

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

WP (C) No. 2566/2021

Dated: 28th of April, 2023.

Ahmad Hussain & Anr.

... Petitioner(s)

Through: -

Mr M. A. Qayoom, Advocate.

V/s

Union Territory of Ladakh & Ors.

... Respondent(s)

Through: -

Mr Tahir Majid Shamsi, DSGI for R-1 to 6; and
Mr Manzoor Ahmad Dar, Advocate for R-7 to 16.

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. The Petitioners, through the medium of this Petition filed under Article 226 of the Constitution of India, claim that a piece of land measuring 110 Kanals comprising under Survey Nos. 1773 to 1777, 1916, 1881 and 1790 situate at village Karkat, Kargil, which was part of un-demarcated forest, was brought under cultivation by the Petitioners and the predecessors-in-interest of the Respondent Nos. 6 to 16 (for short 'the Private Respondents') prior to the year 1936 in accordance with the concession made by virtue of Ailan No. 10 of 1979 BK read with Ailan No. 38 of 1989, provisions whereof were later on incorporated in Para 87 of the Standing Order No. 23 which regulates the preparation of record of mutations.

02. It is stated that having brought the aforesaid land under cultivation, the Petitioners and the predecessors-in-interest of the Private

Respondents, accordingly, requested the Tehsildar concerned to attest appropriate mutation(s) in terms of the applicable provisions of law in their favour, whereafter the Tehsildar conducted a detailed inquiry on spot and, after returning a finding that the said land had been brought under cultivation by the Petitioners and the predecessors-in-interest of the Private Respondents much before the year 1936 and also that they had dug a 'Khul' for irrigating the land, accordingly, attested Mutation Order No. 383 on 9th of July, 1976 in favour of the Petitioners and the predecessors-in-interest of the Private Respondents, thereby giving them the status of occupancy tenants on the said land. Thereafter, one more mutation bearing No. 382 regarding land measuring 26 Kanals and 07 Marlas comprising under Survey Nos. 1881 and 1790 is also stated to have been likewise attested on the same lines by the Tehsildar concerned.

03. Both these mutations became the subject matter of a Revision Petition before the Divisional Commissioner, Kashmir, who, as stated, erroneously and capriciously, accepted the Revision Petition and recommended to the Respondent No.2-Financial Commissioner, Revenue, that the Order passed on mutation Order Nos. 382 and 383 of Village Karkat, Kargil be set aside and the case be remanded back to the Respondent No.3 for *de-novo* enquiry and fresh orders under law.

04. The Respondent No.2 accepted the recommendations of the Divisional Commissioner, Kashmir and, while setting aside the orders of the Tehsildar, Kargil, passed on mutation Nos. 382 and 383 of Village Karkat, Kargil, remanded the case back to the Respondent No.3-Deputy Commissioner, Kargil for fresh inquiry and orders under law vide Order dated 12th of November, 1979. It was alleged that after passing of the Order dated 12th of November, 1979, no inquiry was conducted by the Respondent No.3 in the matter, however, despite that, the possession of the Petitioners and the predecessors-in-interest of the Private Respondents over the land was not disturbed by anybody. The entry of their possession had also not been disturbed despite the setting aside of Mutation Nos. 382 and 383, however, in the year 1984, a subordinate revenue official, i.e., Girdawar,

deleted the entry of the Petitioners and the predecessors-in-interest of the Private Respondents over the land.

05. Aggrieved of the aforesaid entry made by the Girdawar, the Petitioners and the predecessors-in-interest of the Private Respondents challenged the same before the Tehsildar by way of an application of '*Sehat Kasht*', thereby requesting him to order correction of entry in the Girdawari, so as to confirm it with the possession as it existed on spot. The Tehsildar, vide Order dated 26th of May, 1985, corrected the entries and recorded as '*Badastoor Khalsa Sarkar*', however, no order was ever passed by any authority nor was anything available on record ordering deletion of the entry in respect of cultivating possession of the Petitioners and the predecessors-in-interest of the Private Respondents over the land. Therefore, in this situation, the Petitioners and the predecessors-in-interest of the Private Respondents, accordingly, filed a Revision Petition against the Order of Tehsildar, Kargil before the Divisional Commissioner, Kashmir, who, after considering the matter in its entirety, vide Order dated 24th of June, 1996, accepted the Revision Petition and forwarded the case to the learned Financial Commissioner with the recommendations that the Order dated 26th of May, 1985 be restored and the subsequent Order made in Rabi 1995 was quashed.

06. The Financial Commissioner, however, disagreed with the recommendations of the Divisional Commissioner/ Additional Commissioner, Kashmir and, vide Order dated 24th of May, 1997, dismissed the Revision Petition. Aggrieved of the Order dated 24th of May, 1997 passed by the Financial Commissioner, a Review Petition was filed which was also dismissed on 21st of January, 1998.

07. Both the orders dated 24th of May, 1997 and 21st of January, 1998 passed by the Respondent No.2 were challenged by the Petitioners and the predecessors-in-interest of the Private Respondents through the medium of a Writ Petition bearing OWP NO. 270/1998 before this Court. The said Writ Petition was allowed in terms of Order dated 7th of May, 2008 setting aside the Orders passed by the Respondent No.2 with a further

direction to the Deputy Commissioner, Kargil to conduct a fresh inquiry in the matter and pass orders as directed by the Financial Commissioner vide Order dated 12th of November, 1979 within three months from the date the copy of the Order is served upon him.

08. Despite of service of the aforesaid Order dated 7th of May, 2008 passed by this Court, neither any inquiry was conducted by the Deputy Commissioner nor any order of mutation was passed in favour of the Petitioners and the predecessors-in-interest of the Private Respondents in relation thereto, whereas, on the other hand, an order bearing No. DC-K/AQ-App/08 dated 25th of October, 2008 was passed directing the parties to maintain *status quo* on spot. Even after passing of the aforesaid Order dated 25th of October, 2008, the Respondent No.3 did not decide the matter finally, one way or the other.

09. On 7th of May, 2009, the villagers of Karkat submitted an application before the Respondent No.3, stating therein that they have no claim over the land in question which was in the possession of the Petitioners and the predecessors-in-interest of the Private Respondents since decades and that they unanimously favoured the process of mutation initiated in their favour with the exception that a piece of land out of the aforesaid land be reserved for graveyard which has already been surrendered by the Petitioners and the predecessors-in-interest of the Private Respondents. It was also alleged in the application that some of the villagers, for their personal interest, have been attempting to file litigation with which they have nothing to do and that the villagers of Karkat have neither any claim over the land in question nor does a single person claim right in any manner, whatsoever.

10. Since, thereafter, no orders were passed by the official Respondents in the matter, therefore, the Petitioners and the predecessors-in-interest of the Private Respondents filed Writ Petition bearing OWP No. 922/2009 before this Court, wherein they prayed for the grant of following relief(s) in their favour:

“I. By issuance of a writ of Mandamus or any other appropriate writ, order or direction, it be declared that:

a) The Deputy Commissioner, Kargil, has lost the jurisdiction to conduct any enquiry with regard to the conferment of the status of the occupancy tenants in favour of the petitioners in pursuance of Ailan No. 10 of 1979 BK read with Ailan No. 38 of 1989 which is incorporated in para 87 of standing order No. 23 regulating the preparation of record of rights.

b) The respondents be directed to deem the mutation orders 383 and 382 attested in favour of the petitioners under Ailan No. 10 of 1979 BK read with Ailan No. 38 of 1989 of land measuring 110 Kanals covered by survey Nos. 1773 to 1777, 1916, 1881 and 1790 situated at Village Karkat, Tehsil Kargil as legally valid and therefore, the petitioners are legally competent to cultivate the land or bring any part thereof under cultivation in any manner they would like.

IN THE ALTERNATIVE

II. By issuance of an appropriate writ, order or direction, the Assistant Commissioner (Revenue), who is the Settlement Officer and has the jurisdiction to deal with the matter, be directed to attest the mutation orders 383 and 382 in terms of Ailan No. 10 of 1979 BK read with Ailan 38 of 1989 with respect to the land measuring 110 Kanals covered by survey Nos. 1773 to 1777, 1916, 1881 and 1790 situated at Village Karkat, Tehsil Kargil in favour of the petitioners as occupancy tenants thereof, keeping in view the agreement dated 2-3-1982 and the representation dated 7-5-2009 filed by the Villagers of Karkit before the Deputy Commissioner, Kargil.

III. The Hon'ble Court may pass any other order or direction which it deems fit and proper under the facts and circumstances of the case.”

11. The aforesaid Writ Petition was disposed of by this Court on 9th of September, 2015 with a direction to the Respondent No.5 to implement the Court Judgment dated 7th of May, 2008 passed in OWP No. 270/1998 within two months from the date copy of the Order is served on him with further direction that, while considering the matter and passing final orders, he shall afford an opportunity of hearing to both the parties, including the intervenors and shall entertain all documents which may be produced before him. It was also provided by this Court that till the orders are passed, *status quo* be maintained.

12. Thereafter, on 13th of December, 2017, the Respondent No.5 issued a notice to the parties to cause their appearance before his Court on

22nd of January, 2018 in person or through their recognized agents, besides a general notice that if any person from Karkat Village having any interest in the said disputed land wants to intervene in the case, he can also attend the Court on the scheduled date with relevant documents.

13. After issuance of aforesaid notice dated 13th of December, 2017, Fida Hussain-Petitioner No.4 in OWP No. 922/2009 died on 11th of January, 2018 and, as such, the Petitioner Nos. 1 and 3 of OWP No. 922/2009 caused their appearance before the Respondent No.5 on 22nd of January, 2018. Besides other Respondents, the intervenors also caused their appearance before the Respondent No.5 on the said date, who recorded their statements and, thereafter, posted the case on 27th of March, 2008. The Respondent No.5, thereafter, however, did not conduct any proceedings till date and the direction passed by this Court on 9th of September, 2015 has remained unimplemented so far. In the meanwhile, Raza-Petitioner No.1 of OWP No. 922/2009, also expired on 10th of January, 2020.

14. In view of the failure of the Respondent No.5 to comply with the direction of this Court dated 9th of September, 2015, the Petitioners have, again, approached this Court through the medium of the instant Petition seeking indulgence in the matter with a prayer to direct the Respondent No.4, who is a senior revenue functionary in the District, to implement the directions of this Court contained in its Order dated 9th of September, 2015 within some specific timeframe as the Petitioners and the predecessors-in-interest of the Private Respondents have suffered a lot at the hands of the Respondents because of non-implementation of the Orders of this Court.

15. Pursuant to notice issued by this Court, the official Respondents have filed their Objections, asserting therein that as on date the land in question is cultivable and under cultivation and possession of the Petitioners, except graveyard and the Government Middle School Karkitchoo area at Site and that the land in question is recorded in the name of Raza, Ahmad Hussain and Jaffar, all sons of Hassan Mohd., having three shares and one Fida Hussain son of Ali having one share as '*Gair-e-*

Mustqil’ in the column of ‘*Khana-e-Kasht*’ of Girdawari Register Village Karkat.

16. The proforma Respondents have chosen not to file any Response to this Petition, however, Mr Manzoor Ahmad Dar, the learned Counsel appearing on their behalf, submits that they are in agreement with the pleas raised by the Petitioners and do not oppose their Petition in any manner whatsoever. The learned Counsel, accordingly, prayed that the Petition be allowed and the reliefs prayed therein be granted in favour of the Petitioners.

17. Heard and considered.

18. On a bare perusal of the pleadings on record and after hearing the learned Counsel appearing for the parties, it is evident that the official Respondents have not specifically opposed the Petition of the Petitioners in any manner and have, instead, to a large extent, supported the case of the Petitioners with regard to the claim of the Petitioners and the predecessors-in-interest of the Private Respondents over the land in question. There is virtually no contest to the Petition on hand. Since, this Court has already dealt with the matter extensively in OWP No. 922/2009 vide Order dated 9th of September, 2015, thereby directing the Assistant Commissioner, Revenue, Kargil/ Respondent No.5 herein to pass final orders in the matter, after affording opportunity of being heard to the parties, including the intervenors and after entertaining all documents, the only grievance raised in this Petition is that as the aforesaid Order passed by this Court had not been implemented within the time limit fixed by the Court, this Court be pleased to issue fresh directions to a senior revenue official, particularly Respondent No.3-Deputy Commissioner, Kargil or Respondent No.4-Additional Deputy Commissioner, Kargil to implement the Order dated 9th of September, 2015 passed by this Court in OWP No. 922/2015.

19. Having regard to the above factual matrix of the case, coupled with the fact that a specific timeframe having been fixed in the Order dated 9th of September, 2015 by this Court for implementation of the Order,

invoking the mandate of Sections 148 and 151 of the Code of Civil Procedure, this Petition, at this stage, is **disposed** of with a direction to the Respondent Nos. 4 and 5 to comply with the terms of Order dated 9th of September, 2015 passed by this Court in OWP No. 922/2009 with regard to the land in question as expeditiously as possible, preferably within two months from the date a copy of this Order is served upon them.

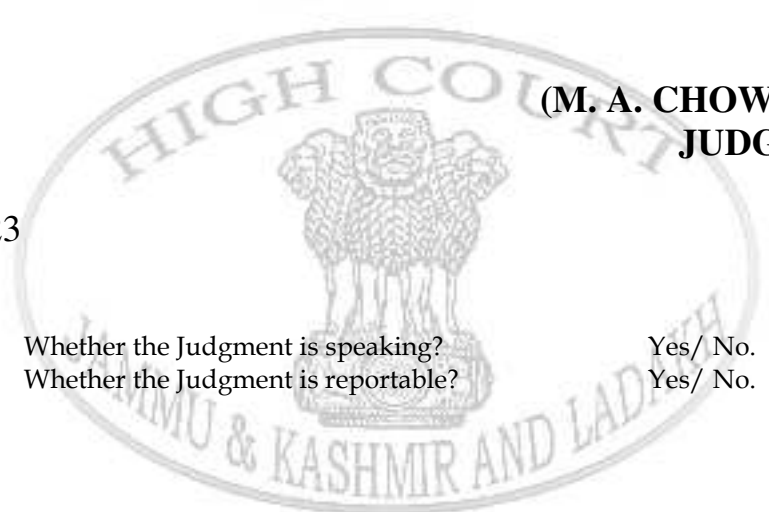
20. **Disposed** of as above, along with the connected CM(s).

SRINAGAR

April 28th, 2023

"TAHIR"

(M. A. CHOWDHARY)
JUDGE

- 
- | | | |
|-----|-------------------------------------|----------|
| i. | Whether the Judgment is speaking? | Yes/ No. |
| ii. | Whether the Judgment is reportable? | Yes/ No. |