(2022) 05 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1379 Of 2015

Ghulam Mohammad Mir And Others APPELLANT

Vs

State Of JK And Others RESPONDENT

Date of Decision : 06-05-2022

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2022) 05 J&K CK 0007

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : R.A. Bhat, M.A. Beigh

Final Decision : Dismissed

Judgement

Iqbal Wani, J

1. The petitioners herein in the instant petition filed under Article 226 of the Constitution of India, implore for the following reliefs.

a. "That by issuance of a writ of certiorari the impugned orders dated 13.06.2018 passed by the Financial Commissioner, Revenue Srinagar, on file No. 991/FC-AP and 992/FC-AP tiled "Mohammad Rafiq Mir Vs. Gulam Mohammad Mir & others" be quashed.

b. That by issuance of writ of mandamus the respondents are directed to restore mutations No. 884 dated 31.12.1999 and mutation No. 762 dated 24.01.2004 of village Wahipora, and PachanMagam, as same shall be in the interest of justice and equity.

c. Any other writ, order or direction which this Hon'ble Court may deem fit in the circumstances of the case may also be passed in favour of the petitioners and against the respondents in the interest of justice and equity."

2. The facts under the shade and cover of which the reliefs aforesaid are being claimed by the petitioners as averred in the petition reveal that one Reshi Mir,

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upon his death in the year 1999 was survived by four sons and three daughters. The petitionersNo. 1 to 3 herein and respondent No. 5 herein being sons and Saja, Fazi, Fata the daughters having been married Khana Beeriu, whereas respondent No. 5- Son having been given in adoption to one Ghulam Mohd. Dar resident of Maisooma, Srinagar.

3. The respondent No. 5 is stated to have challenged inheritance mutation No. 884 dated 31.12.1999 of village Wahipora, relating to the estate of Reshi Mir (father of the parties) before the Financial Commissioner in the year 2017 on the sole ground that the parties being Muslims, and that, the inheritance mutation attested in favour of the petitionersexcluding respondent No. 5 is thus bad.

4.The Financial Commissioner vide order dated 13.06.2018 is stated to have set aside the mutation in question along with mutation No. 762 dated 24.01.2004 of village Wahipora, and Pachan, regarding inheritance of late Reshi Mir.

5.The order of the Financial Commissioner, dated 13.06.2018 is impugned in the petition and is challenged inter alia amongst others on the grounds that the respondent No. 5 had been given in adoption by the father to one Ghulam Mohammad Dar of Maisooma, Srinagar, and that the respondent No. 5 had executed a relinquishment deed surrendering his rights in respect of the properties of his real father Late Reshi Mir in lieu of a compensation of Rs. 25000/-,while the father Late Reshi Mir had gifted away the properties to the petitioners herein and that the respondent No. 5 had challenged mutation No. 884 dated 31.12.1999 earlier as well in the year on01.03.2004 before the Financial Commissioner, which revision petition had been settled on 22.06.2014 upon filing of a memo of relinquishment along with an affidavit by the respondent No. 5 upholding the mutation No. 884. A statement of the respondent No. 5 is stated to have also been got recorded thereon in this regard, and that, the respondent No. 5 also filed a civil suit against the petitioners for seeking inter alia other reliefs a decree of declaration for setting aside, the relinquishment deed before Munsiff, Magam, and that the said suit had been dismissed after application for interim relief accompanying the said suit was dismissed in terms of order dated 07.06.2004 by the said court and that the impugned order passed by the Financial Commissioner is bad in law having been passed at the back of the petitioners.

6.Per contrarespondent No. 5 has filed objections to the petition, wherein the writ petition of the petitioners is being opposed. It is being contended in the objections that the impugned order has been passed in accordance with law by the Financial Commissioner and that the withdrawal of the erstwhile revision petition could not be a ground for dismissal of the revision petition whereunder the impugned order has been passed, as the earlier revision petition was not decided on merits. It isfurther contended in the objections that while attesting the mutation No. 884 dated 31.12.1999, the Naib Tehsildar had not followed the mandate of standing order 23-A. It is further contended in the objections that the impugned order has been passed after affording full opportunity to the

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parties and that the impugned order in essence is remand order requiring the Tehsildar concerned to pass fresh orders in accordance with Muslim Personal Law and as per the procedure laid down in standing order 23.A and that the petitioners herein can urge all the pleaswhich are being raised in the petition before the Tehsildar. The execution of relinquishment deed is stated to have never been accepted or admitted by the respondent No. 5 as is contended in the objections.

Heard learned counsel for the parties and perused therecord.

7. Perusal of the record tends to show that the respondent No. 5 herein has concealed and suppressed filing of revision petition against mutation No. 884 dated 31.12.1999 before the Financial Commissioner, earlier to the filing of the revision petition filed on 26.04. 2017 before the Financial Commissioner, wherein the impugned order has been passed, so much so, the petitioner has also concealed and suppressed the fact that the said revision petition came to be settled upon filing of a memo of relinquishment accompany with an affidavit of the petitioner. Fact also remains that while dismissing the said revision petition upon filing of the memo of relinquishment by the respondent No. 5 herein, the Financial Commissioner in terms of order dated 22.06.2004 upheld mutation No. 884 dated 31.12.1999.

8. Perusal of the record further would reveal that the said order of settlement of the said revision petition dated 22.06.2004 has indisputably been neither challenged nor set aside by any superior forum, and as such essentially has assumed finality.In presence of said order, the respondent No. 5 could not have maintained the subsequent revision petition wherein the impugned order has been passed. The filing of the earlier revision petition and decision rendered thereupon is a “material fact”. It is a fundamental principle of law that a person filing a proceeding before the Judicial or Quasi Judicial Authority must come with clean hands and must make a full and complete disclosure of facts in the pleadings. Suppression and concealment of the aforesaid material fact seemingly has been done deliberately by the respondent No. 5 herein and in the process has mislead the Financial Commissioner while adjudicating upon the subsequent revision petition filed by the respondent No. 5 against the mutation No. 884 upheld earlier by the Financial Commissioner and in presence of the said earlier order it cannot, butsaid to be a fraud played by the respondent No. 5. The conduct of the respondent No. 5, prima facie, demonstrates lack of good faith. The contention of the respondent No. 5 that he has never accepted and admitted therelinquishment deed as pleaded in the objections does not lend any support to his case, in that, a suit admittedly had been filed by him against the said memo of relinquishment which had got dismissed.

9. Having regard to what has been observed, considered and analyzed hereinabove, the petition in hand merits acceptance and, as such, is allowed. The subsequent revision petition filed by the respondent No. 5 before the Financial Commissioner against mutation No. 884 dated 31.12.1999 shall stand dismissed

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as a consequence whereof impugned order dated 26.04.2017 passed thereupon by the Financial Commissioner in regard to the said mutation No. 884 dated 31.12.1999 shall also stand quashed.

10. Dismissed.

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