

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

**OWP No.1956/2015**  
**MP No.01/2015**

Date of decision:28.09.2017

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Mohammad Amin Thoker & Ors. v. J&K Special Tribunal & ors.

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**Coram:**

**Hon'ble Mr Justice Mohammad Yaqoob Mir, Judge.**

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**Appearance:**

For the Petitioner(s): Mr. M. R. Thakur, Adv.

For the Respondent(s): None for R1 to R4.

Mr. S. A. Qadiri, Adv.-for R5.

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| i)  | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press:           | No  |
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1. Order dated 19.10.2015, passed by the Revisional Authority (J&K Special Tribunal, Srinagar), is sought to be quashed.

2. Precise factual matrix which has given rise to hectic litigation between the parties is that land measuring 01 kanal of 1 marla covered by survey No.378/108 situated at Village Agroo Tehsil Kulgam, of which

petitioners claim to be owners, has been mutated under Section 4 of the Agrarian Reforms Act in favour one Mst. Zeba, mother of respondent No.5, vide mutation No.338 dated 28.04.1981.

3. Mst. Zeba having been shown as tiller has been conferred prospective ownership rights. Aggrieved thereof, Sona Thoker, the actual owner, of whom petitioners claim to be the legal heirs, filed an appeal before the Court of Joint Agrarian Reforms Act, Kashmir. On appearance, Mst. Zeba filed an application accepting possession of the owner by stating therein that the land in question is under the possession of the appellant (Sona Thoker) and she has no right or connection with the said land, the position in revenue records showing her as tenant runs contrary to the spot position. In support of the said application styled as compromise, the statement of Mst. Zeba has been recorded wherein she has stated that she has heard the contents of the compromise, admits the same word by word.

4. Learned Joint Agrarian Reforms Commissioner in view of said compromise accepted the appeal, order recorded on mutation to the extent of said land was set aside and the case was remanded to the Tehsildar concerned for denovo enquiry on spot with a further direction that he will

make sure that the parties under the garb of compromise may not make any sale deed.

5. Extract of Girdawari has been placed on record in its column No.7, vis-à-vis said land covered by survey No.378/108, it has been recorded that in pursuance to order of Tehsildar bearing No.785/SQ dated 29.01.1997, remand case Sona Thoker Vs. Zeba wife of Samad Bhat, under survey No.378/108, land measuring 1 kanal 1 marla is recorded in cultivation of Sona Thoker adopted son of Wali Sheikh. In the note beneath the entries of Khasra Girdawari, it is also recoded that Mohammad Amin (petitioner) S/o Sona Thoker, as per petitioner and other villagers on spot, is in possession of the said land.

6. Mst. Zeba, mother of respondent No.5, subsequently in the year 1997 filed an application for grant of temporary injunction and protection before Assistant Commissioner General (Collector), Anantnag, which application has been decided on 03.09.1997. In the said order it has been recorded that on presentation of the application, interim injunction dated 19.03.1996 was issued restraining the non-applicants from causing any interference with the possession of the applicant, same order is in operation. It is further mentioned that the non-applicants therein, Sona Thoker and others, have

pleaded in their objections that though mutation was attested but the applicant Mst. Zeba was not in possession. Mutation was challenged before Agrarian Reforms Commissioner where the parties have entered into a compromise, therefore, application be dismissed. Assistant Commissioner General (Collector) has mentioned that the non-applicants had not produced any proof in support of their objections, they were proceeded in ex-parte. As per entries in the extract of Girdawari, land in question has been mutated vide mutation No.338 in favour of applicant as prospective owner. Finally, application has been allowed. Non-applicants therein have been directed not to cause interference with the land in question subject to condition that regarding land in question, there is no other order passed by any competent Court.

7. Aggrieved by the order of Collector (Assistant Commissioner General), Anantnag, dated 03.09.1997, Sona Thoker filed an appeal before the Additional Deputy Commissioner with powers of Agrarian Reforms Commissioner, Anantnag, titled Sona Thoker & others Vs. Mst. Zeba. Additional Deputy Commissioner (Commissioner Agrarian Reforms), vide order dated 20.07.2007, while allowing the appeal held that the order passed by the Collector is without jurisdiction, as such, has been set aside.

At the same time, order of Joint Agrarian Reforms Commissioner, Srinagar, shown as order dated 04.07.1995, which, in fact, is 06.04.1995, was directed to be forwarded to Tehsildar for necessary immediate action.

8. Aggrieved by this order, Mst. Zeba filed a revision petition before J&K Special Tribunal, Srinagar. The Revisional Authority allowed the revision petition and while setting aside order dated 20.07.2007 passed by Additional Deputy Commissioner (Commissioner Agrarian Reforms), restored order dated 03.09.1997 passed by Assistant Commissioner General (Collector) Anantnag. Aggrieved whereof, instant petition has been filed. In the meantime, Sona Thoker as well as Mst. Zeba died, that is why Mohammad Amin Thoker (son) has filed this petition and in place of Mst. Zeba, her son Abdul Salam has been impleaded as party/respondent No.5.

9. The Revisional Authority has passed the order impugned quite contrary to the factual position without noticing the above referred facts and circumstances, has passed the order in an arbitrary manner, lack of application of mind is apparent.

10. Admitted fact is that the dispute is with regard to land measuring 1 kanal 1 marlas covered by survey No.378/108. Mutation under Section 4 of

Agrarian Reforms Act was attested on 28.04.1981 in favour of Mst. Zeba, prospective owner.

11. The appellate authority i.e. Joint Agrarian Reforms Commissioner, on the basis of a compromise wherein Mst. Zeba had admitted that she is out of possession and it is Sona Thoker who is in actual possession, has set aside the mutation and Tehsildar concerned was directed to conduct fresh enquiry and to ensure that under the garb of compromise, sale is not made.

12. Tehsildar, has passed order on 29.01.1997, position of which has been given effect in the records reflecting Sona Thoker adopted son of Wali Sheikh in personal cultivation of the land. This order of Tehsildar has not been challenged anywhere.

13. How could Mst. Zeba file an application for grant of temporary injunction and protection and then how could Assistant Commissioner General pass order dated 03.09.1997, on the face of it, suggests non-application of mind by the Assistant Commissioner General. It has been brought to the notice of the Assistant Commissioner that mutation under Section 4 has been set aside by Joint Agrarian Reforms Commissioner.

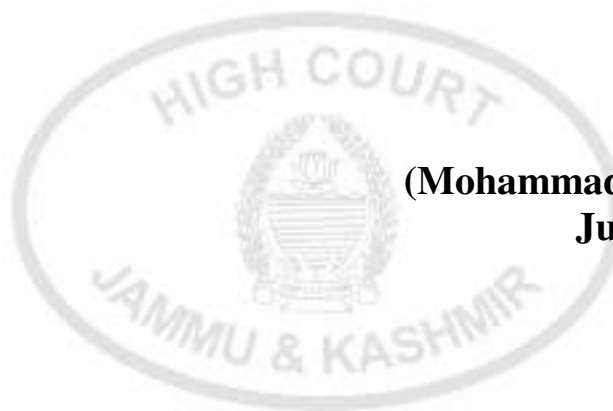
How he has covered up the same is that he has mentioned in the order that no such order or compromise entered into by the parties before Joint Agrarian Reforms Commissioner was produced. Finally, while issuing restraint order has incorporated a condition to the effect “**provided regarding land in question there is no other order passed by any other competent court**”. This suggests that Assistant Commissioner has been conscious about order of Joint Agrarian Reforms Commissioner and the compromise which had been entered into and despite that he has passed the order which was successfully challenged by Sona Thoker before Additional Deputy Commissioner with powers of Commissioner Agrarian Reforms, Anantnag.

14. Learned Revisional Authority without looking into the stated facts and without looking into the cryptic order passed by Assistant Commissioner General (Collector) has restored the same order when Additional Deputy Commissioner while disposing of the appeal has clearly mentioned that mutation No.338 dated 28.04.1981 was set aside and also recorded a finding that the application for injunction could not lie, rightly so because it is Mst. Zeba who had admitted before the appellate authority on 24.02.1988 that she is not in possession of the land. When there is a clear

admission of Mst. Zeba that she was not in possession, how could there be a restraint order against the actual owner.

15. The order passed by the Revisional Authority (J&K Special Tribunal) dated 19.10.2015, on the face of it, is perverse, as such, quashed, as a result whereof, order passed by Additional Deputy Commissioner with powers of Agrarian Reforms Commissioner, Anantnag dated 20.07.2007 is restored.

16. Writ petition succeeds, shall stand disposed of as above.



**(Mohammad Yaqoob Mir)**  
**Judge**

**Srinagar**  
**28.09.2017**  
***"Bhat Altaf, PS"***