

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 20.12.2023
Date of Pronouncement: 30.01.2024

WP (C) No. 3292/2023

CM No. 7894/2023

Caveat No 2432/2023

Mst. Misra and others

...Petitioner(s)/Appellant(s)

Through: Mr. Shafqat Nazir, Advocate

Vs.

UT of JK and others

...Respondent(s)

Through: Mr. Jahangir Iqbal Ganie, Sr. Adv. with
Mr. Murad, Advocate

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE

JUGDGMET

1. The present petition has been filed by the petitioners herein who are aggrieved by the order dated 04.10.2023 passed by the Financial Commissioner J&K Revenue, which rejected the recommendations/reference of the Additional Commissioner, Kashmir dated 31.07.2023, by which the Tehsildar, Beerwah Budgam was directed to carry out mutation proceedings by taking into consideration the case of the petitioners herein.

2. The brief facts of this case are as follows:-

Mst. Khatija, who was an estate holder in estate Mazhama of District Budgam had nine issues. They were six daughters and three sons. The petitioners' No. 1 to 3 in this present petition are the grand-daughters of the estate holder being the daughters of one Mst. Mali, the petitioners. No. 4 to 6 are grand-childrens of the estate holder being daughters of one Mst. Khati. It is the case of the petitioners that upon

the death of the estate holder, her property was to devolve as a Muslim Law of inheritance upon all her issues, but the respondents 3 to 5, through a fraudulent mutation bearing 265 dated 03.12.1991, were successful in mutating the property of the original estate holder, upon themselves to the exclusion of the six daughters of the original estate holder. The said mutation was challenged before the Deputy Commissioner concerned who set aside the said mutation vide order dated 14.01.1992. The order of the Deputy Commissioner was challenged by the respondents before the Financial Commissioner Revenue which dismissed the revision vide order dated 12.08.1998, thereby confirming the order passed in favour of daughters of the estate holder passed by the Deputy Commissioner on 14.01.1992.

3. The Financial Commissioner vide his order dated 12.08.1998, had directed the respondent No.2-Tehsildar to attest the mutation afresh after hearing all the parties concerned. It is relevant to mention here that the mutation order dated 03.12.1991 was set aside by the appellate authority when challenged by the daughters of the original estate holder and thereafter upheld in revision by the Financial Commissioner Revenue on the ground violation of natural justice, as the daughters of the estate holder were not heard in the proceedings before the Tehsildar in mutation proceedings No. 265.
4. It is the further case of the petitioners that instead of complying with the order dated 12.08.1998, the Tehsildar again attested new mutation bearing No. 466 dated 23.01.2003 only in favour of the sons of the estate holder who are the respondents 3 to 5 herein, once again to the exclusion of the daughters of the estate holder. The respondents justified the exclusion of the daughters of the estate holder on the

grounds that they had relinquished their share in the property of the estate holder by way of a relinquishment deed dated 23.01.2003, which is hotly disputed by the petitioners as a fabricated document because the deed of relinquishment is allegedly executed on the same date as the mutation order, passed by the Tehsildar. Thereafter, after the passage of 19 years, the petitioners preferred an appeal against the mutation bearing number 466, before the Additional Commissioner, Kashmir, in the year 2022. The Additional Commissioner, Kashmir, vide his order dated 31.07.2023 set aside the mutation order bearing No. 466 of 23.01.2003. After having found merit in the appeal filed by the petitioners, allowed the appeal and held that the deed of relinquishment does not appear to be genuine as any person who wants to relinquish his/her share may have to first of all acquire legal and rightful ownership of their respective share and only then can he relinquishes his share in favour of any other person. It further held that the mutation of 2003 has been attested on the basis of relinquishment deed executed by the predecessors of the petitioners' No. 1 to 5 and others when they were having no land or share recorded in their favour in the revenue records.

5. The order further held that the limitation will not come in the way of a case which is meritorious which may not be thrown out on mere technicalities. Thereafter, the Additional Commissioner, Kashmir accepted the revision petition and submitted the case to the Financial Commissioner Revenue, Jammu & Kashmir, Srinagar alongwith the recommendations that the impugned mutation No. 466, dated 23.01.2003 be set aside and the Tehsildar concerned be directed to attest fresh mutation after denovo enquiry in favour of all legal heirs

of the deceased Mst. Mali strictly as per Muslim Personal Law. The Financial Commissioner by the impugned order, rejected the revision petition of the petitioners herein and upheld mutation No. 466 of 23.01.2003.

6. The learned counsel for the petitioners submitted that the Financial Commissioner failed to appreciate that the deed of relinquishment was a contested document which was not admitted by the petitioners and placing reliance upon the same was a grave factual error. On the grounds of limitation, the learned counsel for the petitioners submitted that under Section 15 of the Jammu & Kashmir Land Revenue Act, the Additional Commissioner, Kashmir, has *suo moto* powers of revision and even otherwise, the said Act does not provide for limitation where revision applications are filed. In this regard, he submits that in the statute, limitation is applicable only for appeals and review and not for revisions.
7. Learned counsel for the respondents who are on Caveat has submitted that firstly that when the mutation was attested in the year 1998, Customary Law was applicable in the State of Jammu & Kashmir till the year 2007, whereafter, the Muslim Personal Law was made applicable. Learned counsel for the petitioners has questioned this legal proposition by stating that before coming into effect of the Muslim Personal Law 2007, both Customary Law and Muslim Personal Law were applicable in the State of Jammu & Kashmir and the statute of 2007 only acknowledged the right of the women to the estate of their ancestor on the basis of Muslim Personal Law.
8. Having gone through the Act of 2007, which is a short act in three sections and especially the statement of objects and reasons which

discloses the need to enact the law, was that before its enactment, the revenue proceedings were haphazard and both Customary Law and Muslim Personal Law were being applied as per the discretion of the revenue authorities without any justification which gave scope for lot of confusion and corruption. From the statement of objections and reasons, it is clear that Muslim Personal Law was also in vogue in revenue matters along with Customary Law even before 2007 as is borne out from the statement of objects and reasons of the Act of 2007. Therefore, this Court agrees with the view put forth by the learned counsel for the petitioners that before 2007 it was not Customary Law that was exclusively applicable in revenue proceedings but hand in hand, the Muslim Personal Law was also applicable and taken into consideration by the revenue authorities.

9. As regards the question of limitation, this Court is of the view that Section 12 of the Jammu & Kashmir Revenue Act provides for a limitation for appeals, revisions and review from the orders of the authorities mentioned in that Section. Section 15 when read in conjunction with Section 12 gives the right of *suo moto* revision only to the Financial Commissioner who may exercise the powers of revision at any point of time. In such a case, where a power of revision is exercised *suo moto* by the Financial Commissioner, the limitation fixed in Section 12 would not be an impediment. However, as the Additional Commissioner, Kashmir who is also the Divisional Commissioner, Kashmir exercises his powers under Section 15(2) for exercising *suo moto* powers of revision. However, Section 15(2) does not state that the power of revision can be exercised “at any time”. This means that when the *suo moto* powers of revision is being

exercised by the Additional Commissioner, the same would have to be exercised within the period of limitation mentioned in Section 12 of the Act.

10. Even otherwise, the revision taken before the Additional Commissioner, Kashmir at Srinagar was not an exercise of *suo moto* powers but based upon a revision petition preferred by the petitioners. Under the circumstances, the limitation specified in Section 12 would come into play, which required the petitioners to file the revision before the Additional Commissioner within 90 days from the date of the mutation in 2003.

11. Undisputedly, the revision petition is delayed by 19 years. Learned Counsel for the petitioners has stated that though there was no independent application for condonation of delay filed, there was a paragraph praying for condonation of delay in the revision petition itself. This Court has gone through the revision petition filed by the petitioners and paragraph 11 reflects that the petitioners have only mentioned that there may be a delay in filing the revision petition and has only given the cause for the delay in filing the revision petition. However, in the said paragraph there is no prayer to condone the delay, if at all it has occurred.

12. Under the circumstances, the Additional Commissioner having condoned the delay without there being a prayer in the revision, only on the grounds that limitation cannot come in the way of a case which is meritorious to be granted relief has resulted in a miscarriage of justice.

13. In the impugned order, in paragraph 5 to be specific, the Financial Commissioner has held that the impugned mutation of 2003 which is

seen from the records of the mutation proceedings has been attested on 23.01.2003, whereby the landed estate of Mst. Khatija had devolved on her three sons to the exclusion of her six daughters. It has also recorded the fact that the said mutation has been put to challenge on 05.03.2023 that is almost after 19 years. The Financial Commissioner further records the fact that relinquishment deed dated 23.01.2003 was there on the record which was registered by the Sub Registrar Budgam, by which the daughters of the original estate holder had relinquished the rights in favor of the three sons. It further held that the daughters were signatory to the said deed. Again, the Financial Commissioner held that even before the Mutating Officer the said daughters had admitted that they have got cash in lieu of their shares and have no objection to the attestation of mutation in favor of the three sons. It further observed that the daughters are signatories to the mutation. In paragraph 10, the Financial Commissioner has disagreed with a manner in which the delay was condoned by holding that the Additional Commissioner was wrong in holding that the case was a meritorious one which it in fact was not and has erroneously condoned the delay by merely holding that the law of limitation does not apply where a party knocks the door of the competent authority. In paragraph 11, the Financial Commissioner holds that the petitioners have miserably failed to cross the hurdle of limitation and accordingly the reference of the court below not being a reasoned one is rejected and impugned mutation 466 dated 23.01.2003 (SIC) of estate Mazhama, Budgam is upheld.

14. The jurisdiction of this Court to interfere with an order under Article 226 passed by an authority is extremely limited. In that endeavor this

Court is not acting as a Court of appeal, whereby it has to examine the impugned order threadbare. The Court only has to examine the impugned order to see if the due process has been followed, principle of natural justice have been adhered to and that there is no perversity or error apparent on the face of the record. This Court cannot interfere with the impugned order merely because a better view is possible as long as the impugned order is probable.

15. Under the circumstances, the petition being meritless stands dismissed.

(ATUL SREEDHARAN)
JUDGE

SRINAGAR:
30.01.2024
ARIF