Serial No. 23

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

WP(C) No. 2509/2024
CM No. 6110/2024

Mohd. Akbar and anr. .....Appellant(s)/Petitioner(s)

Through: Mr. R.P Sharma, Sr. Advocate with
Mr. Rohit Gupta, Advocate

vs

UT of J&K and ors. ..... Respondent(s)

Through: Ms. Sageera Jafar, Advocate vice
Mrs. Monika Kohli, Sr. AAG
Mr. Ashish Sharma, Advocate

CORAM: HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT
27.10.2026

ORAL

01. The petitioners have approached this Court seeking quashing of the order dated 30.09.2024 passed by respondent No. 2 (Additional Deputy Commissioner, Poonch, exercising powers of Commissioner under the Agrarian Reforms Act, 1976), in an application under Section 5 of the Limitation Act. By the said order, a delay of more than 30 years in preferring an appeal against the attestation of mutations under Sections 4 & 8 of the Agrarian Reforms Act, 1976 (Act of 1976), came to be condoned.

02. The brief facts are that ownership rights under Section 8 of the Act of 1976 were conferred upon the father of the

petitioners, namely Din Mohd. In this regard, mutation Nos. 128 under Section 4 was attested on 29.08.1982 and Mutation No. 129 under Section 8, was attested on 20.03.1984 by the Tehsildar, Haveli, in respect of land measuring 09 kanals falling in Survey No. 299/224 situate at village Atoli.

03. Respondent No. 3, feeling aggrieved of the said Mutations preferred an appeal before respondent No. 2 in the year 2013. By the impugned order dated 30.09.2024, respondent No. 2 condoned the delay of more than 30 years in filing the appeal.

04. The Impugned order is assailed primarily on the ground that it has been passed in violation of the settled principles of law and natural justice, without properly examining whether the appellant (respondent No. 3) had made out a sufficient cause for condonation of such inordinate delay. Though the petitioners have raised several grounds, learned Senior Counsel for the petitioners while restricting his submissions, contended that respondent No. 2 erred in reversing the burden of proof. It was argued that the authority wrongly concluded that the petitioners (respondents in the appeal) had failed to prove that the appellant had knowledge of the mutations prior to 27.07.2013.

05. Respondent No. 3, in the objections, has largely raised factual contentions regarding his claim to ownership over the land in question. Insofar as the challenge to the impugned order is concerned, it is defended on the ground that the delay was condoned after due consideration of the facts and circumstances.

06. Learned counsel for respondent No. 3 submitted that once a plea was taken that knowledge of the mutations was acquired only in the year, 2013, the respondent No. 2 was justified in holding that the petitioners had failed to prove otherwise, and that no error of law or fact was committed.

07. Heard learned counsel for the parties and perused the record.

08. It is not in dispute that the mutations in question were attested in the years, 1982 and 1984, whereas, the appeal came to be preferred by respondent No. 3 only in the year, 2013 involving a delay of approximately thirty one years. A perusal of the impugned order reveals that while condoning the delay, respondent No. 2 proceeded on the premise that the petitioners (respondents in the appeal) had failed to prove that the appellant (respondent No. 3) was aware of the mutations prior to 27.07.2013. The reasoning is not founded upon a finding that the appellant had established sufficient

cause for the delay; rather, it rests on a reversal of the burden of proof.

09. Section` 22 of the Act of 1976 prescribes a period of sixty days for preferring an appeal against an order of the concerned authority. Section 5 of the Limitation Act is applicable to such appeals and the delay can be condoned only if sufficient cause is shown to the satisfaction of the appellate authority.

10. It is settled principle of law that burden to establish "sufficient cause" for condonation of delay under Section 5 of the Limitation Act rests squarely upon the party seeking condonation. The applicant must satisfactorily explain the delay and demonstrate that it was occasioned by sufficient cause, free from negligence or inaction. This burden is real and bonafide. While the evidential onus may shift during the course of evaluation once a prima-facie case is made out, the primary responsibility remains with the party approaching the Court or the appellate forum. There cannot be a shifting of the initial burden upon the opposite party. A mere denial of knowledge or a plea that the other side has not proved earlier knowledge does not reverse this fundamental position.

11. The appellate forum is under a duty to examine the question of limitation. An appeal filed beyond the prescribed period cannot be entertained unless the delay is condoned upon

satisfaction of sufficient cause. Challenges to mutations attested in 1982 and 1984, raised after a lapse of more than thirty years, ordinarily do not warrant interference unless the party seeking condonation discharges the initial burden of showing sufficient cause. The conduct of the applicant and any prejudice caused to the opposite party are also relevant considerations.

12. In the present case, respondent No. 2 has condoned the delay of more than thirty years by reversing the burden of proof, contrary to the established canons of law. It was for the appellant to satisfy the appellate forum by projecting sufficient cause for filling the belated appeal. The reasoning for condonation cannot be founded upon any perceived weaknesses in the case of the opposite party.

13. For the foregoing reasons, it is held that the respondent No. 2 has erroneously shifted the burden of proof while passing the impugned order dated 30.09.2024, whereby the inordinate delay of more than thirty years came to be condoned. The said order, therefore, does not sustain in the eye of law and is hereby set aside.

14. The respondent No. 2 is directed to reconsider the application for condonation of delay afresh after hearing the parties and by applying the settled principles governing the burden of

proof under Section 5 of the Limitation Act. An appropriate order shall be passed in accordance with law. Since the main appeal remains pending on account of the pendency of the present petition, the application shall be heard and decided expeditiously, preferably within a period of four weeks, from the date of receipt of this order.

15. The petition is disposed of in the above terms.

(Shahzad Azeem)
Judge

Jammu
27.10.2026
Tarun/PS

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

Whether the judgment is speaking? Yes
Whether the judgment is reportable? Yes

Tarun Kumar Gupta
2026.10.28 13.44
I attest to the accuracy and
integrity of this document