

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

OWP No.157/2005
CMP No.2516/2013

Date of Decision:27.06.2016

Ab. Salam Bangroo

Vs.

Financial Commissioner & anr.

Coram:-

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:-

For the Petitioner(s): Mr. M. A. Qayoom.
For the Respondent(s): Mr. N. H. Shah, AAG-for R1.
Mr. G. A. Lone-for R2.

i)	Whether to be reported in Digest/Journal:	YES
ii)	Whether to be reported in Press/Media:	OPTIONAL

1) Impugned is the order dated 28th March, 2005, passed by the Financial Commissioner, in terms whereof, orders recorded on ten separate mutations have been set aside.

2) **FACTUAL BACKGROUND OF THE CASE:**

(I) Claim of the petitioner is that the respondent No.2 had orally gifted various parcels of land situated at Village Kralpora in his favour regarding which as many as 10 separate mutations were attested i.e:

1. Mutation No.3017 dated 04.06.1998 for land measuring 3 kanal 12 marlas covered by survey No.1904/1894/1855/1092;
2. Mutation No.3018 dated 04.06.1998 for land measuring 2 kanals under survey No.1089.

3. Mutation No.3019 dated 04.06.1998 for land measuring 1 kanals 16 marlas under survey Nos.1089-min(1 kanal 8 marla) and 1901/1891/1090 (12 marlas).
4. Mutation No.3020 dated 04.06.1998 for the land measuring 2 kanals under survey Nos.1091/1891/ 1090(8 marlas) and 1904/1894/1855/1092 (1 kanal 12 marlas).
5. Mutation No.3080 dated 31.12.1998 for land measuring 2 kanals 12 marlas covered by survey No.1091.
6. Mutation No.3081 dated 04.01.1999 for land measuring 2 kanals 15 marlas under survey No.1091.
7. Mutation No.3083 dated 04.01.1999 for the land measuring 1 kanal 9 marlas under survey No.1125(10 marlas) and 1132(19 marlas).
8. Mutation No.3078 dated 6.1.1999 for the land measuring 2 kanals 14 marlas falling under survey No.1124.
9. Mutation No.3079 dated 6.1.1999 for the land measuring 3 kanals 17 marlas covered by survey No.1130(1 kanal 12 marlas) and 1131 (2 kanals 5 marlas).
10. Mutation No.3082 dated 6.1.1999 for the land measuring 2 kanals 9 marlas under survey No.1123(2 kanal 5 marlas).

(II) Respondent No.2 had filed an application before respondent No.1 complaining therein that fictitious documents regarding his immovable property have been prepared. The respondent No.1 had directed Assistant Settlement Officer, Kashmir, to conduct enquiry and to submit the report who has submitted a detailed report stating therein that the mutations attested on the basis of "Hiba Sharayee" are not recognized kind of mutations so are not governed by Standing Order 23-A. In total 23 kanals and 18 marlas have been mutated in piece meals from June, 1998 to January, 1999, as is clear from ten

mutations. All the ten mutations though attested on different dates but bear the signatures of one and the same witness, that too in similar ink. Furthermore, it had transpired that signatures of witnesses and the complainant had been obtained on blank forms. The attesting officer has not adhered to the procedure prescribed under Standing Order 23-A, as such, has facilitated the attestation of ten mutations.

(III) On the aforesaid basis, Special Assistant to Financial Commissioner had conveyed to the Settlement Tehsildar, Chadoora, to advise the complainant Shri Mir Abdul Hamid (respondent No.2 herein) to file appeal/revision, as the case may be, before the proper forum against the mutations alleged to have been attested against law. As a result whereof, respondent No.2 filed ten revision petitions against these ten mutations. All the ten mutations have been set aside vide detailed order dated 28th March, 2005, passed by respondent No.1. Dissatisfied therewith, petitioner in whose favour mutations were attested has filed the instant petition seeking quashment of the order passed by respondent No.1 (Financial Commissioner).

3) Petitioner earlier had filed suit for declaration titled "Abdul Salam Bangroo Vs. Abdul Hamid Mir & ors." before the Court of District Judge, Srinagar, which was assigned to the Court of Sub Judge (Judge Small Causes), Srinagar. Sub Judge (Judge Small Causes), Srinagar, vide order dated 22nd June, 2004, has concluded that the said Court has no territorial

jurisdiction, as such, returned the plaint for being presented before the Court of District Judge, Budgam. After presentation before the Court of District Judge, Budgam, the case was transferred to the Court of Sub-Judge, Chadoora. Learned Sub-Judge, Chadoora, in his order dated 3rd January, 2013, observed that the Court lacks pecuniary jurisdiction, as such, returned the plaint for being presented before the appropriate forum.

4) The suit was then again filed before the Court of District Judge, Budgam, by the petitioner pleading therein that the respondent No.2(defendant) was the erstwhile owner of the suit land and in the year 1998 he made an oral gift of the suit land in his favour in return (Bil Iwaz) received an amount of Rs.9,00,000(rupees nine lacs) through defendant No.2 (Ghulam Ahmad Dar) with the following break-up:

Rs.12,000/ on 05.04.1998;
Rs.20,000/ on 25.05.1998; and
Rs.7,50,000/

5) Respondent No.2 (defendant No.1) had received amount against proper receipt. Alongside suit, an application for grant of temporary injunction had also been filed which has been allowed by learned District Judge, Budgam, vide his detailed order dated 18.07.2014 providing that the non-applicants therein i.e. Abdul Hamid Mir (respondent No.2) and Ghulam

Ahmad Dar are restrained from causing any sort of interference into the possession of the applicant (petitioner) over the suit land. On the same date i.e. 18.07.2014, another order has been passed where-under SHO, P/S Chadoora had been directed to implement the order passed in the application for temporary injunction, on spot, in letter and spirit. Both the orders have been challenged by medium of CIMA No.124/2014 before this Court and operation thereof has been stayed vide order dated 24.07.2014.

6) The question for determination before this Court, in this writ petition, is "as to whether Financial Commissioner has passed the order impugned in consonance with law".

7) Learned counsel for the petitioner submitted that mutations as were under challenge were perfectly attested in consonance with law. The respondent No.2 had orally gifted the land in favour of the petitioner and it is only then mutations were attested. The Financial Commissioner was biased, therefore, order passed by him is actuated by bias, as such, unsustainable. The Financial Commissioner has, in-effect, based his judgment on the report of the Assistant Settlement Officer, Kashmir. The Financial Commissioner should not have passed orders in view of pendency of three suits as were pending between the parties.

8) Learned counsel for the petitioner would further submit that the oral gift of the immovable property among Muhammadans is permissible, so based on such gift mutations were correctly attested. Supporting this contention, placed reliance on the judgment rendered by the Hon'ble Apex Court reported in AIR 2011 SC 1695.

9) It was further added that the learned Financial Commissioner should not have passed the order because he had ordered the enquiry, therefore, directly or indirectly his mind was biased. In support of this contention, reliance is placed on the judgment reported in AIR 1960 SC 468.

10) In opposition, learned counsel for respondent No.2 submitted that the petitioner in the plaint filed before the District Judge had claimed that he had paid Rs.9,00,000(rupees nine lacs) to the respondent No.2 which is not a fact. Even if it would have been so, then it would neither be a "Hiba" nor "Hiba Bil Iwaz" but would amount to sale and when it would be a sale, then it was required to be effected by a registered instrument. Supporting this contention, relied on the judgment rendered by the Full Bench of Patna High Court reported in AIR 1978 Patna 197 and judgment rendered by Full Bench of the Allahabad High Court reported in AIR 1951 Allahabad 86.

11) It was further added that the question of bias is beyond imagination. Learned Financial Commissioner was Ms. Sushma Choudhary who had ordered enquiry but the impugned order has been passed by her successor Mr. Verghese Samuel. Further in case she would have been biased, nothing prevented her in invoking suo moto revisional powers as permissible under Section 15 of Land Revenue Act.

12) It is further highlighted that the mutations were attested in piece meals, why so, because alienation of agricultural land or of orchard is restricted to the extent of 2 kanals under Agrarian Reforms Act and to the extent of 4 kanals under the Jammu and Kashmir Prohibition on Conversion of Land and Alienation of Orchards Act, 1975. However, in a clandestine manner, ten mutations have been attested for the entire land situated at Kralpora.

13) It is further submitted that the witnesses to the mutations are all from village Bagat when the requirement is that it has to be attested in presence of general public of the concerned village. Further added that on all the mutations witnesses are the same, the procedure prescribed for attestation of mutation as envisaged by Standing Order 23-A has been observed in breach.

14) Whether respondent No.2 had gifted the land orally or had alienated the land or there has been "Hiba Bil Iwaz" are the issues better to be left to be decided in the civil suit as is pending. Though learned counsel for the respondent No.2 submitted that the suit is not maintainable but that too is an issue to be left for the decision by the trial court otherwise any observation, if made in that behalf, would prejudice the rights of the parties during trial of the suit.

15) Para 36 of the Standing Order 23-A provides that mutation has to be attested in presence of the parties and the Lumbardar. In the instant case witnesses to all the mutations are one and the same belonging to a different village, so a suspicious position. Why ten mutations have been attested when the owner (alleged donor) and the donee are same and the land is situated in the same village. If it is to be treated as an alienation then same may not be permissible in view of restriction on alienation provided under Section 31 of the Agrarian Reforms Act and Section 3 of the Jammu and Kashmir Prohibition on Conversion of Land and Alienation of Orchards Act, 1975. Para 104 of the Standing Order 23-A provides that transfers against statutory laws shall not be enforced by mutations.

16) Attestation of mutation is not a routine matter. It should not offend the procedure prescribed under Standing Order 23-A nor should it be attested on the basis of any document or otherwise, which shall be in contravention of any law.

17) Learned Financial Commissioner has appreciated the matter in its correct perspective. It has been observed that none of the seven witnesses who figure in all the mutations belong to Kralpora village. It is also rightly observed in the order that 15 kanals and 18 marlas out of the land included in the mutations was mortgaged to Land Development Bank, therefore, could not have been alienated in the manner nor could mutation be attested for such land. Finally has concluded that a massive fraud has been perpetuated on the petitioner therein (Abdul Hamid Mir) by Patwari and the attesting officer. Even if oral gift would have been made, still mutations have not been attested after proper enquiry. Disciplinary action has been ordered against the erring officers/officials.

18) Since the suit is pending, therefore, it would not be appropriate to comment whether there has been fraud or not but one thing is sure that the mutations have been attested in derogation to the procedure prescribed under Standing Order 23-A, therefore, were not sustainable. The order of learned

Financial Commissioner setting aside mutations does not call for any interference. It is made clear that the observations made hereinabove shall not have effect on the determination of all issues during the course of trial of the suit, if same survives after decision on its maintainability.

19) Viewed thus, writ petition is found to be devoid of merit, as such, dismissed along with connected CMP.

*(Mohammad Yaqoob Mir)
Judge*

Srinagar
27.06.2016
"Mohammad Altaf"