

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP no. 242/2018

Shakoor Ali and others

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

Through: Mr. M. Tufail, Advocate
Mr. Babar Ahmad, Advocate

Vs.

Financial Commissioner and others

...Respondent(s)

Through: Mr. M. Y. Bhat, Sr. Advocate with Mr. Sajid Bhat, Adv.
Mr. T. M. Shamsi, DSGI with Ms. Bisma Ali, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER
31.05.2025

1. Leaned counsel for the parties does not want to file further proceedings.
2. Heard and considered.
3. With the consent of learned counsel for the parties, this petition is taken up for final consideration.
4. Petitioners are aggrieved of order dated 14.02.2017, passed by Settlement Commissioner, J&K, Srinagar in a revision petition titled as Mohd. Hassan and others vs. State and others, and the order dated 28.11.2017, passed by Financial Commissioner (Revenue) J&K.
5. A revision petition under Section 15 of Land Revenue Act came to be filed by private respondents before Settlement Commissioner, against the proceedings taken by revenue officials in respect of State Land measuring 11000 Kanals (approximately), commonly known as Musber Thang and Thunder Thang situated in and adjacent to Estate Chulichan Tehsil and

District Kargil and for setting aside the same and directing subordinate revenue officials for protection and preservation of the said State land. The Settlement Commissioner passed order impugned dated 14.02.2017, as under:

“Instant revision petition has been filed by petitioners in respect of State land measuring appos. 11000 Kanlas, commonly known as Musber Thang and thunder Thang situated in and adjacent to Estate Chulichan Tehsil & District Kargil. Petitioners are residents of two villages Silmoo and Shierchay of Estate Chulichan which is situated in the neighborhood of this State land. Another village namely Cholichan of Estate Chulichan is also situated in the vicinity of this state land. The said state land is barren or spot. Main concern of petitioners is that his vast state land is prone to illegal encroachment, which may be protected and preserved for the betterment of the inhabitants of the villages mentioned above.

In view of the concern of petitioners it was felt necessary by this court to call for a report from the subordinate revenue officers. As such Report was called from Deputy Commissioner Kargil. Said report has been sent by the office of Deputy Commissioner, Kargil vide No. DC-K/LS-108/2011-11 dated 4/11/2016 to this court wherein Tehsildar's report under No. The-K/OQ-244/08 dated 6/10/2016 clearly states that on spot no change in the status of land has taken place and state land is preserved and protected till date and subordinate field staff has been directed to ensure that no change takes place in the status/title of the land. Field staff has further been directed to immediately report any violation that may take place on spot.

Further in his report Tehsildar has stated that Estate Chuilchan comprises of six Mohallahs namely Chulichan, sharchey, Musber, Wachera Chachyhang and Marmak. The Mohallahs Wachera, Chachyhang and Marmak are presently under the Occupation of Pakistan. And some Khevatdars of Mohallah Chulichan also reside in village Silmoo.

The case came up for hearing today on 14.02.2017. During the course of arguments, it was argued by the counsel for the petitioners that this huge chunk of state land measuring 11000 Kanlas is left undeveloped and barren on spot, which is neither in the interest of state nor in the interest of the villagers. It was further stated by the counsel that if this vast chunk of state land is developed then all the stake-holders will be benefited by the same and that will be in the interest of public at large as well as in the interest of State.

Heard. This Court is primarily of the opinion that no illegal encroachment should take place in State land in question, in any manner whatsoever. In this regard subordinate revenue agencies and official respondents are directed to strictly ensure that no illegal encroachment of change in title of land takes place in respect of the State land in question.

So far the second issue regarding development of this State land is concerned, it is observed that if this State land is appropriately developed then same will have a positive impact upon the villagers in particular and whole state in general. Deputy Commissioner, Kargil along with Tehsildar Kargil are hereby directed to positively take steps in consultations and with the help of all stake holders from villages Sharchey, Silmoo, Musber and Chulichan for development of this state land for the betterment of all concerned. Such kind of

development will not only ensure development of the whole area but will protect and preserve the same in desired manner in the interest of the State.

Revision petition is hereby disposed off accordingly.”

6. The order of Settlement Commissioner came to be challenged by the petitioners herein, who were not party before the Settlement Commissioner. The Financial Commissioner has upheld the order passed by the Settlement Commissioner and directed as under:

“...So far as the development of the impugned State land as directed by the court below is concerned, this court is of the opinion that the management of State land is a policy matter and such a decision needs to be taken as the xxx of State Government. It is therefore, recommended that a conscious view is required to be taken by the authorities of Ladakh Affairs Department in consultation with the Revenue Department and Planning Department for the preservation/management of the State land for the betterment of the local population.”

7. It is evident from order impugned passed by the Financial Commissioner that revision had been filed by petitioners herein wherein they have stated that private respondents herein have no right or claim to cultivate or develop the suit land inasmuch as the dispute is going on between the parties before various forums including this court and that private respondents herein by concealing these facts and by not arraying them as party respondents, had managed order of the Settlement Commissioner. Perusal of order impugned also reveals that a report had been sought from Tehsildar concerned, who in his report stated that status quo on spot was being strictly maintained and no violation had taken place on the ground and that the stretch of State land was between two Nallas and there lied a great potential if the said area could be brought under cultivation by utilizing the water available in the two Nallas for irrigation facilities. It is also mentioned in order impugned that so far as development of State land is concerned, Financial Commissioner was of the opinion that the management of State land is a policy matter and such a decision needed to

be taken by the Government and accordingly recommended that a conscious view was required to be taken by authorities of Ladakh Affairs Department in consultation with Revenue and Planning Departments for the preservation/ management of State land for betterment of local population.

8. Learned senior counsel for respondents 8 to 23 would contend that neither occupancy rights can be claimed in Forest land by any person nor mutations for Forest land can be attested under Alan No.10 of 1979 or Alan No.38 C of 1989 and therefore, the mutation, relied upon by petitioners, being void *ab initio* and illegal, were challenged in earlier litigation whereas controversy in the present case is absolutely different. It is also being stated that writ petition, being OWP no.635/2010 was decided by this Court and mutations relate to a plot of land measuring 52 Kanals only and it has nothing to do with rest of the State/Forest land.
9. Counsel for the petitioners would submit that the order passed by the Settlement Commissioner was vague because it has been passed at the back of petitioner and without any notice and information to them and that private respondents had concealed material facts about pendency of litigations including OWP no.1711/2014. It is being also stated that in impugned order, the direction is with regard to 11000 Kanals of land without mentioning about the land which has been mutated in favour of the petitioners and in respect of such mutations, revision filed by the respondents has been rejected and now those mutations are subject matter of a petition which is pending before this Court. It is submitted that impugned order passed by the Settlement Commissioner has created cloud with regard to the mutations which have been attested in favour of the

petitioners. It is because of that confusion and doubt created by the order passed by the Settlement Commissioner that petitioners felt aggrieved and filed the revision. It is submitted by the petitioners that though there were no proceedings pending or order passed, but even then, Settlement Commissioner has passed the order impugned. It is being also submitted that the order was challenged by petitioner before Financial Commissioner who has also felt in error without having considered and taken into account the mutations which are impugned in writ petition bearing OWP no. 597/2012 and which were attested in favour of the petitioners which was in respect of land measuring 1500 Kanals. Counsel for petitioners also submits that petitioners are aggrieved because the order has been passed with respect to the protection of 11000 Kanals of land which according to the petitioners includes the land in respect of mutations already attested. However, mutations after having been upheld by the Financial Commissioner are subject matter of the writ petition. Therefore, it is submitted by counsel for the petitioners that Financial Commissioner ought to have clarified the order so that land measuring 1500 Kanals in respect mutations have been challenged and are subject matter of the writ petition bearing OWP no. 597/2012, could not have created confusion.

10. It is fairly stated by Mr. T. M. Shamsi, learned DSGI, that Settlement Commissioner and for that matter Financial Commissioner, while dealing with the revision ought to have clarified this position to show that there would not have any confusion. It is submitted that the revenue officials have a right and duty to protect the State land from being wasted and encroached. They are required to take every step to protect such land. The grievance of the petitioners is also to the extent that the land in question is

in respect of which impugned orders have been passed do not clarify as to whether such land includes the land in respect of which litigations are pending in writ petition and confusion created was required to be clarified. According to him under the garb of such order, respondents may also encroach upon that land or take away that land before any decision on the proceedings pending this Court comes.

11. Be that as it may be, in view of the submissions made by learned counsel for the parties and the grievances as stated during the course of arguments and submissions made by Mr. T. M. Shamsi, learned DSGI, the order passed by the Financial Commissioner, is required to be clarified, and therefore, the said order is **set aside**.

12. Financial Commissioner, shall hear both the parties and while hearing shall also take into account the land subject matter of the writ petition bearing OWP no. 597/2012, pending before this Court and pass fresh orders, accordingly.

13. So far as the subject matter of the writ petitions are concerned that cannot be a part of proceedings before him, regarding the same separate proceedings are pending as Financial Commissioner has already upheld the mutations attested in favour of the petitioners though under challenge in writ petition.

14. With these observations, this petition shall stand **disposed of**.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
31.05.2025
"Imtiyaz"