

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

WP(C) No.1458/2020

Mohd Latif son of Wali MohdPetitioner(s)
resident of village Gursai Tehsil
Mendhar District Poonch.

Through: Mr.R.P.Sharma Advocate.

Vs

1 UT of Jammu and Kashmir through Respondent(s)
Commissioner Secretary to
Government, Revenue Department.
2. Collector, Deputy Commissioner
Poonch
3. Tehsildar Mendhar
4. Divisional Forest Officer Poonch.

Through: Mrs Monika Kohli Sr. AAG

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

JUDGMENT(ORAL)

1 The petitioner has challenged order dated 16.12.2019 passed by the District Collector (Deputy Commissioner), Poonch whereby the entries in the revenue record with respect to survey No. 2312 min measuring 14 kanals, 07 marlas and survey No. 2271 min measuring 09 kanals situated at village Gursai, Tehsil Mendhar, District Poonch for which mutation No. 990 under Government Order No.LB-6/C of 1958 and mutation No.999 under Government Order No. S-432 of 66 dated 03.06.1966 stood attested in his favour, have been declared as *null and void*.

2 According to the petitioner, the order impugned has been passed by respondent No.2-Deputy Commissioner, Poonch without issuing any notice to him and without following the procedure prescribed under the provisions of Land Revenue Act. It has been submitted that mutation No. 990, in respect of the aforesaid land under Government Order No. LB-

6/C of 1958, was attested in favour of the petitioner, declaring him as a tenant at will. Subsequently, vide mutation No.999, dated 16.12.1988 was attested by the Tehsildar/Assistant Collect 1st Class, Mendhar, in favour of the petitioner in respect of the aforesaid land thereby conferring proprietary rights upon him in terms of Government Order No.S-432 of 66 dated 03.06.1966. It has been contended that it was not open to the respondent-Deputy Commissioner, Poonch to declare the aforesaid mutation orders as *null and void* without even issuing notice to the petitioner and without following the procedure prescribed by law.

3 The respondents have contested the writ petition by filing a reply thereto. In their reply, it has been submitted that the land in question is actually a forest land as reflected in the record of rights. Thus, no mutation under Government Orders No. LB-6/C of 1958 and No.S-432 of 66 dated 03.06.1966 was permissible under any circumstances. It has been submitted that both the mutations aforesaid, attested in respect of the land in question, in favour of the petitioner, are totally illegal and *non est* in the eyes of law. Accordingly, the same were set aside by respondent No. 2 in terms of the impugned order. It has been contended that the natural justice is to be followed for doing substantial justice, but it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It has also been contended that mutations attested in favour of the petitioners are fake and illegal and, as such, the same are of no use. The respondents have gone on to contend that the impugned order has been passed in terms of the various interim directions passed by the Division Bench of this Court in **WPPIL No. 19/2011 titled 'Prof. S.K.Bhalla vs. State and others.**

4 I have heard learned counsel for the parties and perused record of the case.

5 It is not in dispute that mutation Nos.990, under Government Order No. LB-6/C of 1958, and mutation No. 999, under Government Order No. S-432 of 66 dated 03.06.1966, were attested in respect of the land in question in favour of the petitioner by the concerned Tehsildar. It is also not in dispute that, by virtue of the impugned order, the aforesaid mutation orders have been declared *null and void* by respondent No. 2, Deputy Commissioner, Poonch, thereby restoring the land in question to the State. Two issues that are required to be determined are that, as to whether respondent No. 2, Deputy Commissioner, Poonch was competent to cancel these mutation orders without there being any application or appeal from any interested person before him and secondly, whether the mutation orders attested in favour of the petitioner could have been *set at naught* without hearing the petitioner.

6. If we have a look at the provisions contained in the **Jammu and Kashmir Land Revenue Act, 1996 (1939 A.D.)** ('Act of 1996' for short), **Section 6** of the Act classifies the Revenue Officers and these include the Financial Commissioner, the Divisional Commissioner, the Collector, the Assistant Collector of the first class and the Assistant Collector of the second class. It also provides that the Deputy Commissioner of a District would be the Collector of a District and an Assistant Collector and a Tehsildar would be an Assistant Collector of the first class, whereas a Naib Tehsildar would be an Assistant Collector of the second class.

07. [Section 11](#) of the Act of 1996 provides that an appeal from an order passed by the Assistant Collector of either class shall lie to the Collector; an appeal from an order passed by the Collector shall lie to the Divisional Commissioner and an appeal shall lie to the Financial Commissioner from an order passed by the Divisional Commissioner. [Section 13](#) of the Act provides that a Revenue Officer has power to review his own order either of his own motion or on the application of any interested party. Clause (c) of Sub-section (1) of [Section 13](#) of the Act postulates that while exercising the powers of review, an order cannot be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order.

08. [Section 15](#) of the Act of 1996 vests powers of revision with the Financial Commissioner and the Divisional Commissioner. In case, the Divisional Commissioner feels that the order against which revision petition has been filed is required to be modified or revised, he has to send a report along with his opinion to the Financial Commissioner. Proviso to [Section 15](#) of the Act further lays down that in case an order is required to be reversed or modified, the same cannot be done without giving to the affected person an opportunity of hearing.

09. In the instant case, respondent No. 2 has set aside the mutation orders passed in favour of the petitioner. The said mutation orders were passed by the concerned Tehsildar. A Deputy Commissioner is vested with appellate powers against an order of the Tehsildar (Assistant Collector). It is not the case of the respondents that an appeal against the mutation orders attested in favour of the petitioner had been filed before

the Deputy Commissioner. Thus, it cannot be stated that while passing the impugned order, respondent No. 2 has exercised its appellate power in terms of [Section 11](#) of the Act. Since the orders of mutation were passed by the Tehsildar and not by the Deputy Commissioner, as such, it can also be not stated that the Deputy Commissioner has exercised his *suo moto* powers of review as contemplated in [Section 13](#) of the Act. The Deputy Commissioner is not vested with powers of revision in terms of [Section 15](#) of the Act, as such, it cannot be stated that while passing the impugned order, respondent No. 2, Deputy Commissioner, Poonch has exercised his revisional jurisdiction.

10 The power to attest a mutation as also the power to set aside the mutation, is *quasi judicial* in nature. This power is to be exercised by a Revenue Officer strictly in accordance with the provisions contained in the J&K Land Revenue Act and that too after affording an opportunity of hearing to the affected party by adhering to the principles of natural justice. As has been already noted, even while reviewing its own order, a Revenue Officer has to give an opportunity of hearing to the affected party. The same is the position when Divisional Commissioner or Financial Commissioner exercises his revisional powers under [Section 15](#) of the Act. A Revenue Officer is obliged to adhere to the principles of natural justice before setting at naught a mutation order attested in favour of a person.

11. In the instant case, respondent No. 2, Deputy Commissioner, Poonch has adopted a novel approach by exercising powers of review in respect of the orders passed by the Tehsildar, who is a subordinate Revenue Officer. This has been done by respondent No. 2 without even

putting the affected party to notice. The respondents cannot assume that giving a right of hearing to the petitioner would not make any difference to the case. It is quite possible that the petitioner may be able to satisfy the respondents that his version of the case is correct and that the directions passed by this Court in S. K. Bhalla's case (supra) are not applicable in the facts and circumstances of his case, but respondent No.2 has assumed every fact against the petitioner without hearing him. The manner in which respondent No. 2 has proceeded to *set at naught* the mutation orders attested in favour of the petitioners, clearly exhibits arbitrariness on his part.

12. In view of the above, it is clear that respondent No. 2 had no authority to pass the impugned order. Besides this, he has not afforded any opportunity of hearing to the affected party, i.e. the petitioner herein. The impugned order is, therefore, not sustainable in law. The same, as such, deserves to be set aside.

13. For the foregoing reasons, the writ petition is allowed and impugned order dated 16.12.2019 passed by the District Collector (Deputy Commissioner), Poonch is set aside. It shall, however, be open for the respondents to take recourse to appropriate remedy available under law.

(SANJAY DHAR)
JUDGE

Jammu
30.10.2024
Sanjeev

Whether approved for reporting? Yes

