

# HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**LPAOW no. 74/2010**

**CMA no. 109/2010**

Date of order: 16.04.2013

Sheelo Devi and Ors

**v.**

## State of J&K and Ors

**Coram:**

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice.**

**Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge.**

**Appearing counsel:**

For the Appellant(s) : Mr. Anil Khajuria, Advocate.

For the respondent(s) : Mr. S. C. Gupta, Advocate.

i)	Whether to be reported in Press, Journal/Media	:	Yes/No
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ii/ Whether to be reported in  
Digest/ Journal : Yes/No

M. M. Kumar, CJ

1. The instant appeal under Clause 12 of the Letters Patent is directed against judgment and order dated 24.09.2010 rendered by the learned Single Judge of this Court up-holding the order of the Jammu and Kashmir Special Tribunal ( for brevity 'the Tribunal') dated 27.08.2002.

2. The dispute between the parties is in respect of the entries made in Rabi 1971 in favour of one Assa Nand in respect of land measuring 01 kanal 14 marlas comprised in Khasra No. 269 situated at village Channi Himmat Jammu. The mutation nos. 868 of 1981 and 1119 of 1982 were challenged before the Joint Financial Commissioner- cum-Agrarian Reforms Commissioner Jammu who initially upheld the entry made in Rabi 1971 and dismissed the appeal. However, the

Tribunal allowed the revision petition filed by the private respondents vide its judgment dated 10.07.1990 and the Girdawari entries of Rabi 1971 were set aside. Consequently both the mutations, namely, mutation nos. 868 of 1981 and 1119 of 1982 were also set aside. The matter was remanded back to the Tehsildar Settlement Jammu for *de novo* enquiry by passing order afresh after affording opportunity to all the necessary parties. According to the Tribunal there was a conspiracy hatched to change the Girdawari entries with the active connivance of the revenue staff which was found detrimental to the interest of the private respondents. The Tribunal also recorded the finding that no opportunity of hearing was afforded to the private respondents which vitiated the change of entries and accordingly directions were issued for *de novo* enquiry and for passing of fresh order.

3. The order of the Tribunal dated 10.07.1990 has attained finality and none of the parties to the lis had challenged the same. The Tehsildar Settlement conducted the spot enquiry and on 25.03.1991 passed an order concluding that the entries made in 1971 were not correct. The Tehsildar further held that all the four sons of Brij Lal were cultivating the land in dispute including Assa Nand. An appeal before the Financial Commissioner also met the same fate and was dismissed on 12.11.1998 holding that Tehsildar Settlement Jammu had carried out proper enquiry as stipulated by law by ascertaining

the factual position existing on ground with specific reference to the recorded position. He has examined the prominent residents of the village and has also taken into account the consistency of the entries which led him to conclude that all the brothers of Assa Nand were in the cultivating possession of the land. There was no justification for changing the revenue entries in favour of Assa Nand to the exclusion of his other three brothers, namely, Karam Chand, Sant Ram and Raghunath. The argument of the appellant-petitioners that other two brothers of Assa Nand died in the year 1964 and 1969 respectively did not find favour because it did not change the position because the legal heirs were deemed to have been substituted. The revision petition filed against the order of Financial Commissioner was also dismissed by the Tribunal vide order dated 27.08.2002 by holding that the Financial Commissioner has given cogent reasons to conclude that entry in favour of Assa Nand alone was wholly unjustified. The basis of the claim made by the appellant-petitioners was found to be defective and faulty. Accordingly the Tribunal up held the order passed by the Financial Commissioner.

4. Mr. Anil Khajuria, learned counsel for the appellant-petitioners has made an attempt to persuade us to accept the argument that the findings recorded by Tehsildar Settlement Jammu, as up-held by the Financial Commissioner and the Tribunal, are wholly laconic because there is no evidence to

support the findings. Another submission made by learned counsel is that the other two brothers of Assa Nand have died in the year 1964 and 1969 and, therefore, no entry showing them in cultivating possession could have been made.

5. Mr. S. C. Gupta, learned counsel for the private respondents has made reference to the revenue record to argue that once entries existed right from 1959 in the name of the private respondents, than the change made in Rabi 1971, without granting any opportunity of hearing to the private respondents, was wholly without jurisdiction. Consequently the mutations could not have been sanctioned in favour of the appellant-petitioners.

6. Having heard the learned counsel for the parties we are of the considered view that this appeal does not merit admission and is thus liable to be dismissed.

7. In an effort to persuade us to take the view that the findings are perverse and laconic learned counsel for the appellant-petitioners has not been able to show that there is no evidence to support the findings. On the contrary the revenue record coupled with the statements of a number of eminent villagers of the area would support the findings. A finding of fact, if based on evidence, cannot be interfered with under the certiorari jurisdiction. A Judge of finding of fact after appreciating the evidence may take a view different than the one taken by the other Judge but that would not be sufficient

ground in writ jurisdiction to set aside such findings merely because another view is possible. The law is thus well settled that re-appreciation of evidence is impermissible to reach a conclusion other than the one recorded by a Judge of finding of fact. In that regard reliance may be placed on the observations made in the cases of **Syed Yakoob v. K. S. Radhakrishnan and anr, AIR 1964 SC 477** and **Surya Dev Rai v. Ram Chander Rai and ors, (2003) 6 SCC 675**, where it has been held that the true legal position of the certiorari jurisdiction is no longer in doubt and a writ of certiorari can be issued for correcting errors of jurisdiction committed by the inferior Courts or Tribunals, where the orders are passed by inferior Courts or Tribunals without jurisdiction or in excess of jurisdiction or as a result of failure to exercise jurisdiction such a writ can be issued. In para 7 of the judgment in Syed Yakoob's case the following observations have been made:-

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not

entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding the Tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding, are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque 1955-A SCR 1104: (S) AIR 1955 SC 233) Nagendra Nath v. The Commissioner of Hills Division, 1958 SCR 1240 : (AIR 1958 SC 398) and Kaushalya Devi v. Bachittar Singh, A.I.R 1960 S.C 1168.”  
**(Emphasis added)**

8. More over, the order dated 10.07.1990 passed by the Tribunal, for holding de novo enquiry and passing order afresh, has attained finality which was never challenged by either of the parties. The appellant-petitioners cannot now argue that pre-remand evidence should have been taken into account because the findings recorded by the Tribunal in its order dated 10.07.1990 were that private respondents were not given any opportunity of hearing before changing the entry in Rabi 1971.

9. The judgment and order passed by the learned Single Judge does not suffer from any legal infirmity warranting admission of the appeal.

10. Accordingly, the appeal fails and the same is dismissed along with CMA no. 109/2010.

**(Dhiraj Singh Thakur)**  
**Judge**

**(M. M. Kumar)**  
**Chief Justice**

**Jammu,**  
**16.04.2013**  
Anil Raina, Secy.