

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR.**

WP(C) 1303/2025

Reserved on: 09 .12.2025

Pronounced on: 19.12.2025

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*Whether the Operative part
or full judgment is pronounced: FULL*

1. Abdul Gani Ganie. (Age 56)
2. Javeed Ahmad Ganie.
3. Mst. Shameema.
4. Mst. Shafeeqa.
5. Mst. Rafiq.
6. Mst Ashiya
Legal heirs of late. Abdul Rehman Ganie
7. Ghulam Mohamad Ganie (Ghulam Ganie)
8. Ghulam Mohammad Ganie (Mohammad Ganie) 7-5 Sons of the .Mst.
Mukhati and Ghulam Qadie Ganie

**All the residents of Gund Karhama (Kanihama) Tehsil Magam District
Budgam Kashmir.**

...Appellant(s)/Petitioner(s)

Through: Mr.S.H Thakur, Advocate.

Vs.

1. Habib Ullaha Ganie
Son of Qadir Ganie.
Resident of Khoire Pattan District Baramulla.

...Respondent(s)

Through Mr. Mir Majid Bashir, Advocate.

CORAM:

**HON'BLE MR. JUSTICE WASIM SADIQ NARGAL,
JUDGE.**

JUDGMENT

BRIEF FACTS

1. The present writ petition has been filed by the petitioners, who claim to
be legal heirs of late Mst. Mukhti and Qadir Ganie, invoking the

extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking quashment of Mutation No. 267 dated 30.01.1995 pertaining to land measuring 4 Kanals and 5 Marlas situated at village Mahrajpora Kongamdara, Tehsil Pattan, District Baramulla, along with the orders dated 17.04.2025 and 15.05.2025 passed by the learned Financial Commissioner (Revenue), J&K, whereby the revision and review petitions filed by the petitioners were dismissed.

2. The petitioners had approached the Court of Financial Commissioner by way of a revision petition challenging the inheritance mutation attested in the year 1995 on the ground that the same was effected in violation of the law of succession and without associating all legal heirs. The revision petition was heard on merits and thereafter dismissed on 17.04.2025 on the ground of limitation. The review petition preferred against the said order was also dismissed on 15.05.2025.
3. Aggrieved thereof, the petitioners have approached this Court, alleging that the dismissal of the revision on the ground of limitation, without affording an opportunity to address the issue, has resulted in miscarriage of justice.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

4. Learned counsel Mr. S. H. Thakur for the petitioners submits that the impugned orders passed by the learned Financial Commissioner (Revenue) suffer from manifest illegality and procedural irregularity. It is contended that the revision petition was heard at length on merits and the issue of limitation was neither raised by the respondents nor by

the Court during the course of arguments. After hearing the parties, the matter was reserved for orders. The subsequent dismissal of the revision solely on the ground of limitation, therefore, amounts to deciding the case on a point not in issue, thereby violating the principles of natural justice.

5. The petitioners further submit that had the issue of limitation been raised during the hearing, they would have adequately addressed the same by placing the relevant facts and legal position before the Court. It is a settled principle of law that a Court cannot make out a new case for the parties. Reliance was placed on the judgment of the Hon'ble Supreme Court reported in AIR 2003 SC 160, wherein it has been held that Courts should not decide matters on grounds not pleaded or argued by the parties.
6. It is also contended that the question of limitation is a mixed question of law and fact, and the facts of each case have a direct bearing on its application. In the present case, no opportunity was afforded to the petitioners to explain the delay, if any, or the circumstances under which the impugned mutation came to be challenged. Deciding the matter on limitation without notice, therefore, amounts to denial of fair opportunity and violation of the principles of natural justice.
7. The learned counsel further submits that mutations relating to inheritance, particularly those attested in violation of Muslim Personal Law and Standing Order 23-A, stand on a distinct footing. In support of his contention, reliance was placed on the judgment of this Court rendered in Mohammad Maqbool v. State of J&K and Others, OWP No. 584/2018, decided in January 2025, wherein it has been

categorically held that mutations attested in breach of the law of succession can be questioned at any point of time, and that the plea of limitation does not strictly apply in such cases. It is submitted that the learned Financial Commissioner failed to maintain uniformity with the law laid down by this Court.

8. It is further argued that under Section 13(4) of the J&K Land Revenue Act, the revisional powers of the Financial Commissioner are not circumscribed by limitation, unlike appellate powers under Section 12 of the Act. When the statute itself does not prescribe any period of limitation for exercise of revisional jurisdiction, the same could not have been read into the provision by judicial interpretation.
9. The petitioners also submit that the learned Financial Commissioner failed to examine the merits of the case. It is not disputed that the petitioners are legal heirs of the deceased and shareholders in the ancestral property. Their maternity and paternity have not been denied by the respondent, nor contradicted by the official records. The impugned mutation was admittedly attested without associating the petitioners, thereby depriving them of their lawful share.
10. It is further contended that the total landed estate of late Mst. Mukhti and Qadir Gani was 25 Kanals and 16 Marlas, spread over Budgam and Baramulla districts. The respondents, by virtue of the impugned mutation and subsequent transactions, have appropriated more than 9 Kanals and 16 Marlas, whereas the remaining legal heirs have received substantially lesser shares. As per the law of inheritance, each of the four sons was entitled to 6 Kanals and 9 Marlas, which distribution has been clearly disturbed by the impugned mutation.

11.The petitioners further submit that there existed a private settlement between the parties, under which the land covered by Mutation No. 267 was allotted to the respondents, while the remaining land was allotted to the other brothers. Having already taken the benefit of the said settlement, the respondents subsequently disputed the remaining mutations and retained excess land, thereby committing breach of the settlement. Such conduct, according to the petitioners, disentitles the respondents from retaining any undue benefit.

SUBMISSIONS ON BEHALF OF THE RESPONDENT.

12.Per contra, learned counsel for the respondent raises preliminary objection regarding the maintainability of the writ petition. It is contended that the principal contesting respondent is a private individual, not falling within the ambit of “State” under Article 12 of the Constitution of India, and in absence of any public law element, no writ can be issued against a private person.

13.It is further submitted that the writ petition is defective for non-joinder of necessary parties, inasmuch as the authorities who passed the impugned orders, namely the Financial Commissioner (Revenue) and the Mutating Officer, have not been impleaded. The writ petition is also stated to be deficient as relevant documents have not been placed on record.

14.On merits, the learned counsel for respondent submit that the challenge to Mutation No. 267 dated 30.01.1995 was raised after an inordinate delay of nearly 25 years, without any plausible explanation. The petitioners were admittedly aware of the mutation and had acted upon a private settlement under which different properties were inherited by

different heirs. The revision petition was filed only after the petitioners suffered defeat in earlier civil and revenue proceedings concerning other parcels of land.

15.It is argued that the learned Financial Commissioner rightly exercised jurisdiction in dismissing the revision as barred by delay. Even where no specific limitation is prescribed, statutory powers must be exercised within a reasonable period. The learned counsel for respondent placed reliance on judgments of the Hon'ble Supreme Court and this Court to contend that delay cannot be condoned as a matter of course and that courts must first examine the bona fides of the explanation offered.

16.It is further submitted that the writ petition involves disputed questions of fact, including issues relating to settlement, possession, prior litigation and sale of land, which cannot be adjudicated in writ jurisdiction.

17.The learned counsel for private respondent also allege suppression of material facts by the petitioners, contending that the petitioners have inherited substantial land in District Budgam, whereas the respondent inherited the land at Pattan in terms of a valid settlement. The review petition, it is submitted, was an attempt to re-argue the matter and was rightly dismissed.

LEGAL ANALYSIS

18. Having heard learned counsel for the parties at length and have perused the pleadings and material placed on record.

19.Before advertng to the merits of the controversy, this Court is required to consider the issue of maintainability.The primary relief sought in the present writ petition is directed against a private respondent, seeking

quashment of an inheritance mutation and enforcement of alleged private rights arising out of succession and settlement. It is not in dispute that the contesting respondent is a private individual and does not fall within the definition of “State” or “other authority” under Article 12 of the Constitution of India.

20. It is well settled that a writ under Article 226 is ordinarily not maintainable against a private person except where the action impugned has a public law element or where such person is performing a public or statutory function. The dispute in the present case essentially revolves around inter se inheritance rights, private settlement, mutation and claims over immovable property, which are purely private law disputes.

21. The writ jurisdiction is not intended to supplant civil or statutory remedies, nor can it be invoked for adjudication of private property disputes in the absence of any public duty or statutory violation attributable to the private respondent. The reliefs claimed by the petitioners, if granted, would effectively amount to enforcement of private rights, which is impermissible under Article 226.

22. It is a settled principle of constitutional law that the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India is primarily meant for enforcement of public law rights and public duties. The writ remedy is not intended to adjudicate disputes of a purely private character arising out of private rights, contracts, inheritance or personal obligations between private individuals. In the present case, a careful reading of the writ petition reveals that the lis does not involve enforcement of any public duty, nor does it raise any issue relatable to public law. The grievance projected by the petitioners essentially

pertains to inheritance, private settlement and mutation of land between family members. Such a dispute, by its very nature, is purely private, and therefore falls outside the purview of writ jurisdiction.

23. The respondent arrayed in the present writ petition is admittedly a private individual. No material has been placed on record to demonstrate that the respondent satisfy the tests laid down by judicial precedents so as to qualify as an instrumentality or agency of the State.

24. The Hon'ble Supreme Court in case titled as **Shalini Shyam Shetty & vs Rajendra Shankar Patil reported as (2010) 8 SCC 329** has held as under:

It is well settled that a writ petition is a remedy in public law which may be filed by any person but the main respondent should be either Government, Governmental agencies or a State or instrumentalities of a State within the meaning of Article 12. Private individuals cannot be equated with State or instrumentalities of the State. All the respondents in a writ petition cannot be private parties. But private parties acting in collusion with State can be respondents in a writ petition. Under the phraseology of Article 226, High Court can issue writ to any person, but the person against whom writ will be issued must have some statutory or public duty to perform.

25. Article 12 of the Constitution defines the expression "State" to include the Government, Parliament, Legislature, local authorities, and such other authorities which are either created by statute or are functionally, financially and administratively dominated by the Government.

26. In the absence of such foundational facts, the private respondent cannot be equated with the State or its instrumentalities so as to attract the writ jurisdiction of this Court.
27. Though Article 226 empowers the High Court to issue writs to “any person or authority”, it is equally well settled that such power can be exercised only where the person against whom the writ is sought is under a statutory, public or constitutional obligation.
28. In the present case, the petition does not disclose any statutory duty cast upon the respondent any public function entrusted to him or any obligation flowing from constitutional or statutory provisions.
29. It is true that in exceptional circumstances, private parties may be impleaded in writ proceedings. However, such impleadment is permissible only where State action is involved, or where private parties are alleged to have acted in collusion with the State or its instrumentalities, or where they are beneficiaries of an impugned State action.
30. In the present writ petition, the only respondent impleaded is a private individual and no State authority has been impleaded as a necessary party and there are no pleadings alleging arbitrary exercise of power by the State.
31. A writ petition where the respondent is a private individual and no public authority is involved is inherently not maintainable.
32. The petition is conspicuously silent on any allegation of State action or collusion with Government authorities. In the absence of pleadings establishing State action, the extraordinary jurisdiction of this Court under Article 226 cannot be invoked solely on the basis of dispute raised

against private individual .Judicial review under Article 226 is concerned with the legality of State action and not with disputes inter se private parties.

33.The nature of relief sought by the petitioners clearly indicates that, if at all any grievance survives, the same can be adequately addressed by availing remedies under ordinary civil law or appropriate statutory forums. The writ jurisdiction cannot be invoked as a substitute for civil remedies or as a device to bypass established legal procedures.

34.It is trite law that an order cannot be effectively challenged unless the authority which passed the order is arrayed as a party. In the absence of the decision-making authority, no effective adjudication can take place, and any order passed by this Court would be rendered unenforceable. The writ petition, therefore, suffers from a fundamental procedural defect.

35.A careful examination of the pleadings reveals that the lis involves serious and complex disputed questions of fact, including the existence and validity of alleged private settlements, the knowledge and acceptance of mutation entries, the extent of inheritance in respect of different parcels of land, prior civil and revenue litigations between the parties, alleged suppression of material facts, and the conduct of the parties over an extended period of time.

36.The Hon'ble Supreme Court in case titled as **Shubhas Jain v. Rajeshwari Shivam, (2021) 20 SCC 454** has observed as under:

"26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the

Constitution of India, does not adjudicate hotly disputed questions of facts.”

37. Such disputed questions of fact cannot be adjudicated in exercise of writ jurisdiction. The appropriate forum for determination of these issues is either a competent civil court or the relevant statutory authority, where parties can lead evidence and the factual controversies can be examined and adjudicated in a comprehensive manner.

38. In similar facts, Madhya Pradesh High Court in Case titled as Laxmi Devi and Others vs State of M.P. and Others reported as 2019 SCC OnLine MP 3629 has observed as under:

“It is well established principle of law that the writ petition against a private individual is not maintainable. If the petitioner is of the view that the respondent no. 6 is illegally trying to encroach upon the land or has illegally taken possession of the said land, then they have an efficacious remedy of filing a Civil Suit.”

39. Even otherwise, the record reveals that the challenge to Mutation No. 267 dated 30.01.1995 was raised after an inordinate delay of nearly 25 years. The petitioners were admittedly aware of the mutation and had acted upon a private settlement. The belated invocation of revisional and writ jurisdiction appears to be a consequence of adverse orders passed against the petitioners in earlier proceedings concerning other parcels of land.

40. While delay alone may not always be fatal, the conduct of the petitioners, coupled with suppression of material facts and repeated rounds of litigation, disentitles them from invoking the discretionary and equitable jurisdiction of this Court under Article 226.

41. The impugned orders passed by the learned Financial Commissioner shows application of mind to the issue of delay and maintainability of the revision petition. The review petition was dismissed on the well-settled principle that review jurisdiction cannot be used as a forum for rehearing.
42. This Court, while exercising judicial review, does not sit as an appellate authority over the decision of the Financial Commissioner. Unless perversity, patent illegality or jurisdictional error is demonstrated, interference is unwarranted. No such infirmity is made out in the present case.
43. Although this Court has already held that the writ petition is not maintainable and, yet, without entering into the merits of the dispute, this Court deems it appropriate to briefly advert to the issue of limitation as well. This is being done only to demonstrate that even on merits, the challenge laid by the petitioners does not withstand judicial scrutiny and the petitioners are not subject to any prejudice by the decision of this court to refrain from delving into a detailed consideration of the matter on merits.
44. The petitioners have contended that the learned Financial Commissioner could not have dismissed the revision petition on the ground of limitation, as the issue of delay was neither specifically raised by the respondents nor argued before the revisional authority. This court is of the opinion that this submission of the petitioners is wholly misconceived and devoid of any merit.
45. It is a settled principle of law that the question of limitation is a pure question of law, which goes to the very root of the maintainability of

the proceedings. A court or statutory authority is not only empowered but is duty-bound to examine the issue of limitation suo motu, even if the same has not been specifically pleaded or argued by the parties.

46. Where a proceeding appears, on the face of the record, to be barred by delay or suffers from gross laches, the authority cannot shut its eyes to such illegality and proceed to examine the matter on merits. Entertaining a time-barred claim would itself amount to a jurisdictional error.

47. The Hon'ble Supreme court in case titled as **R. Nagaraj (Dead) Through Lrs. And Another Versus Rajmani And Others** reported as 2025 SCC OnLine SC 762 has authoritatively held that even in the absence of a specific issue on limitation, the court is competent to examine and decide the same. The Supreme Court observed that the question of limitation can be subsumed within the broader issues arising from the pleadings and that failure to frame a specific issue on limitation is not fatal, so long as no prejudice is caused to the parties. The Court further emphasised that under Section 3 of the Limitation Act, 1963, it is the bounden duty of the court to examine limitation and decide the same upon consideration of the pleadings and material on record. For the facility of reference, the relevant para of the judgment is reproduced as under:

“22. In the present case, the trial Court though had not framed a specific issue on “limitation”, the same could very well fall under the broader issue. The question of limitation can be encompassed within the larger question determined by the First Appellate Court for determination. The failure of the trial Court and the First Appellate Court to formulate a separate

issue, in the view of this Court, is not fatal to the judgment rendered by them and has not caused any prejudice to the parties. Further, the trial Court, in the performance its duty, mandated under Section 3 of the Limitation Act, 1963, has taken up the question of limitation and upon perusal of the overall pleadings and evidence, has rightly decided the same. Therefore, we do not agree with the decision of the High Court in remanding the matter to the trial Court, that too after this length of time, when all materials were available before it.”

48. Further The Hon’ble Apex Court in **Union of India v. British India Corporation Ltd. (2003) 9 SCC 505**, has held that :

"the question of limitation is a mandate to the forum and, irrespective of the fact whether it was raised or not, the forum must consider and apply it, if there is no dispute on facts."

49. Applying the above principles to the present case, it is evident that the delay of nearly **25 years** in invoking revisional jurisdiction was apparent on the face of the record. The learned Financial Commissioner, therefore, was fully justified in examining the question of limitation, even in the absence of specific arguments on the issue. Entertaining such a stale claim would have resulted in unsettling settled rights and would have caused grave prejudice to the opposite party.

50. This Court is of the considerate view that the learned Financial Commissioner acted well within his jurisdiction and in accordance with settled legal principles while dismissing the revision petition on

the ground of limitation. The contention raised by the petitioners that the authority was precluded from examining limitation in the absence of arguments is legally not tenable and is hereby rejected.

51. The petitioners have placed reliance on the judgment titled **M.S. Kazi v. Muslim Education Society and Others, reported as 2016 (9) SCC 263** the petitioners sought to contend that there was no requirement to array the Financial Commissioner as a party to the present proceedings. However, a bare and careful perusal of the said judgment reveals that the ratio laid down therein pertains specifically to a Tribunal and not to the Financial Commissioner, who undisputedly functions as a statutory revenue authority.

52. The judgment relied upon by the petitioners does not lay down any proposition dispensing with the necessity of impleading a revenue authority as party respondent such as the Financial Commissioner. On the contrary, the decision proceeds on the distinct legal footing that a Tribunal, whose order is under challenge, is not required to be impleaded as a party to writ proceedings, since it is not expected in law to enter the adversarial arena to defend its own order. The underlying rationale is that the Tribunal merely performs an adjudicatory function and does not have a lis to contest in writ proceedings under Articles 226 and 227 of the Constitution.

53. The said principle cannot, by any stretch of reasoning, be extended to a statutory authority like the Financial Commissioner, who exercises administrative and quasi-judicial powers in the revenue hierarchy and whose presence may be necessary for the effective and complete adjudication of the issues involved.

54. For the facility of reference, the relevant portion of the judgment supra is reproduced hereunder:

“The tribunal is not required to defend its orders when they are challenged before the High Court in a Special Civil Application under Articles 226 and 227. The lis is between the management and a member of its teaching or non-teaching staff, as the case may be. It is for the person aggrieved to pursue his or her remedies before the tribunal. An order of the tribunal is capable of being tested in exercise of the power of judicial review under Articles 226 and 227. When the remedy is invoked, the tribunal is not required to step into the arena of conflict for defending its order. Hence, the tribunal is not a necessary party to the proceedings in a Special Civil Application.

The tribunal was not required to defend its order in the writ proceedings before the learned Single Judge. Even if the High Court was to require the production of the record before the tribunal, there was no necessity of impleading the tribunal as a party to the proceedings. The tribunal not being required in law to defend its own order, the proceedings under Articles 226 and 227 of the Constitution were maintainable without the tribunal being impleaded.”

55. Bare reading of the aforesaid extract unequivocally demonstrates that the exemption from impleadment is confined to a Tribunal alone and is founded on the principle that such a body is not obliged to defend its own orders in writ jurisdiction. The said judgment, therefore, offers no assistance to the petitioners in justifying the non-impleadment of the Financial Commissioner in the present case.

CONCLUSION

56. For the aforesaid reasons, this Court is of the considered opinion that the present writ petition is wholly misconceived and not maintainable in law. The dispute sought to be projected by the petitioners is essentially private in nature, arising out of alleged inheritance rights, private settlements and mutation, and does not involve any element of public law or enforcement of a public or statutory duty. The extraordinary jurisdiction of this Court under Article 226 of the Constitution cannot be invoked for adjudication of such private disputes, nor can it be used as a substitute for remedies available under ordinary civil law.

57. The petition also suffers from serious procedural and jurisdictional infirmities, including inordinate and unexplained delay and repeated attempts to reopen settled issues through successive rounds of litigation. The instant writ petition involves complex and disputed questions of fact which cannot be adjudicated by invoking the powers under Article 226 of the Constitution of India.

58. This court is of the view that the appropriate forum for adjudication of these disputes is a civil court or a competent revenue authority, where the parties can present evidence and the complex factual controversies can be comprehensively examined. The extraordinary jurisdiction of this Court under Article 226 is not intended to supplant the ordinary civil remedies available to parties particularly in matters of private law.

59. This Court is of the considered opinion that no effective adjudication can take place unless the authority whose order is under challenge is before the Court. Any order passed in the absence of such authority

would be rendered ineffective and unenforceable. The writ jurisdiction cannot be exercised in vacuum or against private individual alone when the relief sought involves scrutiny of orders passed by revenue authorities.

60.This Court finds that the revenue authorities have acted within the bounds of their jurisdiction, have applied their mind to the relevant considerations, and have declined to entertain a stale and time-barred claim in accordance with settled principles of law. No perversity, arbitrariness, or jurisdictional error is demonstrated so as to warrant interference in exercise of judicial review.

61.The jurisdiction under Article 226 being discretionary and equitable, the conduct of the petitioners does not warrant the grant of any relief. Entertaining such belated and purely private claims would defeat the very object of writ jurisdiction .

62.In view of the foregoing discussion, the writ petition is devoid of any merit and is accordingly dismissed, along with all connected applications.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR

19.12.2025

“Gh. Nabi/Jt. Reg.”

❖ *Whether Judgment is Speaking?* **Yes**

❖ *Whether Judgment is Reportable?* **Yes**