

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) No. 1272/2020

Pronounced on 14.08.2026

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Sunita Devi and Ors

.....Petitioner(s)

Through: - Mr. R.K Jain, Sr. Adv with Assisting counsel

Vs.

Union territory of J&K & Ors

.....Respondent(s)

Through: - Ms. Mrinal, Assisting counsel to
Mrs. Monika Kohli, sr. AAG for R-1, 3 &4
Mr. F.S Bhat, Advocate for R-5 to 8.

CORAM:

**HON'BLE MR JUSTICE MOHD YOUSUF WANI, JUDGE
JUDGMENT**

1. Through the medium of the instant writ petition, having been filed in terms of provisions of Article 226 of the Constitution of India, the petitioners have sought the issuance of writ of certiorari for quashing the order dated 23.07.2020 passed by the respondent No.2-Ld J&K Special Tribunal, Jammu, while hearing the Revision petition against the order dated 25.05.2004 passed by the respondent No.3-Ld Financial Commissioner with powers of Agrarian Reforms Commissioner, Jammu.
2. The case of the petitioners is that their ancestor Ichru @ Achroo, was the tenant of land comprising under Khasra Nos. 81, 82,83 and 84 situated at Toph Sherkhania Tehsil and District, Jammu (hereinafter referred to as subject land) prior to 1950 and thereafter also continued to be in the cultivating possession of the subject

land under his the then landlord Shri Raj Kumar Jai chand. That the father of Shri Raj Kumar Jai chand was the then “RAJA” of Chenanie, (now part of the District Udhampur) and was a big landlord having more than 3266 kanals of land situated at different locations including village Rawalpura Tehsil Shri Pratap Singhpora (Kashmir). That upon coming into the operation of the Big Landed Estates Abolition Act (BLEAA for short) BK 2007 (1950 AD), the ancestor of the private respondent’s i.e the Landlord namely Shri Raj Kumar Jai chand as well as his brother Shri Raj Kumar Terath Chand selected their respective units of land measuring 182 kanals each, permissible to be retained under the BLEAA. That accordingly, two separate mutations came to be attested with respect to the units of the land selected by Sh. Raj Kumar Jai chand and his brother Shr. Raj Kumar Terath chand, which fact also amounted to the **partition** of land in between the said two brothers/land owners. That the subject land was not selected by Sh. Rajkumar Jai Chand and the same continued to be cultivated by their (petitioners) ancestor Ichru@ Achroo who retained physical possession of the same during his life time whereafter the same is held continuously by them (petitioners).

That their ancestor Ichru @ Achroo was entitled to be conferred the ownership rights vis-a-vis the subject land under the operation of the BLEAA but due to non-cooperative attitude of the Revenue Authorities, same got delayed during his lifetime. That their said ancestor Ichru was a poor and illiterate person who

moved from pillar to post so as to get the due benefit of BLEAA but unfortunately, he could not succeed until he died.

That however, during the lifetime of their said ancestor being, the tiller of the subject land and before the ownership rights in terms of Section 5 of the BLEAA could be conferred upon him in respect of the subject land being in excess of ceiling units and also being not identified/selected within the ceiling units by the landlords, the J&K Agrarian Reforms Act 1976 (hereinafter referred to as the Agrarian Act for short) came to be legislated and enforced, extinguishing the rights of the land owners not found in personal cultivation of the land as on 1st Sept. 1971. That their ancestor Achroo also became qualified for conferment of ownership rights in respect of the subject land under the operation of the Agrarian Act who accordingly requested the concerned authorities for conferment of such right in respect of the subject land for his being in cultivating physical possession of the same on 1st Sept 1971 and much prior to that. That the then concerned revenue authorities upon being satisfied regarding the subject land being in physical cultivating possession of their said ancestor attested the mutation u/s 4 of the Act in his favour, under No. 2672.

That, however, the ancestor of the private respondents-Shri Rajkumar Jai Chand claimed to have prayed for resumption of the subject matter by invoking the provisions of Section 7 of the Agrarian Act. That no notice of such resumption application was served upon the said ancestor of the petitioners-Achroo or even to

them (petitioners). That however, the respondent No.4-Tehsildar Jammu, North Janipur, rejected the said application for resumption vide Mutation No.**2813** dated 24.11.81. The said order of rejection of resumption dated **24.11.1981** came to be questioned by the ancestor of the private respondents Sh. Rajkumar Jai chand/ex-landlord, in an appeal before the respondent no.3-Financial Commissioner with powers of Agrarian Reforms Commissioner, Jammu. The appeal was accepted by the respondent No.3 vide his order dated **07.08.1997** and the case was remanded back to respondent No.4-Tehsildar for holding a fresh enquiry.

That in the meantime and pursuant to mutation No. **2672** already attested u/s 4 of the Agrarian Act, a mutation u/s 8 of the Act under No. 2735 also came to be attested in favour of the aforesaid ancestor of the petitioners i.e Ichru @ Achroo, conferring upon him the rights of ownership viz-a-vis the subject land.

That the Mutation No. **2735** u/s 8 of the Agrarian Act came to be questioned in appeal before the learned appellate authority which accepted the appeal, set aside the mutation No. 2735 u/s 8 of the Agrarian Act, vide its order dated **24.07.2001** and remanded the case back to Tehsildar Settlement, Jammu with a direction that proceedings u/s 8 of the Agrarian Act in respect of the subject land be conducted after and subject to the conclusion of the proceedings u/s 7 of the Agrarian Act, already directed by the said authority vide its remand order dated 7th of August, 1997.

That the aforesaid order dated 24.07.2001 of the Appellate Authority also came to be challenged by them (petitioners) before the respondent No.2-J&K Special Tribunal, Jammu through the medium of a revision petition. The respondent No.2 i.e the learned Special Tribunal, Jammu vide its order dated 04.02.2003 declined to interfere in the order dated 24.07.2001 of the learned Appellate Authority with the observations that impugned order dated 24.07.2001 is a remand order and not a final one with the further observation that dispute between the parties u/s 7 of the Act pertaining to resumption is still pending between them/

That the Tehsildar concerned vide his order dated 22.02.2001, again dismissed the application of Sh. Raj Kumar Jai chand by holding him not entitled to the resumption of the subject land on the ground among others that ex-owner had sold some land.

That subsequently the legal heirs of Sh. Raj Kumar Jai chand namely Kanta Kumari (daughter) and Balbahader chand (son), questioned the order dated 22.02.2001, whereby the Tehsildar Settlement, Jammu maintained the rejection of resumption application filed by their ancestor late Rajkumar Jai chand through an appeal bearing file No. 304 before the respondent No.3-Commissioner Agrarian Reforms (Financial Commissioner).

That they (petitioners) filed a transfer application before the respondent No.2 seeking transfer of the appeal to some other competent court as they noticed the inclination of the then learned Financial Commissioner towards Appellants in the said appeal i.e

Kanta Kumari and Balbahadur chand. That para-wise reply was called by the respondent no.2 from the learned Appellate Court, but during the pendency of the transfer petition, the respondent No.3 hurried to dispose of the appeal by its order dated 25.05.2004 allegedly in a biased manner.

That the petitioners challenged the order dated 25.05.2004 of the respondent No.3 in a revision petition before the respondent No.2 which was dismissed on illegal and unjustified grounds, vide impugned order dated 23.07.2020.

That they i.e petitioners, have now been left with no remedy but to invoke the writ jurisdiction of this Court seeking the issuance of a writ of certiorari for quashing the orders dated 25.05.2004 and 23.07.2020, respectively, passed by respondent Nos. 3 and 2, as also a writ of prohibition for prohibiting the respondents from interfering with the petitioners' peaceful possession and enjoyment of the subject land.

That they have also sought issuance of any other writs, directions which this court may deem fit and proper in the facts and circumstance of the case.

3. The petitioners have assailed the impugned orders on the grounds inter alia that:-

- (i) The respondent No.2 i.e. Ld Special Tribunal, Jammu was required to await the result of writ petition No. 904/2010 which was subjudice before this court. That subsequent to the passing of the order dated 25.05.2004, the respondent No.2 vide its order dated 23.04.2010 passed on

their (petitioners) application ordered the summoning of the resumption form alleged to had been filed by Sh. Raj Kumar Jai chand-predecessor in-interest of respondents 5 to 8 as well as the connected record of the Tehsildar concerned. That on 07.06.2010, the respondent No.2 reviewed its earlier order dated 23.04.2010 by which the record of resumption application was summoned. That the order dated **07.06.2010** of the respondent No.2 was questioned by them (petitioners) in writ petition **OWP 904/2010** which petition is still pending in this court. That the fact of the pendency of the writ petition despite being brought to the notice of the respondent No.2 did not make any sound.

- (ii) That the observations/directions issued by respondent No.2 in the impugned order dated 23.07.2020 are without jurisdiction and thus, liable to be quashed. That the respondent No.2 which has kept open the issue of resumption to be adjudicated by the respondent No.4 i.e, Tehsildar Khas, Jammu should not have issued the command to him to attest a mutation under section 7 of the Agrarian Act and handover the possession of the subject land to private respondents. That the grant of simultaneous liberty to the respondent No.4 to seek the assistance of law Enforcement Agency in case of any necessity was not justified.
- (iii) That Tehsildar concerned was supposed to have been given a liberty to conduct adjudication in respect of the fact whether the ancestor of private respondents had transferred the land at Srinagar after 1st Sept 1971.
- (iv) That the resumption application was devoid of any merit as per the requirements of section-7 of the Agrarian Act. That the respondent No.4 as per the provisions of the Agrarian Act and the Rules of 1977 framed there-under was

required to conduct an enquiry after affording an opportunity of being heard to both the parties.

- (v) That it has remained their categoric stand during all the proceedings that the ancestor of the private respondent Sh. Raj Kumar Jai chand was not entitled to resume on the ground that he and his family members were income tax payers and secondly, the ex-owner had transferred the land after 1st day of Sept 1971, thus, disqualified for resumption of land.
- (vi) That the direction issued by the respondent No.2 for attestation of mutation u/s 7 of the Agrarian Act in favour of the legal heirs of Sh. Raj Kumar Jai chand, suffers from material illegalities, irregularities rendering the impugned order unsustainable under law. That there was no question of resumption of subject land as the same already stood escheated to the State under the operation of the BLEAA. That the ancestor of the private respondent had already lost its ownership viz-a-viz the subject land.
- (vii) That the respondent no.2 during proceedings of the revision petition before it and after hearing the learned counsel for the parties passed the order dated 23.04.2010 for summoning of the record which was material for arriving at a just decision but later on the tribunal reviewed its order.
- (viii) That there is no provision guaranteeing the reviewing of the own order by the Authorities under the Act. That the alleged resumption form was a material document required to be examined by the respondent No.2 in terms of the date of presentation of the same and the details made therein. That said remand form was required to be as per Form No.5 prescribed under the Agrarian Reforms Rules, 1977.
- (ix) That the respondent No.2 committed an illegality in reviewing its earlier order dated 23.4.2010 vide subsequent

order dated 07.06.2010 thereby declining the summoning of the original record particularly the alleged resumption form supposed to be containing details of the land as well as the date of submission of the same, thereby rendering the order impugned to be unsustainable in the eyes of law.

- (x) That no record was before the respondent no.2 where from it, could have arrived at a conclusion regarding the date of submission of the resumption form, as well as the contents of the same. That there was also no record before the respondent no.2 on the basis of which, the Tribunal could have satisfied itself that the ancestor of the private respondent made selection of the land at Top Sherkhania, Jammu and which Khasra numbers were sought to be resumed.
- (xi) That the impugned orders suffer from material illegalities and irregularities which are apparent on the face of record and are thus liable to be quashed.
- (xii) That the respondents 2 & 3 were not justified in issuing direction to the respondent No.4 for attestation of a Mutation u/s 7, when no adjudication on the alleged application U/s 7 had been held and further no opportunity was offered to the ancestor of the petitioners i.e. Ichru or to the petitioners after his death to contest the said resumption application.
- (xiii) That the respondent No.2 i.e Special Tribunal Jammu did not return any finding on the issues raised in the revision petition as well as agitated through the written arguments.
- (xiv) That the learned Special Tribunal (respondent No.2) did not appreciate the facto legal issue raised in the revision petition to the effect that the appeal before the respondent No.3 i.e. Financial Commissioner with powers of Agrarian Reforms Commissioner, Jammu was hopelessly time barred and the authority concerned hurried to decide the

appeal on merits without first addressing the application, for condonation of delay.

- (xv) That in terms of the provisions of Order 41 Rule 3 A CPC, the Appellate Court acquires jurisdiction to decide the appeal only subject to the outcome of the condonation of delay application, therefore, the impugned order dated 25.05.2004 passed by respondent No.3 was without jurisdiction which fact was under estimated by the respondent No.2. That the respondent No.2 did not consider such important question of law and hurried to dismiss the revision petition filed by the predecessor in-interest of the petitioners against the mandatory provisions contained in Order 41 Rule 3A CPC.
- (xvi) That the revision petition, giving rise to the impugned order dated 23.07.2020, was pending before the Ld Judicial Member of the Tribunal i.e. Bench No.2 and the Respondent No.2 through its Chairman withdrew the case from the Bench No.2 and assigned the same to its own Bench without notice to the petitioners particularly when the Judicial Member was functioning.
- (xvii) That on 9th of July 2020 when the case was taken up by the respondent No.2 for hearing, the junior counsel of the petitioners appeared and requested to supply him a copy of transfer application for filing the objections which was not done and instead the case was kept open for orders with the direction to the junior counsel of the petitioners to submit his written arguments on or before 20.07.2020.
- (xviii) That the written arguments as directed were submitted and the respondent No.2 while sitting at Srinagar decided the case dismissing the revision petition through impugned order dated 23.07.2020 without affording an opportunity of being heard to the petitioners to argue the case orally.

- (xix) That the respondent No.2 did not consider the written submissions/arguments submitted by their counsel which were supported by the documentary proof as well as the judgments of this Court in respect of the, issues involved, which constitutes a circumstance warranting quashment of the impugned order dated 23.07.2020.
- (xx) That the respondent No.2 mainly based its judgment on the order dated 04.03.2003 passed by it while hearing the earlier revision petition that was filed by their predecessor in-interest against the order of respondent No.3 by virtue of which the said respondent No.3 set aside the Mutation No. 2735 attested in favour of their predecessor in-interest u/s 8 of the Agrarian Act.
- (xxi) That the respondent No.2 upheld the order of the Appellate Court i.e. Respondent No.3 based on the ground that no mutation u/s 8 can be attested unless the proceedings u/s 7 for resumption of the subject land, were concluded.
- (xxii) That there was no dispute u/s 7 of the Agrarian Act before the learned Special Tribunal (respondent No.2) which on one hand directed that Mutation u/s 8 of Agrarian Act in favour of the predecessor in-interest of the petitioners was premature and on the other hand in the same order held that predecessor in-interest of respondents was entitled to resume the subject land.
- (xxiii) That the respondent No.2 did not consider the fact that his predecessor in office/court while recording the order dated 04.02.2003 was dealing with the dispute pertaining to mutation u/s 8 of the Agrarian Act being Mutation No. 2735 dated 01.01.1982 and not the dispute u/s 7 of the Agrarian Act.
- (xxiv) That the observation of the respondent No.2 i.e. Special Tribunal Jammu regarding the operation of the *resjudicata*

is illegal as the controversy involved in the litigation i.e. revision petition giving rise to the order impugned dated 23.07.2020 was in terms of Section 7 of the Agrarian Act.

(xxv) That, except for the present writ petition, no other writ petition has been filed challenging the impugned order dated 23.07.2020. That OWP No. 904/2010 had challenged the order dated 07.06.2010, which was passed during the pendency of the revision petition.

4. The contesting private respondents 5 to 8 through their reply/objections have resisted the instant petition on the ground inter alia, that :-

- (i) The writ petition is not maintainable because no question of law or public interest was pleaded either in the revision petition or in the arguments by the petitioners, the existence/agitation whereof was the *sine quo none* for filing the revision petition, in terms of provisions of Section 21 (2) of the Agrarian Act.
- (ii) That the petitioners cannot go beyond their pleadings in the writ petition filed before this court by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India.
- (iii) That the contention of the predecessor in-interest of the petitioners namely Ichru @ Achroo agitated by him during his life time and thereafter by the present petitioners before the concerned authorities to the effect that Raj Kumar Jai chand,-- the ex-land owner and the predecessor in-interest of the private respondents had not mentioned the subject Khasra numbers of which he sought resumption, in his Unit of 182 Kanals under BLEAA, is not justified because the aforesaid Raj Kumar Jai chand had filed the necessary application before the

authorities and the subject Khasra numbers were included in his unit of 182 kanals of land.

- (vi) That the ex-owner Raj Kumar Jaichand had indicated the old Khasra numbers instead of new Khasra numbers which were allotted to the land in question during the settlement proceedings in the years 1979-80 B.K. That Raj Kumar Jai chand had no other land in village Toph-Sherkhania Tehsil Jammu except the subject land.
- (iv) That the ancestor of petitioners—Achroo had categorically admitted the relationship of land lord and tenant between him and the Raj Kumar Jai chand by filing an application before the Tehsildar Jammu requesting therein for effecting the correction in entries in register of khasra Girdawari for the years 1967-1977 in the quantum of rent of the subject land comprised under khasra numbers 81,82,83 and 84.
- (v) That the petitioners have now taken a belated stand during the second round of litigation to the effect that subject land was not included in the unit of 182 kanals selected by the Raj Kumar Jai chand and as such they (private respondents) are not the owners of the land in question.
- (vi) That at the time of attestation of mutation u/s 4 of Agrarian Act, the petitioner's ancestor admitted the private respondent's—ancestor as his land lord.
- (vii) That section 32 of the Agrarian Act provides that the said Act has an overriding effect on all other previous laws, therefore, no plea can be taken under BLEAA during the proceedings under Agrarian Act. That the relationship of land lord and tenant is to be determined by entry of khasra Girdawari of Kharief 1971. That admittedly Raj Kumar Jaichand was recorded as land lord of the subject land in the year 1971, therefore, no other plea is admissible. That

otherwise also Achroo –ancestor of petitioners and the original tenant has admitted the relationship of land lord and tenant between the parties to the writ petition.

- (viii) That the proceedings under the BLEAA pending, if any, have to abate as no fresh proceedings under any other Act in contravention of the Agrarian Act can be initiated.
- (ix) That as per the provisions of Section 42 of the Agrarian Act, the provisions of BLEAA so far as they are inconsistent with the provisions of Agrarian Act cease to apply and pending inconsistent proceedings before courts or revenue officers shall abate.
- (x) That the contention of the petitioners that appeal before the Respondent No.3 was filed beyond the period of limitation and the learned appellate authority decided the appeal without condoning the delay is not justified, because the appeal was filed within the period of limitation from the date of knowledge of the impugned order.
- (xi) That they i.e. private respondents obtained the knowledge of the impugned order on 09.10.2001 and the appeal was filed on 16.10.2001 when two to three days were spent in obtaining the certified copies.
- (xii) That no question of law or public importance is involved in the case. That jurisdiction under article 226 of the constitution of India may not be exercised by this court to alter the finding of facts arrived at by the J&K Special Tribunal, Agrarian Reforms Commissioner (Financial Commissioner J&K and the Tehsildar) Jammu.
- (xiii) That all the rules including the rule 21 of J&K Agrarian Reforms Rules 1977 have been complied with by the authorities concerned.
- (xiv) That Raj Kumar Jai Chand was not an income tax payer.
- (xv) That no land has been transferred by Raj Kumar Jai chand after the year 1971.

(xvi) That respondents 2 & 3 have passed the justified orders and did not violate the principles of natural justice.

(xvii) That petitioners and their ancestor were afforded sufficient opportunity of hearing and to contest the application u/s 7 of the Agrarian Act.

5. It is needful to mention that having regard to the fact of real contest between the petitioners and the private respondents 5 to 8, the respondents 2 and 3, being quasi-judicial authorities, the submission of the Ld. State Counsel made before the Court at the hearing of the case on 20.08.2024 that no counter affidavit to the petition is needed to be filed on behalf of the said official respondents was agreed with.
6. I have heard the learned counsel for the parties in respect of the matter and considered their rival contentions.
7. Perused the record of the instant petition, especially memo of writ petition, reply filed by the contesting private respondents and the copies of the orders passed from time to time by the revenue authorities as well as the learned Special Tribunal at Jammu especially the orders dated 4.7.2003, 25.05.2004 and 23.07.2020.
8. The case has really a chequered history. This multi rounded litigation dates back from the enactment of J&K, BLEAA 2007 (Svt 1950 AD) and has engaged many generations. Some laxity in addressing the issues involved in the case post enactment and enforcement of J&K BLEAA 1950 AD and J&K Agrarian Reforms Act 1976, in time and strictly as per the law with the involvement of both sides may be a cause of burning issue.

9. It has remained the stand of the ancestor of the petitioners-Ichru @ Achroo during his life time that the subject land comprised under Khasra Nos. 81,82,83 and 84 situated at the then Revenue Estate Top Sherkhinia Tehsil Jammu was under his cultivation as a tenant prior to 1950 AD.

That his landlords, Shri Rajkumar Jai Chand and his brother, Shri Rajkumar Teerath Chand, were the sons of the then “Raja” of Chenani, (now part of District Udhampur) and were owing more than 3266 kanals of land situated at different locations. That upon coming into the operation of the BLEAA, they selected their respective Units of land to the extent of 182 kanals each permissible to be retained by them under the BLEAA, with the attestation of two separate Mutations in their favour.

That the subject land was not selected by them in their Units which continued to remain under his tenancy, thus entitled him to be conferred the ownership in respect of the same in view of the Section 5 of the BLEAA. That he ran from pillar to post for getting ownership vis-a-vis subject land in terms of the provisions of Section 5 of BLEAA, but could not get justice. That meanwhile the Agrarian Act came to be legislated and enforced with effect from 13-7-1978. That being in the continued and uninterrupted tenancy of the subject land right from 1950 AD, (2007 Svt), as well as on Kharif 1971, he got qualified to be conferred with the ownership

rights vis-a-vis the same in terms of the provisions of sections 4 and 8 of the Agrarian Act.

That after approaching the authorities under the Agrarian Act, Mutation under Section 4 in respect of the subject land came to be attested in his favour. That being an illiterate and helpless person, he was not conferred with the full ownership rights with the attestation of mutation under Section 8 of the Agrarian Act, as in the meanwhile the ancestor of the private respondents, Shri Rajkumar Jai Chand, purportedly filed the resumption application which was rejected by the then Tehsildar vide his order dated 24-11-1981. The ancestor of private respondents preferred an appeal before respondent No. 3, i.e., Appellate authority, which vide order dated 9-8-1987, remanded the matter back to respondent No. 4, i.e., Tehsildar concerned, for appropriate verification and passing of orders. It is his further stand that thereafter in continuation to the attestation of the mutation under Section 4 of the Agrarian Act in his favour, the mutation under Section 8 of the Act also came to be attested in his favour, which was however assailed before the Appellate Authority, i.e., respondent No. 3, which vide order dated 24-7-2001 again remanded the matter to respondent No. 4 with the direction that the attestation of mutation under Section 8 be considered after and subject to the conclusion of resumption proceedings already remanded back.

That he, preferred a revision before respondent No. 2, i.e., the learned Special Tribunal at Jammu, assailing the second remand

order of 24-7-2001 of the Appellate Authority. That however the learned Special Tribunal vide order dated 4.2.2003 dismissed the revision while agreeing with the order dated 24-7-2001 of the Appellate Authority (respondent No. 3). It has remained the further stand of the petitioners that thereafter the legal heirs of Shri. Rajkumar Jai Chand assailed the order dated 22-2-2001 of the Tehsildar concerned, maintaining the rejection of the resumption application before the Appellate Authority, i.e., respondent No. 3, which despite the pendency of the transfer application before respondent No. 2, disposed of the appeal in a biased manner vide order dated 25-05-2004, impugned in the petition before this court.

That subsequently the challenge to the earlier impugned order of respondent No. 3 dated 25-05-2004 before respondent No. 2, i.e., Special Tribunal at Jammu, also failed through the second impugned order dated 23-7-2020.

10. The petitioners have thrown challenge to the impugned order dated 23-7-2020 of the respondent No. 2 mainly on the ground that the result of the writ petition No. 904-2010 pending before this court was not awaited; that the adjudication of the issue of the resumption, despite being kept open by all the authorities, there was no justification for directing the attestation of mutation under Section 7 of the Agrarian Act in favour of the private respondents with the direction for handing over the possession of the subject land to them, being illegal and unwarranted; that the respondent No. 4, i.e. Tehsildar concerned, twice rejected the resumption

application/form of the ancestor of private respondents as being hit by the essential requirements laid down under Section 7 of the Agrarian Act, and the issue, despite being directed to be relooked as per the remand orders, was not awaited, and the final impugned order dated 23-7-2020 came to be passed by the learned Special Tribunal by directing the attestation of the mutation and the handing over of the possession of the subject land to the private respondents, even with availing help of law enforcement agencies.

11. As hereinbefore mentioned, the contesting private respondents resisted the instant writ petition on the main grounds *inter alia*, that no substantial question of law or public importance being the *sine qua non* for invoking the revisional jurisdiction of the Jammu Special Tribunal as envisaged under the then position of law, under Section 21 (2) of Agrarian Act was involved in the matter; that the ancestor of the private respondent, Shri Rajkumar Jai Chand, had mentioned the old Khasra numbers of the estate at Top Sherkhania and had not left the subject land as alleged; that the ancestor of petitioners has all along admitted his position as a tenant of the subject land; that in terms of provisions of Section 32 of the Agrarian Act, the legislation has an overriding effect on all other laws and, therefore, no plea could have been undertaken under BLEAA during the proceedings under Agrarian Act; that Rajkumar Jai Chand was not an income taxpayer and no land has been transferred by him after the year 1971.

12. What of essence emerges from the alleged factual aspects of the case is that the issue of resumption already decided by the Tehsildar concerned by rejecting the claim for the same was not revisited and given a relook upon the remand orders dated 07-08-1997 and 24-07-2001 of the learned Appellate Authority i.e. respondent No. 3.

The respondent No. 3, i.e. the Appellate Authority, vide impugned order dated 25-05-2004, makes an observation to the effect of resolution of disputed questions by the learned Special Tribunal at page 5 of the judgment. The said Para is reproduced for ready reference:-

“Keeping in view the order of the Special Tribunal reproduced above, the first question is solved by the Spl. Tribunal that R.K Jai chand was not an income tax payee. Second question is also solved by the same order of Spl. Tribunal that Balbhader Chand had a separate family and his income cannot be taken into account in the instant case. Regarding third question, the right of resuming the land granted by the statue accrued to R.K Jai Chand on the date of filing the resumption application.”

However, a perusal of order dated 4-2-003 of the learned Special Tribunal (respondent No. 2), inter alia, reads that, *“further, it is mandatory that the mutation under Section 8 should be attested after decision of the resumption application under Section 7, but it is on record that while resumption application was pending, mutation under Section 8 was attested in this case”*.

13. The petitioners have also pleaded in the instant writ petition that respondent No. 3 allowed the appeal through impugned order dated 25-5-2004 without deciding the question of limitation, as the appeal was grossly time-barred.
14. The contention of the contesting private respondents that their ancestor Rajkumar Jai Chand selected the subject land also in his unit of 182 kanals by mentioning the old khasra numbers, does not sound well, because had the same been done, the subject land would have been covered under the mutation already affected in terms of the provision of section 4 of the BLEAA.

Section 7 of the Agrarian Act, which lays down the law regarding “the Resumption for bonafide personal cultivation” by ex-landlord, prescribes various prerequisite qualifications and the issue of resumption does not seem to have been properly addressed by the authorities. Vide orders dated 7-8-1997 and 24-7-2001, the appellate authority remanded the matter for fresh enquiry in respect of entitlement of resumption. The order dated 22-2-2001 passed by the Tehsildar concerned is alleged by private contesting respondents as predated. The impugned orders have conspicuously deliberated upon the orders dated 24.11.1981 and 22-2-2001 purported to have been passed by the Tehsildar concerned while rejecting the resumption application/form. The copies of the said orders are not also placed on the record file. It is reiterated that the issue of resumption needs to be properly adjudicated upon, in the light of

law regulating the said issue. The court has gone through the case law relied upon by both the sides.

The impugned orders seem to be suffering from arbitrariness. Principles of natural justice do not seem to have been observed in spirit by the authorities while dealing with the rival claims/contentions.

The matter needs to be revisited on the *facto legal* basis while keeping in mind the basic objects of Agrarian Act providing for transfer of land to tillers and right for Resumption under some justified circumstances.

The Agrarian Act was passed to transfer land ownership to actual cultivators, abolish absentee landlordism, set strict ceilings on land holdings, and ensure better, more productive utilization of agricultural land in the erstwhile State of Jammu and Kashmir.

Under the scheme of Agrarian Act, Resumption is not an absolute right; it is bound by severe conditions to ensure that provision is not exploited to evict tillers unfairly.

15. For the foregoing discussion, the court in exercise of its extraordinary writ jurisdiction vested in it under the provisions of Article 226 of the Constitution of India is of the opinion that it may meet the ends of justice in case the impugned orders dated 25-5-2004 and 23-7-2020 respectively passed by respondent No. 3 and 2 are set aside and the matter is remanded back to the respondent No. 3, i.e. the Appellate Authority, (Financial Commissioner with powers of Agrarian Commissioner at Jammu), for fresh adjudication

of the appeal bearing file number 304 instituted on 16-10-2001 titled “*Kanta Kumari and another versus Ram Lal and others*”, in accordance with the law and the observations made by this court after hearing the learned counsel for both the parties in detail. The learned appellate authority shall bring on record the legal heirs of the deceased parties, if any, on both the sides upon due verification. It is also felt to meet the ends of justice in case pending fresh adjudication of the appeal by respondent No. 3 as hereinbefore opined; status quo is directed to be maintained with respect to the subject land.

16. ***It is accordingly ordered.***

17. The parties shall appear before the Court of respondent No. 3 at Jammu on 10th of September, 2026.

18. The scanned record from the learned authorities below shall be sent back along with copies of this order.

19. **Disposed of.**

(Mohd Yousuf Wani)
Judge

Srinagar:
14.08.2026.

“Ayaz”

Jt. Registrar/Secretary

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|-----|---|--------|
| i) | Whether approved for reporting. | Yes/No |
| ii) | Whether the judgment/order is speaking. | Yes/No |