

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

OWP 1497/2015

Ali Mohammad Mir and Ors.

..... Petitioner(s)

Through: Mr. Rizwan Ul Zaman, Advocate with
Ms. Huda Advocate

V/s

State of J&K and Ors.

.....Respondent(s)

Through: Mr. Arif Javaid Khan, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

ORDER
15.02.2024

ORAL:

01. Aggrieved by an order dated 14th August, 2015, passed by Jammu and Kashmir Special Tribunal, Srinagar [“the Tribunal”] ,in a revision petition titled “*Ali Mohammad Mir and Others Vs. Smt. Meenakshi and Another*”, the petitioners are here before this Court invoking extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India. The dispute between the parties pertains to the land measuring 5 Kanals falling under Khasra No. 1513 of village Bidder Hayatpora [“the subject land”], which as per Khasra Girdawari entry of Kharif 1971, was recorded in personal cultivation of the owners.

02. In the year 1987, father of petitioners, Late Mohammad Abdullah Mir, approached Tehsildar Kokernag with a request of correction of entry of

Khasra Girdawari of Kharif 1971, so as to show the applicant in actual cultivating possession of the subject land as a tiller thereof in Kharif 1971. The matter was considered by the Tehsildar concerned who, by passing a composite order on 25th December, 1987, on Mutation No. 1352/1, corrected the Khasa Girdawari entry of Kharif 1971, and simultaneously attested a Mutation under Section 4 of the Jammu and Kashmir Agrarian Reforms Act, 1976 [“the Act”]. The father of the petitioners was recorded as the prospective owner. The Mutation attested under Section 4 of the Act was followed by Mutation No. 1460 dated 27th December, 1989, attested under Section 8 of the Act. The respondent No.6 claiming to be daughter of Omkar Nath Koul, a co-sharer in the subject land, filed a composite appeal under Section 21(1) of the Act against the order dated 25th December, 1987, passed on Mutation No. 1352/1 attested under Section 4 and order dated 27th December, 1989, passed on Mutation No. 1460 under Section 8 of the Act.

03. The Commissioner Agrarian Reforms, the Appellate Authority, accepted the appeal and set aside both the mutations on the ground that the mutation attested under Section 4 of the Act had been allocated a divisible serial number, which as per standing order 23-A was not permissible. This was done by the Appellate Authority vide its order dated 16th December, 2014.

04. Feeling aggrieved, the petitioners herein preferred a revision petition before the Tribunal. The Tribunal concurred with the view taken by the Appellate Authority that Mutation No. 1352/1, attested under Section 4 of the Agrarian Reforms Act, was manipulated and that only Shyam Lal Koul, was wrongly shown as owner of the entire 5 Kanals of land, whereas

the other co-owners were neither indicated as owners nor were heard in the matter. The revision petition filed by the petitioners was thus rejected vide order impugned dated 14th August, 2015, passed by the Tribunal.

05. Impugned order is assailed by the petitioners on multiple grounds. However, the two grounds which were pressed into service by Mr. Rizwan Ul Zaman, learned counsel for the petitioners, are as follows:

- (i) That both the forums below did not consider and decide the issue of locus standi of the respondent No.6 in filing appeal before the Appellate Authority.
- (ii) That a huge delay of 37 years was mechanically condoned by the Appellate Authority.

06. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the orders passed by the Appellate Authority, as well as the Tribunal, are not wholly incorrect. Indisputably, as per the recorded position in the revenue records, the owners, Shambu Nath and others, are recorded owner in personal cultivation through one Nand Lal in Kharif 1971.

07. That being the recorded position, the land was not amenable to be vested in the State by operation of Section 4 of the Act. Section 4 of the Act comes into action only when an owner of land, as defined under the Agrarian Reforms Act, is found not in cultivating possession in Kharif 1971. Under the Agrarian Reforms Act and the Rules framed thereunder, there is presumption about the correctness of the Khasra Girdawari entries, and the person who disputes such entry/entries has to demonstrate by leading

evidence to the contrary. In the inquiry that is required to be conducted by a Revenue Officer not below the rank of Tehsildar in terms of Rule 4 of the Jammu and Kashmir Agrarian Reforms Rules, 1976, all stakeholders, in particular, the person who is recorded in personal cultivation in Kharif 1971, is required to be put on notice and given an opportunity to contest such application seeking correction of Girdawari entry.

08. In the instant case, as is apparent from reading of mutation under Section 4, there is no detailed inquiry in the matter conducted. The correction of the entry has been made and consequent mutation under Section 4, has been attested in the presence of one Sham Lal who is not the exclusive owner of the subject land nor was he in cultivating possession in Kharif 1971. Shyam Lal Koul, as is forthcoming from the affidavit placed on record by the petitioner is one of the co-sharer who had entered into an illegal deal with the petitioners for the transfer of land and with a view to give it legal shape became party to the mode devised by Tehsildar for transferring the land in favour of the petitioners by attesting mutations under Section 4 and 8 of the Agrarian Reforms Act.

09. From the perusal of the mutation under Section 4, it clearly transpires that no co-sharer other than Shyam Lal Koul were present at the time of attestation of mutation. There is nothing on record to show that they were ever put on notice before correction of entry/entries of Girdawari Kharif 1971 and attestation of mutation under Section 4. The Section 4 mutation, as stated above, was followed by a mutation under Section 8 attested in December 1989. In the year 1990 the mass exodus of Kashmir Pandits from the valley took place and in the then prevailing law and order situation, they had to leave their home and hearth. It is in these

circumstances the other owners/co-sharers, who were recorded in personal cultivation in Kharif 1971 could not know about the attestation of mutation and file an appeal within time. All these aspects have been taken into consideration by both the courts below to come to the conclusion that there was sufficient cause which prevented the respondent No.6 from filing appeal/appeals within the limitation prescribed under the Act.

10. On merits suffice it to say, that Khasra Girdawari entry made in the name of a person cannot be unilaterally changed or altered without affording such person an opportunity of being heard. At this juncture, I deem it appropriate to set out Rule 4 of the J&K Agrarian Reforms Rules, 1976, which reads thus:-

4. Disputes relating to girdawari entries. —(1) Where, in the course of attestation of mutations under Chapter IV, any party objects to the correctness of an entry in the khasra girdawari (whether made under the earlier rules or Standing Order No. 22), a Revenue Officer, not below the rank of Tehsildar, shall, subject to the provisions of sub-rules (2), (3) and (4) and after giving an opportunity of being heard to all the concerned, conduct an enquiry on spot in respect of such mutation and give his finding thereon either confirming the impugned entry or indicating what entry should be made.

(2) Where the impugned entry mentioned in sub-rule (1) has been made by or under the order of a Tehsildar or a Revenue Officer of a higher class, the Tehsildar disposing of a mutation under Chapter IV shall act on the basis of such entry, it being open to the party aggrieved by it to object to

the entry in an appeal against the final order passed on such mutation.

(3) Where, in the course of enquiry under the foregoing sub-rules, objection raised against an entry relating to personal cultivation is admitted by the party in whose favour such entry is made, the Revenue Officer shall, before accepting such objection and admission, record his finding and the reasons therefore that such objection and admission are not a device to defeat the provisions relating to restrictions on alienation of land provided by the Act. 7

(4) Nothing herein contained shall empower any Revenue Officer to pass, or to act upon any order directing an entry relating to rent otherwise than in accordance with the provisions of the Jammu and Kashmir Tenancy Act, Samvat 1984.

11. From plain reading of Rule 4 it would come out clearly that disputes relating to Girdawari entries raised in the course of attestation of mutations under clause IV of the Act can be corrected by the Revenue Officer not below the rank of Tehsildar, however the same can only be done after conducting an inquiry on spot and providing an opportunity of being heard to all the concerned. All the concerned would necessarily include the owner/owners and the person/persons who is/are recorded in personal cultivation of the land in the particular Girdawari entry or are otherwise likely to be adversely affected by change or alteration of the Girdawari entry. Not only that the Revenue Officer is required to conduct an inquiry, but he is also required to return his findings either in support of confirming

the impugned entry or indicating what entry should be made. However, when an entry objected to by a party is corrected in terms of Rule 4 (1) by a revenue officer higher in rank than a Tehsildar, then the Tehsildar disposing of mutations under clause IV of the Act shall abide by such corrected/altered entry. The remedy to challenge the correction of entry under sub-rule (1) of Rule 4 is to object such correction when aggrieved person files an appeal against final order passed on such mutations. In the instant case, the whole procedure laid down in Rule 4 was thrown to the wind by the Tehsildar concerned.

12. For the aforesaid reasons, I find that the mutations attested under Section 4 and 8 of the Act in favour of the petitioners are not sustainable in law and have been rightly set aside by the two forums below. However, I am not in agreement with the direction of the Appellate Authority remanding the matter to the District Magistrate, Anantnag, for a *de novo* inquiry under the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress sales) Act, 1997 [“ Act of 1997”]. As a matter of fact the matter, in the given facts and circumstances, is required to be remanded to the Tehsildar concerned for the *de novo* inquiry and for attestation of fresh mutations after taking all the stakeholders on board in particular the owners of the property and the persons shown in personal cultivation of the subject land in Kharif 1971 and the petitioners herein. It is only if, after considering the matter *de novo*, the Tehsildar comes to a conclusion that no case is made out by the petitioners for correction of Girdawari entry, he shall proceed to evict the unauthorised occupants by having resort to the provisions of the Act of 1997.

13. Let the Tehsildar initiate a fresh inquiry in the matter within a period of four weeks from the date a copy of this order is served upon him and conclude the same as early as possible preferably within a period of four months. Till the fresh inquiry as directed above is concluded by the Tehsildar there shall be status quo with regard to the subject property.

14. The petition is, accordingly, **disposed** of.

**(SANJEEV KUMAR)
JUDGE**

SRINAGAR:

15.02.2024

"Mir Arif"

- | | | |
|------------|---|------------|
| <i>i.</i> | <i>Whether the order is reportable?</i> | <i>Yes</i> |
| <i>ii.</i> | <i>Whether the order is speaking?</i> | <i>Yes</i> |

