

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

Case: WP(C) No. 1121/2021

Reserved on: 13.05.2025.

Pronounced on : 20 .05.2025

Bhagu Ram and others

....Petitioner/Appellant(s)

Through :- Mr. R.K.S.Thakur Advocate

V/s

Joint Financial Commissioner Revenue
Jammu and others

Through :- Ms Chetna Manhas Assistant counsel to
Ms Monika Kohli Sr. AAG
Mr. Rohit Verma Advocate
Mr. Vikas Mangotra Advocate

CORAM:

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1 By this petition, the petitioners have challenged the following orders:

(i) order dated 17.03.2021 passed by respondent No.1, Joint Financial Commissioner (Revenue), Jammu, whereby the revision petition filed by the petitioners was dismissed;

(ii) Order dated 30.04.2016 passed by respondent No.2, Divisional Commissioner, Jammu whereby the revision filed by the petitioners against orders dated 06.03.2015 and 10.06.2015 passed by respondent No.3, Deputy Commissioner, Udhampur, was dismissed;

(iii) order dated 06.03.2015 passed by respondent No.3 in a petition filed under Section 10 of the Land Revenue Act, wherein, instead of deciding the issue of transfer of the case from the Court of Tehsildar, Majalta to another Revenue Court, the Deputy Commissioner adjudicated the main controversy, which was without jurisdiction; and,

(iv) Order dated 10.06.2015 passed by respondent No.3, dismissing the revision petition filed by the petitioners.

Factual Matrix:

3 The petitioners are in exclusive possession of the following land in village Thalora, Tehsil Majalta, Udhampur:

- (a) 03 kanals, 18 marlas falling under khasra No. 3559-min;
- (b) 06 kanals under khasra No. 3563-min;
- (c) 02 kanals, 08 marlas under khasra No. 3570; and,
- (d) 11 kanals, 17 marlas under khasra No. 3580/1 min;

Total: 24 kanals, 03 marlas.

4 The aforesaid land fell to the share of father of the petitioners in a private partition effected long ago with the father of the respondents No. 04 to 08. The father of respondents No. 4 to 8 died in the year 1988, and father of petitioners died in the year 2002. No dispute regarding the private partition was raised during their lifetime. The aforesaid land is adjacent to Dhar Road and its market value increased notably after 2013. Subsequently, respondents No. 4 to 8 started raising a dispute, seeking a fresh partition, which the petitioners denied. This led to interference by respondents No. 4 to 8 with respect to the land in question.

5 On 19.07.2013, the petitioners filed a suit before the Assistant Commissioner Revenue Udhampur, who passed an interim order on 10.12.2013, thereby directing parties to maintain possession. In the meanwhile, respondents No. 4 to 8 filed an application for correction of Girdawaries before Tehsildar Majalta who marked it to Naib Tehsildar, Deot, for submitting a report. The Naib Tehsildar, Deot, submitted a report dated 15.07.2013, in which he stated that respondents No. 4 to 8 were in possession of the land that was less than the land in possession of the petitioners. He, therefore, recommended that the correction of

Girdwaries would not be an appropriate remedy and that respondents No. 4 to 8 should instead file an application for partition. Thereafter, respondents No. 4 to 8 filed a petition for partition of the land before the learned Tehsildar Majalta who, without providing the petitioners an opportunity to file a written statement or to be heard, passed an order of partition. The said order was passed without following the procedure laid down under Chapter X of the Land Revenue Act. Accordingly, the petitioners submitted an application before the District Collector (Deputy Commissioner) Udampur, under Section 10 of the Land Revenue Act, seeking transfer of the case titled Tara Mani and others vs. Bhagu Ram and others from the Court of Tehsildar, Majalta to any other competent Court. In the said transfer application, it was pleaded that the then Tehsildar, Majalta was biased in favour of petitioners and was not conducting the proceedings in accordance with law. The learned District Collector (Deputy Commissioner), Udampur, passed an order dated 01.08.2014, directing that status quo be maintained. However, the petition under Section 10 of the Land Revenue Act was finally disposed of by the Deputy Commissioner, Udampur, vide order dated 06.03.2015. In this order, instead of deciding the application for transfer under Section 10, the Deputy Commissioner decided the matter on merits. He was, in fact, required to determine whether grounds existed for transfer of the case from Tehsildar Majalta to another Court, but instead of doing that, he has held that the land covered by khasra Nos. 3559- min, 3570 and 3580/1-min was shown in the possession of the petitioners. He further directed that the entries made in the khasra Girdwaries in favour of the petitioners be deleted, and directed the Tehsildar Majalta to proceed with the partition proceedings after deleting those entries. According to the petitioners, the aforesaid direction on merit passed by the Deputy Commissioner was without jurisdiction.

6 The petitioners filed a review petition against the said order dated 06.03.2015 before the learned Deputy Commissioner. The said review petition was dismissed on 10.06.2015, wherein it was held that the order dated 06.03.2015 was valid in all respects under the ambit of law and procedure laid down in Chapter X of the Land Revenue Act. Aggrieved by the orders dated 06.03.2015 and 10.06.2015, petitioners filed a revision petition before respondent No.2. In the said revision petition, it was pleaded that the orders passed by the Deputy Commissioner were without due application of mind. It was further contended that instead of deciding the transfer application, respondent No.3 ordered the cancellation of entries of inheritance mutation and khasra Girdwaries. The petitioners also submitted that their prayer for transfer of the case from Tehsildar Majalta to another competent Court was not considered at all. They further asserted that no opportunity of being heard was provided to them in respect of the matters which have been decided. In these circumstances, it was prayed that the impugned orders were without jurisdiction and illegal.

7 Respondent No.2, vide order dated 30.04.2016, dismissed the said revision petition. Respondent No.2 decided the case on merits and upheld the orders passed by respondent No.3. Thereafter, the Tehsildar Majalta passed the order for partition. Against the said order the petitioners filed an appeal before the Additional District Judge, Udhampur. In the meanwhile, the petitioners came to know about another order dated 07.11.2016, whereby partition was directed to be done. The petitioners also preferred an appeal against order dated 07.11.2016 before the Additional District Judge Udhampur. They further came to know that the Girdwari entries in their names had been deleted in pursuance of the orders passed by respondents No. 2 and 3. In these circumstances, the petitioners challenged the aforesaid orders in a revision petition before respondent No.1.

However, respondent No.1 dismissed the said revision petition and recorded a finding that partition in respect of the land including the disputed land, had already taken place between the father of the petitioners and the father of respondents No. 4 to 8, hence there was no scope for further partition. The petitioners have contended that partition had already been effected between the predecessors of the parties and that the application for partition filed by respondents No. 4 to 8 was factually incorrect and legally misconceived. Despite this, the revision petition was dismissed.

8 The impugned orders have been challenged on the ground that the land in dispute had been partitioned long ago between the predecessors-in-interest of the petitioner and respondents No. 4 to 8. It is submitted that respondent No.1 has recorded an independent finding that partition had already taken place between the predecessors-in-interests of the parties. Not only this, it was also found that the family partition had been recorded in the official records. In these circumstances, the revision petition filed before respondent No.1 should have been allowed. However, respondent No.1 dismissed the same without recording any specific reason for such dismissal. The petitioners now have no other efficacious or alternative remedy except to approach this Court by way of present writ petition.

9 On 03.06.2021, while entertaining the instant petition and issuing notice to the respondents, it was directed that the operation of impugned orders shall remain stayed. The Tehsildar Majalta was permitted to proceed with the proceedings de novo after hearing all the stakeholders, including the petitioners and the private respondents, but was restrained from passing final orders until further directions from this Court. .

10 *Per contra*, in response to the writ petition, respondents 4 to 7 have filed their objections, in which, they have stated that the instant writ petition raises questions of factual nature, which cannot be addressed into by way of a writ petition, rendering the present petition misconceived and liable to be dismissed. They contended that the petitioners have an equally efficacious remedy available, if they believe their rights have been violated. Moreover, they argued that no fundamental or statutory rights of the petitioners have been infringed. It is submitted that the land in question was inherited from their grandfather, and it was accordingly to be divided equally between his two sons. This has already been done. It is further submitted that there is no illegality in the impugned orders, as Section 10 of the Land Revenue Act provides ample powers to the Collector, Divisional Commissioner, or Financial Commissioner to decide the main matter on merits even if it is originated as a transfer application. The deletion of Khasra entries was factually and legally correct, and such findings have attained finality. Moreover, respondent No.3 possessed jurisdiction under Section 10 of the Land Revenue Act to decide the application, and the claim that he lacked jurisdiction is legally unsustainable. The review petition was also rightly dismissed as being erroneous. It was further contended that all orders were passed on applications or revisions initiated by the petitioners themselves and now at this stage it does not lie in their mouth to say that they were not granted an opportunity of hearing. Such contradictory allegations amount to scandalizing the Court and should be condemned.

11 A reply on behalf of respondent No.5 has also been filed, wherein he has reiterated the stand taken by the other private respondents and raised objections to the maintainability of the instant writ petition. It is stated that the petition is hit by Section 10 of the Land Revenue Act, which empowers the

concerned Revenue Officer to withdraw any case pending before any Revenue Officer under his control and either dispose of it himself or, by a written order, refer it for disposal to any other Revenue Officer under his control. In view of the said statutory provision, the writ petition is not maintainable and is, therefore, liable to be dismissed.

12 I have heard learned counsel for the parties and perused the record.

13 Before proceeding further, it would be apt to refer to the relevant provisions of Section 10 of J&K Land Revenue Act, which read as under :-

“10. Power to withdraw and transfer cases:—

The Financial Commissioner or a Divisional Commissioner or a Collector may withdraw any case pending before any Revenue officer under his control and either dispose of it himself, or by written order refer it for disposal to any other Revenue Officer under his control”

14 I have carefully examined the provisions of Section 10 of Land Revenue Act. It is true that in terms of [Section 10](#), the Financial Commissioner, the Divisional Commissioner, or the collector is empowered to withdraw any case pending before any revenue officer under his control and either dispose of the matter himself or refer it, by written order, for disposal to any other revenue officer under his control. This is the provision which has been pressed into service by the learned counsel for respondents.

15 From the plain reading of [Section 10](#), it clearly transpires that the Financial Commissioner, Divisional Commissioner or the Collector has been given the power to withdraw any case pending before any revenue officer under his control, and he can either dispose of the matter himself or by the written order refer it for disposal to any other revenue officer under his control. [Section 10](#) of the Act is required to be understood to mean that the Financial Commissioner or

the Divisional Commissioner may withdraw any case pending before any revenue officer under his control and transfer it for disposal to any other revenue officer under his control having jurisdiction to hear such case. Similarly, the Collector too can withdraw any case pending before any revenue officer under his control and either dispose of the matter himself or refer it for disposal to any other revenue officer under his control, provided he has jurisdiction to hear and dispose of such case.

16 The land in question had fallen to the share of father of the petitioners in a private partition carried out with the father of respondents No. 4 to 8 long ago. At no point in time any dispute was raised by father of respondents No. 4 to 8 regarding the said private partition. However, due to the increase in the value of the land, the private respondents started raising disputes and sought a fresh partition. They filed an application for correction of Girdwaries before Tehsildar Majalta, who marked it to the Naib Tehsildar Deot, for submission of a report. The Naib Tehsildar submitted a report stating that the private respondents were in possession of the land less than that in possession of the petitioners. He, therefore, recommended that the correction of Girdwaries was not the appropriate remedy and suggested that the private respondents could file an application for partition. Subsequently, the private respondents filed a petition for partition of the land in question before the Tehsildar Majalta, who passed an order of partition. The petitioners then submitted an application under Section 10 of the Land Revenue Act before the District Collector (Deputy Commissioners) Udhampur seeking transfer of the petition titled Tara Mani and others vs Bhaggu Ram, from the Court of Tehsildar Majalta to any other competent Court. However, the said application was disposed of by the Deputy Commissioner vide order dated 06.03.2015, directing that the entries made in the khasra Girdwaries in favour of

the petitioners be deleted and that the Tehsildar Majalta should proceed with the partition proceedings accordingly.

17 The petitioner filed a review petition against the said order dated 06.03.2015 before the Deputy Commissioner Udhampur which was dismissed vide order dated 10.06.2015. It was held therein that the order dated 06.03.2015 was valid and in accordance with the law and procedure laid down in Chapter X of the Land Revenue Act. Aggrieved, the petitioners filed a revision petition before the Divisional Commissioner Jammu who also dismissed the same vide order dated 30.04.2016. In pursuance of the directions passed by both the Deputy Commissioner and the Divisional Commissioner, the Tehsildar Majalta passed the final order of partition on 07.11.2016. The petitioners filed an appeal on 09.02.2017 against the said order before the District Judge, Jammu which has been dismissed for non-prosecution on 27.03.2023 which reflects the conduct of the petitioners that they are not interested to pursue the case. In addition, a revision petition was filed before the Joint Financial Commissioner Revenue Jammu who also dismissed the same upholding the orders passed by the Deputy Commissioner and the Divisional Commissioner.

18 The primary contention raised by learned counsel for the petitioners is that the application filed under Section 10 of the Land Revenue Act was not decided in accordance with the scope of the provision. According to the petitioners, the Deputy Commissioner Udhampur was only required to assess whether grounds for transfer of the case from Tehsildar Majalta to another officer were made out or not. However, instead of deciding the transfer application the Deputy Commissioner proceeded to determine the merits of the matter and directed the deletion of Khasra Girdawari entries in favour of the petitioners.

19 From a perusal of the provisions contained in Section 10 of the Land Revenue Act, it is evident that the Financial Commissioner, Divisional Commissioner or the Collector are empowered to withdraw any case pending before any revenue officer under his control, and he can either dispose of the matter himself or by the written order refer it for disposal to any other revenue officer under his control. Thus, there is no error apparent in the exercise of such power by the Deputy Commissioner. Therefore, the present writ petition is barred under Section 10 of the Land Revenue Act and is not maintainable on this ground alone.

20 Since the partition has already been carried out by the Tehsildar Majalta on 07.11.2016, after serving notice to the petitioners, thereby implementing the orders passed by the Deputy Commissioner, Udhampur and Divisional Commissioner, Jammu, and as the aforesaid order dated 07.11.2016 has been challenged before the Additional District Judge, Udhampur by way of an appeal which has been dismissed for non-prosecution, the petitioners can still pursue their remedy. Therefore, nothing survives in this petition for adjudication by this Court. Accordingly, the instant petition is dismissed.

Interim directions, if any, shall stand vacated.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Jammu
20.05.2025
Sanjeev

Whether order is reportable: Yes/No