

(2023) 11 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 2811 Of 2023

Ghulam Mohammad Beigh

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 03-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Jammu And Kashmir Agrarian Reforms Act, 1976 — Section 4, 8

Citation : (2023) 11 J&K CK 0005

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Shabir Ahmad, Sofi Manzoor, Z.A.Qureshi

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1. The petitioner has challenged order dated 10.10.2023 passed by learned Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner), Ganderbal, whereby the application for condonation of delay in filing the appeal against orders of mutation bearing Nos.602 and 605 under Section 4 and 8 of J&K Agrarian Reforms Act, 1976, relating to land measuring 4 kanals in khasra No.395 situated at Sonamarg Ganderbal, has been allowed.

2. According to the petitioner the learned Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) could not have condoned the delay of 34 years in filing the appeal against the mutation orders attested in the years 1986 and 1988 and that there was no reason, much-less a plausible reason for the said authority to condone the delay. It has been further contended that the Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) has allowed the private respondents to file a supplementary application for condonation of delay which has caused prejudice to the petitioner. It is also contended that the authority concerned has acted in a mala-fide manner while conducting the

proceedings, as such, the impugned order is liable to be set aside.

3. Heard learned counsel for the petitioner and perused the record.

4. It appears that in an earlier round of litigation, Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) Ganderbal had condoned the delay in filing the appeal, proceeded to decide the appeal on merits and set aside the impugned mutation orders. The order, whereby the delay in filing the appeal was condoned, came to be challenged by the petitioner by way of writ petition bearing WP(C) No.5/2023. While the said writ petition was pending, the Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) decided the appeal on merits, whereafter the petitioner challenged the said order by way of another writ petition bearing WP(C) No.69/2023 before this Court. Vide order dated 10.07.2023, passed by this Court in the aforesaid writ petition, the order whereby the delay in filing the appeal was condoned, was set aside and the case was remanded to the Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) Ganderbal with a direction to decide the application for condonation of delay afresh and pass a speaking/reasoned order thereon and in case the application was to succeed, the appeal was to be decided on merits. The Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) was also directed to dispose of the matter within a period of two months.

5. The Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) by virtue of the impugned order decided the application for condonation of delay in filing the appeal afresh and allowed the same. It appears that after remand of the case to the Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner), the private respondents filed a supplementary application for condonation of delay in which they pleaded that they came to know about the impugned mutation orders in December 2021, when the land in question was acquired by NHIDCL for constructing the road. According to the private respondents, they approached the said authority for seeking the compensation relief in their favour but they came to know that mutation in respect of the land in question had been attested in favour of the petitioner.

6. The learned Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) on the basis of the reasons assigned in the pleadings of the private respondents and taking into account the principle that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, condoned the delay in filing the appeal.

7. So far as the contention of the learned counsel for the petitioner that supplementary application for condonation of delay could not have been taken on record by the Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) is concerned, the same is without any merit, for the reason that it is always open to the parties to file supplementary pleadings subject to permission of the concerned Court/Authority only. While granting permission, the

Court/Authority has to ensure that the adverse party is given opportunity to meet the supplementary pleadings.

8. In the instant case, admittedly the petitioner has been given an opportunity to file reply to the additional application and he has in fact filed the reply thereto. Thus it is not a case where the petitioner has not been allowed any opportunity to meet fresh averments made by the private respondents in their supplementary application. Therefore, the contention of learned counsel for the petitioner is without any substance.

9. The Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) has passed a well reasoned order and exercised discretion of condoning the delay in filing the appeal. This Court in exercise of its powers under Article 226 and 227 of the Constitution cannot ordinarily interfere with the discretionary exercise of powers by the courts below in condoning the delay. It is only where there is complete non-application of mind in condoning the delay, which is inexorable or where no reason for condonation of delay is coming forth in the orders of the court below that High Court would interfere in exercise of its powers under Article 226 and 227 of the Constitution.

10. In the instant case, as already noted the Additional Dy. Commissioner (Joint Agrarian Reforms Commissioner) has passed a reasoned order and there is nothing in the impugned order that would give an impression that there has been any non-application of mind on the part of the said authority in exercise of its discretion. The impugned order, therefore, does not warrant any interference by this Court.

11. For the foregoing reasons, I do not find any merit in this writ petition. The same is, accordingly, dismissed.