

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

LPAOW No. 33/2017

Reserved on 16.09.2021
Pronounced on 24.09.2021

Ghulam Qadir Bhat & Ors.

...Petitioner(s)

Through: Mr. M. A. Qayoom, Adv.

Vs.

Financial Commissioner (Revenue) & Ors.

...Respondent(s)

Through: Mr. D. C. Raina, AG with Mr. Sajad Ashraf, GA.
Mr. Azhar-ul-Amin, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

J U D G M E N T

PANKAJ MITHAL, CJ

1. The judgment and order of the writ court dated 16th March 2017 dismissing OWP No. 1302/2013 Abdul Gani Naik vs. Financial Commissioner (Revenue) and others is under challenge in this Letters Patent Appeal.
2. The controversy raised in this appeal is regarding the two mutations entries No. 156 dated 28 Fag (at places wrongly mentioned as Mag) 1996 Bikrami Samvat. (corresponding to the year 1939-40 AD) and to the mutation entry 470 dated 10.08.1999 which is alleged to be of the 10th day of the 8th month of 1999 Bikrami Samvat (corresponding to the year 1941-42) whereas the other side contends that it is of the year 1999 AD of the Georgian Calendar.
3. It may be pertinent to mention here that the dispute with regard to mutation entry No. 156 has concurrently been held to be correct and maintained by all the authorities below as well the Single Judge. Therefore, in the appeal the dispute only remains with regard to the mutation entry No. 470.

4. The sole controversy involved is whether the said entry could have been challenged by way of a revision after more than 70 years if the date of attestation of mutation is taken to be 10.08.1999 Bikrami (which corresponds to 1941-42 AD) or it is within reasonable time from the attestation of the mutation if the date is taken to be 10.08.1999 AD.
5. The sole argument of Mr. M. A. Qayoom, is that the aforesaid mutation No. 470 was attested on 10th day of 8th month of 1999 Bikrami Samvat and not on 10.08.1999 AD and as such the revision against it filed on 01.07.2005 before the Settlement Commissioner under Section 15 of the J&K Land Revenue Act was highly belated and the said mutation could not have been disturbed by filing revision after such a long distance of time.
6. Mr. Azhar-ul-Amin, learned counsel contends that the aforesaid mutation was attested on 10.08.1999 AD and since there is no limitation provided for the revision, it was rightly entertained after 5-6 years of the said entry. The mutation was rightly modified in accordance with the Muslim Personal Law which was applicable to the parties.
7. In view of the short controversy so involved though it is not necessary to go into the factual background but for the sake of clarity and convenience, it is considered appropriate to narrate the factual position also in brief.
8. In essence, the dispute concerning mutation No. 470 relates to the estate left behind one Abdullah who died issueless. He had a brother Qadir and a sister Khurshi. He had one share in 30 Kanals and 5 marlas of land situate at village Natipora whereas the other two shares belonged to his brother Qadir. On his death, his share was mutated in the name of Qadir vide mutation No. 470.
9. One Mushtaq Ahmad Tantray grandson of sister of the deceased Mst. Khurshi filed a revision before the Settlement Commissioner challenging mutation No. 470 of village Natipora contending that according to the Muslim Law her grandmother was entitled to 1/3rd share in the property of the deceased. The Settlement Commissioner vide order dated 10.02.2006, opined that the personal property of the

deceased would have devolved in the ration of 2:1 in favour of his brother Qadir and sister Mst. Khurshi respectively. Therefore, mutation No. 470 recording the entire property of the deceased in the name of brother Qadir is not in accordance with the Muslim Law. The Settlement Commissioner in terms of Section 15 (3) of the J&K Land Revenue Act submitted a reference to the Financial Commissioner who accepted the same vide order dated 21.02.2011 holding that as the parties have accepted that the devolution of the estate would be governed by the Muslim Personal Law, both the brother and the sister will get share in the ratio of 2:1.

10. The writ court while examining the mutation No. 470 treated the said attestation to have been made on 10.08.1999 AD and since the revision was filed on 01.07.2005, held that it was filed within 6 years and since there is no limitation provided for filing the revision under Section 15 of the J&K Land Revenue Act, and there is no inordinate delay and the substantial justice requires that the estate of the deceased should devolve both upon his brother and sister in the ratio of 2:1, the said mutation need to be corrected accordingly.
11. The petitioner-appellant in filing the writ petition challenging the order of the Settlement Commissioner dated 10.02.2006, order of the Financial Commissioner (Revenue) dated 21.02.2011 and the order of the Naib-Tehsildar dated 14th August 2013 directing for the demarcation of the land on the basis of the modified mutation entry, in paragraph No. 7 of the petition categorically averred that the mutation No. 470 is dated 10.08.1999 Bikrami and this mutation was never objected either by Mst. Khurshi during or by his two sons Rehman and Ali during their life time, therefore, her grandson Mushtaq Ahmad Tantray has no right to object to it after a gap of more than 70 years.
12. The contesting respondents in reply to the writ petition, simply stated that the mutation No. 470 was attested on 10.08.1999 without mentioning whether the said date refers to Bikrami Samvat or to the Georgian Calendar. In response to paragraph No. 7, he simply stated that mutation No. 470 was made clandestinely and fraudulently in the absence of the answering respondents or their ancestors. Since the said

attestation is based on fraud, law of limitation would not apply as fraud vitiates everything. He nowhere contended that the said attestation was not made on 10.08.1999 Bikrami.

13. The revenue documents relied upon from the side of the respondents to establish that the aforesaid date refers to the English date inasmuch as everywhere it is mentioned English. The said documents are in Urdu and it is below the signatures appearing therein that the word “English” has been mentioned to denote that it has been signed in English. The date 11.10.1999 is separately mentioned and the word ‘English’ mentioned there does not refer to the date of the entry.
14. Learned Advocate General Mr D. C. Raina assisted by Mr. Sajad Ashraf, GA. has produced before us the original record containing Parte Patwar and Parte Sarkar to contend that the date 10.08.1999 in respect of mutation No. 470 is of the year 1999 Bikrami and not AD. The said documents have been examined by us in original. They are in Urdu which have been read over carefully by one of us (Hon’ble Justice Koul) who knows Urdu very well and he has explained the documents to the other Hon’ble Judge as well. The said documents do establish that the said mutation was attested on 8th day of 10th month of 1999 Bikrami. There is no reason to disbelieve the said original documents. The above documents are sacrosanct to prove the actual date of the attestation of mutation No. 470. The subsequent mutation entries in respect of the land in question. also supports the fact that the above mutation was attested in 1999 Bikrami and not in 1999 AD. Accordingly, we find that the said attestation was made on the 8th day of the 10th month of the year 1999 Bikrami which corresponds to the year 1941-42 AD. The revision was filed on 01.07.2005 meaning thereby that it was filed after about 63/73 years.
15. In view of the above, the question that arises is even if no limitation is provided for filing a revision, whether the revision could have been entertained after such a long gap of time so as to disturb the entries on the basis of which the property has exchanged hands and many other entries have come to be recorded subsequently.

16. The law of limitation is based upon the public law doctrine that there should be an end to a litigation and that there ought to be finality attained to a decision with the passage of time. The purpose to provide limitation for taking recourse to a legal remedy is not to destroy the rights of parties but to ensure that parties do not resort to dilatory tactics and seek their remedy within the prescribed time or a reasonable time so that the matter may not remain alive forever.
17. In a way, statutes of limitation and prescription are statutes of peace and repose. The interest of state requires that there should be an end to litigation. The public policy therefore requires application of law of limitation. The object of the law of limitation is to prevent disturbance of what has been acquired in equity and justice by long enjoyment and not to restore what may have been lost by party's own inaction.
18. The learned Single Judge in deciding the writ petition has unnecessarily brushed aside his own decision in OWP No. 1833/2015 Mst. Mali v. Financial Commissioner (Revenue) and others on 27.05.2016 wherein he himself held that the delay of 14 years in challenging the mutation entries by way of a revision amounts to inordinate delay and therefore the Financial Commissioner was not justified in overlooking the question of delay in filing the revision.
19. The Apex Court in **Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors (2015) 3 SCC 695** has held that even where no limitation is prescribed for invoking the revisional power that will not permit the authorities to exercise the power arbitrarily with inordinate delay.
20. In **Zaina vs. Financial Commissioner & Ors. 1983 SLJ 1**, this Court in context with the filing of revision under Section 15 of the J&K Land Revenue Act held that though no limitation is prescribed for filing a revision, but it must be filed within the time prescribed for filing appeals and in case there is delay, the revisional court has power to condone it after recording reasons for doing it.
21. The Bombay Land Revenue Code, 1879 also did not provide for any limitation for exercising the revisional power by the Commissioner.

The Apex Court in **State of Gujarat vs. Patel Raghav Natha & Ors. AIR 1969 SC 1297** held that in spite of the fact the provisions do not prescribe for any limitation for exercising revisional power, this power must be exercised in reasonable time and the length of reasonable time must be determined by the facts of the case.

22. In state of **A.P. & Anr. vs. T. Yadagiri Reddy & Ors. (2008) 16 SCC 299**, it was held that where the legislature in its wisdom did not fix any time limit for exercising revisional power and inserted the words “at any time” it does not mean that the legislature intended to leave the orders passed under the Act open to alteration and variation for an indefinite period as it would perpetuate uncertainty.
23. In view of the aforesaid case law, the inescapable conclusion is that the revisional powers cannot be exercised arbitrarily after an inordinate delay of the passing of the order sought to be revised.
24. The case at hand is a classic example of inordinate and unreasonable delay in exercise of revisional power. The said power has been exercised without recording any satisfaction as to the delay in exercising it more particularly when the two earlier generations of the revisionist have not come forward to object to the mutation or to challenge it by filing a revision. Thus, it is a clear case of unreasonable delay in exercise of revisional power.
25. A complete procedure for maintaining the records or the annual record of rights is provided under the J&K Land Revenue Act. The scheme of the above Act clearly provides that the dispute as to the mutation has to be decided by the revenue authorities in a summary manner and that the final order passed by the Revenue Officer as to who is best party entitled to the property is always subject to any decree or order that may be subsequently passed by any civil court of competent jurisdiction. Section 32 of the J&K Land Revenue Act also authorizes a person aggrieved by any entry appearing in the revenue records to institute a suit before the Collector (Deputy Commissioner) for the correction of the record, and for the possession of the right claimed if he is not in possession.

26. It may be noted that the mutation entries have not been recognized as document of titles of property. They are simply meant for fiscal purposes to enable the Government to collect revenue. These entries do not either create any right, title or interest in the land of any party nor do they extinguish any such right of any party. The said entries are always subject to the decree of a civil court of competent jurisdiction. Therefore, whenever a long standing revenue entry is sought to be disturbed, it is always by way of a declaratory suit before the competent court.
27. In view of the aforesaid facts and circumstances, we are of the opinion that the writ court as well as the revisional courts have manifestly erred in law in exercising their power and in directing for the modification of the mutation entry No. 470 attested on 10th day of the 8th month of 1999 Bikrami Samvat. The judgment and order of the learned Single Judge dated 16th March 2017 passed in OWP No. 1302/2013 is hereby quashed and so are the orders of the Settlement Commissioner dated 10th February 2006 and the Financial Commissioner dated 21st February 2011 are quashed.
28. The appeal is allowed with no order as to costs.

(VINOD CHATTERJI KOUL)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

SRINAGAR
24.09.2021
Altaf

Whether the order is reportable? Yes