

(2025) 12 J&K CK 0066
Jammu And Kashmir HC
Case No: OWP No.480 Of 2004

Surishta Devi

APPELLANT

Vs

J&K Special Tribunal, Jammu

RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Constitution of India, 1950- Article 226
- Jammu and Kashmir Agrarian Reforms Act, 1976- Section 4, 8

Hon'ble Judges: Moksha Khajuria Kazmi, J

Bench: Single Bench

Advocate: Sachin Sharma, Chetna Manhas, Monika Kohli

Final Decision: Disposed Of

Judgement

Moksha Khajuria Kazmi, J

1. By way of this writ petition, the petitioner has invoked extraordinary writ jurisdiction of this Court vested under Article 226 of the Constitution of India to assail judgment/order dated 19th April, 2004 passed by the Jammu & Kashmir Special Tribunal, Jammu [hereinafter to be referred as „the Tribunal”] in File No.STJ/268 titled Bimla Devi v.

Savitri alias Taro and another.

FACTUAL MATRIX

2. One Mst. Sangtoo was the owner of land measuring 7 kanals 5 marlas comprising in Khasra No.228 min (new Khasra No.1182) measuring 1 kanal 19 marlas and Khasra No.228 min (new Khasra No.1197) measuring 1 kanal 15 marlas apart from other landed property situated at village Rathian (Fangial), Udhampur. As per the petitioner, with respect to the aforesaid land, mutation of inheritance being Mutation No.805 dated 24.03.1972 was attested in favour of mother of the petitioner, namely, Savitri Devi, father of respondent No.5 and husband of respondent No.6. Respondent No.5, it is alleged by the petitioner, in connivance with revenue officials got mutation No.1105 attested under

Section 4 of the Agrarian Reforms Act on 05.05.1987 and later mutation No.1116 dated 06.07.1987, under Section 8 of the Agrarian Reforms Act. This was got done by respondent No.5 at the back of the mother of the petitioner.

3. On coming to know about the attestation of aforesaid mutation under Section 4 and 8, Savitri Devi preferred an appeal before the Joint Agrarian Reforms Commissioner, who vide its order dated 05.09.1997 set aside both the mutations and remanded the case to Tehsildar, Settlement, Udhampur for fresh consideration. It is stated by the petitioner that the Tehsildar, Settlement passed order dated 12.05.1998, without associating the mother of the petitioner with the proceedings, thereby directing that 5 kanals of land be recorded in the name of respondent No.5 and 2 kanals and 5 marlas in the name of respondent No.6, thereby depriving the mother of the petitioner of her share in the land, which comes to be 1/3rd.

4. Aggrieved by order dated 12.05.1998, mother of the petitioner approached the Additional Deputy Commissioner, (With powers of Commissioner Agrarian Reforms), Udhampur by filing an appeal, who vide order dated 28th June, 2003, set aside mutation No.1116 and directed that the parties should be given rights under mutation No.805 and 1066 respectively. Since the appeal was beyond the period of limitation, a separate application for condonation of delay was filed along with the appeal. However, the Additional Deputy Commissioner, Udhampur has allowed the appeal without first deciding the application seeking condonation of delay.

5. Respondent No.5, preferred a revision against the order dated 28th June, 2003 passed by the Additional Deputy Commissioner, Udhampur before the Tribunal. After considering the rival contentions, the Tribunal set aside the order dated 28.06.2003, passed by the Additional Deputy Commissioner, Udhampur and restored the order passed on mutation No.1116 dated 12.05.1998, passed by the Tehsildar Settlement, Udhampur by holding that the appellate Court fell into error when it, without deciding the issue of limitation, decided the appeal on merits. Operative portion of the order impugned dated 19th April, 2004 is reproduced hereunder:-

"In my considered view the appellate court has fallen into error when the below court without deciding the issue of limitation, decided the appeal on merits. In view of what has been discussed above, the revision petition is accepted and the impugned order of the Additional Deputy

Commissioner, Udhampur with powers of Commission Agrarian Reforms dated 28.06.2003 is set aside and order passed on mutation No.1116 dated 12.05.1998 passed by Tehsildar Settlement, Udhampur is restored. Status-quo order/stay order if any issued in this case is hereby withdrawn. The records of the court below be returned alongwith copy of this order. A copy of this order be also sent to Tehsildar Settlement Udhampur for further necessary action.”

6. Aggrieved by the impugned order passed by the Tribunal, the petitioner has approached this Court by way of instant writ petition primarily on the ground that the course available before the Tribunal after setting aside the order of respondent No.2 was to remand the case with the direction to first dispose of the application for condonation of delay and thereafter hear the appeal. It is submitted that the Tribunal could not have directed restoration of the order passed by the Tehildar Settlement.

7. Respondent Nos. 5 and 6, who are the contesting respondents, have chosen not to file any objections/counter affidavit, even after causing appearance through their counsel, as such, are set ex-parte.

8. Heard learned counsel for the parties and perused the material available on record.

9. Indisputably, the appeal filed by the petitioner before the Additional Deputy Commissioner, Udhampur against the order of the Tehsildar Settlement dated 12.05.1998 was beyond the period prescribed therefor, therefore, a separate application seeking condonation of delay was also preferred by the petitioner, however, Additional Deputy Commissioner, without dealing with the issue of limitation, straightway decided the appeal, which is against the settled principle of law.

10. Supreme Court in the case of Noharlal Verma v. District Cooperative Central Bank Ltd., (2008) 14 SCC 445 has observed that the limitation goes to the root of the matter and if a suit, appeal or application is barred by limitation, a court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits. Relevant extract of the judgment is reproduced hereunder:

“Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.”

11. In the present case, the Appellate Authority has straightaway evaluated the merits of the appeal and its order is completely silent on the limitation issue. Such an approach amounts to a

material irregularity and renders the order unsustainable. Failure to consider limitation not only vitiates the decision-making process but also deprives the parties of a proper adjudication on a jurisdictional issue that may conclude the proceedings entirely. A bare perusal of the order impugned shows that the Tribunal has set aside the order of the Additional Deputy Commissioner, Udhampur on the ground that the appellate authority has fallen into error by deciding the appeal on merits without first deciding the issue of limitation. However, the Tribunal itself has committed an error by ordering restoration of the order of the Tehsildar on mutation No.1116 dated 12.05.1998, without assigning any reason therefor.

12. It is a settled principle of law that reasons constitute the very foundation of a judicial or quasi-judicial order. The impugned order does not disclose the reasoning behind the conclusion drawn by the Tribunal. In the absence of reasoning, the judgment or order stands vitiated and cannot be sustained in law, being contrary to the principles of natural justice and fair adjudication.

13. Therefore, the ends of justice would require that the matter be remanded to the Appellate Authority for fresh consideration. The Authority shall first decide the issue of limitation, after affording petitioner as well as respondent Nos. 5 and 6 a reasonable opportunity of hearing. Only if the proceedings are found to be within limitation, or delay is condoned subject to statutory parameters, shall the Authority proceed to adjudicate the matter on merits afresh by passing a reasoned order.

14. In view of the above, impugned order of the Tribunal dated 19.04.2004, and order of the Additional Deputy Commissioner (with powers of Commissioner, Agrarian Reforms), Udhampur [„Appellate Authority”] dated 28.06.2003, are set aside and the matter is remanded to the Additional Deputy Commissioner (with powers of Agrarian Reforms), Udhampur to first decide the issue of limitation, after affording both the parties a reasonable opportunity of hearing. Only if the proceedings are found to be within limitation, or delay is condoned, subject to statutory parameters, the Authority shall proceed to adjudicate the matter afresh.

15. The writ petition along with connected application(s), if any, shall disposed of in the above terms. Record be sent back forthwith.