

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

Reserved on: 12.07.2023

Pronounced on: 19.07.2023

WP(C) No.1946/2022

SOLI BHAT

... PETITIONER(S)

Through: - Mr. Sheikh Hilal, Advocate.

Vs.

MST. TAJA & OTHERS

...RESPONDENT(S)

*Through: - Mr. Owais Geelani, Adv-for R1 to R3
Mr. Syed Mohtasim, Assisting Counsel, vice Mr.
Mohsin S. Qadiri, Sr. AAG-for R4&R5.*

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

JUDGMENT

1. The petitioner has challenged 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 land measuring 13 kanals and 5 marlas comprised in Khasra No.212 and 226 of estate Budgam Batpora have been set aside.

2. The petitioner happens to be the husband of respondent No.2 whereas respondent Nos. 1 and 3 happen to be the sisters of respondent No.2. Respondent Nos. 1 to 3 happen to be the daughters of late Salam Dar, the

erstwhile owner of the land measuring 13 kanals 5 marlas comprised in Khasra Nos.212 and 226 of estate Budgam Batpora.

3. The case set up by the petitioner is that mutation No.1080 dated 09.11.1984 under Section 4 of the Agrarian Reforms Act and mutation No.1108 dated 24.08.1985 under Section 8 of the Agrarian Reforms Act in respect of the aforesaid land were attested in his favour to the knowledge of the private respondents and their deceased mother. It is submitted that the private respondents never questioned these mutations and after 35 years, respondent No.1 laid challenge to the aforesaid mutations before the Commissioner Agrarian Reforms (Additional Deputy Commissioner) Budgam. It is claimed that during these years the petitioner has been in exclusive possession of the land in question and he has mortgaged the same to J&K Cooperative Bank Ltd. and has even sold 3 kanals of land out of the aforesaid land. It is contended that the learned Commissioner has, without giving any plausible reason for condoning the delay of 35 years in filing the appeal, passed the impugned order. It has been submitted that respondent No.1 in her application for condonation of delay, had taken contradictory stands before the learned Commissioner,

inasmuch as at one place she has claimed that she got the knowledge of the impugned mutations when petitioner declared that he is the sole owner in possession of the property in question and at another place she has claimed that she came to know about the impugned mutations when she received a notice from the Court of District Judge, Budgam. It has been contended that the learned Commissioner has erred in upholding the challenge of respondent No.1 at an extremely belated stage when third party interests have been created in the property in question.

4. The writ petition has been contested by respondent No.1 by filing a reply thereto. In her reply, respondent No.1 has submitted that father-in-law of the petitioner and father of respondents No.1 to 3, Shri Salam Dar, had died in the year 1973 and he was survived by four daughters which includes respondent Nos.1 to 3 and one Saleema as well as their mother, Mst. Zoona. According to respondent No.1, these four daughters were minor at the time when their father died in the year 1973 and mutation of inheritance bearing No.891 dated 27.05.1975 was attested in favour of respondent No.1 and her sisters through their mother, Mst. Zoona, in equal shares, as a result of which

respondent Nos.1 to 3 and Saleema along with widow Mst. Zoonna became joint owners in possession of the land in question. It is further averred that respondent No.2 attained majority in the year 1982 and she entered into wedlock with the petitioner but because there was no male member in the family, as such, the petitioner started residing with respondents No.1 to 3. It is further averred that Mst. Zoonna, mother of respondents No.1 to 3, contracted second marriage and sister Saleema died prior to her marriage. Respondent No.1 is stated to have attained majority in the year 1986 and both respondent No.1 and respondent No.3 are married now. According to respondent No.1, her mother, Mst. Zoonna, is still alive and, as such, she was under the impression that after the demise of their mother, the estate will be partitioned but respondent No.2, the wife of the petitioner, all of a sudden made it public that respondent No.1 would not get anything out of the estate left behind by their father Salam Dar, as whole of the estate has been mutated in the name of the petitioner.

5. On the basis of aforesaid assertions, respondent No.1 has claimed that a fraud has been played by the petitioner upon her whereby he has succeeded in mutating whole of the property left behind by Salam Dar in his favour by

virtue of the impugned mutations. According to respondent No.1 after getting knowledge of these mutations in the month of June, 2020, she obtained certified copies thereof and filed an appeal before the Commissioner Agrarian Reforms, Budgam, who by virtue of the impugned order has set aside the said mutations.

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

7. The main ground on the basis of which the petitioner has challenged the impugned order is that the mutations under challenge have been set aside by the Commissioner Agrarian Reforms belatedly after a period of about 35 years without their being any plausible ground for condoning the delay. Learned counsel for the petitioner has, while referring to the provisions contained in Section 22 of the Agrarian Reforms Act, submitted that the period of limitation for an appeal is 60 days and in the instant case, the appeal has been filed after a period of 35 years without there being any explanation for the delay. Learned counsel while relying upon Division Bench judgments of this court in the cases of **Wali Mohammad Magrey & anr. vs. Ali Mohammad Gujree & ors.** (LPA(OW) No.29/2018 c/w

LPA(OW) No.30/2018 dated 28.12.2021) and many other judgments, has submitted that there is inordinate and unreasonable delay in exercise of appellate power, as such, the appellate authority could not have interfered with the orders under appeal. Learned counsel has further contended that in view of the contradictory stands taken by respondent No.1 as regards the date of knowledge of the impugned mutations, the learned Commissioner would have done well to reject the plea of respondent No.1.

8. There is no dispute to the fact that mutation Nos. 1080 and 1108 under Sections 4 and 8 of the Agrarian Reforms Act have been attested in the years 1984 and 1985 and the same were challenged by respondent No.1 by way of appeal on 26.09.2020. The appeal has, therefore, been filed by respondent No.1 way beyond the prescribed period of limitation. The explanation tendered by respondent No.1 before the learned Commissioner in her application for condonation of delay is that in the month of June 2020 when she received summons from the Court of District Judge Budgam, she came to know about the impugned mutations whereafter she applied for certified copies of the mutations and filed the appeal. Learned Commissioner while dealing with this aspect of the case has observed that

having regard to the fact that the mutations were attested at the back of the respondent No.1/appellant, her plea deserves to be accepted and, accordingly, the delay in filing the appeal was condoned.

9. If we analyze the facts which emanate from the record of the case, 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 daughters of Salam Dar and his widow. However, the impugned mutations came to be attested in favour of the petitioner in the years 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 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 petitioner. The petitioner, 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 in question. The documents on record clearly show that the land in question 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 petitioner and father of respondents No.1 to 3 was owner in possession of the property and the petitioner had nothing to do with the land in question at the relevant time. Therefore, the attestation of mutations under Section 4 and 8 in favour of the petitioner is clearly an act of fraud.

10. Limitation period for challenging an act of fraud would start from the date of discovery of the fraud. In the instant case, respondent No.1 had clearly stated in her application for condonation of delay that she came to know about the impugned mutations only in the month of June 2020, whereafter she obtained certified copies of the impugned mutations and filed the appeal. There is no apparent contradiction in her stand as regards the date of knowledge of fraud. She may have stated that when respondent No.2 declared that she is not going to get anything from the estate of her father and she may also have stated that the attestation of impugned mutations came to her knowledge only when she received a notice from District Court Budgam, but the two statements made by respondent

No.1/appellant in her application/ appeal do not appear to be contradictory in any manner.

11. Admittedly, the impugned mutations were attested at the back of respondent No.1 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 legal heirs of the estate holder in the year 1975. In these circumstances the length of delay could not have debarred the appellate authority in condoning the delay in filing the appeal.

12. Once the appellate authority accepted the explanation tendered by respondent No.1 as sufficient, the exercise of discretion by the said authority cannot be interfered with by this Court while exercising its writ jurisdiction unless the exercise of discretion by the appellate authority was on wholly untenable grounds, arbitrary or perverse. The Supreme Court in the case of **Syed Yakoob vs K.S. Radhakrishnan & Others**. AIR 1964 SC 477, has delineated the scope of Writ of Certiorari in the following words:

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it,

or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was 'insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmed Ishaque), Nagendra Nath Bora v. Commissioner of Hills Division and Kaushalya Devi v. Bachittar Singh.

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.

15. For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. Interim direction, if any, shall cease to be in operation.

16. Parties to bear their own costs.

(SANJAY DHAR)
JUDGE

Srinagar,
19.07.2023
“Bhat Altaf, PS”

*Whether the order is speaking: **Yes/No***

*Whether the order is reportable: **Yes/No***

