

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

**Reserved on: 27.02.2025**

**Pronounced on: 06.03.2025**

**WP(C) No. 1841/2020**

**CM No. 6622/2020**

**c/w**

**OWP No. 1799/2017**

**CM No. 2079/2020**

1.Smt. Amrit Kour age 73 years

W/o Late S. Surinder Singh

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

2. Satnam Singh age 56 years

3. Kamaljeet Singh age 51 years

4. Paramjeet Singh age 33 years

5. Rao Virander Singh age 53 years,  
all sons of Late S. Surinder Singh, all  
residents of Village Jagatpur, Tehsil  
and District Kathua.

Through: Mr. S. M. Chowdhary, Advocate with  
Mr. Mursaleen, Advocate

**vs**

1. The Union Territory of Jammu and  
Kashmir Through Commissioner/Secretary,  
Department of Revenue Civil Secretariat  
Jammu.

..... Respondent(s)

2. The Divisional Commissioner (with the  
powers of Deputy Custodian General and  
Financial Commissioner (Rev.) J&K,  
Jammu.

3. The Deputy Commissioner, Kathua.

4. The Tehsildar Kathua.

5. Jagjit Singh,

6. Jashpal Singh, both sons of late Puran  
Singh.

7. Darshan Kour Wd/o late Surjit Singh,

8. Sarbjeet Singh,

9. Harpreet Singh, both sons of late Surjit  
Singh, all residents of Village Jagatpur,  
Tehsil and District Kathua.

10. Smt. Jasbinder Kour D/o Late Surjit Singh R/o Sujanpur, Tehsil and District Kathua.

Through: Mrs. Monika Kohli, Sr. AAG for R-1 to 4  
Mr. Abhishek Wazir, Advocate for R-5 to 10

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

1. During the pendency of the writ petition bearing OWP No. 1799/2017, wherein the order dated 13.10.2017 passed by the respondent No.2 directing the respondent No.4 to conduct de novo enquiry was impugned, the respondent No. 4 conducted de novo enquiry and passed the order dated 18.08.2020, which has been impugned by the petitioners in WP(C) No. 1841/2020. Both these writ petitions are being disposed of by a common judgment.
2. Brief facts necessary for disposal of these writ petitions are that the respondent Nos. 6 to 10 had filed a revision petition against mutation No. 218 dated 22.09.1967, by virtue of which, land measuring 14 Kanal 18 Marlas comprising Survey No. 10/307 and land measuring 7 Kanal 1 Marlas comprising Survey No. 11/307 (total measuring 21 Kanal 19 marlas) situated at Village Jagatpur, Tehsil and District Kathua was mutated in favour of predecessor-in-interest of the petitioners, namely Surinder Singh S/o Bir Singh and Surjit Singh (now deceased), Jashpal Singh & Jagjit Singh Sons of Puran Singh in equal proportion i.e. ½ share. During pendency of revision petition, Surinder Singh died and he was substituted by the petitioners as his legal representatives. The revision

was allowed by the Divisional Commissioner vide order dated 13.10.2017. It is stated that the forefathers of the petitioners were non camp refugees, and they occupied the State land measuring 14 Kanal 18 Marlas comprising Survey No. 10/307 and land measuring 7 Kanal 1 Marlas comprising Survey No. 11/307 (total measuring 21 Kanal 19 marlas) situated at Village Jagatpur, Tehsil and District Kathua. The abovementioned land was allotted to the forefather of the parties under Government order No. 578-C of 1954. It is also stated that though the land of the custodian measuring 14 Kanals comprising survey No. 164 was allotted to them, but its possession was never given to the forefathers of the parties. The total land measuring 21 Kanals remained in possession of forefathers of the parties. It is further stated that father of the respondent Nos. 5&6 namely-Puran Singh died prior to attestation of mutation No. 218 on 22.09.1967. The husband of respondent No. 7 and father of respondent Nos. 8 to 10 died in the year 2002, and respondent Nos. 7 to 10 inherited the estate of the deceased Surjit Singh and mutation of inheritance was attested on 22.05.2002. The predecessor-in-interest of the petitioners on 18.05.2013 filed an application for partition of above-mentioned land before respondent No. 4 and respondent No. 4 vide its order dated 15.01.2014, allowed the application of predecessor-in-interest of the petitioners and directed the private respondents to handover the possession of excess land occupied by them to the predecessor-in-interest of the petitioners. After an order of partition was passed by the respondent No. 4, the private respondents on 12.05.2014 filed a revision petition

against the mutation No. 218 after 46 years against the predecessor-in-interest of the petitioners before respondent No. 2 and the respondent No. 2 vide order dated 13.10.2017, allowed the revision by setting aside the mutation No. 218 and remanded the matter to respondent No. 4 for conducting de novo enquiry.

3. The petitioners have assailed the order dated 13.10.2017 (for short 'the impugned order') on the following grounds:-

- (a) That perusal of mutation No. 218 dated 22.09.1967 reveals that the husband of respondent No. 7 and father of respondent Nos. 8 to 10, namely, Surjit Singh S/o Puran Singh, elder brother of respondent Nos. 5 and 6 was present at the time of attestation of mutation.
- (b) That the respondent Nos. 5 to 10 had knowledge of the attestation of mutation in the year 1967 and after the demise of Surjit Singh in the year 2002, mutation of inheritance bearing No. 415 in respect of his share came to be attested in favour of respondent Nos. 7 to 10 on the basis of mutation No. 218.
- (c) That the respondent No. 2 has not gone through the impugned mutation properly and he has overlooked the presence of Surjit Singh at the time of attestation of mutation and has condoned the delay of more than 46 years without assigning any reason.
- (d) That the respondent No. 2 has not appreciated the questions of law involved in the matter in right perspective and has wrongly remanded the case to respondent No. 4 for de novo enquiry.

4. Respondent Nos. 5 to 10 have filed the response stating therein that the impugned order is a remand order, whereby respondent No. 2 has allowed the revision petition thereby setting aside the mutation No. 218 and directing for passing fresh order after hearing all the interested parties. It is stated that Bir Singh of Village and Tehsil Palandri now in POK was survived by 5 sons, namely, Puran Singh, Surinder Singh (now deceased), Bhagwan Singh, Dulla Singh and Jaspal Singh. Jaspal Singh died before migration to India. All four sons of Bir Singh, namely, Bhagwan Singh, Puran Singh, Dulla Singh and Surinder Singh migrated to India and all the four brothers got Form 'A' issued and the land was allotted to them separately. In the Form 'A' submitted by Puran Singh, the strength of the family members was five i.e. self, Harbas Kour (wife), Jagjit Singh (son), Surjit Singh (son) and Jaspal Singh (son). They were allotted 21 Kanal 19 Marlas comprising Survey No. 10/307 (14 Kanal 18 Marla) and Survey No. 11/307 (7 Kanal 1 Marla) situated at Village Jagatpur, Tehsil and District Kathua in terms of Government order No. 578-C of 1954. The said land remained in cultivation possession of the family headed by Puran Singh. Surinder Singh, the younger brother of Puran Singh i.e. the predecessor-in-interest of the petitioners while filling his Form 'A' fraudulently without the knowledge of Puran Singh and his family members, mentioned names of Puran Singh and members of family of Puran Singh i.e. Surinder Singh (self) and rest of the names were picked up from Form 'A' of the family of Puran Singh and got the land comprising Survey No. 164 measuring 14 Kanals allotted to his family

headed by himself. Surinder Singh obtained the possession of the land measuring 14 Kanals in Survey No. 164. Puran Singh died prior to 22.09.1967 and Surinder Singh managed the attestation of mutation No. 218 which conferred ownership rights to the extent of one-half share in favour of Surinder Singh and the other half in the name of family members of Puran Singh at the back of the answering respondents without summons/notices, having been served upon the respondents. Respondent Nos. 5 to 10 have admitted that after the demise of Surjit Singh, mutation of inheritance came to be attested in favour of respondent Nos. 7 to 10. It is further stated that Surinder Singh i.e. predecessor-in-interest of the petitioners, filed an application for partition of the land comprising Survey No. 10/307 and 11/307 which was resisted by the answering respondents. One of the answering respondents submitted that an application under Right to Information Act for issuance of certified copy of the order alleged to have been passed by the Tehsildar on the application filed by Surinder Singh for partition of land and as per information available with the official respondents and mentioned in the reply dated 12.08.2015, the application for partition has not been allowed. The answering respondents when came to know about the attestation of mutation No. 218, filed the revision petition before respondent No. 2 and prior to that, they were not aware about the attestation of mutation as they were never summoned by mutating officer at the time of attestation of mutation. It is also stated that the Govt. of India had disbursed the cash amount to displaced families. Surinder Singh S/o Bir Singh showing himself as separate family having a

separate Form 'A', received Rs. 25,000/- in the year 2002. Precisely, the stand of the respondents is that the land measuring 21 Kanal and 19 Marlas was never allotted to Surinder Singh and was rather allotted to Puran Singh but as Puran Singh came to be demised before attestation of mutation, the predecessor in interest of the petitioners i.e. Surinder Singh, fraudulently got the mutation No. 218 attested, thereby getting his name incorporated in the said mutation and the said mutation was attested without hearing the respondents.

5. Mr. S. M. Choudhary, learned counsel for the petitioners has vehemently argued that when mutation No. 218 was attested, Surjit Singh was present at the time of attestation of mutation, therefore, the private respondents cannot be heard to say that the mutation was attested without affording any opportunity of hearing to them. He has further submitted the land was allotted to Surinder Singh and his brother Puran Singh and others jointly on the basis of Form 'A' issued in favour of Surinder Singh and there is no justification for entertaining the revision after huge delay.
6. *Per contra*, Mr. Abhishek Wazir, learned counsel for the private respondents has argued that a separate Form 'A' was issued in favour of Puran Singh and in the said form, particulars of his family members were also mentioned and by fraud, the predecessor-in-interest of the petitioners got the land mutated in equal share by getting his name incorporated in the said mutation. He has further stated that while attesting mutation, due opportunity of hearing was required to be afforded to all the interested parties and assuming Surjit Singh was present at the time of attestation of

mutation, the other sons of Puran Singh, namely, Jaspal Singh and Jagjit Singh were not put to notice and as such they were not present when the mutation was attested in their favour. He has vehemently argued that the factum of Surinder Singh having obtained the cash relief showing himself as having separate family in the year 2002, clearly reveals that he was not part of family of Surinder Singh.

7. Heard learned counsels for the parties and perused the record.
8. A perusal of the order impugned passed by respondent No. 2 reveals that respondent No. 2 has observed that Puran Singh and Surinder Singh were real brothers and displaced persons of 1947 from POK. Both of them filled their Form 'A' separately. As per Form 'A' of Puran Singh, family of Puran Singh was comprised of five members and Surinder Singh was nowhere mentioned in Form 'A' filled by Puran Singh. In the Form 'A' of Surinder Singh, the names of family members of Puran Singh have been mentioned. Taking into consideration this discrepancy, the Divisional Commissioner was of the opinion that the matter requires to be enquired into, more particularly when Surinder Singh was allotted 14 Kanals of land comprising Survey No. 164 in the same village. Respondent No. 2 while making the above mentioned observation has also come to the conclusion that limitation in such cases where interested parties are condemned unheard shall start from the date of knowledge and as the impugned mutation has been attested behind the back of the respondents, therefore, the revision petition is deemed to have been filed within the time from the date of knowledge.

9. Mutation No. 218 though bears the signature of Surjit Singh i.e. the predecessor-in-interest of the respondent Nos. 7 to 10 but other two sons of Puran Singh, namely, Jagjit Singh and Jashpal Singh i.e. the respondent Nos. 5&6 have not been shown to be present at the time of attestation of mutation. Respondent No. 2 once has returned a finding of fact on the basis of record that mutation was attested at the back of predecessor-in-interest of Puran Singh notwithstanding that one of the sons of Puran Singh was present at the time of attestation of mutation bearing No. 218, it cannot be said there is illegality or perversity in the finding returned by respondent No. 2 that the predecessor in interest of Puran Singh have been condemned unheard as out of three sons of Puran Singh, two sons were never present when the mutation was attested. Otherwise also, the matter requires/required a fresh look as Surinder Singh had shown the family members of Puran Singh and his family members as part of his family members whereas Puran Singh in his Form 'A' had mentioned his family members. Same family members could not have been mentioned in two different Forms 'A'. If such thing has happened, it amounts to fraud and fraud vitiates all proceedings. It needs to be mentioned that vide order dated 18.08.2020, the respondent No.4 has returned a finding against the petitioners, after conducting de novo enquiry.
10. In this context, it would be apt to take note of judgment of the Coordinate Bench of this Court in **Raja Begum (Mst.) & Ors. vs J&K Special Tribunal & Ors. JKJ ONLINE 86751**, wherein it has been held as under:

**“12. From the aforesaid legal position, it is abundantly clear that fraud vitiates all solemn acts and any instrument, deed, judgment, decree and order obtained through fraud is a nullity in the eye of law and such an order can be questioned at any time, so much so it can be ignored altogether before any court of law before it is questioned or produced in any proceeding. Once it is proved before the court of law that the order, instrument, decree or judgment brought before it, in any proceeding, is an outcome of fraud, the court of law shall forbear to endorse and perpetuate such fraud. Any transaction which is the result of misrepresentation, fraud or deceitful means is not protected on the ground of limitation. The court of law is under an obligation to refuse to give effect to such order, decree or judgment passed by any authority, much less to endorse or acknowledge it. The Commissioner Agrarian Reforms and the Tribunal have appreciated this aspect in its correct perspective and have rightly set aside the mutation under section 8 attested in favour of the petitioners without there being any mutation qua the subject land attested under section 4 of the Act.”**

(emphasis added)

11. In *Commr. of Customs (Preventive) v. Aafloat Textiles (I) (P) Ltd.*, (2009) 11 SCC 18, the Hon’ble Apex Court has held as under:

**“19. As noted above, SILs were not genuine documents and were forged. Since fraud was involved, in the eye of the law such documents had no existence. Since the documents have been established to be forged or fake, obviously fraud was involved and that was sufficient to extend the period of limitation. In view of this finding the other issues raised by the respondent are of academic interest.”**

(emphasis added)

12. This Court is conscious of the fact that though it is premature to return any finding on the merits of the case but equally true is that this is a case, where there are allegations of fraud and the allegations are/were required to be enquired into detail, as two forms ‘A’ filed by two brothers cannot have the same members of family. It is the duty of the constitutional courts to ensure that no one gets the benefit of fraudulent acts and the writ of certiorari being a discretionary remedy can be refused, when the court

is of the opinion that the allegations of fraud are required to be enquired in to, to do the substantial justice between the parties.

13. The Hon'ble Supreme Court of India in **“Central Council for Research in Ayurvedic Sciences v. Bikartan Das”**, 2023 SCC OnLine SC 996 has examined the scope of Writ of Certiorari and has observed as under:

**“51.** The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that **in** granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views **for** those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

**52.** The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that **in** a given case, even if some action or order challenged **in** the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it **with a view to doing substantial justice between the parties.** Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. **It is perfectly open **for** the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case.** While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing **in** its duty if it does not notice equitable consideration and mould the final order **in** exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.”

(emphasis added)

14. In view of the above, this Court does not find any illegality on the part of respondent No. 2 while passing the order impugned. In view of this, the

petition bearing No. **OWP No. 1799/2017** is found to be misconceived, as such, the same is **dismissed**.

15. In **WP(C) No. 1841/2020**, the petitioners have impugned the order dated 18.08.2020, passed by the respondent No.4 pursuant to the order dated 13.10.2017 passed by the respondent No.2, upheld by this Court while deciding the connected writ petition. The order dated 18.08.2020 is appealable, as such, the petition bearing WP(C) No. 1841/2020 is disposed of by permitting the petitioners to avail the statutory remedy of appeal within the period of 30 days from today. Needless to say, that if the petitioners avail the remedy of appeal within the period mentioned above, the period of limitation shall not come in the way of the petitioners and the appeal shall be decided on merits. It is made clear that this Court has not expressed any opinion on the merits of the claim of the parties and in the event the appeal is preferred against the order dated 18.08.2020, the same be decided on its own merits.

16. Disposed of.

**(RAJNESH OSWAL)**  
**JUDGE**

**Jammu**  
06.03.2025  
*Neha-II*

|                                  |     |
|----------------------------------|-----|
| Whether the order is speaking:   | Yes |
| Whether the order is reportable: | Yes |