the parties in case of the dispute, and the management in the said case had resorted to arbitration proceedings and obtained award which came to be challenged on the ground that since special provision of recovery is provided under section 40 therefore arbitration proceedings could not have taken recourse to, and while the High Court of Patna accepted the challenge and set aside the award, the Apex Court did not agree with the High Court and held that it was for the affected party to opt for either of the

remedies provided under section 40 or 48 holding further that section 40 did not exclude the application of section 48. The relevant part of the judgement otherwise also is extracted and reproduced hereunder:

> **"6. Validity of plural remedies, if available under the law, cannot be doubted. Even if the two remedies are inconsistent, they continue for the person concerned to choose from, until he elects one of them, commencing an action accordingly. A matter which may attract Section 40 will continue to be governed by Section 48 also if the necessary conditions are fulfilled. In the present case no steps under Section 40 were ever taken by the appellant. The provisions of Section 48 are available to the appellant for the recovery of the loss."**

Thus what emanates from the ratio of the aforesaid judgement of the Apex Court is that existence of a special remedy does not exclude the general remedy available under an Act and that it is for the affected party to elect either of the remedies though with a rider that the party cannot have recourse to both.

15. Coming back to the case in hand and having regard to the aforesaid proposition of law laid down by the Apex Court in the judgment supra, it is true that section 121 of the Act of 1996 *supra* provides for summary proceedings by Collector during settlement proceedings and in case of a dispute *qua* the title provides for a special remedy by way of an appeal to the Divisional Commissioner against the decision, but it by no means would suggest exclusion of general power of revision available to the Financial Commissioner under section 15 of the

Act of 1996, which would continue to exist notwithstanding the special remedy provided under said section 121 of the Act of 1996 supra. Thus, it can safely be said that while the jurisdiction of the Divisional Commissioner gets barred under settlement operations by virtue of section 6(6) of the Act of 1996, revisional powers of Financial Commissioner under section 15 supra would remain intact and unaffected and the case of the petitioners that section 121 of the Act of 1996 supra is standalone provision cannot be accepted and the revisional power of the Financial Commissioner under section 15 supra is held to be of wide magnitude not barred by the provisions of section 121 of the Act of 1996 supra and the Financial Commissioner would retain the said revisional power to determine the legality of the orders passed by the subordinate officers under his jurisdiction in order to correct patent errors.

Even otherwise, a bare perusal of the provisions of section 8 and 10 of the Act of 1996 supra read with section 15 supra envisaging revisional powers of the Financial Commissioner manifestly demonstrates that same do not admit of any exception under any circumstances as all the revenue officers named in the Act of 1996 are subject to overall control and superintendence of the Financial Commissioner in addition to his revisional jurisdiction, as such, on this count no fault can be found with the approach of the Financial Commissioner while agreeing to exercise revisional jurisdiction on the joint request of the parties

for determining the legality of the mutation order dated 27.1.1997 passed under and in terms of section 121 of the Act of 1996 supra.

16. For another reason as well nothing in section 121 of the Act of 1996 supra suggests that powers under section 8 and 10 and in particular under section 15 *supra* have been excluded or made inapplicable as going by the scheme of the Act of 1996, the Financial Commissioner retains full authority to determine the legality of any order that may be passed by any revenue officer under his control provided the conditions that are *sine qua non* for passing of such orders exist which would include orders those may be passed under section 121 of the Act of 1996.

Furthermore, the language used in section 121 of the Act of 1996 *supra* makes it clear that orders that may be passed would be binding on the parties concerned and not on the authorities constituted under the Act suggesting further that the remedy of appeal provided in section 121 of the Act of 1996 *supra* is an additional special remedy that can be availed by an affected party in addition to the general remedy of power of revision available with the Financial Commissioner under section 15 *supra* to ensure that subordinate revenue officers exercise their power and authority in accordance with and within the four corners of the law.

In the aforesaid backdrop, the judgment of this court relied upon by the counsel for the petitioners passed in case titled as

Ahali Manhassan vs. Financial Commissioner and others reported in **2009 (II) SLJ 608** cannot be said to lend any support to the case of the petitioners, in that, in the said judgment neither the scope of powers of the Financial Commissioner enshrined in section 15 *supra* nor the interplay between section 121 of the Act of 1996 supra and section 15 supra was under consideration.

17. It is not in dispute that the original petitioner along with respondents 5 and 6 herein being real brothers became owners of the land in question upon attestation of mutation under section 8 of the Act of 1996 supra being mutation no. 696 dated 10.3.1996 and the question of title stands decided by the authority under the Act of 1976 and under the said circumstances the original petitioner herein could not have taken recourse to the provisions of section 121 of the Act of 1996 supra and thereby set at naught the order of conferment of title conferred under section 8 supra, in that, had the original petitioner been aggrieved of the attestation of the said mutation no. 696 he could have assailed the said order under the provisions of the Act of 1976, however, instead chose a strange approach by invoking the provisions of section 121 of the Act of 1996 supra in disregard of the facts that the original petitioner along with his brothers respondents 5 and 6 herein divested the previous owner/landlord of his ownership rights qua the land in question under the provisions of the Act of 1976 himself and his above named brothers and immediately thereafter took recourse to the provisions of section 121 of the

Act of 1996 supra to deprive his other two brothers, respondents 5 and 6 herein, of the benefit conferred upon them along with him pursuant to the attestation of mutation no. 696 *supra*, more so, in absence of a dispute relating to the title of the land in question.

A deeper and closer examination of the said mutation no. 727 dated 27.1.1997 attested pursuant to section 121 of the Act of 1996 supra in favour of the original petitioner qua the land in question also manifestly tends to show that same had been attested at the back of respondents 5 and 6 herein, and assuming that the respondent Financial Commissioner could not have exercised revisional jurisdiction in the matter as is contended by the petitioners, the said mutation no. 727 dated 27.1.1997 cannot sustain in the eyes of law on the ground of breach of principles of natural justice besides on the ground of wrong application of section 121 of the Act of 1996 supra.

Otherwise also the recourse to the provisions of section 121 of the Act of 1996 *supra* by the original petitioner after attestation of mutation no. 696 dated 10.3.1996 under the provisions of Act of 1976 jointly investing ownership rights upon the petitioner and respondents 5 and 6 herein not only is misdirected but also without jurisdiction in view of section 41 of the Act of 1976 whereunder the Act of 1996 stand repealed to the extent same is inconsistent with the said Act of 1976 and since the question of ownership of the land in question had been

decided under the provisions of the Act of 1976 by the authority under the said Act, the same could not have been undone by attestation of mutation under section 121 of the Act of 1996 supra.

18. Having regard to the aforesaid facts and circumstances it can safely be concluded that the exercise of equitable discretionary jurisdiction of this court enshrined in Article 226 of the Constitution is not warranted particularly owing to the reason that mutation no. 727 dated 27.1.1997 had been attested illegally, in breach and violation of the principles of natural justice inasmuch as being void ab initio, in that, exercise of equitable discretionary jurisdiction of this court in the matter would certainly and definitely result in the **revival of the said illegal mutation no. 727 dated 27.1.1997**. A reference in this regard to the judgement of the Apex Court passed in case titled as **Mohammad Swalleh and others vs. 3rd Additional District Judge, Meerut and another** reported in **(1988) 1 SCC 40** would be relevant wherein following came to be observed.

> **"7. It was contended before the High Court that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court accepted this contention. The High Court finally held that though no appeal lay before the District Judge, the order of the Prescribed Authority was invalid and was rightly set aside by the District Judge. On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the order of the Prescribed Authority could not be set aside. But the High Court was exercising**

> **its jurisdiction under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, on objection can be taken."**

A further reference to the judgement of the Apex Court passed in case titled as **Maharaja Chintamani Saran Nath Shahdeo vs. State of Bihar and others** reported in **(1999) 8 SCC 16** would also be relevant hearing wherein at paras 37 and 38 following came to be observed by the Apex Court.

> **"It has been urged before us by Mr. Sanyal that final assessment roll was prepared without complying with Rule 18(2) in form `F' which is a step prior to preparation of final assessment roll. As the petitioner accepted the final assessment roll such plea could not be taken up by the petitioner, therefore, this contention has no force.**
>
> **For what has been stated above we hold that the order of the learned Member of Board of Revenue directing the action to be taken for refund of the excess compensation was valid and proper though he had no jurisdiction to pass the order. In the event it is set aside it would amount to reviving an invalid order of payment of excess compensation to the appellant."**

19. There is yet another angle of the matter which needs to be taken cognizance of, that is respondents 5 and 6 herein admittedly questioned mutation no. 727 *supra* before the Divisional Commissioner on 02.06.2003 having contended therein that they

got the information about the same on 28.3.2003 and as has been observed in the preceding paras the said mutation 727 *supra* had been attested at the back of the respondents 5 and 6 herein, knowledge of the said mutation cannot thus be attributed to the respondents 5 and 6 from the date of the said attestation. It is pertinent and significant to note here that section 121 of the Act of 1996 *supra* came to be amended in the year 2003 by virtue of which amendment an appeal against an order passed under section 121 of the Act of 1996 *supra* was supposed to be filed before the Divisional Commissioner and the respondents 5 and 6 herein challenged the mutation 727 *supra* in a revision petition instead of an appeal before the Divisional Commissioner and if section 121 of the Act of 1996 *supra* is treated as standalone provision then the powers of the Divisional Commissioner could not be said to be barred by section 6(6) of the Act of 1996 and the Divisional Commissioner can, therefore, be said to have all the powers to set aside mutation 727 *supra* in exercise of his appellate jurisdiction in terms of said section 121 of the Act of 1996 supra, even though the respondents 5 and 6 had approached him by way of a revision petition as the jurisdiction of the Divisional Commissioner was there in the matter notwithstanding the nomenclature of the petition (revision) filed by the respondents 5 and 6 before him instead of finding of an appeal as in that event eventually the Divisional Commissioner wasn't required even to make any recommendation/reference to

the Financial Commissioner and the Divisional Commissioner having held the mutation 727 *supra* bad cannot thus be said to have been done by him wrongly or illegally.

20. Viewed thus, what has been observed, considered and analysed hereinabove, this court is of the considered opinion that exercise of equitable discretionary extraordinary writ jurisdiction enshrined under Article 226 of the Constitution is not warranted. Resultantly, the petitions fail and are accordingly dismissed.

(JAVED IQBAL WANI)
JUDGE

Srinagar
22-05-2024
N Ahmad

Whether the order is speaking: Yes

Whether the order is reportable: Yes

HIGH COURT
JAMMU & KASHMIR AND LADAKH

Nissar Ahmad Bhat
I attest to the accuracy and
authenticity of this document

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