

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

Reserved on :- 12.01.2024

Pronounced on:-23.02.2024

CM(M) No. 13/2024

Madan Lal Age- 63 years
S/o Late Sh. Chandi Ram
R/o Village Bal Shama, Tehsil
Sunderbani District Rajouri, UT
of J&K.

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

Through: Mr. Abdul Hafeez, Advocate.

Vs

1. Jeet Singh S/o Late Sh. Garib Singh.
2. Shamo Devi W/o Late Sh. Garib Singh.
3. Jasbir Singh S/o Late Sh. Garib Singh.
4. Balbir Singh S/o Late Sh. Garib Singh.
5. Kirana Devi D/o Late Sh. Garib Singh.
6. Makhani Devi D/o Late Sh. Garib Singh.
7. Bindu D/o Late Sh. Garib Singh.
8. Nasib Singh S/o Sh. Shiv Ram.
9. Chaggar Singh S/o Sh. Shiv Ram.
All residents of Village Bal
Shama, Tehsil Sunderbani
District Rajouri, UT of J&K

..... Respondent(s)



10. Birbal S/o Late Sh. Chandi Ram.
11. Bimla Devi Wd/o Gillu Ram.
12. Ravinder Pal S/o Gillu Ram
All residents of Village Bal
Shama Tehsil Sunderbani
District Rajouri, UT of J&K

Through:

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGEMENT
23.02.2024

1. The petitioner through the medium of the present petition which has been preferred under **Article 227** of the Constitution of India is seeking quashment of the order dated **06.06.1998** passed by the Assistant Commissioner, Rajouri and also the order dated **06.09.2023** passed by the learned Financial Commissioner, Jammu in revision titled **Madan Lal and ors. Vs. Jeet Singh and ors**, whereby, the revision petition filed by the petitioner has been dismissed.

BRIEF FACTS OF THE CASE:

2. Before advertng to the grounds of challenge, it would be advantageous to give a brief history of the case which has been projected by the petitioner in the instant writ petition.

In Kharief 2007, Svt. BK and prior to that also, the father of the petitioner (Late Sh. Chandi Ram) was in cultivating possession over the land measuring **28 kanals** falling in **khasra No. 331** situated at **Bal Shama Tehsil Sunderbani, District Rajouri**. After coming into force of **The Jammu and Kashmir Big Landed Estate Abolition Act 1950**

(hereinafter referred to as “BLEA Act”), the father of the petitioner namely Late Sh. Chandi Ram had been granted ownership rights in view of **section 5** of BLEA Act with respect to the aforesaid land and **mutation no. 101** dated **23.06.1957** came to be attested in favour of the Late Sh. Chandi Ram with respect to the aforesaid land. The factum of possession of the Late Sh. Chandi Ram came to be inserted in Khasra Girdawari and record of rights as prepared from time to time by the revenue department. The rights of the respondents in the aforesaid land had been extinguished under **section 4** as proprietors under the BLEA Act in view of the fact that the land measuring **28 Kanals** falling in **khasra no. 331** was exclusively cultivated by Late Sh. Chandi Ram prior to and in crucial date of Khariet 2007 Svt. BK. The further case of the petitioner is that Late Garib Singh (Son of Late Sh. Shiv Ram) who's father's proprietary rights qua the aforesaid land had been extinguished under section 4 of BLEA Act resulting into transfer of the rights under section 5 of the BLEA Act in favour of Late Sh. Chandi Ram, had filed an application for (Sehat Kaasht) on **03.06.1998** before the Assistant Commissioner, Revenue (ACR), Rajouri. Assistant Commissioner, Revenue Jammu has passed order on **06.06.1998**, whereby **mutation no. 455** with respect to **9 Kanals 9 Marlas** out of **28 Kanals** already occupied and possessed by Late Sh. Chandi Ram by way of **mutation no. 101** dated **23.06.1957**, has attested in favour of the respondents.

3. Learned counsel for the petitioner submits that being aggrieved of order dated **06.06.1998**, the father of the petitioner filed a revision before the Ld. Divisional Commissioner, Jammu on **25.06.1998** and

the same was dismissed on **18.11.2000**. Feeling aggrieved thereby, a revision was preferred before the learned Financial Commissioner, Jammu on 04.01.2001 and the same was dismissed on **06.09.2023**.

4. Feeling aggrieved of the aforesaid orders, the petitioner has filed the instant petition.

LEGAL ANALYSIS

5. It is an admitted case where the petitioner having lost before three forums, has chosen to file the instant petition under **Article 227** of the Constitution of India for invoking the supervisory powers of this Court on false and flimsy grounds.

6. The petitioner in the instant petition, has admitted that the Assistant Commissioner, Rajouri has passed the order dated 06.06.1998, whereby, the mutation No. 455 with respect to land measuring 09Kanals and 09Marlas out of 28 kanals falling under Khasra No 331, already occupied and possessed by Late Sh. Chandi Ram by way of mutation No. 101 dated 23.06.1957 has attested in favour of the respondents and being aggrieved of the said order, father of the petitioner filed a revision before the learned Divisional Commissioner, Jammu on 25.06.1998 and the same was also dismissed on 18.11.2000.

7. The said order, although, has been referred but the same has not been challenged nor placed on record. The petitioner has deliberately not placed on record the aforesaid order, nor, there is any specific challenge to the same. However, the petitioner has challenged the latest order passed by the learned Financial Commissioner, Jammu dated 06.09.2023 which has been passed against the order of the learned Divisional Commissioner, Jammu dated 18.11.2000. In

absence of any specific challenge to the order passed by the learned Divisional Commissioner, Jammu dated 18.11.2000, the instant petition, otherwise, is not maintainable and this Court while exercising the powers under Article 227 of the Constitution of India does not act as Court of first appeal to re-appreciate, re-weigh the evidence or facts upon which the determination under challenge is based.

8. Having lost before the three forums, the petitioner through the medium of the instant writ petition has tried to invoke the powers of this Court under Article 227 of the Constitution of India, which power has to be exercised by this Court with circumspection and sparingly. It is settled proposition of law that the High Court is not to substitute its own decision on the fact and conclusion for that of inferior Court or Tribunal.

9. The law has been settled at naught by the Apex Court in authoritative pronouncements that the power under Article 227 of the Constitution of India is to be exercised sparingly in appropriate cases like, when, there is no evidence at all to justify or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the Court or the Tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure that there is no miscarriage of justice.

10. I have gone through the writ petition filed by the petitioner and the record annexed with the petition minutely and the grounds urged in the instant petition and accordingly, this Court is of the view that it is not a case, where the powers wherein the scope and ambit of the exercise of power and jurisdiction vested in this Court under Article 227 has to be exercised.

11. This is a peculiar case, where the father of the petitioner after having filed a revision before the learned Divisional Commissioner, Jammu against the order passed by the Assistant Commissioner has chosen to file a revision before the learned Financial Commissioner and all the three petitions stood dismissed and the petitioner by way of camouflage has filed the instant petition by invoking the powers under Article 227 of the Constitution and that too, by suppressing the order passed by the learned Divisional Commissioner, Jammu deliberately. In absence of any specific challenge to the order passed by the learned Divisional Commissioner, Jammu, the instant petition, even otherwise, is not maintainable on technical grounds.

12. The Apex Court in catena of judgments has already held that the High Court has to exercise such wide powers under Article 227 with great care and circumspection which cannot be exercised to correct all errors of a judgment of Court and Tribunal acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases, where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. Even the power to re-appreciate the evidence would only be justified in rare and exceptional situations, where the grave injustice would be done, unless the Court interferes and the exercise of such discretionary power would depend upon the peculiar facts of each case with the sole objective of ensuring that there is no miscarriage of justice. The Apex Court in the case of ***Jai Singh Vs. Municipal Corporation of Delhi; (2010) 9 SCC 385*** has held as under:-

15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the

Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The High Court cannot lightly or liberally act as an appellate court and reappreciate the evidence. Generally, it cannot substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice."

13. Further, the Apex Court in *M/S Garment Craft Vs. Praksh Chand Goel; (2022) 4 SCC 181* has held as under:-

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

*16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.* has observed:*

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep

inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

14. Further, the record reveals that the impugned mutation which has been attested by the Assistant Commissioner, Revenue, and pursuant thereto, an application came to be preferred by one Garib Singh, who happens to be the predecessor of the respondents before the mutating officers seeking correction of the Girdhawari entries qua the suit land. The record further reveals that Late Sh Chandi Ram, the predecessor of the petitioner herein, was present before the Mutating Officer whose statement was recorded.

15. From the bare perusal of the order passed by the learned Financial Commissioner, it is apparently clear that the said Sh.

Chandi Ram has stated that the land falling under Khasra No 331 has vested in ownership to him and on spot, he is in possession of land measuring 18 Kanals 11 Marlas and the remaining land is under possession of respondents therein for over forty to fifty years. The record further reveals that with a view to certify the claim of the respective parties, the learned Financial Commissioner, Jammu has also sought a report in this regard from the concerned Patwari, which too has confirmed the possession of the respondents therein, over the suit land and it was only, when the Mutating Officer was satisfied with the spot position, the said officer has corrected the Girdhawari entries in favour of the parties with effect from Khariet 1997.

16. The learned Financial Commissioner, in the aforesaid backdrop, has recorded a finding that the court below has thoroughly examined the issue and has rightly upheld the mutation which only correlated the spot position with the record and rightly so, the revision petition filed by the petitioners, therein, being devoid of any merit stood dismissed and the order which was impugned before the learned Financial Commissioner, dated **18.11.2000** passed by the Divisional Commissioner, Jammu (which has not been placed on record by the petitioner in the instant petition) has been upheld.

17. After having gone through the record and the order passed learned Financial Commissioner, I do not, find any legal infirmity with the same, which could be a compelling reason for interference in the instant petition by invoking the powers under Article 227 of the Constitution of India.

18. Thus, in the light of what has been discussed hereinabove coupled with the said legal position, the instant petition which is devoid of any merit deserves dismissal in *limine* and is, accordingly,

dismissed along-with all connected applications as the challenge thrown by the petitioner to the order dated **06.09.2023** passed by the learned Financial Commissioner, Rajouri in mutation No 455 dated **06.06.1998** is ill-founded and without any basis and as a necessary corollary, the order passed by the Learned Financial Commissioner is hereby upheld.

(Wasim Sadiq Nargal)
Judge

JAMMU
23.02.2024
"Tarun"

- i. Whether the order is speaking? Yes/No
- ii. Whether the order is reportable? Yes/No