

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

**OWP No. 1425/2017**

Mst Khalida ...Petitioner(s)  
Aged about 55 years  
W/o Ghulam Mohi ud Din Sofi,  
R/o Safakadal, Srinagar.

Through: Mr. R. A. Jan, Sr. Advocate with  
Mr. Suhail Mehraj, Advocate

**Vs.**

1. Financial Commissioner (Revenue), J&K at Srinagar. ...Respondent(s)
2. Collector Defence Land (Acq)  
Deputy Commissioner, Srinagar.
3. Collector/Additional Deputy Commissioner,  
Budgam.
4. Tehsildar Budgam.
5. Mohammad Ramzan Ganai (Doom)  
S/o Mohammad Ganai (Doom)  
R/o Dharambugh, (Kralpora),  
Tehsil Chadoora, District Budgam.

Through: Mr. N. A. Kuchai, Advocate for R 5

**CORAM:**

**HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**

25.04.2024

**(ORAL)**

1. In the instant petition filed under Article 226 of the Constitution, the petitioner herein has called in question order dated 12.09.2017 (for short the impugned order) passed by the Financial Commissioner (Revenue) respondent 1 herein (in revision petition titled as "Mst. Khalida Vs. Mohd Ramzan Gaine (Doom)")
2. Facts giving rise to the filing of the instant petition are that mutation No. 5233 dated 13.08.1996 pertaining the land measuring 3 kanals 5 marlas covered survey no. 1410 and land measuring 15 marlas covered under survey No. 1267 situated in estate Karewa Damodhar, Budgam came to be attested in favour of the petitioner herein while

the said mutation came to be assailed by the respondent 5 herein in an appeal on 16.01.2013 before the Collector/Additional Deputy Commissioner Budgam on the ground that the said mutation had been attested against law and facts on the basis of an oral gift alleged to have been made by the appellant in favour of the respondent. The said appeal being time barred was accompanied with application for condonation of delay filed under Section 5 of the Limitation Act, which application for condonation of delay came to be allowed on 18.04.2015, where after the appeal came to be decided by the appellate authority in terms of order dated 29.07.2015 and while allowing the same held that the mutation in question stands attested in contravention of the standing Order No. 23-A which governs the mechanism for attestation of mutations, besides holding that the mutation in question is contrary to law and facts and consequently the appellate authority remanded the case to the Tehsildar Budgam respondent No. 4 herein with a direction to conduct an enquiry and pass appropriate orders for rectification of the record.

3. Aggrieved of order dated 29.07.2015, the petitioner herein being respondent in the appeal filed a revision petition before the Financial Commissioner (Revenue) i.e. respondent 1 herein on 20.08.2015 challenging the said order dated 29.07.2015 inter-alia on the grounds that the impugned order has been passed against the facts and law declared on the subject by the High Court as well as by the Supreme Court and that at the time of attestation of the mutations in question, the respondent herein was present and the delivery of possession of land in question in favour of the petitioner herein have had been affirmed by receipt of rentals and compensation by the petitioners herein from the competent authority.
4. The revision petition came to decide by the respondent 1 herein on the basis of respective pleadings of the parties as also the record available and respondent 1 in terms of the impugned order though allowed the same qua setting aside of the order impugned passed by the appellate forum yet, simultaneously set-aside the mutation No. 5233 dated 13.08.1996 on the premise that the said mutation have had been attested in contravention of the Section 31 of the Agrarian Reforms

Act, 1976 (which Section on the date of attestation of mutation was in place having however, been omitted in the year 1997) which Section inter-alia prohibited the alienation of land covered under Agrarian Reforms Act, 1976 either by act of the parties or a decree or order of the Court or of a revenue officer.

The petitioner herein has assailed the impugned order to the said petition on the grounds urged in the petition.

5. **Counter affidavit** to the petition been filed by respondent 5 wherein petition is being opposed on the premise that mutation in question have had been attested at his back and that no oral gift had been made by respondent in favour of the petitioner on the basis of which the mutation in question had been attested which mutation in fact had been managed by the petitioner herein fraudulently without any right and that land in question have had been requisitioned by the Ministry of Defense, Government of India, in early 1960s and that the petitioner have had managing receipt of 80% of the Award amount passed in respect thereof as compensation and that the appellate forum rightly entertained the time barred appeal and validly set-aside the mutation in question while holding that said mutation to have been attested in contravention of provisions of law admitting that the said order of appellate forum came to be set-aside by respondent 1 herein upon having been challenged by the petitioner herein in a revision petition as also admitting that the mutation in question came to be set-aside very rightly by the respondent 1 on the premise of being violative of Section 31 of Agrarian Reforms Act 1976.

**Heard counsel for the parties and perused the record.**

6. Before advertent to the rival contentions of appearing counsel for the parties, it is deemed appropriate hereunder to refer to Section 15 of the J&K Land Revenue Act, 1996, herein being relevant and germane to the controversy: -

**15. Power to revise orders.—**

- (1) The Financial Commissioner may at any time call for the record of any case pending before or disposed of by any Revenue Officer under his control.

(2) The Divisional Commissioner may call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him.

(3) If in any case in which, the Divisional Commissioner has called for a record he is of opinion that the proceedings taken or order made should be modified or revised he shall report case with his opinion thereon for the orders of the Financial Commissioner.

(4) The Financial Commissioner may, in any case called for by him under sub-section (1) or reported to him under sub-section (3), pass such order as he thinks fit:

Provided that, he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate officer affecting any question of right between private persons without giving those persons an opportunity of being heard.

A bare perusal of the provisions of Section 15 Supra would tend to show that the said power is exercisable by both the Financial Commissioner (Revenue) as well as the Divisional Commissioner, however insofar as the exercise of such power by Financial Commissioner (Revenue) under sub section (1) or (3) the said power is to be exercised with a caveat incorporated in the proviso appended to Section 15 supra which in explicit terms provide that the Financial Commissioner shall not under the Section pass an order reversing or modifying any proceedings or order of a subordinate officer affecting any question of right between private persons without giving those persons an opportunity of being heard.

7. Keeping in mind the aforesaid position of law and reverting back to the case in hand, perusal of the record indisputably tends to show that admittedly the case setup by the respondent herein before appellate forum against the mutation in question was that the said mutation have had been attested against law and facts and the appellate forum having regard to the case setup before it accordingly, while deciding the appeal held the mutation to have been attested in contravention of law and facts and consequently set-aside the same in terms of order dated 29.07.2015.
8. It is also an admitted fact that the said order of appellate forum came to be questioned by the petitioner herein before respondent 1 herein qua the findings and observations recorded and made by the appellate

forum in the impugned order on the premise that the mutation in question have had been attested in accordance with law and in presence of the respondent herein and the respondent 1 herein admittedly while deciding the revision petition on the basis of the respective pleadings of parties as also the record available before him held the mutation to have been attested in accordance with law and in presence of the respondent herein and however, while exercising a suo-moto revisional power set-aside the mutation in question on the ground of applicability of Section 31 of the Agrarian Reforms Act, 1976 without framing any issue thereof and without affording opportunity of hearing of the parties in general and the petitioner herein in particular being a party likely to be affected by setting-aside of the mutation in question.

9. Though there is no dispute qua the suo-moto power of revision available to the Financial Commissioner in a particular case, yet, it cannot be lost sight of that such power, as has been noticed in the preceding paras is to be exercised subject to a caveat that in the course of exercise of such power, a proceeding or an order affecting any right of a party would get reversed or modified the party to be effected had to be provided an opportunity of hearing.

In the instant case the Financial Commissioner has made a complete departure while exercising suo-moto revisional power in the matter while setting-aside the mutation in question attested in favour of the petitioner herein without providing an opportunity of hearing to the parties.

10. The aforesaid exercise of power by the Financial Commissioner qua setting-aside the mutation in question thus, cannot but, be said to be an flagrant violation of principles of natural justice.

In the aforesaid backdrop, a reference to the judgement of the Apex Court passed incase titled as “*Dharampal Satyampal Limited Vs. Deputy Commissioner of Central*” reported in *2015 (8) SCC 519*, would be relevant wherein the nature, scope and applicability of the principles of natural justice came under consideration and the following has been laid down in paras 21, 24 and 28:-

[ 21. In common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision-making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (sic an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as “natural justice”. The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. nemo debet esse judex in propria sua causa; and (ii) opportunity of being heard to the party concerned i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a “reasoned order”.

“24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanizing factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.”

“28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.”]

11. Under the aforesaid circumstances, it is deemed appropriate to set-aside the order impugned to the extent of setting aside of mutation in

question on the ground of application of Section 31 of the Agrarian Reforms Act, 1976 is remanded back to the respondent 1 herein for its reconsideration. Accordingly, the petition succeeds, as a consequence whereof the impugned order is set-aside to the extent of setting aside of mutation No. 5233 dated 13.08.1996 on the ground of application of Section 31 of the Agrarian Reforms Act, 1976, as a consequence whereof the respondent 1 herein being Financial Commissioner (Revenue) is directed to revisit and reconsider the matter to the said extent and pass appropriate orders after hearing the parties.

12. The parties are directed to appear before the Financial Commissioner (Revenue) on 20.05.2024.
13. The amount deposited before this Court by the official respondents in respect of land in question is directed to be remitted to the account of the Financial Commissioner (Revenue) along with interest if any, accrued thereon who shall pass appropriate orders in respect thereof upon deciding the revision petition supra.
14. Disposed of.

**(JAVED IQBAL WANI)**  
**JUDGE**

**SRINAGAR**

25.04.2024

*Ishaq*

*Whether the order is speaking? Yes*  
*Whether approved for reporting ? Yes*