Regular List
Serial No. 27

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

WP(C) No. 3625/2019
CM No. 7520/2019

Date of pronouncement : **16.11.2026**
Uploaded on : **20.11.2026**

Bhagwan Dass, Aged 64 years
S/o Sh. Lashman Dass
R/o Village Daroor
Tehsil Katra Distt. Reasi

…..Petitioner

Through:- Mr. Rohit Kohli, Sr. Adv
With Mr. Raghav Gaind, Advocate.

V/s

1. State of Jammu & Kashmir
Through Commissioner Secretary
Revenue Department
Civil Secretariat Jammu/Srinagar.

2. Financial Commissioner
J&K Jammu
Rail Head Complex, Jammu.

3. Settlement Commissioner
J&K Jammu.

4. Tehsildar Katra.

5. Jogeshwar.

6. Ashok Kumar
No. 4 & 5 sons of Sh. Bishan Dass.

7. Bansi Lal S/o Sh. Jagan Nath.

8. Sukhdev Chand
S/o Sh. Battiram.
No. 5 to 8 resident of Village Daroor
Tehsil Katra Distt. Reasi.

…..Respondents

Through:- Ms. Nazia Fazal, Assisting Counsel vice
Mrs. Monika Kohli, Sr. AAG for R-1 to 4.
Mr. D. R. Khajuria, Sr. Adv.

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With Mr. Sanjay Langeh, Advocate for R-5 to 7.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

01. Mr. Jatinder Singh, Tehsildar Katra along with Mr. Kulvinder Singh, Patwari, Halqa Sool, is present in person.

02. The petitioner, Bhagwan Dass, in whose favour two mutations under Section 121 of the Jammu and Kashmir Land Revenue Act, Svt. 1996 (hereinafter referred to as *"the Act"*), pertaining to land measuring 3 kanals and 4 marlas falling under Khasra No. 158 and 2 kanals and 4 marlas falling under Survey No. 159, were attested on 20.10.2008, has called in question the orders passed by the Settlement Commissioner and the Financial Commissioner, whereby the aforesaid mutations have been set aside. The Settlement Commissioner, in exercise of revisional jurisdiction, found the mutations to be unsustainable and made a reference to the Financial Commissioner vide order dated 15.02.2011, which came to be accepted, resulting in the setting aside of both the mutations.

03. The principal ground urged by the petitioner is that the revision petition itself was not maintainable in view of the statutory remedy of appeal available under Section 121 of the Act. It is further contended that, even assuming that the revisional jurisdiction could be invoked, the authorities were under a legal obligation to examine the question of limitation before entertaining the revision, notwithstanding that such an objection may not have been specifically raised before them.

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According to the petitioner, once the revision was not maintainable, the consequential reference to the Financial Commissioner was equally without jurisdiction. Learned counsel for the petitioner submits that, since an appeal against an order passed under Section 121 of the Act was maintainable within a prescribed period of 90 days, the respondents, having allowed the said period to expire, could not have circumvented the statutory limitation by invoking the revisional jurisdiction. It is, accordingly, contended that both the authorities committed a jurisdictional error in setting aside the mutations. It is further pleaded that the petitioner acquired knowledge of the impugned orders only when the Tehsildar visited the spot for taking possession of the land and that the present petition was instituted immediately thereafter.

04. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment reported as **AIR 2022 CC 872**, to contend that the exercise of revisional jurisdiction under Section 15 of the Act, when invoked at the instance of an aggrieved party, is subject to the requirement of limitation. It is argued that, ordinarily, a revision petition ought to be preferred within a period corresponding to that prescribed for filing an appeal against the order sought to be revised.

05. Per contra, ld. Senior Counsel for the respondents, while inviting the attention of the Court to the objections filed on behalf of private respondents Nos. 5 to 7, submits that Section 121 of the Act does not confer an independent or substantive right of ownership upon a person merely on the basis of possession. The provision, according to learned

Senior Counsel, comes into operation when a question relating to title arises during settlement proceedings and requires determination by the competent Settlement Officer. It is contended that the Settlement Officer, in the present case, illegally attested the mutations behind the back of the recorded owners, thereby purporting to confer ownership rights upon the petitioner in respect of land belonging to the predecessors-in-interest of the private respondents. The petitioner, it is submitted, neither possessed any lawful title to the land nor established any legally recognizable basis for claiming ownership thereof.

06. Learned Senior Counsel further submits that the petitioner has conspicuously failed to disclose the manner in which he allegedly came into possession of the land or the capacity in which such possession was held. There is no pleading or material to indicate whether the petitioner claimed any right on the strength of a sale, gift, exchange, oral transfer or any other legally recognised mode of acquisition of title. It is further urged that the conduct of the petitioner is itself indicative of the absence of any bona fide claim. Despite having knowledge of the proceedings culminating in the impugned orders, the petitioner did not challenge the same for more than five years. The belated institution of the present petition, according to learned Senior Counsel, reinforces the respondents' contention that the petitioner had no enforceable right or interest in the subject land. It is also submitted that the mutations were attested in disregard of the prescribed revenue procedure and that the

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revisional authorities, upon examination of the record, rightly corrected the illegality committed by the Settlement Officer.

07. Heard learned counsel for the parties at length and perused the record. The scope and ambit of Section 121 of the Act have been considered by a Co-ordinate Bench of this Court in the judgment reported as **2007 (2) J.K.J. 48**. In that case, a mutation under Section 121 had been attested by a Naib-Tehsildar who was not competent to attest the same, particularly when the land involved constituted migrant property. The Court observed that, while attesting a mutation under Section 121, the competent Revenue Officer is required to ascertain the legal basis upon which ownership is claimed to have vested in the person seeking attestation. In the absence of any instrument, document or other legally recognizable act attributable to the owner or tenant of the land, the Revenue Officer cannot presume that ownership has passed from one person to another. It was further held that Section 121 comes into operation when, during the revision of the Record of Rights, a question of title arises for determination. The Settlement Officer is, therefore, required to satisfy himself regarding the legal foundation of the claim before recording a mutation which has the effect of recognising ownership rights in favour of a person.

08. When confronted with the aforesaid legal position, learned counsel for the petitioner was unable to demonstrate the basis upon which the petitioner claimed possession of the subject land. The submission was confined to the assertion that the petitioner had remained in continuous

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possession and that such possession stood reflected in the mutations themselves. It was further contended that one Som Nath, stated to be a predecessor-in-interest of the respondents, was present at the time of attestation of the mutations and had raised no objection thereto.

09. The said contention has been seriously disputed by learned counsel for the respondents, who submits that the petitioner has neither disclosed the origin of his alleged possession nor established any legally recognised transaction through which title could have passed to him from the recorded owners. It is argued that, unless the petitioner brings his claim within the recognised modes of transfer contemplated under the *Hidayat Bandobast Aillan, 2005*, mere possession, even if assumed to have been established, would not entitle him to the benefit of Section 121 of the Act.

10. The submissions advanced on behalf of the respondent's merit acceptance. The attestation of a mutation under Section 121 of the Act cannot be divorced from the requirements prescribed under the applicable settlement instructions. The Revenue Officer exercising jurisdiction under the said provision is required to ascertain whether the claim of ownership is founded upon any legally recognizable mode of acquisition of title. In the present case, the authorities below have examined the revenue record and the circumstances attending the attestation of the disputed mutations. They have noticed serious procedural irregularities, including the absence of the requisite supporting material and a detailed report justifying the deletion of the names of the

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erstwhile owners and the corresponding entries made in favour of the petitioner. These deficiencies assume significance in view of the fact that the mutations purported to recognize ownership rights in favour of a person who had failed to establish the legal foundation of his claim.

11. The authorities below have further noticed that, under Rule 9 of the *Jadeed Hidayat Bandobast, 2005*, a mutation founded upon an oral gift or oral transfer is required to be supported by verification of the transaction at the spot. Such verification necessarily entails ascertainment of the transaction from the persons competent to transfer the property, including their consent or acknowledgment, wherever required. In the case at hand, no such exercise appears to have been undertaken. Neither the alleged oral transaction nor the consent of the erstwhile owners was established in accordance with the prescribed procedure. Consequently, the very foundation upon which the mutations were attested remained unsubstantiated.

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12. Learned Senior Counsel for the respondents has rightly emphasised the distinction between possession and title. Section 121 of the Act is attracted where, in the course of settlement proceedings, a question relating to title arises and is required to be determined summarily by the competent Settlement Officer. The provision cannot be construed as an independent source of title or as a mechanism for converting mere possession into ownership in the absence of any legally recognizable basis.

13. In the present case, the petitioner has failed to establish how and in what manner he acquired title to the subject land. No material has been placed on record to demonstrate that his claim originated from any transaction recognised under the applicable settlement instructions or the law governing transfer of immovable property. When specifically confronted with this aspect, learned counsel for the petitioner was unable to point out any averment in the pleadings explaining the source of the petitioner's alleged possession or the mode through which ownership was claimed to have been acquired.

14. The assertion of continuous possession, without anything further, cannot substitute proof of title. Possession may constitute a relevant factual circumstance in settlement proceedings, but it does not, by itself, establish a lawful transfer of ownership. The competent authority must ascertain the legal basis of the claim before recognising a change in the Record of Rights. Thus, even if the petitioner's assertion of possession were accepted for the sake of argument, the same would not, in the absence of a legally sustainable claim to title, justify attestation of the mutations under Section 121 of the Act. A similar question fell for consideration before this Court in *Musthaq Ahmed Khan v. UT of J&K*, reported as **2022 (2) J.K.J. 229**. In that case, a mutation under Section 121 had been attested during settlement operations on the premise that the beneficiary was found to be in possession of the land.

15. The Court examined the legal basis of the claim and noticed that no valid sale deed had been executed in favour of the person claiming

ownership. It was further found that Mst. Saja, being a *Khananeshin* daughter of the deceased estate holder, Gani Dar, was not exclusively entitled to inherit the estate to the exclusion of the other daughters and, therefore, could not have validly transferred the property in disregard of their rights. In those circumstances, the mutation attested under Section 121 was held to be illegal, as the purported recognition of ownership was unsupported by any valid transfer of title.

16. The principle emerging from the aforesaid judgment is applicable to the facts of the present case. A mutation attested during settlement proceedings cannot, merely on the strength of possession, confer or recognised ownership rights where the person claiming such rights is unable to establish a legally sustainable source of title. The petitioner herein has similarly failed to demonstrate any transaction or legally recognised mode of acquisition through which ownership of the subject land passed to him. His claim, being founded solely upon alleged possession, cannot be sustained under Section 121 of the Act.

17. Learned counsel for the petitioner has also sought to derive support from the alleged presence of Som Nath at the time of attestation of the mutations, contending that his signatures appear in the margin of the mutation proceedings. However, the record does not establish that Som Nath, in his capacity as a recorded co-owner, had relinquished or transferred his rights in the subject land in favour of the petitioner. The petitioner has also failed to establish that the person whose signatures appear in the margin was, in fact, a co-owner competent to acknowledge

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the alleged transaction. Even assuming that Som Nath was one of the co-owners, his mere presence or signatures, without proof of a valid transfer, would not establish the petitioner's title to the entire land, particularly in the absence of the other co-owners whose rights were also affected by the mutations. The aforesaid contention, therefore, does not advance the case of the petitioner.

18. Another material circumstance noticed by the authorities below is that, after their attestation, the disputed mutations were not deposited in the record room in accordance with the prescribed procedure. The record further reveals that the mutations were attested without affording the recorded owners an effective opportunity of participation and without establishing their consent to the alleged transfer. The petitioner has been unable to demonstrate whether his alleged possession originated from an oral gift, oral exchange or any other legally recognised transaction. In the absence of such material, the claim sought to be regularized through Section 121 of the Act lacks the necessary legal foundation.

19. The attestation of mutations affecting the rights of recorded owners, without following the procedure prescribed under Standing Order No. 23-A and without affording the persons concerned an opportunity of being heard, constitutes a serious procedural infirmity. It is well settled that an entry in the revenue record does not, by itself, create or extinguish title. Where a mutation is attested without establishing the underlying transaction and in disregard of the rights of the recorded owners, such an

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entry cannot acquire legal validity merely by reason of its continued existence in the revenue record.

20. The question of maintainability of the revision and the objection relating to limitation must, therefore, be examined in the context of the nature of the illegality found in the present case. The mutations were not merely irregular in form; they were found to have been attested without establishing the essential prerequisites for invoking Section 121 of the Act and in violation of the prescribed procedure and the principles of natural justice. The mere lapse of time cannot, by itself, supply the missing legal foundation of such mutations or confer upon the petitioner a title which he has otherwise failed to establish.

21. The private respondents, having succeeded to the rights and interests of the erstwhile landowners, were entitled to question the mutations which adversely affected those rights. The contention that the availability of an appellate remedy under Section 121 of the Act completely excludes the revisional jurisdiction conferred by Section 15 is also without merit. The appellate and revisional jurisdictions are distinct statutory remedies. The mere availability of an appeal does not, in the absence of any express statutory prohibition, necessarily divest the competent revisional authority of the jurisdiction otherwise vested in it under Section 15 of the Act. The exercise of such jurisdiction must, however, remain subject to the requirements and limitations governing the revisional power.

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22. Section 15 of the Act empowers the competent revisional authority to call for and examine the record of any case pending before, or disposed of by, a Revenue Officer subordinate to it, for the purpose of exercising the jurisdiction contemplated by the said provision.

23. The Settlement Officer, who attested the disputed mutations, was subordinate to the competent revisional authority. Consequently, the orders passed by the Settlement Officer were amenable to examination in the exercise of revisional jurisdiction under Section 15 of the Act. The Settlement Commissioner, having examined the legality and propriety of the mutations, made a reference to the Financial Commissioner in terms of Section 15(3), which was subsequently accepted. The submission that the revisional jurisdiction stood altogether excluded merely because an appeal was available against an order under Section 121 is, therefore, misconceived.

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24. There can be no quarrel with the proposition that revisional jurisdiction, particularly when invoked at the instance of a party, is required to be exercised within a reasonable period and that the question of delay cannot be disregarded as a matter of course. However, the aforesaid principle must be considered in the context of the facts and circumstances of each case, including the nature of the order sought to be revised, the manner in which it was passed and the extent to which it affects the rights of persons who were not afforded an opportunity of being heard. In the present case, the authorities below have recorded findings that the mutations were attested without establishing any legally

recognised transfer of title, without complying with the applicable settlement instructions and without affording the recorded owners the requisite opportunity of participation.

25. The petitioner has not been able to dislodge these findings or demonstrate any lawful foundation for the ownership rights claimed by him. Nor has he established that the disputed mutations were attested pursuant to any valid transaction capable of recognition under Section 121 of the Act. In these circumstances, the objection relating to limitation, though relevant to the exercise of revisional jurisdiction, cannot be treated as sufficient, by itself, to establish the legality of the mutations or to confer an enforceable right upon the petitioner. The revisional authorities, having examined the record and found that the mutations were attested in disregard of the essential statutory and procedural requirements, cannot be said to have acted without jurisdiction merely because an appellate remedy was also available under the Act. The petitioner, who seeks discretionary relief in the exercise of the writ jurisdiction of this Court, has failed to establish any subsisting legal right warranting interference with the orders passed by the revenue authorities. In view of the foregoing discussion, this Court finds no illegality, perversity or jurisdictional infirmity in the orders passed by the authorities below warranting interference in the exercise of writ jurisdiction.

26. The mutations attested in favour of the petitioner under Section 121 of the Jammu and Kashmir Land Revenue Act, Svt. 1996, having been found to be unsupported by any legally recognised transfer of

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title and contrary to the prescribed settlement procedure, were rightly set aside. The present petition is, accordingly, **dismissed**, along with all connected application(s). The impugned orders passed by the authorities below shall stand affirmed.

(SANJAY PARIHAR)
JUDGE

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Bunty

Whether the order is speaking: **Yes**

Whether the order is reportable: **Yes**

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Bunty Kumar
2026.11.20 18:14
I attest to the accuracy and
integrity of this document