



In the Court of Additional Commissioner, Jammu  
**(With the powers of Divisional Commissioner)**  
 (Rail Head Complex, Jammu)  
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<u>File</u>	<u>Date of Institution</u>	<u>Date of Decision</u>
70/Revision 2019-20	09.10.2019	14.05.2022

Mohd Aziz, age 70 yrs S/o Manni R/o Bhera Tehsil Mendhar, District Poonch.

....Petitioner

Versus

1. Sarfaraz Ahmed
2. Mohd Yasin Ss/o Fazal Hussain R/o Bhera Tehsil Mendhar, District Poonch  
....Respondents
3. Deputy Commissioner, Poonch
4. Addl. Deputy Commissioner, Poonch
5. SDM, Mendhar.
6. Tehsildar, Mendhar
7. NaibTehsildar,

.....Official Respondents

8. Mohd Shafi
9. Mohd Bashir
10. Mohd Hussain

Ss/o Manni R/o Bhera Tehsil Mendhar, District Poonch

.....Proforma Respondents

In the Matter of:

Revision against order dated 05-09-2019 passed by ADC Poonch in file no. 232 instituted on 21-02-2000 in case titled "Fazal Hussain versus Jamal Din and ors" whereby mutation no. 73 dated 23-12-1976 existing in favour of petitioner and his brothers has been set aside with a direction to demolish shed of petitioner; for setting aside order dated 05-09-2019 and restoration of mutation no. 73 dated 23-12-1976 in respect of Khasra no. 688 measuring 24 Kanals and 18 marlas in Village Bhera of Tehsil Mendhar, District Poonch.

**ORDER**

The present revision petition has been filed against order dated 05-09-2019 passed by ADC Poonch in file no.232 instituted on 21-02-2000 in case titled "Fazal Hussain versus Jamal Din and ors" whereby mutation no. 73 dated 23-12-1976 existing in favour of petitioner and his brothers has been set aside with a direction to demolish shed of petitioner; for setting aside order dated 05-09-2019 and restoration

g/c website  
 Reader to  
 Additional Commissioner  
 Jammu

of mutation no. 73 dated 23-12-1976 in respect of Khasra no. 688 measuring 24 Kanals and 18 marlas in Village Bhera of Tehsil Mendhar, District Poonch.

The main submissions made in the Revision Petition are as follows:-

- ❖ That land falling under Khasra no. 688 measuring 24 kanals and 18 marlas situated in village Bhera of Tehsil Mendhar, District Poonch has been in continuous and uninterrupted possession of father of petitioner since 1945 and the same continues to be in possession of petitioner on spot till date. Father of petitioner being eligible and entitled to occupancy rights over aforesaid land requested the then Assistant Collector for attestation of mutation in his favour and other occupants of land under Govt. order LB-6/C of 1958 and same was refused by the then Assistant Collector on 14-01-1972. Feeling aggrieved the real maternal uncle of Petitioner namely Jamal Din and others challenged the order of then Assistant Collector before Deputy Commissioner, Poonch in appeal no. 121 dated 11-03-1972 and the appeal was accepted on 24-05-1972 holding the ancestors/occupants of petitioner eligible and entitled to benefits under Govt order LB-6/C of 1958 in respect of land falling under Khasra No. 688 and mutation bearing no. 73 dated 23-12-1976 was attested by the AC(R) Poonch in favour of Jamal Din, Sai Ss/o Fakeer, Sh. Manni, Sh. Fateh Ss/o Kadar and Gul Mohd S/o Billu. Further Fateh Mohd and Gul Mohd have become migrants. Out of 24 Kanals and 18 marlas, 12 Kanal and 9 marlas land continues to be with Ss/o Jamal Din and Sai and similarly 12 Kanals and 09 marlas has been with Petitioners and Proforma respondents and in their respective shares residential houses have been constructed by the co-sharers.
- ❖ That after expiry of nearly 24 years Fazal Hussain (now deceased) challenged the mutation No. 73 dated 23.12.1976 before Additional Deputy Commissioner, Poonch who vide his order dated 05-09-2019 has set aside mutation no. 73 dated 23-12-1976 and directed the Tehsildar Mendhar to demolish the shed existing in the land of petitioner.

That the order passed by the court below is illegal and bad in law and as such challenged on the following grounds:

- ❖ That a perusal of mutation no. 73 dated 23-12-1976 clearly show that the same is based on order of the Collector/Deputy Commissioner, Poonch passed in appeal no. 121 dated 24-05-1972 by which the co-sharer/occupants of Khasra no. 688 have been declared and held entitled to benefits under Govt. order LB-6 of 1958. Aforesaid order has not been challenged at all and has attained finality. So long the order of Deputy Commissioner dated 24-05-1972 is alive, the possession and entitlement of petitioner to cultivate and raise construction in Khasra no. 688 cannot be disturbed in any manner.
- ❖ That the impugned order is without jurisdiction too.
- ❖ That father of respondents 1 and 2 was neither owner nor had any title in the land of petitioner and had no *locus-standi* to file the appeal in the court below. This aspect of the case despite arguments has not been appreciated by the

court below and has committed an error which is apparent on the face of record.

- ❖ That petitioner has raised shed in his own land. House of petitioner also exists in his land. The father of respondents 1 & 2 obtained ex parte status quo order from Deputy Commissioner, Poonch on 09.02.2000 and insisted for removal of shed built by petitioner in his land prior to issuance of status quo order on the alleged ground of the same having been raised during status quo order. The then Deputy Commissioner, Poonch in an ex-parte manner asked the Tehsildar Mendhar to demolish shed of petitioner against which petitioner earlier approached this court and ultimately matter went to High Court in "OWP 1328/18. On 17-07-2018 the writ petition of petitioner was allowed by the Hon'ble High Court quashing the order of Tehsildar Mendhar.
- ❖ That the original appellant Fazal Hussain died during pendency of appeal and his successors have not been added as party before pronouncing the judgment. On the death of appellant and absence of legal heirs, the appeal shall be treated as abated automatically. The court below has decided an abated appeal and has committed an illegality. On this ground alone the impugned order is liable to be set aside.
- ❖ That petitioner continues to be in possession of land/ house/shed raised by him. In case impugned order is allowed to stand the same shall cause injustice and irreparable loss to petitioner.

The objections on behalf of the respondent No. 1 and 2 are summarised as under:-

- That the order bearing No. 121 dated 24.05.1972 passed by Deputy Commissioner Poonch is very clear in which Tehsildar Mendhar has been directed to attest the fresh mutation as per the Govt. Order of LB 6-C of 1958, in favour of the Jamal Din, Sain S/o Faqir, Manni S/o Qader, but the mutation was attested in favour of the 5 persons thereby adding 2 persons namely Fateh S/o Qader and Gul Mohd S/o Billu, who had migrated. It is pertinent to mention herein that mutation can be attested in favour of those persons who are in actual possession of the land but here the mutation no. 73 dated. 23.12.1976 was attested in favour of those persons who had migrated. The mutation was attested for the land falling under the category of Banjer Qadeem which is illegal and invalid as per the provision of Govt. Order LB 6 - C of 1958.
- That it is further evident from the affidavit dated 12.05.1989, given by Mohd. Din alias Manni S/O Qader who is the father of petitioner herein, in which he had categorically stated that the land falling under khasra No. 688 measuring 12 kanal 9 marlas situated at village Behra, Tehsil Mendhar, District Poonch, is in the peaceful possession of the Haji Fazal Hussain (father of answering respondent No. 1 and 2) for last 15 to 16 years and has the full power to get the registration of mutation regarding the same land in his favour.

- That the Deputy Commissioner Poonch on 03.02.1997 has rejected the application of the father of the petitioner herein in which he prayed for the cancellation of the affidavit dated 01.03.1989 given by the brother of the petitioner herein namely Mohd. Shafi and further claimed the possession of land in question in his favour.
- That from the order dated 15.04.2005 passed by the Tehsildar Mendhar in an application filed by the father of the petitioner herein for the restoration of the possession and correction of Girdawari and the same was dismissed and ordered that in this situation the applicant should approach the civil court for possession and further mentioned that the land in question is in the actual possession of the respondent (father of the respondent herein).
- That the mutation no. 73 dated 23.12.1976 was attested in village Gohlad, Tehsil Mendhar which is 6 km away from the village Behra and the same was attested in absence of the father of the respondent no. 1 and 2 herein. Thus the mutation is invalid and arbitrary in the eyes of law.
- That the father of the answering respondent no. 1 and 2 came to know in 1999 that the mutation under LB-6 had been attested in favour of the father of the petitioner herein namely Manni in 1976 in respect of the land in question against the ground position and Manni got it done without the knowledge of the father of the respondents no 1 and 2. herein. The Mutation showed that the land under Khasra no. 688 of village Behra was also mutated under LB-6 in favour of 4 persons namely Jamal Din and Sain sons of Faqir and Fateh son of Qadir and one Gul Mohd. son of Billu. Fateh and Gul Mohd. had migrated in the year of 1965 and were Evacuees. The father of the answering respondent challenged the mutation No. 73 before the Deputy Commissioner Poonch in 1999 by way of an appeal for setting aside the same as the same was invalid in the eyes of law. The Deputy Commissioner Poonch Passed an interim order on 21.02.2000 where by the parties were directed to maintain Status Quo.
- That the appeal of the father of the petitioner pending before the Deputy Commissioner Poonch was transferred by him for hearing to Additional Deputy Commissioner Poonch vide order dated 29.04.2004.
- That the petitioner herein on 16th Nov. 2013 forcibly constructed the shed with the aid of some other persons and on 17.11.2013 the father the respondents approached the Tehsildar regarding the construction of the shed who directed to approach the Addl. Deputy Commissioner Poonch. where the matter is pending and stay order has been issued. The father of the respondents no.1 and 2 filed the contempt application before the Addl. Deputy Commissioner Poonch who called the report from the concerned Tehsildar on 29.11.2013. The Tehsildar submitted the factual report 06.12.2013 on the basis of which the Addl. Deputy Commissioner Poonch passed the order for the demolition of the shed on 11.12.2013.
- That the father of the petitioner through petitioner herein challenged the order of the Addl. Deputy Commissioner Poonch dated 11.12.2013 before Divisional Commissioner Jammu and the Divisional Commissioner Jammu set aside that order against which the father of respondent no.1 and 2 approached the Hon'ble High court by way of writ petition OWP.No.546/2015. The High Court again set aside the order of the Divisional Commissioner Jammu and directed the Divisional Commissioner Jammu to pass appropriate order on merit on 10.04.2017.

- That the Divisional Commissioner Jammu dismissed the revision petition of the petitioner herein on 11.04.2018 and directed both the parties to appear before Addl. Deputy Commissioner Poonch on 28.04.2018.
- That the Addl. Deputy Commissioner on 28.05.2018 issued a letter to Tehsildar concerned to submit the detail factual report as per contents of the judgment of the Divisional Commissioner Jammu. The Tehsildar issued notice on 11.07.2018 to the petitioner herein to explain the reason for the violation of the stay order and construction of the shed in violation of the stay order of the Deputy Commissioner Poonch within 3 days otherwise the shed will be demolished with the help of police.
- That the petitioner herein challenged the order of the Addl. Deputy Commissioner Poonch dated 11.12.2013, Judgment of Divisional Commissioner Jammu dated 11.04.2018 and notice dated 11.07.2018 before the Hon'ble High Court by way of OWP NO. 1328/2018. The Hon'ble High Court quashed the notice of the Tehsildar concerned dated 11.07.2018 and directed the Addl. Deputy Commissioner Poonch to decide the case quickly after hearing both the sides and after the taking into consideration the report of the Tehsildar concerned.
- That the Addl. Deputy Commissioner Poonch issued a letter to the Tehsildar Mendhar to submit the report along with comments and also intimate to this court the date of construction of the shed. The Tehsildar Mendhar submitted the detail factual report in which it is categorically mentioned that the land in question is in the peaceful possession of the father of the respondents no 1 and 2 and further made it clear that the shed was constructed in violation of the stay order. On the basis of the detail factual report of the Tehsildar and other record, the Addl. Deputy Commissioner Poonch passed the order which is very clear and valid in the eyes of law.

The written arguments have also been submitted on behalf of petitioner which are summarised as under:

- That Sh. Jamal Din, Sh.Sai both Sons of Fakeer, Sh.Manni, Sh. Fateh both sons of Qadar and Gul Mohd S/o Billu were in occupation of state land falling under Khasra no. 688 measuring 24 kanals and 18 marlas situated in village Bhera of Tehsil Mendhar, District Poonch since decades and were recorded as Tenant-at-Will (under the State) under Government order No. LB- 6/C of 1958 dated 5th June, 1958, mutation bearing no.64 was attested in their favour. However Tehsildar Mendhar vide order 14-01-1972 cancelled the mutation no.64 on the ground that nature of the land is Banjar qadeem and the possession of the beneficiaries is after 1957-58.
- That against the order dated 14-01-1972 passed by Tehsildar Mendhar, Sh. Jamal Din, Sh. Sai both Sons of Fakeer, Sh. Manni filed appeal only because Fateh Mohd and Gul Mohd have become migrants but the possession of the land in question remained with the other co-sharers and Deputy Commissioner vide order dated 24-05-1972 declared the appellant as tenant at will and are entitled for attestation of mutation under government order no. LB/6 and accordingly mutation bearing no.73 dated 23-12-1976 was attested in terms of Government Order No.LB-6/C of 1958 dated 05-06-1958 for land measuring 24 kanal 18 marlas and out of 24 Kanals and 18 marlas, 12 Kanal

and 9 marlas land continues to be with Ss/o Jamal Din and Sai and similarly 12 Kanal and 9 marlas has been with Petitioners and Proforma respondents. Respondent No. 1 & 2 have no locus standi to challenge the said mutation.

- That it is important to adjudicate how the name of the father of the respondent no. 1 and 2 was entered in to the khasra Girdawari without adopting principle of Natural Justice to the petitioners. They tried to claim their right over the land in question on the basis of affidavit of 1989. The father of the petitioner had never executed any affidavit and the same is forged one. Even if it is presumed that the affidavit is genuine still title of the land cannot be transferred in the name of the father of the respondent no. 1 and 2 in terms of section 54 of Transfer of Property Act:-

"54. "Sale" defined.- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer or such person as he directs, in possession of the property.

Contract for sale.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

So in terms of section 54 of Transfer of property over the land in question act the respondent no, 1 and 2 have no right title or interest.

Thus respondent No. 1 and 2 have no right / title or interest in the said land as they are claiming rights over the land in question on the basis of agreement to sell executed by Shafi s/o Manni with Haji Fazal father of the respondent no. land 2, it is important to mention here that during the life time of Manni how his son can execute agreement to sell thus the agreement to sell is void-ab-initio, illegal, nonest in the eyes of law. Even the agreement to sell cannot confer any right, title or interest upon respondent no.1 land 2 over the land in question.

The counsels of both the parties argued the matter and they reiterated their respective position as highlighted in the memorandum of petition, written arguments and the objections filed.

After careful examination of the case file, record file of the court below, impugned order and written / oral submissions of both the counsels, it has been observed that the court of Addl. Deputy Commissioner, Poonch has set aside the mutation No. 73 attested in favour of Jamal Din, Sain, Sons of Faqir in equal shares half share, Manni, Fatah sons of Qader and Gul Mohammed S/o Billu in equal share half share as tenant at will in respect of Khasra No. 688 measuring 24 Kanal 18 Marla and has remanded the case to the Tehsildar Mendhar to attest fresh mutation as per spot position under rule. From the perusal of the record placed on the file it has been observed that mutation No. 73 of Village Bhera has also been attested in favour of some persons who have become Mahajirs and attestation of mutation under section LB-6/C of 1958 in favour of person who is not in cultivating possession or occupation in Kharif 1957-58 is vide ab-initio. Besides there is entry of Maqbooza Custodian in Khasra Girdawari and Rabi 1966 to Rabi 1968. However, in the Khasra Girdawari of Kharif 1968 there is a mention Sain, Jamal Din, Manni have returned back to India. Moreover there is also mention of land being vacant, Banjar Qadeem etc. in the Khasra Girdawari such recorded as well as spot position shall have been considered by the attesting officer before passing any order conferring rights under the Government order LB-6/C of 1958.

In view of what has been discussed above it is clear that the mutation No. 73 dated 23.12.1976 of Village Bhera was not sustainable in the eyes of law and as such has been rightly set aside by Ld. Addl. Deputy Commissioner Poonch vide his order dated 05.09.2019. Thus the revision against the order dated of Additional Deputy Commissioner Poonch dated 05.09.2019 is dismissed. Status quo order, if any, issued by this court shall stand vacated and the case file be consigned to records after due completion. The record file of court below be sent back.

**Announced**  
**14.05.2022**

**Sd/-**  
**Pawan Kumar Sharma, JKAS**  
**Additional Commissioner, Jammu**  
**[with the powers of Divisional Commissioner]**