

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

Reserved on: 18.03.2024
Pronounced on: 29.03.2024

LPA No. 134/2023 in WP(C) 1946/2022

SOLI BHAT AGED 75 YEARS S/O GANI BHAT
R/O PANZIPORA CHADOORA DISTRICT BUDGAM

...Petitioner(s)/appellant(s)

Through: Mr. Sheikh Hilal, Advocate

Vs.

1. MST. TAJA
D/O LATE SALAM DAR
W/O FAROOQ AHMAD BHAT
R/O BUDGAM BATAPORA TEHSIL THROUGH HER
ATTORNEY
FAROOQ AHMAD BHAT
S/O GH RASOOL BHAT
R/O BUDGAM BATAPORA TEHSIL CHADOORA
DISTRICT BUDGAM

...Respondent(s)

2. MST. RAJA KHANA NISHEEN
D/O LATE SALAM DAR
W/O SOLI BHAT
R/O PANZIPORA CHADOORA DISTRICT BUDGAM

3. FATA
D/O LATE SALAM DAR
R/O PANZIPORA CHADOORA DISTRICT BUDGAM

4. TEHSILDAR CHADOORA DISTRICT BUDGAM

5. PATWARI HALQA BUDGAM BATAPORA DISTRICT
BUDGAM

Through: Mr. Syed Owais Geelani, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

J U D G M E N T

29.03.2024

Per Moksha, J.

1. In this intra court appeal, the appellant has challenged the judgment dated 19.07.2023 passed by the learned Single Judge in writ petition bearing WP(C) No. 1946/2022, whereby the learned Single Judge has dismissed the writ petition filed by the appellant-petitioner, challenging the order dated 06.08.2022 passed by Commissioner Agrarian Reforms (Additional Deputy

Commissioner), Budgam, whereby mutation No. 1080 under Section 4 and mutation No. 1108 under Section 8 of the Agrarian Reforms Act pertaining to the land measuring 13 kanals and 5 marlas encompassing Khasra No. 212 and 226 of estate Budgam Batpora have been set aside.

FACTUAL MATRIX

2. The appellant is the husband of respondent No. 2 whereas respondent Nos 1 & 3 are the daughters of Late Salam Dar (erstwhile owner of land measuring 13 kanals and 5 marlas encompassing Khasra No. 212 and 226 of estate Budgam Batpora) and sisters of respondent No. 2.

3. It is stated that the learned Commissioner has, without giving any plausible reason for condoning the delay of 35 years, passed the order dated 06.08.2022. The respondent No. 1 in her application for condonation of delay had taken contrary stands before the learned Commissioner inasmuch as at one place she had claimed that she got the knowledge of the mutations when the appellant declared that he is the sole owner of the property in question and at the other place she has stated that she had come to know about the mutations when she received a notice from the Court of District Judge, Budgam. It is further contended that the learned Commissioner erred in upholding the challenge of respondent No. 01 at an extremely belated stage when third party interest had been created in the property in question.

4. The appellant herein preferred writ petition before the learned Single Judge i.e., WP(C) No. 1946/2022 thereby challenging the order dated 06.08.2022 passed by Commissioner Agrarian Reforms (Additional Deputy Commissioner), Budgam whereby mutation No. 1080 under Section 4 and mutation No. 1108 under Section 8 of the Agrarian Reforms Act in respect of the land measuring 13 kanals and 5 marlas encompassing Khasra No. 212 and 226 of estate Budgam Batpora have been set aside. The learned Single Bench dismissed the writ petition with the following observations:

“13. From the foregoing analysis of the law on the subject, it is clear that while exercising writ jurisdiction against the order of an appellate authority, unless it is shown that the procedure adopted by the appellate authority is opposed to principles of natural justice or there is an error of law which is apparent on the face of record, the discretion exercised by the appellate authority in condoning the delay in filing the appeal cannot be interfered with. In the instant case, as already noticed, there were sufficient reasons for the appellate authority to condone the delay in filing the appeal. Thus, even if the impugned mutations were challenged after about three decades, these mutations being a result of fraud

and the same having been attested at the back of respondent No.1 who was a minor at the relevant time, the delay in filing the appeal deserved to be condoned.

14. That takes us to the merits of the impugned order passed by the learned Commissioner. As has been already discussed, the mutations under Section 4 and 8 attested in favour of the petitioner were acts of fraud which could not have been attested in the presence of mutation of inheritance having been attested in favour of respondent No.1, her sisters as well as the widow of the estate holder. Thus, no fault can be found in the impugned order passed by the learned Commissioner whereby mutation Nos. 1080 and 1108 of estate Budgam Batpora have been set aside.”

5. The appellant herein has challenged the judgment supra of the learned Single Bench on the ground that the mutations were challenged belatedly that too after a gap of 35 years without there being any sufficient and reasonable explanation tendered by the respondent No. 1 in her application seeking condonation of delay. It is further stated that as per Section 22 of the J&K Agrarian Reforms Act 1976 read with rules an appeal has to be filed within 60 days. This aspect of the matter was never considered by the writ court as well as by the Commissioner Agrarian Reforms (Additional Deputy Commissioner Budgam). The appeal of the respondent No. 1 was hit by huge delay and laches. It is further stated that writ court had not considered that the crucial date for conferring the status on a person as a tiller is date prescribed by the J&K Agrarian Reforms Act 1976. The crucial date is 1971 kharif and on this date if any person is cultivating the land as a “tiller” then only the benefits under the J&K Agrarian Reforms Act 1976 can be granted to him. In the instant case the mutation of inheritance was attested in favour of the respondents on 27.5.1975. It is further stated that the writ court did not appreciate that the third party interest in the property had already been created by the appellant and it was the specific case of the appellant if at this time revenue entry/mutation is disturbed it will create a problem for the beneficiary who is the beneficiary of the disputed land.

6. Heard learned counsel for the parties and perused the impugned judgment.

7. Fraud vitiates all the proceedings and unravels everything. In Black’s Legal Dictionary, fraud is defined as an intentional perversion of truth for

the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right, a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

8. The writ court in para No. 09 of the judgment supra has specifically analyzed the fact that in terms of the record it is revealed that in the year 1975, after the death of the estate holder Salam Dar, mutation of inheritance bearing No. 891 was attested in favour of the daughters of Salam Dar and his widow. The mutations came to be attested in favour of the appellant in the year 1984 and 1985 in terms of Sections 4 and 8 of the J&K Agrarian Reforms Act. Once the mutation of inheritance was attested in respect of the estate in the year 1975 in favour of the legal heirs of estate holder, there was no occasion for the Revenue Authorities to attest mutations under Sections 4 and 8 of the Agrarian Reforms Act in favour of the appellant. The appellant, who happens to be the husband of respondent No. 2 in whose favour mutation of inheritance was attested, can by no stretch of imagination be termed as a tenant of the land. Moreover, the documents on record clearly show that the land was under the self-cultivation of estate holder Salam Dar after whose death mutation of inheritance was attested in the year 1975 in favour of his daughters and widow which clearly goes on to show that in Kharif 1971, the crucial date for attesting the mutations in favour of the tenants, the father-in-law of the appellant and father of respondents No. 1 to 3 was owner in possession of the property and the appellant had nothing to do with the land in question at the relevant point of time as such the attestation of mutations in favour of the appellant is clearly an act of fraud.

9. It has also been held by the learned Single Judge that limitation period for challenging an act of fraud would start from the date of discovery of the fraud. In the present case, respondent No. 1 had clearly stated in her application for condonation of delay that she came to know about the impugned mutations in the year 2020 whereafter she filed the appeal. It is also stated that the impugned mutations were attested at the back of the respondent No. 01 when she was a minor and it was an act of fraud in the face of mutation of inheritance having already been attested in favour of the legal heirs of the estate holder in the year 1975, as such the period of delay

could not have debarred the appellate authority in condoning the delay in favour of the respondent No. 01. Admittedly, fraud has been committed by the appellant, as the mutations under Section 4 and 8 attested in favour of the appellant could not have been attested in the presence of mutation of inheritance having already been attested in favour of respondents and thus an attempt to create third party interest in the property in question was also an act of fraud.

10. Learned Single Judge has rightly pointed out that the fraud has been committed by the appellant herein as such limitation shall not come in the way of the respondent No. 01 and has rightly upheld the order dated 06.08.2022 passed by Commissioner Agrarian Reforms (Additional Deputy Commissioner), Budgam. Moreover, this Court in case titled “Ghulam Mohammad Reshi vs Jammu and Kashmir Special Tribunal, Srinagar and Others reported as MANU/JK/0652/2023 in paragraphs 20, 21 & 22 has held as under:-

“20. In this regard one may refer to the decision of the Hon’ble Supreme Court in B. S. Sheshagiri Setty v. State of Karnataka : (2016) 2 SCC 123 in which the following observations were made:

“28.Further, in the context of limitation, it has been held by this Court in a catena of cases that when what is at stake is justice, then a technical or pedantic approach should not be adopted by the courts to do justice when there is miscarriage of justice caused to a public litigant.

A three-judge bench of this Court in the case of State of Haryana v. Chandra Mani & Ors. : (1996) 3 SCC 132 has held as under :

“7.....The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

More recently, a two-judge bench of this Court observed in Dhiraj Singh v. State of Haryana : (2014) 14 SCC 127 as under:

“15...The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self- imposed limitations.....”

21. Thus, ordinarily though the courts are required to examine the sufficiency of the cause put forth by the applicant to explain and justify the delay in approaching the court yet, there cannot be a hard and fast rule that the merits of the case cannot be looked into at all by the court while deciding the issue of limitation. In fact, if a case is non-suited because of delay only which otherwise would cause serious and grave injustice, the court can certainly condone delay and examine the merits of the case also.

22. In the present case, what we have noted, and not denied by the appellant is that appellant is the grandson of Akram Bhat and if the document produced by respondent no.3 is not denied, the appellant would be three years of age when he professes to be the tenant or tiller of the land in the year 1971 to claim title over the land by virtue of being actual user as provided under Section 4 of the Act. We have also noted that the mutation orders were attested in absence of respondent no.3. Thus, we are of the view that if the appeal of respondent no.3 against the mutation orders is rejected solely on the ground of delay, it can lead to serious miscarriage of justice.”

11. Accordingly, for the reasons discussed above, we hold that the judgment passed by the learned Single Judge dated 19.07.2023 in writ petition bearing WP(C) No. 1946/2022 does not warrant any interference and accordingly the appeal is dismissed.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(RAJNESH OSWAL)
JUDGE

SRINAGAR

29.03.2024

Aamir

Whether approved for reporting Yes/No