

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

Reserved on 19.02.2024
Pronounced on 02.03.2024

WP(C) No. 2360/2021
c/w
CCP (S) No. 293/2021
OWP No. 549/2019

1. Om Parkash, Age 76 years, S/o Mool Raj, R/o Sakta Chack, Tehsil and District Kathua. Mobile No. 9522333033
2. Madan Lal, Age 70 years, S/o Mool Raj R/o Sakta Chack Tehsil and District Kathua.
3. Surinder Kumar, Age 68 years S/o Mool Raj R/o Sakta Chack Tehsil and District Kathua
4. Shiv Kumar, age 58 years, S/o Mool Raj R/o Sakta Chack Tehsil and District Kathua.
5. Bishamber Dass, Age 78 years S/o Jagan Nath R/o Sakta Chack Tehsil and District Kathua.

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

Through: Mr. Ankur Sharma, Advocate

Vs.

1. Union Territory of Jammu and Kashmir, through its Commissioner/Secretary Revenue Department, Civil Secretariat, Jammu/Srinagar. Respondent(s)
2. Mr. Rahul Yadav, IAS, Deputy Commissioner, Kathua
3. Deputy Commissioner, Kathua.

Through: Mrs. Monika Kohli, Sr. AAG

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

JUDGMENT

WP(C) No. 2360/2021

01. The petitioners through medium of the present writ petition have challenged order No. DCK/SQ/2021-22/1090-93 dated 17.07.2021 issued by respondent No. 2, whereby respondent No. 2, Deputy Commissioner, Kathua has set aside mutation Nos. 171, 422, 423 and 440 of village Chak Sagta, Tehsil and District, Kathua and restored the land measuring 58 kanals under khasra No. 310/24, situated at village Chak Sagta, Tehsil and District Kathua to the State.

02. According to the petitioners, in terms of mutation No. 457, the ownership rights in respect of land measuring 4 kanals under khasra No. 27 min, situated at village Sakta Chack, Tehsil and District Kathua were attested in favour of the petitioners. Similarly vide mutation No. 171, the petitioners were recorded as tenants at will in respect of land measuring 01 kanal 18 marlas under Khasra No. 24 min, situated in the same village in terms of Government Order No. LD-6/C of 1958, whereafter vide mutation Nos. 422/423, the petitioners were recorded as owners in respect of the aforesaid land in terms of Government order No. S-432 of 1966. It has been submitted that by virtue of the impugned order, respondent No. 2 has declared all the above-referred mutation orders as *void ab-initio* and restored the land in question to the State.

03. The petitioners have challenged the impugned order passed by respondent No. 2 on several grounds, but the main grounds, on which, the learned counsel for the petitioners has laid emphasis during the course of arguments, are that respondent No. 2 was not competent to pass the impugned

order, as neither he had any power to exercise the revisional jurisdiction in respect of the mutations attested by the Tehsildar, nor did he had power to review the said mutation orders. It has been further contended that even otherwise, it was not open to respondent No. 2 to cancel the mutations attested in favour of the petitioners without hearing them.

04. The writ petition has been contested by the respondents by filing reply thereto. In their reply, the respondents have taken a stand that illegal entries in the revenue record were made in respect of the land in question in favour of the petitioners on the basis of illegal mutation orders. It has been submitted that respondent No. 2, while preparing parawise reply/objections in another writ petition bearing OWP No. 549/2019 filed by the petitioner-Om Parkash against the respondents, came to know about the aforesaid illegalities/irregularities, which compelled him to pass the impugned order in exercise of his administrative powers. According to the respondents, there was no requirement of adhering to the principle of natural justice before cancelling the mutation orders passed in favour of the petitioners and that respondent No. 2, Deputy Commissioner, Kathua being the head of the Revenue Officers of the District, was well within his jurisdiction to pass the impugned order so as to correct the illegalities/irregularities.

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

06. It is not in dispute that mutation Nos. 171, 422, 423 and 440 of village Sakta Chack Tehsil and District Kathua were attested in respect of the land in question in favour of the petitioners and the said attestation was

undertaken by the concerned Tehsildar. It is also not in dispute that by virtue of the impugned order, the aforesaid mutation orders have been set aside by respondent No. 2, Deputy Commissioner, Kathua, thereby restoring the land measuring 58 kanals under khasra Nos. 310/24, situated at the aforesaid village to the State. Two issues that are required to be determined are that as to whether respondent No. 2, Deputy Commissioner, Kathua 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 petitioners could have been set at naught without hearing the petitioners.

07. If we have a look at the provisions contained in the Jammu and Kashmir Land Revenue Act, 1996 (1939 A.D.), 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.

08. Section 11 of the J&K Land Revenue Act 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.

09. Section 13 of the J&K Land Revenue 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.

10. Section 15 of the J&K Revenue Act 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 alongwith his opinion to the Financial Commissioner. Proviso to Section 15 further lays down that in case an order is required to be reversed or modified, the same cannot done without giving to the affected person an opportunity of hearing.

11. In the instant case, respondent No. 2 has set aside the mutation orders passed in favour of the petitioners and the said mutation orders had been passed by the Tehsildar. A Deputy Commissioner is vested with appellate powers against an order of the Tehsildar (Assistant Collector). It is not case of the respondents that an appeal against the mutation orders attested in favour of the petitioners had been filed before him. 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, Kathua has exercised his revisional jurisdiction.

12. The stand taken by the respondents is that respondent No. 2, Deputy Commissioner, Kathua has exercised his administrative powers. I am afraid, there is no such administrative power vested with the Deputy Commissioner that would give him jurisdiction to set aside the mutation orders passed by the Tehsildar. The power to attest a mutation as also the power to set aside the mutation, is quasi judicial in nature. The said power can never be termed as an administrative power of the Revenue Officer. This power is to be exercised by the Revenue Officers 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.

13. In the instant case, respondent No. 2, Deputy Commissioner, Kathua 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 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.

14. 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 petitioners herein. The impugned order is, therefore, not sustainable in law. The same, as such, deserves to be set aside.

16. For the foregoing reasons, the writ petition is allowed and impugned order No. DCK/SQ/2021-22/1090-93 dated 17.07.2021 passed by respondent No. 2 is set aside. It shall, however, be open for the respondents to take recourse to appropriate remedy available under law.

CCP (S) No. 293/2021

17. The present contempt petition has been filed in respect of the interim order dated 01.11.2021 passed in WP(C) No. 2360/2021. Since the main writ petition has been decided in terms of the afore-noted order, as such, the interim order has merged with the final judgment. Thus, the contempt proceedings do not survive. The same are, accordingly, closed.

OWP No. 549/2019

18. One of the contentions raised by the petitioner in the instant petition is that instead of paying full compensation of Rs. 22,11,000/- as per the

award, the respondents are offering to pay 1/3rd of the assessed compensation to the petitioner.

19. The respondents have taken a definite stand against the aforesaid claim of the petitioner on the basis of order No. DCK/SQ/2021-22/1090-93 dated 17.07.2021, which has been set aside in terms of the judgment passed in the connected writ petition bearing No. WP(C) 2360/2021.

20. In view of the above, the respondents may file a fresh reply explaining the basis on which the petitioner is being offered only 1/3rd of the assessed compensation.

21. Be listed on 03.04.2024.

(SANJAY DHAR)
JUDGE

Jammu
02.03.2024
Karam Chand/Secy.

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No.