

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

**LPA No. 40/2024
CM No. 1161/2024**

(Through Virtual Mode)

Reserved on: 06.03.2024

Pronounced on: 26.03.2024

1. **Sukhdev Singh (aged 60 years)**
2. **Romesh Singh (aged 68 years)**
Both sons of Late Mohinder Singh
Both residents of Village Najwal
Tehsil Pargwal District Jammu.

..... Appellant(s)

Through: Mr. G.S. Thakur, Advocate.

V/s

1. **Union Territory of J&K through Commissioner
Secretary Revenue Department, Civil Secretariat,
Jammu.**
2. **Deputy Commissioner, Jammu.**
3. **Tehsildar, Tehsil Pargwal District Jammu.**

.....Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG.

CORAM:

**HON'BLE THE CHIEF JUSTICE.
HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.**

JUDGMENT

Per Wasim Sadiq Nargal: J

1. This Letters Patent Appeal has been filed by the appellants against the judgment dated **19.02.2024** passed in **WP(C) No. 314/2024** titled, "**Sukhdev Singh & Anr. Vs. UT of J&K and Ors** whereby the learned Writ Court has dismissed the writ petition of the appellant/petitioner.

2. The appellants-petitioners filed **WP(C) No. 314/2024** challenging the order passed by Respondent No. 2 vide order No. **DCJ/Rdr/2023-24/360-63** Dated 03.02.2024 by virtue of which the mutation No. 42 dated 03.10.2005 has been set-aside.

3. The order so passed by the Respondent No. 2 was challenged in the Writ Petition by the appellant-petitioner, broadly, on the following grounds:

(i) *The order impugned is otherwise against the law, facts and without hearing the petitioners. The petitioners were never heard by the respondent no.2 while passing the order impugned. The order impugned which is the administrative action on the part of the respondents who were not competent to cancel the mutation. Since the mutation was attested by the Naib Tehsildar, the enabling provision for attestation of the mutation is the Standing Order 23-A, instruction no. 74, which envisages that mutation of transfer by registered deed may be sanctioned, provided that the transfer is found to have been actually made and acted upon, the registration department will send monthly to the Tehsildar, particular of all registered deed which purport transfer of agriculture land. Since the mutation was attested on 03.10.2005, but never questioned the possession of the petitioners who continuously remained in their cultivating possession, therefore, the respondent no. 2 has committed an error in passing the order impugned so as to cancel the mutation. The respondent no. 2 who was not competent to pass an administrative order, where the mutation has been cancelled without the cancellation of the sale deed, therefore, the order impugned is bad and liable to be quashed.*

(ii) *The order impugned is otherwise bad, the respondent no. 2 who was not competent to review the order of mutation in view of Section 13 of the Land Revenue Act by exercising the administrative powers, Section 13 of the Land Revenue Act, which envisages that a revenue officer may, either of his own motion or on the application of any party interest, review, modify, reverse or confirm any order passed by himself or any of his predecessor in office, provided, when (the board), a*

Divisional Commissioner or collector think it necessary to review any order which he has not himself passed, and when revenue officer of class below that of collector purposes to review any order, whether passed by himself or by any of his predecessor in office, he shall first obtain the sanction of the revenue officer in whose control he is immediately subject. The respondent no.2 was not competent to review the order which is not passed by him unless the sanction of a revenue official is obtained as held by the Hon'ble High Court in case titled Mohd Yousuf Vs Director Consolidation. It is also mandatory that the order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order, thus the order impugned is bad and liable to be quashed.”

4. The learned Writ Court, vide its judgment impugned in this appeal, dismissed the writ petition holding that:

“Thus, in presence of the aforesaid statutory remedy available to the petitioners this court is not inclined to exercise extraordinary writ jurisdiction and allow the machinery created by the provisions of the J&K Land Revenue Act, Svt. 1996 to be bye-passed. Resultantly, the petition on this count is held to be not maintainable and is accordingly, dismissed.”

5. Mr. G. S. Thakur Learned Advocate appearing on behalf of the appellants has submitted that the appellants/petitioners were never heard by the Respondent No 2 while passing the order impugned in the writ petition. He further submits that the Respondent No 2 was not competent to assume the jurisdiction of revision, as the order passed by the Respondent No. 2 is neither in appeal nor in review.

6. Learned counsel appearing for the appellants/petitioners further submitted that the collector has exercised the administrative powers to review/revise the order of mutation in view of *Section 13 of J&K Land Revenue Act Svt.1996*, which he was not competent to exercise.

LEGAL ANALYSIS

7. The order which is impugned in the present Letters Patent Appeal has been passed by the Collector under Land Revenue Act on a representation moved by the appellants/ petitioners seeking correction of the revenue records. However, it is not clear in the said impugned order as to whether the Collector has exercised powers under Land Revenue Act or exercised administrative powers vested in him.

8. As far as Section 11 of J&K Land Revenue Act is concerned, an appeal shall lie from an original or appellate order of a Revenue Officer. Since, the order impugned seems to be an original order and not an appellate one, an appeal under Section 11 should be preferred by a person aggrieved of such an order. For facility of reference, Section 11 is reproduced as under:

- “11. Appeals. Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue Officer as follows namely***
- a. to the Collector when the order is made by an Assistant Collector of either class;***
 - b. to the [Divisional Commissioner] when the order is made by a Collector;***
 - c. to the Financial Commissioner when the order is made by a [Divisional Commissioner]***
- Provided that,-***
- 1. where an original order is confirmed on first appeal, no further appeal shall lie except on the grounds mentioned in clauses (a), (b) and (c) of sub-Section (1) of Section 100 of the Code of Civil Procedure, 1977;***
 - 2. where any such order is modified or reversed on appeal by the Collector, the order made by the [Divisional Commissioner] on further appeal, if any, to him shall be final;***
 - 3. the Government may especially empower an Assistant Collector of the First Class to hear appeals against the order of an Assistant Collector of the second Class.]”***

9. A bare perusal of section 11 of the Land Revenue Act would indicate that against any order passed by the Collector whether it is original or appellate is appealable before the Divisional Commissioner. The appellants/petitioners without availing the alternate and efficacious remedy provided under the statute had straight way filed the writ petition which came to be dismissed on

this count alone, before the Learned writ Court and feeling aggrieved of the same, the instant appeal has been preferred by the appellants.

10. After perusing the record, it is clear that the petitioners/Appellants herein in the writ petition had challenged the impugned order on the ground that Respondent No 2 was not competent **to review the order of mutation** in view of **Section 13 of J&K Land Revenue Act, 1996**, however, the petitioners/Appellants in the instant appeal have taken altogether a different stand contrary to what has been pleaded before the writ Court by pleading that the Respondent No. 2 was not competent to assume the **jurisdiction of revision** under **Section 15 of J&K Land Revenue Act, 1996**.

11. From the perusal of the record, it is manifestly clear that the appellants/petitioners have tried to give colour to the order impugned dated 03.02.2024, before the writ Court by projecting that the order impugned has been passed by Respondent No. 2 under section 13 of **J&K Land Revenue Act, 1996** while exercising powers of review on the administrative side. However, the appellants have taken altogether a different stand by projecting that the order impugned has been passed under section 15 of **J&K Land Revenue Act, 1996**, while exercising revisional powers. However, the fact remains that the order has been passed by Respondent No. 2 pursuant to the representation filed by the Appellants/petitioners by exercising power by way of original jurisdiction and the order nowhere reflects that the same has been passed under section 13 or 15 of **J&K Land Revenue Act, 1996**.

12. We are of the view that even the ground that collector has no jurisdiction to pass the said order, is not available to the appellants/petitioners more particularly, when the appellants/petitioners have themselves approached the said collector for exercising the original jurisdiction. Had the order been favourable to the appellants, they wouldn't had any grievance and it was only when the said order has gone against them, they have filed the petition before the writ court and subsequently, appeal before this court by taking two contradictory stands just to mislead this Court. The appellants by no stretch of imagination can plead altogether a new stand before the Appellate Court, which was not pleaded before the writ Court. It is peculiar case, where the appellants after having failed to convince the learned writ Court and earned

dismissal of the writ petition being not maintainable in the light of the statutory remedy under Section 11, have pleaded altogether a new stand in the instant appeal in contradistinction to what has already been pleaded before the writ Court by twisting the facts just to mislead this Court. The appellants cannot take contradictory stands before the writ and the Appellate Court according to their convenience which falls within the ambit of playing fraud with the Court.

13. Law is well-settled that a litigant approaching an authority or a court, cannot take two different stands as per his/her own convenience and cannot be allowed to plead in appellate court what he has not pleaded before the Writ Court and cannot go beyond pleadings.

14. The Hon'ble Apex Court in case titled *Suzuki Parasrampuriah Suitings Pvt. Ltd. V/S The Official Liquidator Of Mahendra Petrochemicals Ltd. (In Liquidation) And Others* reported as (2018) 10 SCC 707, has held as under:

“Para 12: A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in Amar Singh vs. Union of India, (2011) 7 SCC 69, observing as follows:

“50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.”

15. The law of **“Estoppel by Conduct”** also holds good against the appellants in the light of the fact that the Respondent No. 2 has exercised the original jurisdiction pursuant to the representation filed by the appellants and the grievance of the appellants was redressed and an order came to be passed by the Deputy Commissioner, whereby, mutation No. 42 to the extent it has escheated to the state, has been set-aside and the copy of the said order has been shared with Tehsildar Pargwal for necessary implementation in the revenue record with a direction to submit the action taken report before the said office of the Collector within two days of the receipt of the said order besides sharing the names of the delinquent officials who issued *fard*, for further necessary action.

16. Once the Appellants have themselves approached before the Deputy Commissioner for redressal of their grievance, it doesn't lie in the mouth of the appellants/petitioners to agitate, subsequently, that the Deputy Commissioner couldn't have passed the said order, which, according to the appellants, is without jurisdiction.

17. The order has been passed by the Collector by exercising original jurisdiction and accordingly, we are of the view that the learned writ Court has rightly held that against the said order of the Collector which has been passed by way of original jurisdiction, the appeal can be preferred before Divisional Commissioner under ***Section 11 of the Land Revenue Act.***

18. We have gone through the order impugned dated 03.02.2024 passed by the Deputy Commissioner and we are not convinced that the said order has been passed while exercising the revisional jurisdiction as there is no whisper in the said order as to whether the said order has been passed while exercising the revisional jurisdiction. However, the order reveals that the same has been issued pursuant to the representation preferred by the appellant namely Sukhdev Singh, Romesh Singh and Shubash Singh and accordingly, the Collector has sought a report from the concerned Tehsildar Pargwal along with the relevant revenue record and after perusing the same, the violations which have been observed by the concerned Collector, are reproduced as under:

- a. ***The aforementioned purchased land to the extent measuring 34 kanals,6 marlas has been escheated to state.***
- b. ***Fard has been illegally issued by the revenue officials contrary to the provisions of J&K Land Revenue Act.***

19. In the aforesaid backdrop, the Collector has held that the impugned mutation no 42 dated ***03.10.2005*** was not sustainable under law and deserves to be set aside to the extent it has been escheated to the State of J&K and Others. Accordingly, he has issued direction to Tehsildar Pargwal for further implementation of the same in the revenue record with a direction to submit action taken report. Now, the appellants have approached this Court by filing the present appeal by taking contradictory stand, which is not sustainable in the light of the statutory remedy available to the petitioners/appellants herein under Section 11 of the Land Revenue Act Svt. 1996.

20. Since, the appellants have taken two contradictory stands according to their own convenience and have tried to mislead this Court with a view to get favorable order and they have not come to this Court with clean hands, we deem it proper to burden the appellants with costs with a view to deprecate such practice of unscrupulous litigants from abusing the process of Court.

21. In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice.

22. Similar view has been taken by Hon'ble Apex Court in case titled ***K.D. Sharma v. SAIL*** reported as ***[(2008) 12 SCC 481]***, wherein it has been observed as follows:

“Para 24: The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

26: A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest

to deter unscrupulous litigants from abusing the process of Court by deceiving it.

46. In the case on hand, the appellant has not come forward with all the facts. He has chosen to state facts in the manner suited to him by giving an impression to the Writ Court that an instrumentality of State (SAIL) has not followed doctrine of natural justice and fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. But we have also considered the merits of the case and even on merits, we are convinced that no case has been made out by him to interfere with the action of SAIL, or the order passed by the High Court.

47. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed with costs.”

CONCLUSION:

23. The learned writ Court has held that statutory remedy is available to the petitioners/appellants under the Land Revenue Act, while the appellants have bypassed the said remedy and the writ petition has rightly been held as not maintainable and was dismissed. We don't find any legal infirmity with the observation of the learned Single Judge and thus, the order passed by the learned Single Judge is upheld accordingly.

24. For the foregoing reasons, the appeal being devoid of any merit, deserves to be **dismissed** and is accordingly **dismissed** and the appellants are burdened with a cost to the tune of Rs. 20,000/- to be deposited in the Advocate's Welfare Fund, within a period of two weeks from today.

(Wasim Sadiq Nargal)
Judge

(N. Kotiswar Singh)
Chief Justice

SRINAGAR:

26.03.2024

“Hamid”

- i. Whether the Judgment is Reportable? Yes/No
- ii. Whether the Judgment is Speaking? Yes/No