

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

OWP no. 1447/2017

Mohammad Iqbal Mir and others

... Petitioner/Appellant(s)

Through: Mr. M. Sultan, Advocate

V/s

State of J&K and others

... Respondent(s)

Through: Mr. Aijaz Chesti, Advocate

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

ORDER
01-10-2024

ORAL

1. In the instant petition filed under Article 226 of the Constitution of India, the petitioners herein have prayed for the following reliefs:

- a) Certiorari, quashing the impugned orders dated 30.03.2016 passed by the Divisional Commissioner, Kashmir- respondent No. 2 and order dated 12.09.2017 passed by respondent Financial Commissioner in a revision petition captioned Haji Ghulam Rasool Shah and Anr. Vs. Mohammad Iqbal Mir and Ors.
- b) Any other writ, order or direction which this Hon'ble court may deem, fit and proper may also be passed favouring petitioner and against the respondents, albeit not prayed for.

2. The facts, as stated in the petition, on the strength of which the aforesaid reliefs have been prayed, as stated in the petition, are that the petitioners are the owners of land measuring 24 kanals covered under survey nos. 168, 496, 497, 486, 177/1, 163, 164, 156, 134 min, 173

min, 178 min and 486 min, situated in revenue estate Jageer Baramulla, having been inherited by them from their ancestors who are claimed to have purchased the same in the year 1964 whereupon the said purchase, mutation no. 24 dated 24.4.1968 had been attested in favour of the said predecessors-in-interest of the petitioners and aggrieved of the said mutation no. 24 dated 24.4.1968, the respondents 5 and 6 herein filed an appeal before the Deputy Commissioner, Baramulla, respondent 4 herein, on the premise that out of the said 24 kanals of land they were entitled to 11 kanals and 4 marlas being the co-sharers of the erstwhile sellers who had sold the land in question to the predecessors-in-interest of the petitioners herein which appeal filed by the respondents 5 and 6 herein was accompanied by an application for condonation of delay and an application for interim relief, and in the said application for interim relief the respondent 4 herein passed an interim order on 24.5.2014 in favour of the appellants/respondents 5 and 6 herein which interim order came to be called in question before the Divisional Commissioner, Kashmir respondent 3 herein in a revision petition on 24.12.2014 by the petitioners herein being respondents in the said appeal on the ground that the appellate authority i.e. the Deputy Commissioner, Baramulla, respondent 4 herein, could not have passed the interim order in the application for interim relief accompanying the appeal without first adverting to the application for condonation of delay as the appeal was time barred and the Divisional Commissioner respondent 3 herein while adverting to the said revision petition during the course of the proceedings and having regard to the nature of controversy

involved in the appeal filed by the respondents 5 and 6 before the Deputy Commissioner respondent 4 herein coupled with the specific contention raised by the appellants respondents 5 and 6 herein therein the appeal that the impugned mutation had been got attested on the basis of a non-existent sale deed by the predecessors-in-interest of the petitioners herein, the Division Commissioner respondent 3 herein sought a report from the Tehsildar Kreeri on 17.8.2015, besides ordering an enquiry to be held by the Assistant Commissioner (Revenue) Baramulla in terms of order dated 02.12.2015, and consequently on the basis of the reports received therefrom and considering the facts and circumstances of the case inasmuch as after hearing the appearing counsel for the parties, exercised *suo moto* revisional powers therein the matter, withdrew the appeal filed by the respondents 5 and 6 herein before the Deputy Commissioner respondent 4 herein and consequently set aside the mutation no. 24 dated 24.4.1968, fundamentally on the premise that the said mutation had been attested fraudulently on the basis of a non-existent sale deed and directed restoration of the previous position in the matter as was existing prior to the attestation of the impugned mutation, and consequently made a recommendation/reference to the Financial Commissioner whereupon the Financial Commissioner after receipt of the reference/recommendation dated 30.3.2016 from the Divisional Commissioner respondent 3 herein accepted the same and concurred with the decision rendered by the Divisional Commissioner respondent 3 herein in terms of order dated 12.9.2017.

3. The petitioners herein feeling aggrieved of the aforesaid orders dated 30.3.2016 and 12.9.2017 passed by the Divisional Commissioner and the Financial Commissioner, respectively, have maintained the instant petition for seeking the aforesaid relief on the strength of the grounds urged in the petition.
4. **Objections** to the petition have been filed by the respondents 5 and 6 herein wherein the petition is being opposed *inter alia* on the grounds that the same is misconceived both in law and on facts, and that the impugned orders have been passed by the Divisional Commissioner and the Financial Commissioner validly and legally after having noticed that the mutation no. 24 dated 24.4.1968 had been got attested on the basis of a non-existent sale deed.

Heard learned counsel for the parties and perused the record.

5. Having regard to the case set up by the parties in their respective pleadings, the moot question for consideration of this court would be as to whether the impugned orders have been passed in tune and line with the power of revision enshrined under Section 15 of the J&K Land Revenue Act, 1996.
6. Before proceeding to advert the aforesaid question, a reference to the provisions of Section 15 of the Act of 1996 becomes imperative which for the sake of convenience is extracted and reproduced here under:

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.

A bare perusal of the Section 15 *supra* would tend to show that the power is exercisable concurrently both by the Divisional Commissioner and the Financial Commissioner at any time in regard to any matter which is either pending before a subordinate Revenue Officer or has been disposed of by any Revenue Officer under their control and is exercisable by the aforesaid Revisional Authorities either upon being invoked by a party and suo moto as well. However, the Financial Commissioner in exercise of the said power of revision in case intends to revoke or modify any proceeding or order of a subordinate authority affecting any right of a party, has to afford an opportunity of hearing to such party before modifying or reversing an order.

7. Keeping in mind the aforesaid provision and position of law and reverting back to the case in hand, it is not in dispute that the mutation no. 24 dated 24.4.1968 had been called in question by the respondents 5 and 6 herein before the Deputy Commissioner respondent 4 herein in

an appeal, which appeal had been time barred, as such, was accompanied with an application for condonation of delay, a perusal whereof would reveal that the appellants in the appeal being respondents 5 and 6 herein, sought condonation of delay in preferring the said appeal belatedly on the grounds spelt therein and the said condonation of delay application had not been adverted to by the Deputy Commissioner respondent 4 herein and had instead passed an interim order in the application for interim relief accompanying the said time-barred appeal, which interim order became subject matter of the aforesaid revision petition filed on 24.12.2014 by the petitioners herein being respondents in the appeal before the Divisional Commissioner respondent 3 herein and the said revision petition indisputably came to be converted by the Divisional Commissioner respondent 3 herein into *suo moto* revisional proceeding upon taking cognizance of facts and circumstances of the case and consequently withdrew said appeal from the records of the Deputy Commissioner respondent 4 herein for the purpose of exercising of such *suo moto* revisional power and in the process the Divisional Commissioner respondent 3 herein sought a report from the Tehsildar Kreeri pertaining to the sale deed on the basis of which the impugned mutation had purportedly been attested, and also ordered holding of an inquiry by the Assistant Commissioner (Revenue) Baramulla.

8. Perusal of the report of said enquiry would reveal that the Assistant Commissioner (Revenue) Baramulla did not return any findings in respect of the fact as to whether the sale deed in question had been non-

existent or not, in that, in the said report it is barely stated that for arriving at a definite conclusion, it becomes imperative for the petitioners to produce the certified copy of the sale deed in order to establish that the land in question had been acquired by them pursuant to the said sale deed. Thus, in view of the said report, the Divisional Commissioner respondent 3 herein could not have held that the sale deed is non-existent or that the petitioners failed to produce the said sale deed when no inquiry in this regard had been conducted by the Divisional Commissioner respondent 3 herein after the receipt of the report from the Assistant Commissioner (Revenue) dated 29.2.2016, as record reveals that the Divisional Commissioner respondent 3 herein on 30.3.2016 withdrew the record of the appeal from the Deputy Commissioner respondent 4 herein and exercised the revisional power therein on the same date and consequently set aside the mutation in question. The whole exercise, as emerges from the record, undertaken by the Divisional Commissioner respondent 3 herein in the matter seemingly has been undertaken in hot haste without affording a reasonable opportunity of hearing to the petitioners herein

9. Further perusal of the record would suggest that the Financial Commissioner, as well, while considering the recommendation made by the Divisional Commissioner respondent 3 herein in terms of order dated 30.3.2016 has in a mechanical manner proceeded to accept the reference/recommendation of the Divisional Commissioner respondent 3 herein. Both the authorities have summarily decided the issues involved in the case which otherwise in law could not have been

decided as such, but ought to have been decided by allowing parties to lead their respective evidence for establishing their respective cases set up by them.

10. Thus, what is manifest from above is that the matter has not received appropriate consideration either by the Divisional Commissioner respondent 3 herein or else by the Financial Commissioner while passing the impugned orders, therefore necessitating the remanding of the matter back, however to the appellate authority respondent 4 herein for reconsideration of the time-barred appeal afresh in accordance with law requiring the said appellate authority to advert to the delay matter as well which has not been addressed so far.
11. Resultantly, the petition succeeds as a consequence whereof the impugned orders dated 30.3.2016 passed by the Divisional Commissioner, Kashmir and order dated 12.9.2017 passed by the Financial Commissioner are set aside. The appeal on the records of the Deputy Commissioner respondent 4 herein shall stand restored with the direction to the Deputy Commissioner to proceed and decide the matter in accordance with law after affording an adequate opportunity to the parties and uninfluenced by any observation made hereinabove as the said observation made shall be deemed to have been made for the purposes of disposal of the instant petition alone and shall not be treated to be any observation made by this court in respect of merits of the case involved in the appeal including the condonation of delay application.

12. Till the matter is decided afresh as directed above, parties shall maintain status quo on spot with respect to the subject matter land.
13. The parties shall appear before the Deputy Commissioner on 21.10.2024.
14. Disposed of.

**(JAVED IQBAL WANI)
JUDGE**

Srinagar
01-10-2024
N Ahmad

Whether the order is speaking: Yes

Whether the order is reportable: Yes

