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(2023) 12 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2188 Of 2022

Abdul Hameed Lone And Another	APPELLANT
Vs	
Government Of J&K And Others	RESPONDENT

Date of Decision : 04-12-2023

Acts Referred:

Citation : (2023) 12 J&K CK 0004

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Lone Altaf, Umar Rashid, Mubeen Wani

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1. The petitioners have challenged order dated 15.09.2022, passed by Financial Commissioner (Revenue) J&K, whereby the revision petition filed by the private respondents challenging mutation No.1559 dated 21.05.2008 has been transferred to Additional Dy. Commissioner, Ganderbal with a direction to treat it as an appeal and to dispose it of in accordance with law.

2. Heard and considered.

3. Learned counsel for the petitioners has submitted that the learned Financial Commissioner had no power and jurisdiction to transfer the revision petition filed by the private respondents to Additional Dy. Commissioner, Ganderbal and ask him to treat it as an appeal. It has been further submitted that there is no provision in the Land Revenue Act which authorizes a Financial Commissioner to pass such an order. It has also been submitted that previously the private respondents had filed an appeal before the Dy.Commissioner Ganderbal against the same mutation but it was withdrawn by them. It has been submitted that despite the Financial Commissioner having been apprised of this position, he has passed the impugned order, thereby subjecting the petitioners to multiple

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proceedings.

4. It is correct that there is no provision in the Land Revenue Act that would vest jurisdiction in the Financial Commissioner to transfer proceedings pending before it to the Additional Dy. Commissioner, but in the instant case it seems that the learned Financial Commissioner after realizing that the impugned order of mutation is appealable in nature and instead of filing an appeal the private respondents have filed revision petition, has transferred the revision petition to the Additional Dy. Commissioner directing him to treat it as an appeal. Technically the learned Financial Commissioner may not be correct in adopting the said approach. Instead of transferring the revision petition to the Additional Dy. Commissioner for treating it as an appeal, it may have been proper for the said authority to dismiss the revision petition with liberty to the private respondents to file appeal before the Additional Dy. Commissioner. Nonetheless no prejudice is caused to the petitioners if the revision petition that has been transferred to Additional Dy. Commissioner Ganderbal is treated as an appeal and the said authority decides it in accordance with law. Technicalities should not come in the way of deciding a case on merits. Therefore, it would not be appropriate to interfere in the impugned order passed by the learned Financial Commissioner on technical grounds.

5. Coming to the contention of the petitioners that earlier appeal filed by the private respondents was withdrawn by them, a perusal of the record would show that earlier appeal was filed by Mst. Khatji, the mother of private respondents. The question, as to whether the withdrawal of the said appeal by the mother of the private respondents would have an effect on the fresh proceedings that may be initiated by the Additional Dy. Commissioner on the basis of impugned order is a question which is to be gone by the said authority and this Court would not like to make any observation on this aspect of the matter, leaving it open to the Additional Dy. Commissioner to render a finding on the said aspect of the matter.

6. The writ petition is disposed of in the above terms.

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