



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

Reserved on: 25.02.2025  
Pronounced on 08.04.2026  
Uploaded on 08.04.2026

Whether the operative part or full  
judgment is pronounced: Full

**CJ Court:**

**LPA No. 06/2023 (O&M)**  
**In (OWP No. 879/2003)**  
**CM No. 297/2023**

1. Naresh Kumar, aged 69 years S/o ...Petitioner(s)/Appellant(s)  
Sh. Mulkh Raj, R/o Hiranagar  
District Kathua.
2. Dharampal, age 74 years.
3. Satya Paul aged 70 years.
4. Sudershan Kumar Aged 67 years  
-all sons of Gouri Shankar.
5. Vimla Devi @ Guddu Devi aged  
55 years D/o Gouri Shankar.
6. Geeta Devi aged 50 years Wd/o  
Sudesh Kumar  
-All residents of House No. 4/8  
Hiranagar District Kathua.

Through:

Mr. P. N. Raina, Sr. Advocate with  
Mr. J. A. Hamal, Advocate

v/s

.... Respondent(s)

1. J&K Special Tribunal, Jammu.
2. Pritam Chand
3. Ashok Kumar
4. Manohar Lal  
-all sons of late Sh. Budha, all  
residents of village  
Raghunathpura Tehsil Hiranagar  
District Kathua.
5. Dilawar Singh
6. Sagar Chand



7. Dwarka Nath
8. Mangal Dass  
-Sons of Bodh Raj, All residents  
of village Raghunathpura Tehsil  
Hiranagar District Kathua.
9. Anju Bala, D/o Sh. Bodh Raj,  
W/o Sh. Sham Lal R/o Thangar  
Moar Tehsil Hiranagar District  
Kathua.
10. Geetanjali D/o Sh. Bodh Raj W/o  
Sh. Ashok Kumar R/o Garwal  
Vijaypur Tehsil and District  
Samba.

Through:

Mr. Rakesh Chagotra, Sr. Advocate with  
Mr. Ashok Singh, Advocate for R-2 to 4.  
Mr. Mandeep Singh, Advocate for R-4 to  
10.

**CORAM: HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.**

**JUDGMENT**

**'OSWAL-J'**

1. This *intra-court* appeal is directed against the judgment dated 23.11.2022 rendered by the learned writ court in OWP No. 879/2003. In terms of the impugned judgment, the learned writ court has quashed the order dated 27.08.2003 passed by the learned Special Tribunal, Jammu as well as the mutation No. 221 dated 04.12.1986, and further the matter has been remitted to the Tehsildar, Hiranagar to conduct a *de novo* enquiry into all aspects as highlighted in the judgment and pass fresh mutation in terms of Agrarian Reforms Act of 1976 after affording opportunity of hearing to all the stakeholders including the appellants and the private respondents.
2. The judgment dated 23.11.2022 has been impugned by the appellants on the ground that the private respondents had not challenged mutation Nos.



104, 106 and 115, even though the respondent No.1 i.e. J&K Special Tribunal, Jammu in its order dated 27.08.2003 had explicitly held that that as mutation Nos. 104, 106 and 115 had become final, there was no question of attesting mutation No. 221 under Section 4 of Agrarian Reforms Act in favour of the writ petitioners/private respondents. It is urged that as there was no challenge made to surrender of tenancy and the mutations by the private respondents, the learned writ court had no jurisdiction to entertain appeal directly or indirectly allowing a challenge to mutation No. 104, 106 and 115 and surprise the appellants with the judgment impugned. It is further urged that the learned writ court proceeded on a wrong presumption, as if, surrender of tenancy and attestation of mutation Nos. 104, 106 and 115 were part of implementation of the Agrarian Reforms Act, 1976. In fact, the learned writ court landed itself in grave error of law both pertaining to nature of jurisdiction under Article 226 of the Constitution, as also with respect to nature of controversy by taking same as a matter relating to implementation of Agrarian Reforms Act of 1976, which it was not.

3. Heard learned senior counsel for the parties and perused the record.
4. The sole contention of the appellant is that in absence of challenge thrown to surrender of tenancy by the predecessor-in-interest of the private respondents, the learned writ court could not have commented upon the validity of attestation of mutation Nos. 104, 106 and 115.
5. In order to appreciate the abovementioned contention, it would be appropriate to have the brief resume of the facts of the case. One Budha Ram was the protected tenant of land measuring 17 kanals 12 marlas,



comprising survey No. 228 (5 kanals) and survey No. 230 (12 kanals 12 marlas) situated at village Gopala Chak Hiranagar, District Kathua. In the month of May 1971, he surrendered the tenancy in favour of the owners pursuant to which mutation No. 104 was attested on 27.09.1971. As the possession of owners was not reflected in Girdawri, pursuant to the application moved by Mulkh Raj, mutation No. 106 was attested on 22.01.1972, and the land in question was recorded as “Khud Kasht Malkan.” Subsequently, mutation No. 115 was attested on 25.10.1972, and Budha Ram was recorded as “un-authorized occupant” of the land.

6. Thereafter, in terms of mutation No. 221, Buddha Ram was declared as prospective owner of the subject land in terms of Section 4 of Agrarian Reforms Act on 21.12.1986. This order was assailed before Director Land Records (with power of Commissioner, Agrarian Reforms), J&K, who vide order dated 28.9.1996 set aside the mutation No. 221 attested by Tehsildar Hiranagar. Private respondents assailed the order dated 28.9.1996 before respondent No. 1, but remained unsuccessful as the learned Tribunal dismissed the revision petition vide order dated 27.8.2003.
7. The order dated 27.8.2003 was assailed by the private respondents through the medium of OWP No. 879 of 2003 on the ground that the learned Tribunal in parallel proceedings for seeking possession initiated by the predecessor-in-interest of the appellant has remitted the matter to Additional Deputy Commissioner, for detailed enquiry and for returning a finding with regard to the possession and status of Budha Ram and the proceedings were stated to have been pending. It was also urged by the



private respondents that the entry in 1971 was managed by the predecessor-in interest of appellants, despite the fact that the possession continued to remain with Budha Ram. It was also asserted that mutation dated 21.12.1986 was attested on the basis of revenue record and as per the position on spot.

8. The writ petition was strongly opposed by the appellants and the learned writ court remitted the matter to Tehsildar Hiranagar to look into all its aspects and attest the mutation afresh. Interestingly, the learned writ court also set aside the mutation No. 221, which was already set aside by Director Land Records vide order dated 28.9.1996.
9. The learned writ court while remitting the matter to Tehsildar, Hiranagar has made certain observations in para of 13 of the judgment impugned and the same are extracted as under:

“The sequence in which the developments took place in the year 1971-72 and the manner in which the Revenue Authorities acted from time to time leaves no manner of doubt that the proceedings conducted by the Revenue Authorities were not aimed to get the true position reflected in the revenue records. The mutations, one after another, were obviously entered for consideration unrelated to the implementation of the provisions of the Act of 1976. The Tehsildar Hiranagar, who attested the mutations, has not bothered to enquire into the circumstances that led to the execution of an affidavit of relinquishment of tenancy by late Budha. Obviously and without any manner of doubt, the alleged relinquishment of tenancy was without any consideration nor the same was evidenced by any document executed before any competent authority. The Tehsildar was under an obligation to ascertain, after conducting proper enquiry, the circumstances that may have led late Budha to relinquish his tenancy rights. The date, month and year when the alleged relinquishment of tenancy rights took place, also assumes importance. It is during those days, when the Government was contemplating to come up the J&K Agrarian Reforms Act, 1972 (later repealed and replaced by Act of 1976) providing for conferment of ownership rights in favour of the tiller in cultivating possession of land during kharif 1971. **The possibility of manipulation of the documents in the circumstances was not ruled out.** Neither the Commissioner, Agrarian Reforms, nor the Tribunal went to these aspects of the matter. Both the Forums below have not considered another vital aspect of the matter, i.e. attestation of mutation No. 104 and 106, one in September 1971 and another in January 1972. In the mutation No. 04, there is only a mention of relinquishment of tenancy rights by late Budha in favour



of the owners, but there is no consequent correction in the Khasra Girdawari of kharif 1971. Obviously, this would not have served the purpose and, therefore another mutation No. 106 was attested to record the owners in self-cultivation in Kharif 1971. The circumstances which led to attestation of these mutations have also not been gone into by both the forums below.

It is true that when mutation No. 221 was attested in favour of the petitioners by correction of Khasra Girdawri and the petitioners were recorded as prospective owners under section 4 of the Agrarian Reforms Act, the private respondents were not heard in the matter. As a matter of fact, respondent No. 3 was never aggrieved of mutation under section 4 of the Act of 1986 attested in favour of the petitioner. This is evident from the fact that he never preferred any appeal against mutation No. 221 before the Commissioner, Agrarian Reforms. The Commissioner, Agrarian Reforms did not take into consideration this aspect and set aside the entire mutation though respondent No. 2 was only entitled to half of the land.”

10. It is an admitted case that the private respondents never challenged the mutation Nos. 104, 106 and 115, and interestingly in mutation No. 115 Budha Ram was recorded as un-authorized occupant. The learned Tribunal in its order dated 27.8.2003, has also observed that mutation Nos. 104, 106 and 115 have not been challenged so far and having attained the finality, mutation No. 221 could have been attested by the same officer. We too are of the view that in absence of the challenge to the mutation Nos. 104, 106 and 115, mutation No.221 under Section 4 of the Act of 1986 could not have been attested in favour of the predecessor-in-interest of the private respondents. Though the Senior Counsel for private respondents tried to persuade the court that procedure under section 41 of the Tenancy Act was not followed, as such, the mutation under section 104 is nullity, but the fact remains that the mutations were not challenged by the predecessor-in-interest of the respondents during his life time and even by the private respondents, as such, we are not inclined to accept this contention of the learned Senior Counsel and accordingly, this contention is rejected.



11. In absence of challenge to mutation Nos. 104, 106 and 115 and once the validity of these mutations, were not the issues before the learned writ court, the learned writ court ought not to have dealt and commented upon the mode and manner in which these mutations were attested. The learned writ court was to only examine the validity of the order dated 27.8.2003 and 28.9.1996 passed by the learned Tribunal and Director, Land Records, (Commissioner Agrarian Reforms), Jammu respectively. A perusal of the judgment impugned would reveal that the learned Single judge has nowhere observed/held that the orders passed by the learned Tribunal as well as Director, Land Records, (Commissioner Agrarian Reforms), Jammu are bad in law. In fact, the learned writ court was not sure about the invalidity of mutation, which is evident from the observation made by the learned writ court that *“The possibility of manipulation of the documents in the circumstances was not ruled out”*.
12. It would be apt to take note of the fact that proceedings initiated by the appellants regarding recovery of possession of the land in question are still pending before Additional Deputy Commissioner and the land is admittedly in possession of the private respondents.
13. After having examined the judgment impugned minutely, we are of the considered view that the learned writ court has not rightly determined the controversy and has erred in commenting on the mode and manner in which the mutation Nos. 104, 106 and 115 were attested, particularly when the same were not the subject matter of writ petition and the writ court was only enjoined upon to determine the correctness of the order dated 27.08.2003 passed by the learned Tribunal.



14. Accordingly, we set aside the judgment dated 23.11.2022 rendered by the learned writ court in OWP No. 879/2003 and the writ petition is dismissed. It is made clear that the Additional Deputy Commissioner concerned, before whom the proceedings for recovery of the possession of the subject land are pending, shall proceed with the proceedings without being influenced by any observation made either by us or by the learned Tribunal, and conclude the same in accordance with law. Further, the dismissal of the writ petition would not preclude the private respondents to explore and avail appropriate remedy in accordance with law qua the mutation Nos. 104, 106 and 115.

JAMMU  
08.04.2026  
Karam Chand

(RAJNESH OSWAL)  
JUDGE

(ARUN PALLI)  
CHIEF JUSTICE

Whether the order is speaking: Yes/No  
Whether the order is reportable: Yes/No

