

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

WP(C) No. 2573/2023(O&M)

Kuldeep Raj

.....Appellant(s)/Petitioner(s)

Through: Mr. Ranjeev Sangotra, Adv.

vs

Union Territory of J&K and others

..... Respondent(s)

Through: Ms Priyanka Bhat, Adv. vice
Ms. Monika Kohli, Sr. AAG for No. 1, 3 to
11
Mr. Vaibhav Gupta, Adv. for No. 2

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER
28.02.2025

Oral:

1. The petitioner has filed this writ petition for quashing the Mutation No. 369 dated 26.06.1991 attested under section 7 of the Agrarian Reforms Act, 1976 recorded in favour of predecessor-in-interest of respondent No. 2-Dr. Neeraj Sharma by the respondent No. 7. It is stated that aggrieved of the aforementioned mutation, the father of the petitioner had preferred an appeal before respondent No. 11 and the same was dismissed vide order dated 10.04.1994 and thereafter, order dated 10.04.1994 was assailed through the medium of revision petition before the J&K Special Tribunal, Jammu-respondent No. 12 herein, but the revision petition was also dismissed by the learned Tribunal vide order dated 15.05.1998.
2. It is stated that the grandfather of the petitioner, namely, Thotha Ram was the tenant in respect of the land comprising khasra No. 50 min measuring

WP(C) No. 2573/2023

8 kanals situated at Village Agore Tehsil Jammu. After the demise of the father of the petitioner namely Fiso Ram on 19.12.2022, the petitioner and his mother Parsino Devi, brother and sister stepped in to the shoes of Fiso Ram being his legal heirs and the petitioner has been appointed as attorney by his mother, brother and sister.

3. It is contended by the petitioner that the orders passed by respondent Nos. 11 and 12, have been passed without application of mind, as such, are not sustainable in the eyes of law as the application submitted by the father of respondent No. 2 was time barred and as such, his application was required to be rejected, but the authorities below have committed great illegality by ignoring the said issue. It is also urged by the petitioner that pursuant to Mutation No. 322 attested under section 4 of the Agrarian Land Reforms Act, 1976, levy for 8 kanals of land amounting to Rs. 2575/- was also deposited by the father of the petitioner with respondent No. 6 for conferring ownership rights under section 8 of the Agrarian Reforms Act, 1976 and mutation under section 7 of the Agrarian Reforms Act has been attested in violation of the principles of natural justice. It is further averred by the petitioner that an application was filed for getting the certified copy of the judgment dated 05.08.1999 passed in OWP NO. 603/1998 but the registry reported that no such file has been deposited in the month of August 1999. The petitioner further claims to be in possession of the land measuring 8 kanals.
4. The respondent No. 2 has filed the response, stating therein that the petitioner has concealed the material facts that he had earlier filed two

WP(C) No. 2573/2023

civil suits for permanent prohibitory injunction with regard to the same land, which is the subject matter of present petition, before the courts of learned Munsiff, Jammu and learned Sub Registrar, Jammu and as such, the petitioner has not approached this Court with clean hands, therefore, he is not entitled to any relief. The present writ petition is also being objected on the ground that it suffers from delay and *laches*. On factual aspects of the case, it is stated that the father of respondent No. 2 was the lawful and absolute owner in possession of land measuring 19 kanals and 2 marlas comprising old khasra No. 50 min situated at Village Chak Singha Agore, Tehsil Bhalwal, District Jammu and as the father of respondent No. 2 was not personally cultivating the said land in kharief 1971, therefore, in terms of Section 4 of the Act, all the rights, title and interest over the aforesaid land were extinguished and vested in the State. However, the father of the answering respondent No. 2 resumed 5 kanals and 11 kanals from other two tenants by mutual agreement, out of which 2 kanals of land was acquired by the Government for construction of the road. It is also stated that the father of the respondent No. 2 further exercised his right vested with him under section 7 of the J&K Agrarian Reforms Act, 1976 for resumption of land measuring 8 kanals from the grandfather of the petitioner and submitted resumption form with the concerned authorities in December, 1978 and finally Mutation No. 369 with respect to land measuring 4 kanals, out of 08 kanals of land in possession of the grandfather of the petitioner, comprising khasra No. 50 min situated at Village Chak Singha Agore Tehsil Bhalwa, was attested

WP(C) No. 2573/2023

in favour of the father of the respondent No. 2 on 26.06.1991 under section 7 of the Act of 1976. Therefore, the father of respondent No. 2 was put in actual possession of 04 kanals of land on 21.11.1993. This fact is duly reflected in the khasra girdawari of kharief 1993. It is stated that respondent No. 2 is now owner in possession of the land measuring 7 kanals and 6 marlas, as 5 marlas of land out of total 7 kanals 11 marlas of land has been left by respondent No. 2 for passage to his land. The respondent No. 2 has further stated about the filing of the appeal and revision by the father of the petitioner and the subsequent dismissals by the appellate authority as well as the revisional authority as the case may be vide orders dated 10.04.1994 and dated 15.05.1998 respectively.

5. It is further stated that the father of the petitioner-Fiso Ram had filed the writ petition, titled, 'Fisso Ram vs State of J&K and others', which is still pending adjudication but the record of which is not traceable. It is also stated that on 17.03.2021, father of the petitioner filed a civil suit, titled, 'Fiso Ram vs. Neeraj Sharma' with respect to above mentioned land before the court of learned Munsiff, Jammu which was withdrawn by the father of the petitioner and on the same day, another suit, titled, 'Fiso Ram vs. Punnu Ram' was filed before the Sub-Registrar and said suit was also dismissed for non-prosecution on 30.12.2021.
6. Heard learned counsel for the parties and perused the record.
7. Mr. Rajeev Kumar Sangotra, learned counsel for the petitioner has argued that the respondent No. 2 has no right with regard to land of the petitioner

as the mutation itself was illegal, therefore, the respondent No. 2 cannot raise construction over the land.

8. On the contrary, Mr. Vaibhav Gupta, learned counsel for respondent No. 2 has vehemently argued that the instant petition suffers from delay and *laches* and the petition deserves dismissal more particularly when the father of the petitioner had challenged the orders passed by the appellate as well as the revisional authorities.
9. A perusal of the record reveals that the Mutation No. 369 was attested in the year, 1991 in favour of the father of respondent No. 2 under section 7 of the Agrarian Reforms Act and the father of the petitioner assailed the same through appeal and the same was dismissed by respondent No. 11 on 10.04.1994. Thereafter, father of the petitioner assailed order dated 10.04.1994 before the J&K Special Tribunal through the medium of revision and that too was dismissed vide order dated 15.05.1998.
10. At this stage, Mr. Rajeev Kumar Sangotra, learned counsel for the petitioner has produced the photocopy of order dated 27.07.1998, which reflects that the orders dated 10.04.1995 and 15.05.1998 passed by the appellate authority as well as the revisional authority were impugned by the father of the petitioner and interim order of status quo was passed. Mr. Sangotra has further submitted that OWP No. 603/1998 is not traceable in the record.
11. As per the record, the orders passed by the appellate as well as revisional authority were impugned by the father of the petitioner through the medium of OWP No. 603/1998, but the said file is not traceable and page

34 of the writ petition reveals that no such file has been deposited in the month of August, 1999.

12. Vide order dated 22.12.2023, this Court directed the Registrar Judicial of this Court to report about the fate of the writ petition bearing OWP No. 603/1998. The Registrar Judicial has submitted a report, thereby stating that during search of the judicial record, the file could not be found and no such file has been deposited in the month of August 1999.
13. This report was submitted pursuant to the report submitted by the official concerned that earlier an application for issuance of the certified copy of the judgment dated 05.08.1999 passed in OWP No. 603/1998, titled, Fiso Ram vs State of J&K and others' was filed on 04.12.2018 but the file was not deposited in the month of August, 1999.
14. This is a peculiar situation arisen before this Court as the learned counsel for the petitioner has placed on record interim order dated 27.07.1998 passed in OWP No. 603/1998. The petitioner has not been able to demonstrate the fate of the said writ petition and the Registrar Judicial has also reported in respect of the certified copy of the judgment dated 05.08.1999 passed in OWP No. 603/1998.
15. On query by this Court, learned counsel for respondent No.2 submitted that respondent No. 2 had moved an application for certified copy of the judgment dated 05.08.1999 only when the father of the petitioner told respondent No. 2 that he has got an order dated 05.08.1999 from High Court and due to that reason only, the respondent No. 2 applied for the issuance of the certified copy of the said order. In fact, both the counsels

WP(C) No. 2573/2023

have not been able to demonstrate before this Court about the fate of OWP No. 603/1998. The fate of OWP No. 603/1998 is required to be ascertained.

16. So far as merit of the case is concerned, once the father of the petitioner had filed the writ petition, and even two suits in which he could not get any interim order, the petitioner cannot file the present writ petition.
17. In view of the above, this Court is not inclined to pass any order in respect of the land which is the subject matter of the instant writ petition but deems it proper to dispose of the present writ petition by directing the respondent No. 13 to locate the file of OWP No. 603/1998.
18. Registry to maintain the index of the file and photocopy of the interim order dated 27.07.1998 submitted by the learned counsel for the petitioner shall form part of the index.
19. Let the index be listed on 04.04.2025 for response by the Registrar Judicial-respondent No. 13 herein with regard to the fate of OWP No. 603/1998.

(RAJNESH OSWAL)
JUDGE

Jammu:
28.02.2025
Rakesh

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No