

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

Reserved on: 13.12.2023

Pronounced on: 22.12.2023

WP(C) No.2286/2023

GHULAM HASSAN BHAT

...PETITIONER(S)

Through: - Mr. G. N. Sofi, Advocate.

Vs.

UT OF J&K AND OTHERS

...RESPONDENT(S)

*Through: - Mr. Faheem Nisar Shah, GA
Ms. Asifa Padroo, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order No.ADC/Reader/23/A-345/Ang dated 24.08.2023 passed by respondent No.3 whereby application of the petitioner seeking condonation of delay in filing appeal against the order passed on mutation No.776 dated 08.09.1982 of Village Saidiwara Tehsil Dooru, has been dismissed.

2) According to the petitioner, he along with respondents No.5 to 8 happen to be the co-owners of the Estate left behind by Abdul Rehman Bhat at Village Saidiwara Tehsil Dooru. It has been contended that the private respondents in league with revenue officials managed to attest mutation No.776 dated 08.09.1982 of the said village under Section

4 of the J&K Agrarian Reforms Act, 1976, with respect to estate of the petitioner and other co-sharers in favour of Rahim Padder, the predecessor-in-interest of respondents No.5 to 8 by showing him as tenant in respect of the joint property of the parties. However, mutation under Section 8 of the Agrarian Reforms Act is yet to be attested and vide the impugned mutation, the above named Rahim Padder has been shown as prospective owner.

3) According to the petitioner, he obtained knowledge about the impugned mutation recently when revenue record was digitized and after obtaining the knowledge, he procured certified true copy of the impugned mutation order whereafter he filed an appeal against the said order before respondent No.3 along with an application for condonation of delay, but vide the impugned order, the application for condonation of delay has been dismissed by respondent No.3

4) The petitioner has challenged the impugned order on the grounds that the same is illegal as the impugned mutation attested in favour of the predecessor-in-interest of the private respondents is fraudulent in nature. It has been further contended that respondent No.3 has not considered the matter in its right perspective, inasmuch as

the said respondent has not considered that one co-sharer cannot be a tenant of another co-sharer.

5) The petition has been contested by the private respondents by filing a reply thereto, in which it has been submitted that the petitioner has failed to justify the delay of 41 years in filing the appeal against the impugned mutation order and, therefore, respondent No.3 has rightly dismissed the appeal. It has been further contended that the delay in filing the appeal could not have been condoned on mere asking without assigning any sufficient reason, particularly when the petitioner had the knowledge of attestation of the mutation and it was also within the knowledge of the petitioner that the private respondents are in possession of the property in question and have built their houses thereon.

6) I have heard learned counsel for the parties and perused the material on record.

7) There is no dispute about the fact that the petitioner has filed appeal against mutation No.776 dated 08.09.1982 before respondent No.3 in the year 2023 i.e. after a delay of more than 41 years. Learned counsel for the petitioner has submitted that the impugned mutation is fraudulent in nature, inasmuch as one co-sharer cannot be a tenant of

the other co-sharer, as such, Rahim Padder, the predecessor-in-interest of the private respondents, could not have been shown as a tenant in respect of the property, which is subject matter of the impugned mutation. It has been contended that the private respondents, in a suit filed against the petitioner before the Civil Court, have admitted that the parties are co-sharers and, therefore, the impugned mutation on the face of it is fraudulent in nature. It is contended that no amount of delay can come in the way of nullifying a fraudulent act. It is also contended that while attesting the impugned mutation, no notice was issued to the petitioner by the attesting officers and, as such, there was no question of the petitioner having knowledge about the attestation of impugned mutation.

8) Learned counsel appearing on behalf of the private respondents, on the other hand, has submitted that the petitioner and the predecessor-in-interest of the private respondents are not co-owners in respect of the property which is subject matter mutation No.776 dated 08.09.1982. It has been submitted that the petitioner and the private respondents are co-owners in respect of the Estate which is subject matter of mutation bearing No.507 that was attested in favour of Ahad who happen to be the predecessor-in-interest of the private respondents and their

mother Khatji. According to the learned counsel, the property comprised in aforesaid mutation No.507 falls under Survey No.424, 510, 544, 626, 1283, 1297, 1298, 1324, 1347, 449 and 524 of Village Saidiwara whereas the property which is subject matter of mutation No.776 is comprised in Khasra Nos.276, 278, 436, 1271, 1272, 1277 and 1282 of the same village. It has been contended that the two properties are entirely distinct from each other and the source of inheritance of the private respondents in respect of these two properties is also different from each other.

9) It is contended that the property, which is subject matter of mutation No.776, came under the ownership of Rahim Padder who was married to Khatija as a Khana-Damad and it has nothing to do with the property that was inherited by Khatija from her father Ahad, which is subject matter of mutation No.507. According to the learned counsel, it cannot be stated that the petitioner and the private respondents are co-owners in respect of the property which is subject matter of mutation No.776, as such, the same, by no stretch of imagination, can be termed as fraudulent.

10) Since the Appellate Authority-respondent No.3 has not gone into the merits of the rival submissions of the

parties, therefore, this Court would also confine itself to the issue whether the discretion exercised by the appellate authority in not considering the delay in filing the appeal is proper and in accordance with law.

11) If we have a look at the impugned mutation No.776, it does not reflect the presence of any party but then there is no dispute to the fact that the private respondents have been in possession of the property which is subject matter of the impugned mutation since long and they have also constructed their houses on the said land. This has been clearly stated by respondent No.3 in the impugned order and the said finding has not been challenged by the petitioner by way of present writ petition. Therefore, it can very well be inferred that the petitioner was having the knowledge of attestation of mutation No.776 dated 08.09.1982 and in spite of this, he did not choose to challenge the same before the competent authority.

12) The plea of the petitioner that he came to know about the attestation of impugned mutation only when the revenue records were digitized, does not appear to be plausible. It is not that only after digitization of the revenue records the land records were maintained for the first time and prior to that, the land records were not being maintained. The land records prior to digitization were

being maintained in physical form. The only thing that has happened now is that the land records which were already in existence, have been digitized. Therefore, the contention of the petitioner that he came to know about the impugned mutation only after digitization of the land records, cannot be accepted. The petitioner has not even given the date on which he came to know about the impugned mutation. This makes his plea for condonation of delay unacceptable. For a litigant to claim condonation of delay, he has not only to furnish the exact or at least approximate date of knowledge but he has also to explain the circumstances which prevented him from filing the appeal within the prescribed period of limitation. All these particulars are missing in this case and on top of it, the petitioner seeks an order for condonation of delay not of a few days or months but he is seeking condonation of delay of 41 long years.

13) The Supreme Court **Joint Collector Ranga Reddy District and anr. v. D. Narsing Rao and others:(2015) 3 SCC 695**, relied upon **Sulochana Chanrakant Galande v. Pune Municipal Transport : (2010) 8 SCC 467**, wherein the Apex Court held thus:

"28.The legislature in its wisdom did not fix a time-limit for exercising the revisional power nor inserted the words "at any time" in Section 34 of the 1976 Act. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the

holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure. The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute"

14) Again, in the case of **Dehri Rohtas Light Railway Co. Ltd. v. District Board, Shojpur**, (1992) 2 SCC 598, in paragraph 31, the Supreme Court summed up the principles in regard to delayed exercise of revisional jurisdiction thus:-

"31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority."

15) From the ratio laid down by the Supreme Court in the aforesaid cases, it can safely be stated that a settled matter cannot be reopened after a long period of 41 years. If settled matters are allowed to be reopened after such a huge delay, it would be opposed to public policy of giving finality to the orders of administrative/quasi-judicial authorities and

there will be no end to litigation if a person is allowed to challenge an order of mutation after a lapse of decades.

16) Apart from the above, the condonation of delay in filing an appeal is a matter which lies entirely within the discretion of a quasi-judicial authority. This Court in exercise of its writ jurisdiction would not interfere in exercise of such a discretion unless the same is based on irrelevant considerations or the same is patently illegal. In the instant case, respondent No.3 has, while refusing to exercise discretion in favour of the petitioner, given cogent and convincing reasons for doing so. The same do not appear to be either perverse or arbitrary. Therefore, it would not be appropriate for this Court to exercise its writ jurisdiction so as to interfere with the discretion exercised by respondent No.3.

17) For the foregoing reasons, I do not find any merit in the writ petition. The same is dismissed accordingly. Interim direction, if any, shall stand vacated.

(Sanjay Dhar)
Judge

Srinagar

22.12.2023

“Bhat Altaf, PS”

Whether the order is reportable: Yes/No