

(2001) 04 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 888/1998

Lal Chand and Others

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Jammu and Kashmir Agrarian Reforms Act, 1976 — Section 30

Citation : (2001) KashLJ 506

Hon'ble Judges : R.C.Gandhi, J

Bench : Single Bench

Advocate : Raghu Mehta, Advocates appearing for the Parties

Judgement

1. Petitioners by means of this petition are seeking to quash impugned order dated 1998 passed by Respondent No. 2, in Revision Petition filed against order dated 19.07.94 of the Director, Land Records with Powers of Agrarian Reforms, whereby he has upheld the order passed in mutation No. 916 dated 151094. The subject matter of dispute is mutation No. 916 dated 151094 attested by the Tehsildar Hira Nagar in favour of the petitioners in respect of land comprising Survey No. 1709 measuring 2 kanals 19 marlas and Survey No. 1710 measuring 4 marlas situated in village Nonath Tehsil Hira Nagar, District Kathua. The original mutation was attested on 8696 declaring the respondents herein as prospective owners under Section 4 of the Agrarian Reforms Act. This mutation was challenged in appeal before Director Land Records with powers of Agrarian Reforms, Jammu. The mutation was set aside, remanding the matter back to the Tehsildar for fresh inquiry and to pass appropriate orders after hearing the parties. The Tehsildar after hearing the parties has passed the impugned mutation.

2. This mutation has been challenged on the ground that respondents were cultivating the land in Kharief 1971 and Girdawari entries are recorded

in the revenue record, against the record. This has been stated on the ground that Girdawaries of the respondents have been recorded from 1974

onwards upto 1978. The Tehsildar during inquiry recorded the statements of witnesses produced by both the parties and came to the conclusion

that the petitioners were in cultivating possession of the land throughout and particularly in Kharief 1971. This order has been confirmed and

upheld by the Director Land Records, respondent No. 3 in appeal vide his order dated 26.04.1996.

3. Having not satisfied, the respondents preferred revision petition against the order dated 26.04.1996. Respondent No. 2 has set aside the

mutation on the ground that he himself examined and appreciated the statements of witnesses, Girdawaries recorded in the revenue record by the

revenue agency, which according to him have not been explained by the mutating officer.

4. I have heard learned counsel for the petitioners. Learned counsel for the respondents is not present, perused the orders passed by the

respondents including the impugned order. The reasoning recorded by the Tribunal that the Tehsildar has not gone into the fact and explained the

Girdawaries recorded in favour of the respondents, therefore, the matter needs denovo inquiry, is not sustainable. Perusal of the mutation order

reveals that Tehsildar has looked into and taken case of this aspect and on the basis of the evidence of statement of witnesses has come to the

conclusion that the petitioners were in physical cultivating possession of the land and particularly in Kharief 1971.

5. The Tribunal was not required to appreciate the statement of witnesses while deciding a revision petition which has its own parameters of

jurisdiction of Revisional Court. The Revisional Court has not recorded any finding that the mutation is based either on no evidence or is a case of

perverse order to assume jurisdiction to look into the legal aspect of failure of justice. Therefore, the Revisional Court was not justified to

appreciate the statements of witnesses.

6. The dispute has been remanded twice. The Tehsildar has conducted thorough inquiry and where there is no scope to hold denovo inquiry, there

must be an end to such approach and the litigation between the parties needs to be settled finally. The tribunal was exercising revisional powers

and it was not within the province of the Tribunal to revise the order, unless some substantial question of law is involved. Perusal of the impugned

order reveals no justification for such denovo inquiry.

7. For the aforesaid reasons, I do not see any sustainable ground to uphold the impugned order directing denovo inquiry. The order of the tribunal

is, therefore, set aside and the order of the Director Land Records is maintained.