



**In the Court of Additional Commissioner, Jammu**  
**(With the powers of Divisional Commissioner)**  
(Rail Head Complex, Jammu)  
(0191-2478991, 2478999, Fax-2478997, e-mail: [divcomjammu@gmail.com](mailto:divcomjammu@gmail.com))

**File No**  
51/Revision 2016-17

**Date of Institution**  
12.03.2016

**Date of Decision**  
20.07.2022

Jagdev Singh S/o Meshu Caste Rajput R/o Plahi, Tehsil Basohli

.....Petitioner

Versus

1. Santosh Kumari D/o Chinta Devi W/o Rattan Singh R/o village Sarore, Tehsil Bari Brahmana, District Samba.
2. Kamlesh Kumari D/o Chinta Devi W/o Omkar Singh R/o village Rehan at present Ward No. 6, Basohli, District Kathua and
3. Sawarn Jeet Singh S/o Jaswant Singh caste Rajput R/o Plahi, Tehsil Basohli.

.....Respondents

**In the matter of :-** Revision petition has been filed against the order dated 01-02-2016, passed by the Court of Sub Divisional Magistrate (Collector), Basohli in file No.97/SDM in the case tilted Jagdev Singh Vs Santosh Kumari & Ors. by virtue of which the appeal file by the appellants against order (Fard Badar) dated 11-05-2014 passed by the Girdawar Circle No.2 whereby the name of Ranjeet Singh S/o Chinta Devi alleged co-sharer has been deleted from Girdawari Rabi, 2014 and in his place the respondent Nos. 1 & 2 have been recorded holding them in possession of land measuring 01Kanal comprised of Khasra No. 1783/375 situated in village Plahi, Tehsil Basohli was upheld and the appeal of the appellant was dismissed on 01-02-2016. Prayer for setting aside of above said order dated 11-05-2014 passed by the Girdawar Circle No.2 and the order dated 01-02-2016 passed by the said Collector (SDM) Basohli.

**ORDER**

**The main submission made in the appeal are as under:-**

1. That the petitioner is and his male lineal ascendants are residents of village Plahi Tehsil Basohli where they own proprietary land during and prior to the last Settlement (Bandobast) which took place in the year, 1970-71 Bikrami and that ancestral land devolved on the appellant by way of inheritance, as such the petitioner has also proprietary rights in Shamilat land situated in village Plahi in proportion to the size of his holding and the petitioner is also entitled to get Shamilat land partitioned.

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Jammu



2. That abutting to proprietary land of the petitioner, the land comprising of khasra No 1783/375 measuring 1 kanal 17 marlas is situated and this Shamilat land remained under possession of the petitioner's father Sh. Maheshu alias Meshu and after his death the same remained in possession of the petitioner.
3. That one Jaswant Singh S/o Chand R/o Plahi remained posted as Patwari, then Girdawar in Tehsil Basohli and also Office Qanungo in Tehsil Office Basohli who in order to give wrongful advantage to his sister Mst. Chinta Devi entered her name for 1 Kanal of land out of said Shamilat land falling under khasra no.1783 /375 though she never remained in possession of the same at any point of time and the remaining land measuring 17 marlas was illegally recorded in his own name.
4. That after the death of Mst. Chinta Devi, his son namely Ranjeet Singh and after the death of Jaswant Singh his son Swaranjeet Singh were illegally reflected in possession of the said Shamilat land measuring 1 Kanal 17 Marlas. The said land was uncultivable but illegally the same was recorded as Warhal Awwal.
5. That the respondents neither cultivated the above said Shamilat land at any point of time nor remained in possession of the same but the Girdawar Circle No .2 on 11-05-2014 made a fabricated, false, incorrect entry i.e. Fard Badar in the record of Girdawari Rabi, 2014 whereby he reflected illegally the names of the respondent No. 1 & 2 in possession of 1 Kanal of land in place of Ranjeet Singh and this alleged entry dated 11-05-2014 is quite contrary to facts. Being aggrieved of this entry the petitioner assailed the same before the Collector (SDM) Basohli in an appeal in file No. 97/SDM but the court below neither appreciated the facts nor considered the law and illegally dismissed the appeal on 01-02-2016. Hence this revision is being filed on the following ground:-

- ❖ That the order dated 01-02-2016 passed by the Court of Sub Divisional Magistrate (Collector), Basohli in file No. 97/SDM is against law, facts and all canons of justice as such order is not maintainable.
- ❖ That the above said order dated 11-05-2014 passed by the Girdawar Circle No. 2 is also against law, facts and all canons of justice.
- ❖ That both the impugned orders have been passed at the back of, without notice to and knowledge of the petitioner as such the same has been passed in violation to Rules of natural and fundamental justice. The petitioner is interested person and has legal ownership share in Shamilat land comprised of said khasra No. 1783/375.

The impugned order has been passed secretly & mechanically without application of mind under political influence just to please and give wrongful advantage to the respondents. On 27<sup>th</sup> or 28<sup>th</sup> January, 2016 the J&K Government passed an Order transferring the Presiding Officer of the court below as SDM, Chowki Chowra. The appeal in the court below had been fixed for arguments on 28-01-2016 but the Presiding Officer not conducted the court hearing and no date was



assigned by the concerned Reader orally intimated that the case /appeal would be taken for hearing on 03-02-2016. The counsel for the petitioner believed the assertions of the concerned Reader and after noting the date left the court below and he appeared in the court on 03-02-2016 to his great astonishment & dismay, it was told by the same Reader that the appeal has been dismissed on 01-02-2016. It is not out of place to mention here that the Presiding Officer i.e. the then SDM, Basohli was not present in the court during the working hours on 01-02-2016 and he reached Basohli on 02-02-2016. Even in the impugned order dated 01-02-2016 there is no mention that same was announced on same date.

- ❖ That no opportunity was afforded to the petitioner of being heard by either of the Subordinate concerned Revenue Officials, as such the impugned orders are against the Rules of Natural and Fundamental Justice, as such both are bad in law, nullity, void ab-initio and not tenable. The both impugned orders involve civil consequences and deprivation of the petitioner from the said land of which he is a co-sharer. The law mandates that a fair and plausible inquiry should be conducted in presence of all the affected persons and those persons should be given an opportunity of being heard but in the instant case no such procedure was adhered. Every State action must be supported by discernible reasons. To fortify his submission the reliance has been placed on the following judgments:

**J.S. Yadav Vs State of U.P. & Anr. 2011(3) Apex Court Judgments 0001 (S.C.) - Natural Justice** - No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the Principles of Natural Justice.

**M/s Tirupati Industries Vs Punjab State Electricity Board 2000(2) Civil Court Cases 377 (P&H)-Natural Justice**-Every piece of adverse material / evidence which an authority seeks to rely upon for taking an action against a person, must be disclosed or made known to the affected person and he should be given an opportunity to defend himself with reference to such material / evidence.

**Canara Bank Vs V.K. Awasthy 2005 (1) Apex Court Judgments 611 (S.C.) - Natural Justice** - No one should be condemned unheard - Notice is the first limb of this principle -- Notice must be precise and unambiguous and it should appraise the party determinatively the case he has to meet - Time given for the purpose should be adequate so as to enable him to make his representation - In the absence of such a notice and such reasonable opportunity, order passed becomes wholly vitiated.

**State of Uttranchal & Anr. Vs Sunil Kumar Singh & Anr.2008 (2) Apex Court Judgments 486 (S.C.): 2008(3) CCC 567(S.C.) - Natural Justice** - Cryptic order - Order set aside - Held, that reason is the heartbeat of every conclusion and without the same, it becomes lifeless - Right to reason is an indispensable part of a sound judicial system - Reasons at



least sufficient to indicate an application of mind to the matter before Court - Another rationale is that the affected party can know why the decision has gone against him- One of the salutary requirements of natural justice is spelling out reasons for the order made.

The Hon'ble High Court of J&K in the case of Suraj Parkash Vs. Hon'ble Member Special Tribunal reported in 1996 Srinagar Law Journal at page 285 has held: -

*"A time barred appeal against a mutation attested in absence of the appellant-appeal filed without an application for condonation of delay - such mutation held a nullity and nonest in the eye of law - appeal held maintainable."*

- ❖ That the impugned order dated 01-02-2016 has been passed without application of mind and is unwarranted in law. The court below has blindly accepted the report of the Tehsildar Basohli dated 09-04-2015 bearing no OQ /34 dated 11-04-2015. The Tehsildar Basohli visited spot and he was apprised of the factual & actual position of the land on spot by the petitioner as the land on spot was Gair Mumkin /Uncultivable and the petitioner pointed out that in Girdawari, the land has been shown as Warhal Awal which is contrary to kind of land on spot and this fact the Tehsildar also admitted on spot. The statements of the appellant Jagdev Singh and his 7 witnesses were recorded in presence of the Tehsildar Basohli which establishes that the land was lying fallow (Khaali) & under the possession of the petitioner (Jagdev Singh) who looks after the same and also conducts bush clearance while as the respondent no.2 (Kamlesh Kumari) produced only 2 witnesses namely Raj Kumar Singh and Prithi Singh who very categorically stated that the land under khasra No.375 min which is Shamilat in nature is lying fallow (Khaali) since long. The said Prithi Singh is a real maternal uncle (Mama) of the respondent nos. 1 & 2 while the said Raj Kumar Singh is also maternal uncle (Mama in relation) because he was cousin of the said Mst. Chinta Devi (mother of the respondent nos. 1 & 2). The Tehsildar in his said report has also very clearly mentioned that land in reference is lying fallow and deserted since long, so it was established beyond any doubt that the above said land was not being cultivated and the kind Warhal Awwal assigned to it was totally illegal and against facts.
  
- ❖ That the Girdawar Circle No. 2 was not competent to effect any change in Girdawari record after 13-07-1978 (the date of operation of J&K Agrarian Reforms Act). The Hon'ble Financial Commissioner Jammu & Kashmir at Srinagar vide Circular No. FC / LS /MISC 1648 /97 dated 22-12-97 has held that only the Tehsildar can make any amendment /correction in Girdawari that too by attesting Sehat Indraj Intiqal (mutation for correction of record) and the Patwari concerned have to mention in Girdawari record, the reference of mutation and date by virtue of which such amendment /correction was ordered.



**Ld. Counsel for respondents have submitted the written objections which are as under:-**

- ❖ That the applicant/appellant had filed the appeal against the order dated 11.05.2014 passed by Girdawar Circle No. 2 whereby entries in the name of non-applicants in Shamlat Deh land bearing Khasra No. 1883/375 of Village Plahi measuring 1 Kanal 17 Marlas of Village Plahi Basholi were challenged before the Learned SDM (Collector) Basholi and after seeking report from Tehsildar Basholi with respect to the controversy involved in the appeal, the Learned SDM, Basholi vide order dated 01.02.2016 dismissed the appeal having no merits but now, the appellant has chosen to file the revision petition before this Hon'ble Court against the respondents No. 1 and 2 with respect to land measuring 1 Kanal comprised in Khasra No. 1783/375 situated in Village Plahi Tehsil Basholi; which is legally not tenable and thus, requires dismissal at the outset.
- ❖ That the non-applicants/respondents No. 1 and 2 are the real sister of Sh. Ranjit Singh S/o Late Smt. Chinta Devi and land measuring 1 Kanal comprised in Khasra No. 1783/375 situated at Village Plahi was and is in physical possession of the non-applicants No. 1 and 2 to the extent of their share which is even reflected by the revenue record which was submitted before the Learned SDM Basholi and the non-applicant No. 3 was and is in possession of land measuring 17 Marlas situated at Village Plahi comprised in Khasra No. 1783/375 which is depicted by the revenue record as well as the report of the Tehsildar, Basholi and as such, the revision petition is not maintainable.

The matter was argued by both the counsels. Ld. Counsel for petitioner reiterated the submissions made in the petition and stated that there is no possession of respondents on the land in question. He laid emphasis on the report of the Tehsildar Basohli dated 11.04.2015 wherein Tehsildar has categorically mentioned that the said land is lying fallow since long and there is no possession of the respondents over the said piece of land which is recorded as Shamlat land. The entries made by way of Fard Badar are totally false, fabricated and need to be set aside. However, Ld. Counsel for the respondent said that the land in question is adjoining the land of Ranjeet Singh and the respondents are therefore entitled for the said piece of land.

I have gone through the record placed on the case file, heard the Ld. Counsel of both the parties and gone through the report of the Tehsildar Basohli on the basis of which Sub-Divisional Magistrate, Basohli has passed the impugned order. From the perusal of the record placed on the file, it is clear that the land in question is lying fallow. The Sub-Divisional Magistrate, Basohli has passed the order without considering the factual possession highlighted by the Tehsildar in his report dated 11.04.2015 wherein he has categorically mentioned that the land is lying fallow since long.

In view of this, the order passed by Sub-Divisional Magistrate, Basohli is set aside and the entries made in the kasht column of khasra No. 1783/375



measuring 1 kanal 17 marlas (which is Shamilat land) are declared void-ab-initio and the case is remanded to the Tehsildar Basohli for denovo enquiry and passing appropriate order strictly in terms of law governing the subject. The interim order, if any, issued by this court, if any, shall stand vacated. This is, however, subject to confirmation by the court of Ld. Financial Commissioner (Revenue) J&K. In terms of Section 15(3) of the Jammu & Kashmir Land Revenue Act, the case file along with record file of Sub-Divisional Magistrate, Basohli (in original) is submitted to Ld. Financial Commissioner (Revenue) J&K for kind consideration. The parties are directed to appear before the court of Ld. Financial Commissioner (Revenue), J&K, Jammu on 02.08.2022.

Sd/-

**(Pawan Kumar Sharma) KAS**  
**Additional Commissioner, Jammu**  
[with the powers of Divisional Commissioner]

**Announced**  
**20.07.2022**