
(2003) 04 J&K CK 0010

Jammu & Kashmir High Court (Srinagar Bench)

Case No: Others Writ Petition (OWP) No. 83 of 2001

Gh. Qadir Malik

APPELLANT

Vs

Special Tribunal, J and
K

RESPONDENT

Date of Decision: April 17, 2003

Acts Referred:

- Jammu and Kashmir Agrarian Reforms Act, 1976 - Section 8

Citation: (2010) 3 JKJ 837

Hon'ble Judges: Bashir-Ud-Din, J

Bench: Single Bench

Judgement

Syed Bashir-ud-Din, Judge

1. Petitioners allege that they have been title holders in possession of land measuring 3 kanals and 9 marlas in survey No. 572 situated at Kullar

Malikgund, Tehsil Shopian. In 1999 respondent No. 5 attempted to dispossess them on the ground that the land is mutated in his name as owner

U/s 8 of J&K Agrarian Reforms Act (hereafter Act). On enquiry petitioners, came to know that this land is mutated U/s 4 of the Act on 16-03-

1983 vide mutation order No. 476, followed by mutation order No. 494 dated: 11-12-1987 U/s of the Act, conferring ownership rights on

respondent No. 5. Petitioners on coming to know all this, filed an appeal with application for condonation of delay before Additional Dy.

Commissioner/Commissioner Agrarian Reforms Pulwama (respondent No. 2) on grounds taken thereto. The delay in filing appeal was not

condoned and the application with appeal was dismissed on 04-01-2000 (Annexure-C). Against this order petitioners filed revision before J&K

Special Tribunal (Respondent No. 1). However, the revision was dismissed on 26-02-2001 (Annexure-D). Petitioner is challenging the above two

mutation orders and the orders of dismissal of the application with appeal and the revision, as above, in this petition.

2. The counsel submits that the mutations U/s 4 and 8 of the Act have been recorded at the back of the petitioners. Petitioners have not been

heard in the matter. The Agrarian Reforms Commissioner while disposing of the application for condonation of delay and appeal has not allowed

the petitioners to make out a cause for condonation on evidence. The civil suit between the parties is filed by respondent No. 5 against the

petitioner in the court of Sub Judge Shopian. The petitioners got knowledge of the suit in ""November, 1998, they received summons from the

court. So far as the statement dated: 04-05-1983 relied by Agrarian Commissioner to impute knowledge to the petitioners about the possession

and mutation and passing of title under the Agrarian Reforms Act is concerned, the same could not have been looked into as it was only photostat

copy. Neither the original nor attested copy of the statement was produced. The revisional forum also has not addressed the core issue of legality

of the orders passed by the mutating Revenue Officers as also the Agrarian Commissioner. The sufficiency of the ground for allowing the

application for condonation of delay and to entertain the appeal was not also focused on by the revisional forum.

3. Counsel for respondents Mr. Lone in reply affidavit as also in his oral submissions defended the action of mutating officers and the impugned

orders of Agrarian Commissioner and the Sp. Tribunal. The counsel submits that the mutations U/s 4 and 8 of the Act in favour of respondent No.

5 in respect of the land in question have been effected within jurisdiction and in accordance with law. The petitioners despite knowledge of the

mutation filed appeal with condonation application before the Agrarian Commissioner after a lapse of more than 16 years and that too when driven

by the greed of making money on account of escalation in prices of real estate. The application was rightly dismissed after the statement dated: 04-

05-1983 record by Naib Tehsildar in proceedings regarding dispute between the parties concerning the trees standing around the land in question

wherein the possession of respondent No. 5 over the land for more than 30 years, was admitted. The parties are also litigating in civil court where

the land in question is subject matter of the suit. The suit has been instituted by respondent No. 5 in 1990. The civil court has also issued an interim

injunction order for bidding petitioner to interfere with the possession of respondent No. 5 as an interim measure. Against the order appeal is

pending before District Judge Pulwama. All this is to indicate respondent No. 5 has been in possession for decades and orders of mutation first U/s

4 of the Act and then U/s 8 of the Act is within the parameters of Agrarian Reform Law. The impugned mutations are not vitiated. The appellate

court as also the revisional court have found that no reasonable cause is made out to warrant condonation of delay and no question of public

importance was involved for adjudication in the matter and therefore, the delay is declined to be condoned and appeal dismissed alongwith

application. The counsel also submits that the petitioners are guilty of laches and delay which would disentitle them to any relief. Matter having

been duly examined by the above prescribed forums cannot be reopened in writ petition.

4. It is found on record that the petitioners had right through remedies available against the mutations entered U/s 4 and U/s 8 of the Act affected

on 16-03-1983 and 11-02-1987 respectively in favour of respondent No. 5 (Annexure A & B). No action was taken in respect of either or both

mutation orders till 04-01-2000, when an appeal alongwith condonation application was filed. The Commissioner Agrarian Reforms Pulwama

noted that the appeal had been filed after long 16 years. Even a civil suit inter se parties on the same subject is subjudice before Sub Judge

Shopian since 1990. Besides a copy of statement of appellants writ petitioners recorded on 04-05-1983, by Naib Tehsildar Shopian was also

placed before the appellate authority. In this statement, respondents have clearly stated rather admitted that the respondent No. 5 is, in physical

possession of and cultivating the land for last 30 years. From all this the appellate authority has drawn the inference that the writ petitioners were

aware of the mutation orders and even had admitted possession of respondent No. 5 way back in 1983. Appellants awareness and knowledge of

these facts and circumstances led the appellate authority to conclude that no sufficient cause for condonation of delay, is at all made out. The

application was thereby dismissed alongwith appeal.

5. The condonation matter falls within realm of discretionary powers of the Commissioner Agrarian Reforms, the appellate authority. So long the

discretion is exercised for reasons and on sound legal principles, the writ proceedings cannot be pressed into service, to question such exercise of

discretion. Mode of exercise of discretion qua condonation of delay cannot be controlled or regulated in writ jurisdiction. It cannot be lost sight

that there was material before the appellate authority to view the matter as is done by the appellate authority. In revision proceedings against this

order of the appellate authority, the Tribunal has meticulously examined the whole question of delay. The revisional forum has addressed the issues

raised before it which for the most part overlap with those placed before the writ court. The Spl. Tribunal has considered the legality and factum of

mutations U/s 4 and 8 of Agrarian Reforms Act as also the issues raised before it in the light of pending civil litigation inter se the parties. The

statement made by the writ petitioners on 04-05-1983 before the Naib Tehsildar in proceedings connected with dispute between parties regarding

trees standing around me land in question too is focused on. He has also examined the argument of legal fictitious character of this statement. The

Tribunal has come to the conclusion that the petitioners had the knowledge about the mutations right through and they could have challenged the

same within the prescribed time. Even the entries in Jamabandi recorded earlier to entry and attestation of mutations in questions have not been

challenged. The civil litigation between the parties, in which writ petitioners defendants had the knowledge through Ghulam Qadir Malik co-

petitioner No. 1 way back in July, 1990(Annexure-A) about the nature of dispute pending before the civil court and the mutation, also shows that

the petitioners had knowledge of the mutations yet they failed to challenge the same in time. It took writ petitioners long 16 years to challenge the

mutation. The cause is found to suffer from latches and delay. The revisional forum concurred with the appellate authority that no sufficient cause

was made out to warrant condonation of delay and reopen a matter which has been concluded 16 years back on the basis of record, documents,

revenue entries and other material available with the concerned authorities. The petitioners had full knowledge of the events and fact situation and

the established presumptive entries in revenue record. The delay cannot be condoned on mere asking for. The revisional forum has come to the

conclusion that even after giving preference to the substantial justice, the delay cannot be condoned and appeal entertained as no case is made out

thereto.

6. Obviously the matter has been examined both by Agrarian Reforms Commissioner Pulwama and also by J&K Sp. Tribunal. Both forums have

found that the cause suffers from latches and delay 16 years have been taken to question the mutation before the appellate forum, when during

these 16 years petitioners had knowledge and information about respondents possession of land in question, entries in revenue records, the

mutations by the concerned Revenue Officer(s), pendency of inter se civil suit and on spot ground reality. The application of law to the fact of this

case both by appellate and revisional forums cannot be found fault with. The issue(s) has been already addressed to and minutely examined in right

perspective by the appellate and revisional forums. Nothing has been brought to the notice of this court to show that the authorities have acted

beyond jurisdiction or outside powers. There is presumption of correctness with regard to official record and action, quo discharge of the official

duties by the authorities. Nothing is on record to displace due discharge of duties by revenue authorities, appellate authority and revisional forum.

7. The factual parameters laid in the pleading are full of disputed questions of fact. The writ court cannot enter such an arena to oversee the

discharge of duties and to judiciary review the impugned orders of the authorities made in exercise of powers vested in them. So long the impugned

order(s) are based on facts duly determined by the authorities and forums, within jurisdiction, there is no scope for judicial review.

Viewed thus for, the impugned orders are not found vitiated and accordingly writ petition is dismissed.