Serial No. 7

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

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OWP No. 1825/2013

Nancy Koul and another .....Appellant(s)/Petitioner(s)

Through: Mr. Virender Bhat, Advocate.

vs

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

Through: Ms. Sagira Jaffar, Advocate vice
Ms. Monika Kohli, Sr. AAG
Mr. Dheeraj Sharma, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT (ORAL)

19.11.2026

1. The predecessor-in-interest of the petitioners, namely, Sarwanand Koul was the owner of land measuring 35 Kanals and 15 Marlas (Survey No. 577 and 644) situated at Vessu, Tehsil Doru and 33 Kanals 08 Marlas (Survey No. 181, 182, 187, 195 and 344) situated at Manigam, Tehsil and District Kulgam.

2. The father of the petitioners came to demise on 13.11.2008 at Subash Nagar, Jammu. It is stated that father of the petitioners submitted an application for resumption of land to respondent No. 3 under receipt No. 19 dated 12.01.1979, but the application stated to have been filed by the father of the petitioners remained undecided till his migration from the valley. After migration, respondent Nos. 5 to 9 started raising construction over the land under their cultivation as tenants and started alienating the same. Father of the petitioners submitted an application dated 17.08.1999

with the Financial Commissioner i.e. respondent No. 2. In terms of order dated 18.08.1999 issued by respondent No. 2, the Tehsildar concerned was directed to take steps for disposal of the resumption application and ensure that no alienation of the land takes place.

3. Tehsildar Qazigund vide communication dated 06.08.2003 intimated the father of the petitioners that the resumption form was not traceable, therefore, he was asked to furnish receipt of the resumption application in support of his claim, which in turn was submitted to the respondent No. 3 by the father of the petitioners vide representation dated 07.02.2007. In the meanwhile, some land owned by the father of the petitioners, but in possession of the tenants (19 Kanal 19 Marlas) comprising survey No. 577 situated at Vessu was acquired by the Industries Department and 50% of the compensation was paid to him. Further, another stretch of land (Survey No. 644) situated at Vessu was acquired by the National Highway. Then only the petitioners came to know from their friend that respondent Nos. 5 to 9 were claiming entire compensation on the basis of mutation attested under Section 8 of the Agrarian Reforms Act. Thereafter, the petitioners filed appeals against mutation No. 724 claimed to have been attested under Section 7 of the Agrarian Reforms Act and Mutation No. 817 dated 13.10.2006 attested under Section 8 of the Agrarian Reforms Act comprising land measuring 16 Kanal 18 Marlas falling under Survey No. 644 situated at village Vessu, Tehsil Duru District Anantnag.

4. Both the mutations i.e. mutation No. 724 claimed to have been attested under Section 7 of the Agrarian Reforms Act and Mutation No. 817 attested under Section 8 of the Agrarian Reforms Act were assailed on the

grounds that as the resumption application preferred by father of the petitioners was still pending, so the issue of ownership could not have been decided under Section 8 of the Agrarian Reforms Act and mere order of rejection of the resumption application was solely the result of connivance of the respondent Nos. 5 to 9 with the Revenue Officials. It was also contended that as the petitioners were migrants and the property fell within the ambit of The Jammu and Kashmir Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 and The Jammu and Kashmir Migrants (Stay of Proceedings) Act, 1997, therefore, it was not open to the Authorities to deal with any matter regarding property of the petitioners.

5. The aforesaid appeals were contested by the respondent Nos. 5 to 9 and the respondent No. 2, in terms of order dated 17.12.2013, dismissed the appeals preferred by the petitioners.

6. Aggrieved thereby, the petitioners have approached this Court to assail the order dated 17.12.2013, *inter alia*, on grounds identical to those set out above.

7. Respondent Nos. 5 to 9 have stated that after attestation of mutation bearing No. 550 under Section 4 of the Act, the land had already vested in the State and tenant Ahad Shah was declared as prospective owner. The said mutation was never challenged by anyone. In the year 1985, Sarvanand Koul started making false claim that he had filed the resumption application before Deputy Commissioner Anantnag. Detailed enquiry was conducted by Tehsildar in presence of both the parties and finally it was found that no resumption form was ever filed. So final order

on mutation No. 615 under section 7 of the Act was passed, which was duly signed by Sarvanand. The said order was never challenged by anyone including Sarvanand during his lifetime.

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

9. The main contention raised by the petitioners is that once their father had filed an application for resumption of property under Section 7 of the Agrarian Reforms Act and the same was not finally adjudicated, Official respondents could not have attested mutation No. 817 under Section 8 of the Agrarian Reforms Act.

10. A perusal of the record reveals that mutation No. 724 claimed to have been attested under Section 7 of the Agrarian Reforms Act was never formed part of the appeal. Rather it was mutation No. 615 attested on 19.05.1985 pursuant to which claim of father of the petitioners for resumption of land was rejected. In the order dated 26.06.1985, statement of predecessor-in-interest of the petitioners was recorded, wherein he had stated that he had submitted the form with the Tehsildar's Office, but his contention was rejected with an observation that he was not entitled to resumption of land. The said mutation order carries signatures of predecessor-in-interest of the petitioners i.e. Sarwanand Koul, who came to demise in the year 2008 and during his lifetime neither he, nor after his demise, the petitioners assailed this mutation order No. 615 dated 26.06.1985.

11. Although a feeble attempt was made by the petitioners before the Appellate Authority, i.e., the Financial Commissioner (Revenue), it recorded a categorical finding that no substantial evidence had been

produced in support of the denial of signatures on the aforesaid mutation (*supra*).

12. Interestingly, same is the situation before this Court as well. At the cost of repetition, it is observed that mutation No. 615 was never assailed, as such, has attained finality. Therefore, there is no force in the contention raised by the petitioners. Accordingly, the same is rejected.

13. Lastly it has been contended that once the property fell within the ambit of The Jammu and Kashmir Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 and The Jammu and Kashmir Migrants (Stay of Proceedings) Act, 1997, Official respondents were not competent to attest the mutation under Section 8 of the Agrarian Reforms Act and more particularly when the Financial Commissioner (Revenue), in terms of order dated 18.08.1999 had directed the Tehsildar to take steps for disposal of the resumption application and not to permit any alienation of land.

14. This contention might have carried weight with this Court had the resumption application been pending before the Authority concerned upon the enactment and enforcement of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997, and the Jammu and Kashmir Migrants (Stay of Proceedings) Act, 1997. Since the claim of the petitioners' predecessor-in-interest stood rejected by the order dated 26.06.1985, no resumption proceedings were pending when the Acts (*supra)* came into operation, there is no merit in this contention and accordingly fails.

15. This Court has perused the order impugned passed by the Appellate Authority and finds that the Appellate Authority has rightly dealt with the matter in accordance with law. Needless to say that while exercising power under Article 226 of the Constitution of India, this Court cannot sit as a court of appeal/revision over the decision recorded by the Appellate Authority within the parameters of law. It would be apt to take note of the judgment of the Hon'ble Apex Court rendered in ***Central Council for Research in Ayurvedic Sciences v. Bikartan Das*****, (2023) 16 SCC 462,** wherein, it has been held as under:

> **63.** Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. **To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.**
>
> **64.** A writ of certiorari, being a high prerogative writ, is issued by a superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded the jurisdiction. It cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter. However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. **We may only say that while adjudicating a writ application for a writ of certiorari, the court is not sitting as a court of appeal against the order of the tribunals to test the legality thereof with a view to reach**

> **a different conclusion. If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well-established principle of law that a writ of certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits.** (See :*R.* v. *Nat Bell Liquors Ltd.* [*R.* v. *Nat Bell Liquors Ltd.*, (1922) 2 AC 128 (PC)])
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> (emphasis added)

16. Before parting, this court would like to observe that father of the petitioners did not challenge the mutation bearing No. 550 attested under Section 4 of the Act, and the petitioners without availing the remedy of appeal for the purpose of assailing the mutation No. 550 attested under section 4 of the Act, have assailed the same for the first time in the present petition, but without mentioning any ground as to how the said mutation is bad in law, which admittedly was attested prior to migration from the valley. This belated challenge without any ground and availing the remedy of appeal is clear an afterthought and is mis-conceived.

17. In view of the above, this Court is of the considered view that this petition lacks merits and the same is, accordingly, **dismissed.**

(RAJNESH OSWAL)
JUDGE

Jammu
19.11.2026
Sahil Padha

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I attest to the accuracy and
integrity of this document