

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 1609/2023
CM(3765/2023)

BASHIR AHMAD MIR AND ORS.

...Petitioner/ Appellant(s)

Through: Mr. Altaf Mehraj, Advocate

V/s

UNION TERRITORY OF J AND K AND OTHERS.

...Respondent(s)

Through: Mr. Hakim Aman Ali, Dy
Mr. N. A Beigh, Sr. Advocate with
Mr. Irfan Rasool, Advocate

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE.

ORDER
24.02.2025

1. In the instant petition, the petitioners have challenged order dated 17.04.2023 passed by Joint Financial Commissioner (Revenue) J&K in revision petition titled as **“Mohammad Maqbool Allie Vs. Bashir Ahmad & Ors.”** instituted on 09.12.2021 by private respondent herein against mutation No. 2042 dated 08.09.2007 in respect of land measuring 3 kanals and 18 ½ marlas covered under survey No. 1087/412 situated at Estate Khusipora HMT, Tehsil Shalteng, Srinagar.

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

2. The private respondent, in the aforesaid revision had alleged that the mutation in question had been got attested by the petitioners

herein fraudulently at their back, as private respondent inherited the land in question upon death of his father having died on 24.06.2000, and that the mutation in question had been got attested after death of the father of the private respondent herein by the petitioners herein purportedly on the basis of a gift deed claimed to have been executed by the father of the private respondent herein in favour of the petitioners herein on 14.06.2002, on which date the father of the private respondent was already dead.

3. Perusal of the record reveals that the Revisional Forum, after entertaining the said revision petition, summoned the respondents in the revision petition, being petitioners herein, initially through ordinary mode and subsequently through substituted mode, and on account of their non-appearance, consequently set them exparte and proceeded to decide the revision petition on merits, and consequently upon examining the record available on the revision petition as also the case set up therein, allowed the revision petition and set aside the mutation in question while holding that the question of limitation would not come in its way in deciding the revision petition in the light of various judgments referred therein in the impugned order passed by this Court and the Apex Court, besides opining that the mutation in question seems to have been attested in violation of standing order 23-A and is outcome of fraud and consequently

remanded the matter to the Tehsildar concerned for denovo inquiry and orders.

4. The petitioners herein, in the instant petition, have averred that the impugned order came to be passed at their back by the Revisional Forum and the findings recorded by the said Forum qua the validity of the gift deed on the basis of which the mutation in question came to be attested has been arrived at without providing any chance to the petitioners herein to rebut the same.
5. Perusal of the record of the petition as also the record of the Revisional Forum would reveal that the respondents before the Financial Commissioner being petitioners herein, indisputably have chosen not to appear before the Revisional Forum despite having been summoned properly and the Revisional Forum has as such allowed the revision petition and set aside the impugned mutation.
6. Besides the plea of the non-existence of the gift deed on the basis of which the mutation in question was claimed to have been attested in favour of the petitioners herein is not being disputed or denied by the petitioners herein even before this Court, although the petitioners were not present before the Financial Commissioner and could not object to the plea of non-existence of the gift deed in question, yet the petitioners could have produced the said gift deed before this court in the instant

petition, in order to dispel the findings of the Financial Commissioner in this regard.

7. Be that as it may, without expressing any opinion as to the existence or non-existence of the gift deed in question and in order to secure the ends of justice in the matter, it is deemed appropriate to modify the impugned order, and, set aside the findings recorded by the Financial Commissioner, qua the existence of gift deed in question and consequently dispose of the petition with a direction to the Tehsildar concerned to conduct denovo inquiry in the matter and offer reasonable and adequate opportunity of hearing to both petitioners as well as respondents herein before passing any fresh orders in the matter with liberty to the parties herein to produce all necessary and requisite documents on which they would rely upon in support of their respective claims before the Tehsildar.
8. Till fresh orders as directed above are passed by the Tehsildar concerned, the parties shall maintain status quo on spot over the subject matter land.

9. Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
24.02.2025
"S.Nuzhat"

