HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case No. WP(C) No. 24/2023

Reserved on: 29.10.2026

Pronounced on: 03.11.2026

Uploaded on:03.11.2026

Whether the operative part or full judgment is pronounced:- Full

Prem Singh Aged 72 years
S/o Sh. Sewa Singh
R/o Village Traf Bala Nagri,
Tehsil Parole (Nagri) District Kathua.

.....Petitioner/Appellant(s)

Through: Mr. Virender Bhat, Advocate.

Vs

1. UT of J&K
   through Commissioner-cum
   Secretary Revenue,
   Government of J&K.

2. Financial Commissioner
   (Revenue) J&K.

3. Divisional Commissioner,
   Jammu.

4. Mst. Ram Kali
   D/o Sh. Badhri Nath
   W/o Ch. Chuni Lal R/o Ward
   No.1 Nagri Tehsil Parole
   (Nagri) District Kathua.

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG with
Ms. Sagira Jaffar, Advocate.

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

(JUDGMENT)

1. The petitioner seeks quashing of the orders dated 16.11.2022 and 09.10.2021 passed by respondent Nos. 2 and 3 respectively,

whereby the findings of the Deputy Commissioner (Collector), Kathua, in file No.166/DCK/AM dated 10.08.2018 in an appeal against the order dated 08.01.2011 passed by the Tehsildar Kathua, on Mutation No.137 in respect of land falling in survey No.61/26 situate at Padri Pain, Parole Tehsil and District Kathua, were upheld.

BRIEF FACTS

2. The petitioner, Prem Singh, claims continuous possession of land measuring 27 Kanals 14 Marlas comprised in survey No.61/26 Min situate at village Padari Pain, Tehsil Nagri Parole, District Kathua, prior to and after 1971, over which a brick kiln (Patha) was constructed.

3. The recorded owners were Krishan Singh, Mst. Banti Devi, Smt. Nirmala Devi and Vaishno Devi. The petitioner filed a civil suit No.117/Civil dated 02.01.1998 before the learned Sub Judge, Kathua (Civil Court), seeking a declaration of ownership by adverse possession. The suit was decreed on 26.12.2007. the Civil Court held the land being shown as Ghair Mumkin Patha escaped the definition of "land" under the Agrarian Reforms Act, 1976 (the Act of 1976) and, therefore, the suit was maintainable before the Civil Court. The defendants therein filed an appeal before the Court of

learned Additional District Judge, Kathua, but same was withdrawn on 10.02.2010.

4. On the strength of the decree passed by the Civil Court, Mutation No.137 was attested by the Tehsildar Kathua on 08.01.2011, reflecting the petitioner as owner of the land in question.

5. The private respondent No.4-Mst.Ram Kali had filed an appeal before the Deputy Commissioner (Collector), Kathua, against Mutation No.137, with a limited prayer to the extent of 2 Kanals 5 Marlas of land. The appeal was instituted on 02.02.2013 and by order dated 10.08.2018, the Deputy Commissioner (Collector), Kathua, set aside the entire Mutation No.137 on the ground that the Civil Court decree was without jurisdiction under the Act of 1976. The petitioner preferred an appeal before the Divisional Commissioner (Revenue), Jammu, and thereafter a revision was filed before the Financial Commissioner (Revenue), J&K and by orders dated 09.10.2021 and 16.11.2022, the findings of the Deputy Commissioner (Collector), Kathua, were upheld and Mutation No.137 was set aside by holding that, as per Jamabandi of 1970-1971, the land was entered as "Warhal Awal" in the ownership of Ram Singh, Krishan Lal and others and the State, and was in self cultivation; from Kharif 1971 onwards the kind of soil was changed to Ghair Mumkin Patha and possession was

shown with the petitioner. A portion comprising of 9 Kanals 5 Marlas was found to be State land. It was held that; (i) the land recorded as "Warhal Awal" in Kharif 1971 fell within the definition of "land" under Section 2(9) of the Act of 1976; (ii) conversion to commercial use i.e., brick kiln, from Kharif 1975 was without prior permission under the then Section 13(1); (iii) disputes of adverse possession were triable by the Collector under Section 19 and Civil Court are barred by Section 25; (iv) the Tehsildar was required to enquire into the prima facie validity of the decree before attestation of the Mutation; (v), inclusion of State land in the decree was beyond comprehension; (vi), reliance under the Roshni Act was rejected in view of judgment in ***Prof.S.K Bhalla vs. State of J&K***; and (vii) the compromise appear to be underhand sale and was not accepted.

SUBMISSIONS

6. Learned counsel for the petitioner submits that once the suit land has been shown as Ghair Mumkin Patha, it escapes the scope of the definition of "land" under the Act of 1976, therefore, the authorities under the Agrarian Reforms Act has no jurisdiction to upset the Mutation based on the decree passed by a Civil Court. It is contended that the decree passed by the Civil Court cannot be upset by the revenue authorities without resorting to remedy of the appeal under the Code of Civil Procedure. In this backdrop, Mr.

Virender Bhat, learned counsel for the petitioner contended that the impugned orders are without jurisdiction and, if the same are allowed to continue, it amounts to over-reach the jurisdiction of the Civil Court, which is against the tenants of law governing the jurisdictional hierarchy.

7. Learned counsel has also pressed the ground of limitation and urged that the impugned orders are without jurisdiction as the Deputy Commissioner (Collector), Kathua, has not examined the issue of limitation, therefore, same goes to the very jurisdiction of the authorities under the Agrarian Reforms Act. Hence, the subsequent orders of the Divisional Commissioner and the Financial Commissioner also do not sustain in the eyes of law, being a nullity. Therefore, learned counsel for the petitioner prays for setting aside the aforesaid impugned orders.

8. Per Contra, Ms. Monika Kohli, learned Sr. AAG while defending the impugned orders, vehemently argued that the decree of Civil Court, which was the basis of attestation of Mutation No.137, was without jurisdiction and thus is a nullity in the eyes of law, hence, no illegality has been committed by passing the impugned orders by the competent authorities under the Agrarian Reforms Act.

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

ANALYSIS

10. Before touching the nub of the controversy on merits, it is important to deal with the question of limitation as raised by the petitioner, as the same goes to the very jurisdiction of the authority to assume jurisdiction to deal with the appeal or revision under the provisions of the Act of 1976.

11. Mutation No.137 was attested by the Tehsildar, Kathua on 08.01.2011 on the basis of Civil Court decree dated 26.12.2007. The private respondent No.4 filed an appeal against the said Mutation before the Deputy Commissioner (Collector), Kathua. As per order of Deputy Commissioner, Kathua, the appeal was instituted on 02.02.2013. By order dated 10.08.2018, the Deputy Commissioner set aside the Mutation No.137 on the ground that Civil Court lacked jurisdiction under the Agrarian Reforms Act. The said order contains no discussion on the question of limitation or any application for condonation of delay. The subsequent orders of the Divisional Commissioner and Financial Commissioner, whereby the order the Deputy Commissioner was upheld, set aside the Mutation without addressing the limitation aspect, as is raised by the petitioner.

12. Section 22 of the Act of 1976 provides the period of limitation is 60 days in the case of an appeal from the date of order, and

provisions of limitation Act, shall also be applicable to the appeals under the Act of 1976.

13. Consequently, Section 5 of the Limitation Act is available and the delay can be condoned if the appellant shows sufficient cause. In the absence of such condonation, the appeal filed beyond 60 days is barred.

14. Mutation No.137 was attested on 08.01.2011. The appeal of the private respondent was instituted on 02.02.2013. The delay was of approximately two years, far in excess of the statutory period of 60 days. The order of the Deputy Commissioner dated 10.08.2018 does not contain any reference to the question of limitation, any application under Section 5 of the Limitation Act, or any finding that the delay was condoned. The authority proceeded straight to the merits and set aside the Mutation.

15. The law on the subject is well settled and has been consistently reiterated that the limitation goes to the root of the maintainability and it is not a mere procedural formality. It is a mandate to the forum. The question of limitation must be decided first, even more so, where the delay is apparent on the face of the record.

16. When an appeal is ex facie time barred, the appellate authority is duty bound to first determine whether the delay is

condonable. Only after the delay is condoned does the authority acquire the jurisdiction to examine the merits. Deciding the merits without first adjudicating the limitation constitutes a material irregularity and jurisdictional error.

17. Failure to decide the question of limitation first vitiates the subsequent exercise of jurisdiction on merits. The order of the Deputy Commissioner dated 10.08.2018 is legally unsustainable insofar it decided the appeal on merits before first adjudicating the threshold issue of limitation.

18. The subsequent orders of Divisional Commissioner and Financial Commissioner, which rest upon and uphold the Deputy Commissioner's order without examining or querying the limitation defect, are correspondingly without jurisdiction and thus not sustainable in the eyes of law.

19. In the absence of a decision on the question of limitation, it was not legally permissible for the Deputy Commissioner to proceed and decide the appeal on merits. The omission constitutes a jurisdictional error that goes to the root of the maintainability of the appeal. The subsequent orders that had affirmed the Deputy Commissioner's orderwithout addressing this defect suffer from the same infirmity.

20. Since the impugned orders dated 16.11.2022 and 09.10.2021 are found not sustainable on account of the failure to decide the question of limitation first, it is not deemed proper to touch the merits of the case. Any observation on the merits would be premature and unwarranted at this stage.

21. For the foregoing reasons, it is held that the impugned order dated 16.11.2022 passed by the Financial Commissioner (Revenue), J&K; as well as order dated 09.10.2021 passed by the Divisional Commissioner, Jammu, suffer from a patent jurisdictional error and thus do not sustain in the eyes of law. Accordingly, the impugned orders are hereby set aside. The parties are relegated to the appellate forum. The Deputy Commissioner (Collector), Kathua, is directed to decide afresh the question of limitation and, only thereafter, if the delay is condoned, to proceed to deal with the matter on merits, in accordance with law.

22. Disposed of as above along with connected application(s).

23. Let record be returned with due dispatch.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR
03.11.2026
Surinder

Whether order is speaking: *Yes*
Whether order is reportable: *Yes*

Tahir Manzoor Bhat
I attest to the accuracy and
authenticity of this
document