IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 27.05.2025
Pronounced on: 05.06.2025

LPA No. 169/2024

Saja Begum, Aged 65 years.
D/o Mst. Mugli & W/o Abdul Samad Ganie
R/o Nehalpora Tehsil Pattan District Baramulla

…Appellant(s)

Through: Mr. M. Amin Khan, Advocate.

Vs.

1. Financial Commissioner Revenue J&K Govt. Srinagar/Jammu.

2. Ghulam Mohammad Ganie,
S/o Mst. Mugli.
R/o Kalsari Nehalpora,
Tehsil Pattan District Baramulla

...Respondent(s)

Through: Mr. Javid Ahmad Parray, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjay Parihar-J

1. Appellant is aggrieved of and has thrown challenge to order dated 15-04-2024 of passed by the learned Single Judge ['the writ Court'] in WP(C) No. 1746/2022 titled Ghulam Mohammad Ganie Vs Financial Commissioner and Anr, whereby the order of Financial Commissioner (Revenue) passed in revision File No. 696/FC/AP has been held not legally sustainable and has been quashed thereby upholding the Mutation No 988 dated 11-07-1996 in respect of 22 Kanals 13 Marlas of land drawn on the strength of oral gift made by

predecessor-in-interest of the appellant in favour of private respondent herein.

2. Briefly put, the facts are that the mother of the appellant Mst. Mugli was stated to be the estate holder in respect of land measuring 35 Kanals 7 Marlas comprising Survey No's. 949 (2 Kanals 9 Marlas), 1026 (8 Marlas), 1112 (3 Marlas) 1169/1 (16 Marlas), 1152 (2 Kanals 16 Marlas), 1590 (2 Kanals), 1592 (4 Kanals), 1526 min (6 Marlas), 1629 (2 Kanals 10 Marlas), 1748 (14 Marlas), 1795 (1 Kanal 1 Marla), 1801 (1 Kanal), 1823 (1 Kanal 10 Marlas), 1826 (2 Kanals 3 Marlas), 2079 (18 Marlas), 2092 (3 Kanal), 2228 (4 Kanal 10 Marlas), 2322 (1 Kanal 10 Marlas), 2329 (3 Kanal 13 Marlas) of village Nihalpora Tehsil Pattan District Baramulla, who was having three daughters and one son, the appellant being one of them. Whereas private respondent herein is the only son of deceased Mst Mugli who died in the year 2015. During her lifetime she is claimed to have parted with 22 Kanals 13 Marlas falling under Survey No 1067 min (04 Marlas) 1112 min (02 Marlas) 1123 min (04 Kanals and 03 Marlas) 988 (02 Kanals 06 Marlas) 1795 fai (01 Kanal)2079 (18 Marlas) 2228 (04 Kanals and 09 Marlas) 1527 (09 Kanals and 09 Marlas) by way of oral gift in favour of private respondent prior to the year 1971 and as a consequence whereof Mutation No 988 dated 11-07-1996 came to be attested in favour of the private respondent. After the demise of Mst Mugli, her estate is said to have devolved on her daughters and the only son for which mutation of inheritance came to be attested on 16-03-2017.

3. According to appellant, at the time of attestation of mutation of inheritance No 2067, the respondent did not divulge of such oral gift

or the attestation of Mutation No. 988. She claimed gift to be a fictitious one as no such oral gift could have taken place prior to 11-07-1996 as at that time there was complete ban on alienation of land. The said oral gift, if any, was against provisions of law and in terms of Standing Order 23-A, the mutation officer was bound to reject such oral gift, if any, brought to his notice. She therefore questioned the mutation before Financial Commissioner, Agrarian Reforms, Srinagar, by way of revision bearing No 696/FC-AP on 16-09-2020 which in terms of order dated 21-07-2022 came to be decided in the manner that the Financial Commissioner (Revenue) proceeded to observe that, since there was complete ban on alienation of land through whatever means as on the date of attestation of mutation No. 988, so despite permissibility of oral gift among muslims, the same was liable to be set aside because essential ingredients of law have not been complied with, and, as a result, while accepting the revision, the said mutation was set aside.

4. Being aggrieved of the order passed by the Financial Commissioner (Revenue), the private respondent herein filed the writ petition and the writ Court took a view that Section 31 of the Agrarian Reforms Act had no application to the matter in hand and that the Financial Commissioner (Revenue) has passed the order in mechanical manner and without recording any reasons. The writ court, therefore, proceeded to observe as under:

> *"10: In so far as the validity of an oral gift made by a muslim is concerned, law stands settled by the Apex Court as also the full Bench of this court in case titled as "Hafeeza Bibi Vs. Shaikh Farid" reported in AIR 1974 JKJ 59 wherein the mode of transfer of an immovable property*

> *through an oral gift by a muslim has been held to be valid permissible.*
> *11: Insofar as the application of Section 31 read with Section 2(9) of the Agrarian Reforms Act 1976 referred and relied upon by the respondent herein is concerned, a bare perusal of the said provisions indisputably tends to show that said provisions were and are not applicable to the case in hand in general and in particular qua the mutation 988 set aside by respondent No 1 herein. The revisional forum indisputably had misdirected itself while having wrongly referred to and relied upon the said provisions of the Agrarian Reforms Act, 1976.*
> *12: Viewed thus, what has been observed, considered, and analyzed herein above the impugned order manifestly has been passed on a wrong premise and thus is not legally sustainable. Resultantly the petition succeeds as a consequence whereof the impugned order is quashed."*

5. We have heard the learned counsel for parties and perused the material on record.

6. It is admitted case of the parties that mutation No 988 dated 11-07-1996 has given effect to oral gift said to have been made by Mst Mugli, by which she parted with 22 Kanals and 13 Marlas of land to her only son (respondent). Whereas the parties were governed by Muslim personal law so given the law applicable at that time in terms of Sri Partap Jammu and Kashmir Laws (Consolidation Act 1977) questions regarding succession, wills, gifts etc. where the parties are Muhammadans shall have to be governed by Muhammadan law. The principles of Muhammadan law duly recognize oral gift as a mode of transfer of property. So much so, even the Transfer of Property Act, which was in vogue at that time, does not supersede the Muslim law on matters relating to making of oral gift. In this regard, a full Bench of this court in **Hafeeza Bibi v. Shaikh Farid**, **AIR 1974 J&K 59** had an occasion to deal with the principles of Muhammadan law

governing gift and whether such gift is affected by Section 123 and 129 of the Transfer of Property Act, and it was held thus:

> *"It seems that the words "or to affect any rule of Muhammadan Law" have been deliberately substituted in order to exclude the operation of Chapter VII in regard to gifts made by persons professing Muslim faith and made under that law. This had indeed made all the difference in the case of gifts made under any rule of Muhammadan law and under any other law. Thus if all the formalities as prescribed by the Muhammadan law relating to making of gifts are satisfied i.e. there is a declaration by the done, and delivery of possession of the property is complete, the gift is valid notwithstanding the fact that it is made orally without any instrument.*
> *Therefore, the answer to the question formulated would be in the negative i.e. that Sections 123 and 129 of the Transfer of Property Act do not supersede the Muslim law on matters relating to making of oral gifts, that it is not essential that there should be a registered instrument as required by Sections 123 and 138 of the Transfer of Property Act in such cases. But if there is executed an instrument and its execution is contemporaneous with the making of the gift then in that case the instrument must be registered as provided under Section 17 of the Registration Act. If, however, the making of the gift is an antecedent act and a deed is executed afterwards as evidencing the said transaction that does not require registration as it is an instrument made after the gift is made complete the gift thereby transferring the ownership of the property from the executant to the person in whose favour it is executed."*

7. Given the aforesaid legal preposition, gift, if any, by Mst Mugli was recognized mode of transfer, however, since the appellant is relying on Section 31 of the Agrarian Reforms Act to advance her case, the aforesaid provision for reference and convenience is reproduced as below:

> *"Restriction on alienation and felling or reomval of trees – Notwithstanding anything contained in any law for the time being in force-*

a) *i. alienation of land, whether by act of parties or a decree or order of a Court or of a Revenue Officer; or*

ii. felling or removal of trees standing on land;

except under such conditions as may be prescribed and with previous permission of the Revenue Minister, or such officer as may be authorized by him in this behalf, is forbidden:

Provided that clearing of bushes or lopping or pruning of trees in accordanct with agricultural practice shall not be deemed to be felling of trees:

Provided further that a mortgage without possession of land in favour of an institution mentioned in section 4-A of the Jammu and Kashmir Alienation of Land Act, Samvat 1995 and transfer of land in favour of the Government of Jammu and Kashmir shall not need any permission:

1[Provided also that permission for conversion of land which grows shall crop, vegetables or saffron bulbs for any purpose shall be governed under and in accordance with the provisions of the Jammu and Kashmir Land Revenue Act, Samvat 1996.]

b) *(any alienation of land made on or after the first day of May,1973 in contravention of-*

i. the provisions of this Act; or

ii. section 45 of the Jammu and Kashmir Agrarian Reforms Act, 1972: or

iii. section 8 of the Jammu and Kashmir Agrarian Reforms (Suspension of Operation) Act, 1975: or

iv. clause (a) of sub-section (1) of section 3 of the Jammu and Kashmir Prohibition on Conversion of Land and Alienation of Orchards Act, 1975;

shall be null and void and the land so alienated shall, after such enquiry as may be prescribed, vest in the State:

Provided that nothing herein contained shall be deemed to affect the provisions of section 4 of the Jammu and Kashmir

Prohibition on Conversion of Land and Alienation or Orchards Act, 1975:

c) *no transfer of possession of land effected in anticipation of alienation of such land shall be valid and the land in respect of which possession has been so transferred shall, after such (enquiry), as may be prescribed, vest in the State;*

d) *no document purporting to alienate land in contravention of the provisions of this section shall be admitted to registration.*

Explanation—For the purpose of this section, alienation means sale, gift, mortgage with possession, or exchange."

8. It is true that in terms of Rule 60 of Agrarian Reform Rules 1977, permission can be granted for alienation of land by the competent authority and Rule 60(A) (made applicable with effect from 11-06-1981) provides that where a transfer has been effected in contravention of Section 31 of the Act, the revenue officer not below the rank of Tehsildar shall conduct enquiry on the mutation, if any, attested thereto and if it is found that there is contravention of Section 31, he shall, after giving opportunity of being heard to both aliener and alienee, pass order in the mutation register to the effect that the land shall vest in the State. However, Section 31 proposes to impose a restriction on alienation of land and this provision begins with a *non-obstante* clause and forbids alienation of land by act of parties except under such condition as may be prescribed, wherein conditions are laid in Rule 60. Further, in terms of Section 31(b) of the Act, alienation of land made on or after the first day of May, 1973 in contravention of the provisions of the "Act" shall be null and void and land so alienated shall, after such enquiry as may be prescribed, vest in the State.

9. In terms of clause 2(9) of the Act, 'land' would mean the land which is occupied or was let for agriculture purposes or for purposes subservient to agriculture and includes structure on such land for the purpose connected with agriculture, but would not include an orchard, a site of a building or structure within municipal area, town notified area or village abadi or any land appurtenant to such structure or building.

10. The record pertaining to mutation No 988 describes the land being one subservient to the agriculture and Mst Mugli, in terms of

mutation No 988, has declared to have orally gifted the land in question in favour of her only son. It was argued by the learned counsel for the private respondent that, Mst Mugli had also candidly admitted and accepted the oral gift as she was present during the attestation of mutation on 11-07-1996, so there was no scope for further enquiry or providing chance of hearing to the appellant and no right or interest had accrued to her. This argument though, on the face of it, appears to be attractive but given the mandate of Section 31, which stood in the statute book during the time of attestation of mutation, clearly forbid alienation of land by way of gift or otherwise. Stress had been laid that in terms of Alienation of Land Act, Samvat 1995 (1938 AD), the owner was empowered to transfer land by way of gift or otherwise not exceeding 4 Kanals in favour of person who has not made any such acquisition.

11. In **Pratap Singh Vs. State of Jharkhand** **2005 (3) SCC 511**, the issue on interpretation of statutes and also keeping in view the object sought to be achieved by enacting the later statute came up for consideration and it was held as under:

> "The statute, it is well known, must be construed in such a manner so as to make it effective and operative on the principle of 'ut res magis valeat quam pereat' the court lean strongly against any construction which tends to reduce a statute to a vitality. When two meanings, one making the statute absolutely vague, wholly intractable and absolutely meaningless and the other leading to certainty and a meaning interpretation, are given, in such an event the latter should be followed."

12. Applying the aforesaid construction, since the Act of 1976 has come much after the enactment of Alienation of Land Act of 1995 (1938 AD) and given the mandatory nature of Section 31, the later Act would prevail in matters of alienation of land and Mst Mugli

before proceeding to record oral gift in favour of her only son was required to seek permission from the competent authority in terms of Section 31 of the Agrarian Reforms Act read with Rule 60. Having regard to the provisions of the Agrarian Reforms Act and its objectives, the dominant purpose of the statute is to bring about a just and equitable redistribution of the land, which is achieved by making the tiller of the soil, the owner of the land, which he cultivates and by imposing a ceiling on the extent of land which any person whether landlord or tenet can hold. Considering the scheme and purpose of the Act, the restriction imposed on utilization and alienation in terms of Section 28, 28-A and 31 have withstood the constitutional schemes and would definitely mean that the later Act would prevail upon the Act of 1995. This position is further made clear by Section 42 of the Agrarian Reforms Act which categorically makes provisions that with the commencement of this Act (Agrarian Reforms Act), the provisions of Jammu and Kashmir Alienation of Land Act Samvat 1995 and the rules, standing orders, orders, instructions issued thereunder as far as they are inconsistent of the provisions of this Act and the rules framed and instructions issued there under cease to apply to the land to which this Act applies.

13. As already made clear, the disputed land falls within the ambit of clause 2(9) of the Act, therefore, once the provisions of the Act are applicable to such a land, then, even if there is scope for alienation of land to the extent of 4 Kanals in terms of Jammu and Kashmir Alienation of Land Act, alienation thereof would become inconsistent with the provisions of the Agrarian Reforms Act, which clearly bars alienation of land except in accordance with Section 31 of the Act. In

that background, the Act of 1996 would override the Act of 1995, which normally being later Act and its provisions having overriding effect would prevail. Having not applied in prescribed mode, any such mutation recorded on the strength of such transfer (by way of gift) is forbidden by Section 31 of the Act.

14. Having said so, the learned counsel for the private respondent would also contend that the mutation dated 11-07-1996 had been challenged by way of revision after expiry of limitation period, and, therefore, the Financial Commissioner Revenue ought not to have interfered with the mutation No 988. This argument too, lacks substance because once the transfer by way of oral gift was forbidden by law, then any such transfer could not have been given effect to by the revenue authorities in terms of Standing Order 23-A. This is so because Section 32 of the Agrarian Reforms Act provides for overriding effect of its provision over all other laws. Even if Mst Mugli was legally entitled to make oral gift and there was no prohibition in terms of the Transfer of Property Act or the Act of 1995 on her for effecting or making such transfer, however, that transfer could have taken place and given effect to, only by taking recourse to Section 31 and Rules framed thereto whereas clause (c) to Section 31 clearly provided that no transfer of possession of land effected in anticipation of alienation shall be valid and the land in respect of which possession has been so transferred shall, after such enquiry as may be prescribed, vest in the State. The explanation appended to the provision further prescribes that alienation would include sale, gift, mortgage with possession etc. Section 35 of the Act again re-affirms the provisions of Section 31 and 32 by providing that transfer in

defeat of provisions of Agrarian Reforms Act cannot be given effect to.

15. In that background the order drawn by Financial Commissioner Revenue in exercise of its revisional jurisdiction was in accordance with law because the mutation recorded on the strength of oral gift, being in contravention of Section 31 of the Agrarian Reforms Act, was un-enforceable, rather was a document that was prohibited by law which could be rectified under revisional jurisdiction at any time and limitation in itself would not have validated such a mutation. Hence the writ Court has landed in error in not examining Section 31 of the Act in a manner, it was supposed to provided for.

16. For the aforesaid reasons the instant appeal is allowed. The impugned order dated 15-04-2024 passed by the writ Court is set aside and, as a sequel thereto, the order of Financial Commissioner Revenue dated 21-07-2022 is upheld with further direction to the revenue authorities to conduct an enquiry on the impugned mutation and after providing reasonable opportunity of being heard to the beneficiaries, shall to recast the mutation in accordance with law. The revenue authorities, while conducting the enquiry in terms of the Act, shall follow the mandate of Rule 60 of the Rules of 1977.

(SANJAY PARIHAR) **(SANJEEV KUMAR)**
JUDGE **JUDGE**

SRINAGAR:
05.06.2025
"Adil Ismail"

Whether the judgment is approved for reporting: Yes