

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

WP(C) No.815/2020
CM No.1787/2020

Date of Order:05.06.2020

Abdul Aziz Wani Vs. Financial Commissioner & Ors.

Coram:

Hon'ble Mr Justice Dhiraj Singh Thakur, Judge

Appearance:

For the Petitioner(s): Mr. Rizwan-ul-Zaman Bhat, Advocate

For the Respondent(s):

- | | | |
|-----|---|--------|
| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
-

1) The petitioner challenges the order dated 09.01.2020, passed by Joint Financial Commissioner (Revenue) with powers of Financial Commissioner (Rev)/Commissioner Agrarian Reforms, whereby the revision petition filed by the petitioner against mutation No.200 dated 09.09.1967 and mutation No.622 dated 25.11.2009, has been dismissed as time barred.

2) Briefly stated, the material facts are as under:

- i) Mutation No.200 came to be attested on 09.09.1967 in regard to property left by Ghulam Rasool Wani at village Shankerpora in favour of Ahmad Wani who claimed to be the adopted son of the deceased. After the death of Ahmad Wani, mutation No.622

came to be attested on 25.11.2009 in favour of his legal heirs, private respondents herein, in regard to the same property.

- ii) A revision petition came to be preferred by the petitioner challenging the basic order of mutation No.200 dated 09.09.1967 as also the consequential mutation bearing No.622 dated 25.11.2009. The main ground that was taken in the revision petition was that the deceased Ahmad Wani had never been taken in adoption by petitioner's father, Rasool Wani. It was alleged that the petitioner had no knowledge of the impugned mutations and that knowledge was obtained only on 14.11.2009.
 - iii) The revisional authority, however, dismissed the revision petition, primarily on the ground that the same was time barred. Besides this, it was held that no cogent reasons had been brought on the file which would warrant any interference with the mutations in question.
- 3) Heard counsel for the petitioner
 - 4) Admittedly, the petitioner challenges the basic order of mutation bearing No.200, which was attested as far back as in the year 1967. No plausible explanation has been rendered by the petitioner to explain the undue delay in challenging the mutation in question. Mutation bearing No.622 is only consequential as the property standing in the name of

the deceased Ahmad Wani, the alleged adopted son of Rasool Wani, is shown to have devolved on his legal heirs, the private respondents herein.

5) Admittedly, the revision petition was preferred in the year 2009 after a lapse of 42 years. In fact, I am bound by my own views expressed by me in the order and judgment dated 02.07.2018 rendered in “*Mst. Taja v. Qadir Dar & Ors*” (OWP No.1078/2018), which has also been followed in “*Mohammad Akram Malik & Ors. v. Union Territory of J&K & Ors.*” (WP(C) No.520/2020) decided on 12.03.2020. For facility of reference, what was held in the later judgment in paragraph 5, 6 and 7, is reproduced here-under:

“5.This judgment, in my opinion, does not at all help the petitioners’ case. In-fact I am bound by my own views expressed by me in the judgment and order dated 02.07.2018 rendered in Mst. Taja Vs. Qadir Dar & Ors., OWP No. 1078/2018, which was the case where the mutation came to be challenged after a long lapse of more than 33 years. The challenge was based upon a similar ground that the mutation had been attested ignoring the provisions of the Standing Order No. 23-A which governs the attestation of mutation of inheritance and that it was recorded in the absence of the petitioner in the said petition. Financial Commissioner in that case had dismissed the revision petition on various grounds including the ground that the petitioner in that petition was trying to unsettle a settled matter after the lapse of more than

33 years, thus was barred by limitation. Reliance was placed in the judgment (supra) upon the Apex Court judgment in ***Joint Collector Ranga Reddy District and anr. Vs. D. Narsing Rao and others (2015) 3 SCC 695*** and ***Sulochana Chanrakant Galande Vs. Pune Municipal Transport (2010) 8 SCC 467***.

6. In the ***Joint Collector Ranga Reddy's*** case, the Apex Court had held as under-

“28. The legislature in its wisdom did not fix a time-limit for exercising the revisional power nor inserted the words ‘at any time’ in Section 34 of the 1976 Act. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure. The Court has to construe the statute provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute.”

7. The Apex Court also relied upon ***State of H.P. Vs. Rajkumar Brijender Singh (2004) 10 SCC 585*** in the same spirit. The Apex Court also relied upon ***Dehri Rohtus Light Railway Cdo.Ltd. Vs. District Board, Shoipur, (1992) 2 SCC 598***. Paragraph-31 of the said judgment reads as under:

“31.To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be

trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

6) Following the ratio of the judgments aforementioned, I am of the opinion that the view expressed by the revisional authority does not warrant any interference as the same is neither illegal nor perverse.

7) For the reasons mentioned above, the petition is found to be without any merit and is, accordingly, dismissed along with connected CM

(Dhiraj Singh Thakur)
Judge

Srinagar
05.06.2020
"Bhat Altaf, PS"