

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

**WP(C) 3722/2019 CM(7664/2019)**

**Ama Teli**

... Petitioner/Appellant(s)

Through: Mr. Z. A. Qureshi, Sr. Advocate with Ms. Rehana Fayaz, Adv.

V/s

**Manzoor Ahmad Bhat and others**

... Respondent(s)

Through: Mr. S. H. Thakur, Advocate

**CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**  
**29-08-2023**

Oral

1. The petitioner in the instant petition filed under Article 226 of the constitution has called in question order passed by the Financial Commissioner (Revenue)/Commissioner Agrarian Reforms dated 15.5.2019 in appeal titled as "Manzoor Ahmad Bhat and others versus Ama Teli" and order dated 11.6.2019 passed by J&K Special Tribunal in revision petition titled as "Ama Teli versus Manzoor Ahmad Bhat and others".
2. The genesis of the controversy involved in the writ petition is traceable to Mutation (Sehti Kasht) No. 2369 dated 15.6.1982, Mutation No. 2370 dated 15.6.1982 and Mutation No. 2511 dated 15.9.1983 attested under Agrarian Reforms Act, 1976 in favour of the petitioner herein.

3. The respondents herein aggrieved of the aforesaid Mutations filed a time-barred appeal on 19.5.2015 before the appellate forum on the premise that their father passed away on 26.3.1977 and the land covered under the impugned Mutations remained under their personal cultivation and that the father of the petitioner herein was being hired as a labourer in lieu of cash for cultivating and supervising the land in question without there being any relationship of landlord and tiller and that upon the death of their father they took over the control of the land and got it cultivated through labourers including the father of the petitioner herein and that before one year from the date of filing of the appeal when the petitioner herein did not allow the appellants respondents herein to take the produce of the land, the respondents herein got suspicious and approached the Patwari concerned whereupon the respondents herein came to know about the attestation of the impugned Mutations effected at their back and subsequently took steps for challenging the same in the appeal.

It came to be further averred in the appeal by the appellants respondents herein that the impugned Mutations had been attested in breach and violation of the provisions of Agrarian Reforms Act 1976 and that the Sehti Kasht Mutation as also the Mutation under section 4 of the Act had been attested on the very same day i.e. on 18.6.1982 at the back of the appellants respondents herein and in absence of any Patri Sarkar and that the officer attesting the Mutation did not hear the appellants respondents herein and attested

- the Mutations illegally declaring the respondent petitioner herein as the absolute owner of the land in question.
4. The appellate forum upon entertaining the appeal and after summoning the respondent petitioner herein decided the application for condonation of delay accompanying the appeal on 11.2.2017 condoning the delay in filing the appeal and consequently decided the appeal in terms of the impugned order dated 15.5.2009 and while accepting the same, set aside the impugned Mutations 2369, 2370 both dated 15.6.1982 and Mutation no. 2511 dated 15.9.1983, remanding the matter to the Assistant Commissioner, Revenue for holding a denovo enquiry and passing of appropriate orders. The appellate forum while accepting the appeal and setting aside Mutations in question observed that the 'Sehti Kasht' Mutation and Mutation under section 4 had been attested on the very same day i.e. on 15.6.1982 and since the 'Sehti Kasht' Mutation involved change in the records of the Girdawari and having a bearing on the question of personal cultivation of the land in question, the attesting officer ought to have conducted an enquiry thereon which enquiry had not been conducted. Though no finding is recorded insofar as the attestation of Mutation under section 8 dated 15.9.1983 is concerned by the appellate forum, yet the appellate forum set aside the said Mutation holding that the officer attesting the Mutation did not follow the procedure laid down under applicable law and the rules.
5. The respondents before the appellate forum petitioner herein aggrieved of the order of the appellate forum dated 15.6.2019

- preferred a revision petition before Jammu & Kashmir Special Tribunal being the Revisional forum on 29.5.2019. The said Revisional forum while concurring with the observations and the findings recorded by the appellate forum dismissed the revision petition in terms of order dated 11.6.2019 upholding the order of the appellate forum.
6. The petitioner herein has instituted the present petition calling in question both the orders of the appellate as well as Revisional forum on the grounds urged in the petition *inter alia* fundamentally on the ground that both the forums below did not decide the matter in right perspective and in the process committed an illegality and also that the appellate forum wrongly condoned the delay in filing the appeals prepared by the respondents herein.
7. **Reply** to the petition has been filed by the respondents wherein it is being *inter alia* stated that the petition is not maintainable against the impugned orders being concurrent determination of question of fact by two forums below having assumed finality and that the Mutations in question had been attested by the revenue officers at the back of the respondents herein and in absence of any relationship of landlord and tenant between the father of the respondents and after his death between them and the petitioner herein and that the limitation for filing the appeals before the appellate forum came to be condoned rightly and legally and consequently the appeal as well as a revision petition came to be decided by the forums below after

affording an opportunity of being heard to the parties besides considering the record available.

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

8. Perusal of the record tends to show that the land in question indisputably is an agriculture land in respect of which prior to coming into being of the Agrarian Reforms Act 1976, the father of the petitioner herein namely Qadir Teli had been recorded as tenant thereof and the predecessors-in-interest of the respondents herein as the owners/landlords thereof and no Mutation be it under section 4 or under section 8 of the Act of 1976 had been attested in favour of the father of the petitioner herein extinguishing the rights of the predecessor-in-interest of the respondents herein qua the land in question. Perusal of the record reveals that it had been for the first time that the 'Sehti Kasht' Mutation came to be attested in terms of Mutation 2370 on 15.6.1982 by the revenue officers effecting the change in the Girdwari of the land in question reflecting the name of the present petitioner in the column of tenant instead of his father Qadir Teli. The record further demonstrates that on the very same day when the aforesaid 'Sehti Kasht' Mutation was attested, Mutation under section 4 of the Act of 1976 came to be attested on 18.6.1982 itself followed by Mutation no. 2511 dated 15.9.1983 attested under section 8 by the Act of 1976 in favour of the petitioner herein.
9. It is pertinent to mention here that the Act of 1976 was brought into existence to extinguish the relationship between a landlord and a

tenant and a scheme thereby was formulated under the said Act itself as to how and in which manner the said relationship should come to an end. Under the Act, in order to get benefit of Sections 4 and 8 it had to be established that there was a relationship of a landlord and a tenant between the parties and a tenant who was in possession of the land in Kharief 1971 and was paying rent to the landlord, as such, became entitled to get the benefit under the provisions of the Act including the benefits that would flow from sections 4 and 8 of the Act of 1976.

10. In view of the aforesaid clear and explicit provisions of the Act of 1976, if the father of the petitioners herein had been recorded as tenant in Kharief 1971, the relevant date for granting the benefits under the provisions of the Act, the *sine qua non* for availing such a benefit ought to have flown therefrom in his favour by attestation of Mutations under section 4 followed by attestation of Mutation under section 8 of the Act. Interestingly, record tends to show that no Mutation had been attested either under section 4 in respect of the land in question or else under section 8 of the Act in favour of the father of the petitioner who was recorded as a tenant of the predecessors-in-interest of the respondents herein of the land in question during his lifetime after coming into being of the Act of 1976. The Mutations under sections 4 and 8 indisputably came to be attested in favour of the petitioner herein in the year 1982 and 1983 respectively only after, in the first instance, the official respondent effected a change in the Girdawari by attesting 'Sehti Kasht'

- Mutation No. 2369 on 18.6.1982 that too without any enquiry whatsoever conducted which ought to have been conducted under and in terms of Rule 4 of the Agrarian Reforms Rules 1977.
11. In view of the aforesaid admitted facts and circumstances both the forums below have rightly held that the Mutations have been attested in breach of the provisions of the Act of 1976 and have rightly directed holding of denovo enquiry in the matter therefore in presence of the aforesaid concurrent findings recorded by both the forums below, this court is not inclined to exercise discretion and jurisdiction in the matter under Article 226 of the Constitution. Accordingly the petition is *dismissed*.
12. It is made clear that the present judgment/order is passed in the context of issues raised in the instant petition and, as such, nothing herein shall be deemed to be expression of any opinion *qua* the matter which is to be decided by the Assistant Commissioner, Revenue, during the denovo inquiry.
13. Record be remitted back along with a copy of this order.

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

Srinagar  
29-08-2023  
*N Ahmad*

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