

(2024) 04 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : ?Latters Patent Appeal No. 48 Of 2021 In Others Writ Petition No. 1790 Of 2017

Saja Banoo And Others

APPELLANT

Vs

J&K, Special Tribunal, Srinagar And Others

RESPONDENT

Date of Decision : 03-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Civil Procedure, 1908 — Section, Order 41 Rule 3
Jammu And Kashmir Agrarian Reforms Rules, 1977 — Rule 4(a)

Citation : (2024) 04 J&K CK 0013

Hon'ble Judges : Rajnesh Oswal, J; Moksha Khajuria Kazmi, J

Bench : Division Bench

Advocate : Nazir Ahmad Bhat, Ateeb Kanth

Final Decision : Dismissed

Judgement

Moksha Khajuria Kazmi, J

1. This Intra Court Appeal is directed against the Judgment dated 08.02.2021, for short impugned Judgment, passed by the writ Court in a petition bearing OWP No. 1790/2017, whereby the said petition of the petitioners-appellants has been dismissed. The appellants seek setting aside of the impugned Judgment on the grounds taken in the memo of appeal.

2. In order to appreciate the controversy as set out in the instant appeal as also in the petition, it is desirable that the facts that led to filing of the instant appeal are taken note of in brief, thus:

3. Mutation Nos. 2511 dated 20.08.1989 and 2728 dated 01.08.1991 in respect of land measuring 01 Kanal and 3½ Marlas under Khasra No. 2100/536 in estate Beerwa Budgam, were set aside by the Joint Agrarian Reforms Commissioner, Srinagar, in terms of order dated 29.07.2015, after having been assailed before him by the respondent No. 4. The appellants being the beneficiaries of the

mutations in question, challenged the order of the Joint Agrarian Reforms Commissioner before the J&K, Special Tribunal, for short 'Tribunal' by way of a revision petition, which was, upon consideration, dismissed by the Tribunal in terms of order dated 31.10.2017.

4. Feeling aggrieved of the orders dated 29.07.2015 and 31.10.2017, supra the appellants approached the writ Court with a writ petition, OWP No. 1790/2017, seeking setting aside of the afore-stated orders. The writ Court after hearing learned counsel for the parties and on consideration of the matter, dismissed the writ petition in terms of Judgment dated 08.02.2021 for short impugned Judgment.

5. The appellants have challenged the Judgment impugned of the writ Court inter alia on the grounds that the writ Court did not appreciate the position of law with reference to the condonation of delay of 24 years; the mandate of the Judgments delivered by the Coordinate Benches was disregarded; the impugned Judgment is perverse to the legal norms; the exercise of the revenue Courts in the matter in hand has been made against the mandate of order 41 Rule 3 CPC; the contention in respect of revenue entry dated 20.08.1989, having been passed in pursuance to Rule 4 (a) of the Agrarian Rules, has been nullified by the writ Court; the impugned Judgment is in disregard of the fact that the appellants are in possession of the land in question from Kharief 1971 and have been continuously depositing the levy.

6. Before the merits of the matter are addressed, it would be desirable that the controversy as raised in the appeal in hand is elaborated for better understanding. The appellants before us have been, as would appear from the records, cultivating the land in question belonging to the father of respondent No. 4. The position in respect of the said land has remained so till the year 1989, when mutation No. 2511 dated 20.08.1989 and subsequent thereto mutation No. 2728 dated 01.08.1991, came to be attested in favour of the appellants. The respondent No. 4, in her capacity as the daughter of Reshi Bhat, the actual owner of the land in question after coming to know about the aforesaid mutations challenged the same before the Joint Agrarian Reforms Commissioner, Srinagar, in the year 2011, which was accepted and the mutations attested in the year 1989 and 1991 came to be set aside in terms of order dated 13.10.2011. However, the said order upon being challenged by the appellants before the J&K Special Tribunal was set aside and the matter was remanded on the ground that the limitation aspect had not been decided by the Joint Agrarian Reforms Commissioner, Srinagar, while passing the order dated 13.10.2011.

7. The matter after having been remanded again came to be considered by the Commissioner Agrarian Reforms/Additional Deputy Commissioner, Budgam, and vide order dated 29.07.2015, the mutation Nos. 2511 dated 20.08.1989 under Section 4 and 2728 dated 01.08.1991 under Section 8 were set aside after condoning the delay, that had crept in filing the appeal against aforesaid mutation numbers. The said order was kept in tact by the Tribunal in the revision

petition and by the writ Court in the writ petition in terms of orders dated 31.10.2017 and 08.02.2021 respectively.

8. We have heard learned counsel for the parties and considered the submissions made. In support of his submission, learned counsel for the respondents referred to and relied upon the Judgment of the Supreme Court titled as Hari Vishnu Kamat Vs. Ahmad Ishaque and others, reported as AIR 1955 SC 233.

9. The concurrent findings recorded by the writ Court and the revenue Courts subscribe to the view that the mutations in question are the outcome of fraud played by the appellants in league with the revenue officials/officers on the ground that the nature of the land has all along been shown to be orchard and it has been changed from orchard to Maidani by virtue of the mutation dated 20.08.1989 only to attract the provisions of Agrarian Reforms Act. The limitation aspect of the matter has also been dealt with by the writ Court and the revenue Courts in proper appreciation of law as the delay cannot form a ground for causing miscarriage of justice. This Court in case titled as Ghulam Mohammad Reshi Vs. Jammu and Kashmir Special Tribunal, Srinagar and Ors. in paragraph No. 19, has held as under:-

"19. As submitted by learned counsel for the appellant, normally the court ought to have considered the issue of limitation based on reasons showing sufficient cause for approaching the court or forum beyond the period of limitation and normally the merit of the case is not required to be considered. However, it is to be noted that limitation is a matter of public policy primarily to bring to end litigation within a reasonable period. The law of limitation is also based on the premise that if a person is not alert and sleeps over his rights, he may not be allowed to raise certain issues. Further, if a person knowingly does not question certain -7- matters, it will be deemed that he had accepted the same and hence he shall be estopped from questioning it after certain period of time. In dealing with law of limitation, the issue of vested right accrued to other person becomes relevant also, so that issues which have been settled are not to be re-agitated after a reasonable period of time. The primary aim of the law of limitation is to put an end to litigation. This is a law of procedure based on public policy which, however, cannot come in the way if it results in miscarriage of justice. Thus, in spite of inordinate delay, if grave miscarriage of justice is likely to occur against a person, law of limitation should not come in the way."

10. The writ Court while taking such a view has rightly recorded that the change affected by the medium of mutation dated 20.08.1989, cannot operate retrospectively and relate back to Kharief 1971, being illogical. Paragraph No. 17 of the writ Court Judgment, being relevant, is taken note of hereunder:-

"Even if, it is assumed that the Tribunal, while recording the aforesaid finding, has relied upon Jamabandi of the land in question for the year 1966, still then there is other material on record, even in these proceedings, that goes on to show that the land in question was an orchard during kharief 1971. If we have a

look at the mutation order dated 20.08.1989 (Annexure-A to the petition), in column No.12 of the said document, it is recorded that the correction has been effected in girdawri of 1971 vide the said mutation order. In the body of the mutation order, the 9 OWP 1790/2017 first line records that correction has been effected in the kind of land from orchard to "Maidani". When these two entries are read together, it is crystal clear that in the girdwari of 1971, the land in question was recorded as Bage khuski (orchard), whereas, while effecting mutation on 20.08.1989, the entry has been changed from orchard to "Maidani". This shows that in kharief 1971, the land in question was recorded as an "orchard" and not any other kind of land. The change effected in the kind of land by virtue of mutation dated 20.08.1989 cannot operate retrospectively and relate back to Kharief 1971. To assume so, would be antithesis to reason and logic. Therefore, it cannot be stated that the finding of respondent No.1, that the land in question, was an orchard at the relevant time i.e., in kharief 1971 is based on no record."

11. The prayer of writ of certiorari as sought by the writ petitioners-appellants herein before the writ Court in respect of the order of the subordinate authority was rightly refused by the writ Court, in that, the purpose of certiorari is only to confine the inferior Tribunals within their jurisdiction in order to avoid the irregular exercise or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in exercise of powers vested in them under the statute. We are fortified in our view by the Judgment of Supreme Court delivered in case titled Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikartan Das and Ors. Reported as 2023 SCC Online SC 996. It would be profitable to reproduce relevant portion of paragraph No. 77 herein thus"-

"The accepted rule is that where a Court has jurisdiction it has a right to decide every question which crops up in the case and whether its decision is correct or otherwise, it is bound to stand until reversed by a competent Court. This Court in G. Veerappa Pillai v. Messrs Raman and Raman Ltd. Kumbakonam, Tanjore District and Others, (1952) 1SCC 334 observed:

"26. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."

12. For all what has been said hereinbefore, we do not see any ground having been made out by the appellants to convince us to take a view different than the

one taken by the writ Court. The appeal, therefore, being without any merit is dismissed.