Item No.50
Regular List

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

OWP No.116/2015

MST. RAJI

...PETITIONERS/APPELLANT(S)

Through: - Mr. Mir Majid Bashir, Advocate.

Vs.

FINANCIAL COMMISSIONER & ORS. ...RESPONDENT(S)

Through: - None.

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

ORDER(ORAL)
19.11.2026

1) The petitioner, through the medium of present petition, has challenged order dated 02.05.2011 passed by the Divisional Commissioner, Kashmir, and order dated 31.12.2014 passed by the Financial Commissioner, Revenue, Srinagar.

2) It appears that mutation No.383 in respect of estate of deceased Baju Gojar was attested on 07.06.1972 in favour of his daughter, Mst. Raji (the petitioner herein), as Khana Nisheen daughter. It was shown in the mutation order that at the time of its attestation, wife of Baju, namely, Noora, and her daughter from second marriage, namely, Sakhian, were present on spot and they had expressed their no objection to the attestation of mutation.

3) Respondents No.5 and 6, who happen to be the sons of Mst. Sakhian, after her death, filed an appeal before the

Additional Deputy Commissioner, Bandipora, on 29.03.2007, assailing mutation No.383 dated 07.06.1972. Along with the appeal, they also filed an application seeking condonation of delay in filing the appeal. The learned Additional Deputy Commissioner, vide his order dated 22.11.2009, proceeded to dismiss the appeal on the ground that the same is hopelessly barred by limitation and that the impugned mutation had been attested on spot when mother of the appellants was present at the relevant time and that she had appended her thumb impression on the mutation order.

4) It seems that respondents No.5 and 6 filed a review petition against the aforesaid order before the Additional Deputy Commissioner, Bandipora. Along with the review petition, they placed on record a copy of the death certificate in respect of Sakhian Begum reflecting her date of death as 04.01.1972. It was contended by the review petitioners that as on the date of attestation of mutation, Sakhian Begum had died, therefore, it was not possible for her to be present on spot at the time of attestation of mutation, thus, the whole proceedings are fraudulent in nature. The Additional Deputy Commissioner, Bandipora, vide his order dated 19.04.2010, dismissed the review petition on the ground that the same is time barred.

5) Respondents No.5 and 6 filed a revision petition against both orders dated 22.11.2009 and 19.04.2010 passed by the Additional Deputy Commissioner, Bandipora, before the Divisional Commissioner, Kashmir, who, vide order dated 02.05.2011, accepted the revision petition by holding that the impugned orders have been passed against the express provisions of law. The delay in filing the revision petition was condoned and a recommendation was made that the impugned orders passed by the Additional Deputy Commissioner be set aside. A reference was made to Financial Commissioner, Revenue, with the recommendation to quash the impugned orders and remand the case to Tehsildar concerned for fresh enquiry as per law.

6) The learned Financial Commissioner vide impugned order dated 31.12.2014 accepted the recommendation of the Divisional Commissioner and set aside the orders passed by Additional Deputy Commissioner together with the order dated 07.06.1972 passed in mutation No.383 of Estate Alosa, Bandipora. The case was remanded to Tehsildar, Bandipora, for enquiry and passing of fresh orders in accordance with Muslim Personal Law as per the procedure laid down in Standing Order 23-A.

7) The petitioner has challenged the impugned orders passed by the Financial Commissioner and the Divisional

Commissioner on the grounds that there was no perversity in the order passed by the Additional Deputy Commissioner, Bandipora, who had rightly rejected the application for condonation of delay and dismissed the appeal of respondents No.5 and 6 that had been filed after a gap of 35 years without any plausible explanation. It has been contended that the Divisional Commissioner, by a cryptic order, has proceeded to recommend setting aside of the orders passed by the Additional Deputy Commissioner as also the mutation order dated 07.06.1972. It has been contended that it was not open to the Financial Commissioner to accept the document relating to date of death of Sakhian Begum, which had been produced at a belated stage, authenticity of which is highly debatable.

8) I have heard learned counsel for the petitioner and perused record of the case.

9) As already stated, as per mutation order dated 07.06.1972, copy whereof is on record, the same appears to have been passed in presence of Mst. Sakhian, the predecessor-in-interest of the private respondents. It bears thumb impression of Mst. Sakhian in token of her presence on spot. The mutation has been attested at the camp office, on spot. If it is shown that the predecessor-in-interest of the private respondents was present on spot at the time of

attestation of the mutation and that she had consented to the same, the private respondents are precluded from challenging the same after a period of 35 years when Mst. Sakhian has not challenged the said mutation during her lifetime. However, the private respondents, while filing review petition before the Additional Deputy Commissioner, Bandipora, have produced on record a copy of the certificate of death issued by Registrar, Deaths and Birth, Government of Jammu and Kashmir, which shows that Sakhian had died on 04.01.1972. However, a closer look at the death certificate shows that the particulars of death have been registered on 08.02.2010, which is more than 38 years after her date of death.

10) As per sub-section (3) of Section 13 of the Registration of Births and Deaths Act, any birth or death, which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of first class after verifying the correctness of the birth or death. It is not clear from the perusal of the death certificate placed on record by the private respondents before the Additional Deputy Commissioner, Bandipora, at the time of filing review petition or before the Financial Commissioner, that the same has been issued under the directions of the Magistrate after verification of the correctness of the death of Mst. Sakhian

Begum. In the absence of any such material, it was not open to the Financial Commissioner to rely upon the said certificate. The fact that the death particulars of Mst. Sakhian have been registered well after the litigation between the parties had started with the filing of appeal by the private respondents before the Additional Deputy Commissioner in the year 2007 makes the certificate of death produced by private respondents highly doubtful. Therefore, the Financial Commissioner, by relying upon the contents of the death certificate produced by the private respondents, has landed himself into a grave error. It was incumbent upon the Financial Commissioner to verify the authenticity and veracity of the particulars recorded in the certificate of death before placing reliance upon it.

11) In the absence of any contemporaneous record, a certificate of death, which has been prepared after 38 years of the death of the concerned person, lowers its immediate evidentiary weight and triggers stricter verification. In the property/inheritance cases, the delayed recording of particulars of death raise doubts. Therefore, it was incumbent upon the Financial Commissioner to get the underlying facts verified properly before placing reliance upon the said death certificate. The Financial Commissioner by relying solely upon the delayed certificate when the date

of death of Sakhian was contested by the petitioners, independent evidence of actual date of death of Mst. Sakhian was required. However, the Financial Commissioner has blindly relied upon the death certificate. This act of the Financial Commissioner is not in accordance with law.

12) For what has been discussed hereinabove, the impugned orders passed by the Financial Commissioner as also by the Divisional Commissioner are set aside and the matter is remanded to the Financial Commissioner with the direction to enquire into the veracity of the particulars of death of Mst. Sakhia Begum recorded in the death certificate produced by the private respondents before the said forum, whereafter a fresh decision shall be taken by the said authority in accordance with law. Needless to mention that the Financial Commissioner shall serve a notice upon the contesting parties before proceeding to hold the enquiry.

(Sanjay Dhar)
Judge

SRINAGAR
19.11.2026
"Bhat Altaf-Secretary"

Whether the **Order** is speaking: **YES**
Whether the **Order** is reportable: **YES/NO**