Serial No.18
Regular Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

LPAOW 119/2015
IA(1/2015[01/2015])

MOHAMMAD HUSSAIN WANI.

…Appellant/Petitioner(s)

Through: Mr. M. Y. Bhat, Sr. Advocate with
Ms. Urba Nazir, Advocate and
Mr. Sajid Ahmad, Advocate.

Vs.

SPECIAL TRIBUNAL AND OTHERS (AGRARIAN).

...Respondent(s)

Through: Mr. Vaseem Aslam, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER
12.11.2026

01. This intra-court appeal, preferred by the appellants in terms of Clause 12 of the Letters Patent, arises from the judgment and order dated 9th of June, 2015, passed by a learned Single Judge of this Court [("the Writ Court")] in OWP No. 1855 of 2013, titled *Mohammad Ramzan Wani vs. J&K Special Tribunal & Others*. By virtue of the judgment impugned, the Writ Court has dismissed the writ petition filed by the predecessor-in-interest of the appellants and upheld the order impugned passed by the J&K Special Tribunal, as well as the order passed by the Commissioner Agrarian Reforms (Additional Deputy Commissioner, Anantnag).

02. Briefly stated, the facts leading to the filing of the instant appeal are that one Brij Lal was the recorded owner of land measuring 5 Kanals and 6 Marlas, falling under Survey No. 2205, situate at Tehsil Verinag (hereinafter referred to as "the subject land"). As per the revenue records, the subject land was in the cultivating possession of one Rasool, the father of respondents 4 and 5 (the private respondents) during Kharif 1971, and remained so from Kharif 1970 through Kharif 1980. However, in the year 1980, the deceased predecessor-in-interest of the appellants came to be recorded as a tenant over the subject land.

03. The records further reveal that on 30th of November, 1982, an agreement under Section 12 of the J&K Agrarian Reforms Act, 1976 (hereinafter referred to as "the Act") was executed between the erstwhile owner, Brij Lal, and the predecessor-in-interest of the present appellants, whereby the landlord was shown to have surrendered his ownership rights over the subject land in favor of the latter. The said agreement was attested by the Tehsildar Agrarian Reforms, Qazigund.

04. Pertinently, the aforesaid agreement under Section 12 of the Act was attested prior to the attestation of any mutation under Section 4 of the Agrarian Reforms Act. Subsequently, vide Mutation No. 1870, the subject land came to be vested in the State by operation of Section 4 of the Act, reflecting the predecessor-in-interest of the appellants as the prospective

owner. This was followed by the attestation of Mutation No. 2460 under Section 8 of the Act, thereby conferring ownership rights upon the predecessor-in-interest of the appellants.

05. Aggrieved thereof, the private respondents assailed both mutations before the Additional Deputy Commissioner, Anantnag (exercising the powers of Commissioner Agrarian Reforms), who, vide order dated 12th of November, 2007, set aside both mutations and remanded the matter to the Tehsildar concerned for conducting a *de novo* inquiry and passing fresh orders in accordance with the provisions of the Act of 1976 and the rules framed thereunder.

06. In compliance with the remand directions issued by the Appellate Authority,(Additional Deputy Commissioner, Anantnag) the Tehsildar, Dooru, attested a fresh mutation bearing No. 3159 dated 31st of October, 2008, under Section 4 of the Act, in favor of the private respondents. The predecessor-in-interest of the appellants challenged the said mutation by way of an appeal before the Additional Deputy Commissioner, Anantnag (with the powers of Commissioner Agrarian Reforms), which came to be dismissed vide order dated 25th of September, 2009, thereby upholding the order on Mutation No. 3159 dated 31st October 2008, passed by Tehsildar Dooru in respect of the subject land.

07. A revision petition thereafter preferred by the predecessor-in-interest of the appellants before the J&K Special Tribunal,

challenging the orders dated 12th of November, 2007, and 25th of September, 2009, passed by the Additional Deputy Commissioner, Anantnag, as well as the order dated 31st of October, 2008, passed by the Tehsildar also met the same fate and was dismissed vide order dated 28th of November, 2013.

08. Feeling aggrieved and dissatisfied with the order passed by the Special Tribunal, the predecessor-in-interest of the appellants invoked the extraordinary writ jurisdiction of this Court through OWP No. 1855 of 2013, which came to be dismissed by the Writ Court in terms of the judgment impugned in the present Letters Patent Appeal.

09. The Writ Court dismissed the writ petition filed by the predecessor-in-interest of the appellants primarily on the ground that, as borne out from the revenue records, the father of the private respondents was recorded as the cultivating tenant of the subject land continuously from Kharif 1970 until his demise in 1980, thereby establishing that the private respondents were the tillers cultivating the land personally in Kharif 1971. Consequently, the Writ Court concluded that the private respondents, having acquired a vested right to be conferred with proprietary rights over the subject land, could not be divested of the same through the subsequent taking over of possession of the subject land by the predecessor-in-interest of the appellants by manipulating the provisions of the Act. Furthermore, the Writ Court returned a clear and

categorical finding that the predecessor-in-interest of the appellants was neither in actual physical cultivation of the subject land in Kharif 1971, nor was the mandatory procedure prescribed under Rule 4 of the J&K Agrarian Reforms Rules, 1977, adhered to for effecting the correction of the *Khasra Girdawari* entry of Kharif 1971.

10. The impugned judgment is assailed by the appellants herein primarily on the ground that the Writ Court has failed to appreciate that the subject land was recorded as *banjar* (unculturable/barren) in *Kharif* 1971, and therefore, neither the private respondents nor anyone else could have cultivated the same personally during that period. It is further contended by the learned counsel for the appellants that the revenue authorities failed to appreciate that in the absence of payment of any rent by the private respondents as reflected in the revenue entry '*bila lagan bawajah banjar*' the relationship of landlord and tenant had not come into existence, thereby disentitling the private respondents from claiming the benefit of Sections 4 and 8 of the Jammu and Kashmir Agrarian Reforms Act, 1976.

11. It is contended by the learned counsel for the appellant that the subject land was in the cultivating possession of the father of the private respondents in *Kharif* 1971, which is the statutory cut-off date mentioned in the Act for giving effect to its provisions and thereby conferring ownership rights on the

tillers found in cultivating possession of the land of the landlords in Kharif 1971. It is also not in dispute that the subject land remained in the possession of the father of the private respondents till the year 1980, when suddenly the name of the predecessor-in-interest of the appellants emerged in the revenue record as a tenant in cultivating possession.

12. With a view to transferring the land covered by the Act, the erstwhile landlord, Brij Lal, and the predecessor-in-interest of the appellants entered into a deal and, in the first instance, executed an agreement purportedly under Section 12 of the Agrarian Reforms Act. As per this purported agreement, the landlord Brij Lal surrendered and relinquished all his ownership rights in favour of the predecessor-in-interest of the appellants. This was a procedure totally unknown to law. Needless to say that, an agreement under Section 12 of the Agrarian Reforms Act can only be entered into between an ex-owner" and a "prospective owner," and that too solely with respect to the payment of an agreed amount or for admitting the apportionment of the land between themselves in an agreed manner. The expression "ex-owner" of the land used in Section 12 presupposes the prior attestation of a mutation under Section 4 of the Act.

13. In the instant case, following the private agreement entered into between the landlord Brij Lal and the predecessor-in-interest of the appellants, a mutation under Section 4 came to

be attested in favour of the father of the appellants by deeming him to be in cultivating possession as a tenant in *Kharif* 1971. This was followed by a mutation attested under Section 8 of the Act conferring ownership rights upon the appellants. If we were to accept the argument of the learned counsel for the appellants that the land was *banjar* (unculturable) in the year 1971, it remains unexplained as to how the predecessor-in-interest of the appellants could simultaneously be shown as a tiller in cultivating possession in Kharif 1971.

14. That apart, if it was the case of the appellants that they were in cultivating possession of the subject land in *Kharif* 1971 as tenants under Brij Lal, bent the revenue record failed to reflect the same, it was incumbent upon them to raise this objection before a Revenue Officer not below the rank of Tehsildar at the time of the attestation of mutation under Section 4. Such an objection, if raised, was required to be dealt with by the concerned Revenue Officer by strictly following the procedure laid down in Rule 4 of the Jammu and Kashmir Agrarian Reforms Rules, 1977. The Rule 4 clearly provides for granting of an opportunity of being heard to all stakeholders, particularly the landlord and the person whose name is already recorded as a tenant in cultivating possession of the subject land. Obviously, this did not happen in the present case; instead, the Section 4 mutation was straightaway attested by the Revenue Officer showing the predecessor-in-interest of

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the appellants in cultivating possession of the subject land in *Kharif* 1971, followed by the conferment of ownership rights via mutation under Section 8 of the Act. Both of these mutations were rightly set aside by the Appellate Authority as well as the Jammu and Kashmir Special Tribunal.

15. Needless to say, following the dismissal of the revision petition by the Tribunal, the matter was reconsidered by the Tehsildar on remand. On the basis of the *Khasra Girdawari* entry of *Kharif* 1971, the mutation under Section 4 was attested in favour of the private respondents. This mutation also became the subject matter of challenge before the Appellate Authority, namely the Commissioner Agrarian Reforms, Anantnag. The said mutation was upheld not only by the Commissioner Agrarian Reforms but also by the Jammu and Kashmir Special Tribunal, which dismissed the revision petition filed by the predecessor-in-interest of the appellants.

16. It was in these circumstances that the matter came to be considered by the Writ Court. Having regard to the concurrent findings of fact returned by all the revenue authorities right from the Tehsildar upto the Jammu and Kashmir Special Tribunal, the Writ Court found no merit in the writ petition filed by the appellants.

17. We also see no reason or justification to take a view different from the one taken by the Writ Court. We concur with view

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taken and findings of fact returned by the Writ Court, and find no merit in this appeal. The appeal is, accordingly, ***dismissed***.

(MOHD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
12.11.2026
"Shaista-PS"

Whether the order is speaking *Yes/No*
Whether the order is Reportable *Yes/No.*

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