

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

*Reserved on 30.11.2022
Announced on 20.12.2022*

WP(C) No. 2588/2022
CM No. 7128/2022
CAV No. 1460/2022

Bindu Singh Jamwal

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

Through: Mr. G. S Thakur, Advocate

Vs

UT of J&K and Ors.

..... Respondent(s)

Through: Mr. R. S. Kotwal, Advocate For caveator

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

CAV No. 1460/2022

Heard learned counsel for the caveator . The Caveator stands *discharged*.

WP(C) No. 2588/2022

01. The Petitioner in the present writ petition is aggrieved of the order dated 13.08.2022 passed by respondent No. 2 (Sub Divisional Magistrate (Collector) Jammu North, Jammu in case titled "*Bindu Singh Jamwal & Anr V/s Chanchal Singh*" by virtue of which the order dated 23.07.2022 has been vacated without hearing the petitioner. The petitioner further contends that backdated order has been passed by the respondent No.2.

02. The case set up by the petitioner is that the petitioner is the widow of Late Rudraksh Dev Jamwal, who expired in the year 2006 and the father-

in -law of the petitioner had died in the year 2021, and after his death petitioner being the widow has succeeded over the estate by way of succession. It is submitted that late father-in-law was the owner in possession of the land falling under Khasra No. 78 situated at Village Barani, Jammu, which was gifted to late father-in-law by Late Atma Singh and it was reflected in the record of rights in equal share along with two other share holders namely Sukhdev Singh and Hardev Singh. It has been contended by the learned counsel for the petitioner that during the life time of Late Jagdev he had been enjoying the peaceful cultivating possession over the land who expired in the year 2022 succeeded by the petitioner and the granddaughter namely, Ojaswini Jamwal as the husband of the petitioner who expired before the death of Late Jagdev Singh. It is further contended that late Jagdev Singh was in possession of the land falling under Khasra No. 78 alongwith other share holder, total land measuring 02 kanals 17 marlas where the respondent No. 3 in connivance with the revenue authority got the revenue entry in his name without any competency.

03. Learned counsel for the petitioner further submitted that the petitioner has filed the petition for correction of Khasra Girdwari indicating the fact that the Girdawar circle Muthi changed the revenue entry without any competency as he was not competent to change the revenue entry and incorporated the name of the respondent No. 3 without conducting any spot enquiry or hearing the actual owner. On the presentation of the petition the respondent No. 2, passed the order on 23.07.2022, by admitting the petition and directed the Tehsildar to furnish a report in the matter within a period of

15 days and the respondent No. 3 was restrained from interfering in the possession of the petitioner and the case was directed to be listed on 13.08.2022 for hearing.

04. Learned counsel for the petitioner further submits that since the Girdawar circle was not competent to change the revenue entry, the correction of the revenue entry can be made by the Revenue Officer as per Section 26 of the Land Revenue Act and i.e only during the course of settlement operation where there is a notification under Section 22 of the land Revenue Act but not otherwse and in case of a dispute pertaining to the tenancy then it is to be done in terms of Rule 4 of the Agrarian Reform Rules 1977.

05. Mr. G. S Thakur, learned counsel appearing for the petitioner submits that the order which is impugned in the present writ petition has been passed whereby the interim direction has been vacated without hearing the petitioner, thus, the petitioner is aggrieved of the same and has filed the writ petition challenging the same on the ground that the order is against the law and facts. It is the specific case of the petitioner that since the petitioner was absent on 13.08.2022, and the objections were filed by the petitioner and it was incumbent upon respondent No. 2, to have kept the case awaiting the appearance of the petitioner or it should have been dismissed, in default, but respondent No. 2 in the instant case has passed the order on merits by passing a cryptic order vacating the interim directions, therefore, as per the petitioner the order impugned cannot sustain the test of law and is liable to be set aside. It has been further contended by the learned counsel for the

petitioner that the order impugned is otherwise bad and based on non-application of mind and respondent No. 2 has misdirected in passing the order impugned, which is bad in the eye of law by ignoring the principle of natural justice.

06. Lastly, the learned counsel appearing for the petitioner submits that the order impugned is otherwise perverse, as such is liable to be set aside. As per the learned counsel for the petitioner, once the petition has been admitted by the respondent No. 2 in order to determine the rights of the parties, it was incumbent upon respondent No. 2 to preserve the lis, the interim direction could not have been vacated without hearing the petitioner and, accordingly learned counsel for the petitioner has prayed for its quashment.

07. **Per contra**, learned counsel for the respondent, who is on caveat has taken preliminary objections with regard to maintainability of the writ petition in light of alternate and efficacious remedy provided under the Land Revenue Act.

08. Heard learned counsel for the parties and with the consent of the parties, the case is taken up for final disposal.

Heard.

Admit.

09. Heard the caveator and caveator stands **discharged**.

Legal Analysis

10. The order which is impugned in the present writ petition has been passed by the Collector under Land Revenue Act which is amenable to the appellate jurisdiction of the Divisional Commissioner in terms of Section 11

of Land Revenue Act. For facility of reference Section 11 is reproduce as under: -

“11. Appeals. Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue Officer as follows namely-

- a. to the Collector when the order is made by an Assistant Collector of either class;**
- b. to the [Divisional Commissioner] when the order is made by a Collector;**
- c. to the Financial Commissioner when the order is made by a [Divisional Commissioner]**
- d. where an original order is confirmed on first appeal, no further appeal shall lie except on the grounds mentioned in clauses (a), (b) and (C) of sub-Section (1) of Section 100 of the Code of Civil Procedure, 1977;**
- e. where any such order is modified or reversed on appeal by the Collector, the order made by the [Divisional Commissioner] on further appeal, if any, to him shall be final;**
- f. the Government may especially empower an Assistant Collector of the first class to hear appeals against the order of an Assistant Collector of the second Class.]”**

11. A bare perusal of section 11 of the Land Revenue Act would indicate that against any order passed by the Collector whether it is original or appellate side is appealable before the Divisional Commissioner. The petitioner without availing the alternate and efficacious remedy provided under the statute has straight way filed the present writ petition which is not maintainable and is liable to be dismissed.

12. Besides, Section 15 of the Land Revenue Act confers power upon the Divisional Commissioner as well as Financial Commissioner to call for the record of any case pending before or disposed by any Revenue Officer under his control. That being the position, the Collector, in any case, is a revenue officer, as indicated in Section 6 of the Land Revenue Act and

subordinate to Divisional Commissioner as well as Financial Commissioner.

For facility of reference Section 15 is reproduced as under.

“15 Power to revise order___

(1) the [Financial Commissioner] may at any time call for the record of any case pending before or disposed of by any Revenue Officer under [his Control]

(2) the [Divisional Commissioner] may call for the record of any case pending before or disposed of by, any Revenue Officer subordinate to him.

(3) if in any case in which, the[Divisional Commissioner] has called for a record he is of opinion that the proceedings taken or order made should be modified or revised he shall report case with his opinion thereon for the order of the Financial Commissioner.]

(4) the Financial Commissioner may, in any case called for by him under sub-Section (1) or reported him under Sub-Section(3), pass such order as he thinks fit.

Provided that, he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate officer affecting any question of right between private persons without giving those persons an opportunity of being heard.”

13. Thus, in light of the alternate and efficacious remedy, provided under the statute i.e Jammu and Kashmir Land Revenue Act 1996, of filing appeal and revision as envisaged under Section 11 & 15 respectively, the present petition is not maintainable.

14. I have carefully gone through the grounds urged in the writ petition and also the arguments advanced by the learned counsel for the petitioner, I don't find it a case, which is covered by the exceptions to the general rules that in the face of alternate and efficacious remedy, the Constitutional Court would entertain the present writ petition under Article 226 of the Constitution of India. The case of the petitioner does not fall within

exceptions carved out to the general principle that in the face of alternate and efficacious remedy, the writ petition can be maintained. The writ petition as such, is not maintainable.

15. The law in this regard is well settled that in face of availability of statutory and equally efficacious remedy, writ petition should not be entertained and the party concerned should be relegated to such alternative remedy. There is no whisper in the writ petition which is filed by the petitioner that he has availed alternate and efficacious remedy provided under statute nor there is any averment that case of the petitioner falls within the exceptional clause to give a right to the petitioner to bypass the alternate efficacious remedy by approaching this Court straight way.

16. It is trite law that ordinarily relief under Article 226 of the constitution of India is not available, if efficacious alternative remedy is available to any aggrieved person. Where statutory remedy is created by law, the writ petition should not be entertained ignoring the statutory dispensation. It is also a well recognized principle of law that where a right or liability is created by a statute, which provides for speedy remedy for enforcing it, the remedy provided by the said statute alone should be availed of. Undoubtedly, it is equally well settled that this canon of law is not free of exceptions and alternative remedy is not a bar to the entertaining of the writ petition filed for enforcement of any of the fundamental rights or where there has been violation of principles of natural justice or where the order under challenge wholly without jurisdiction or vires of the statute providing for alternative remedy is otherwise under challenge.

17. In face of availability of the statutory remedy of appeal and revision as envisaged under section 11 and 15 respectively of the Land Revenue Act, this writ petition is not maintainable, I have carefully perused the grounds urged in the writ petition, I do not find it a case, which is covered by the exceptions to the general rules that in the face of alternate remedy, the Constitutional Court would not entertain the writ petition under Article 226 of the Constitution of India. The order impugned was passed after putting the petitioner to notice, therefore, he was well aware of listing of the case on 13.08.2022, when restraining order passed by the Collector on 23.07.2022 was vacated. The petitioner deliberately chose not to appear, in spite of the fact that the petitioner was provided an opportunity to appear and present his case. It appears that the petitioner has chosen not to appear before the concerned authority i.e Collector on the said date and in those circumstance the Collector after taking note of the reply/objections submitted by Sh. R. S Kotwal, learned counsel for the respondent passed impugned order vacating the restraining order dated 23.07.2022.

18. Mr. R. S Kotwal, learned counsel appearing for the respondent filed written reply/objections which were considered by the Collector while vacating the aforesaid order. The order impugned, therefore, cannot be said to have been passed in violation of the principles of the natural justice.

19. From a perusal of the impugned order, it is apparent that the case was heard at length on 13.08.2022 and Collector after perusing the written reply/objections filed by the learned counsel for the respondents vacated the

restraining order by issuing a direction to Tehsildar Jammu North to furnish a report in the matter within fifteen days.

20. Be that as it may, the fact remains that in the instant case the petitioner has failed to demonstrate that the order impugned is either in any violation of the principles of natural justice or is passed by an authority who does not have the jurisdiction to do so. Thus, I am of the considered view that the case of the petitioner does not fall within the exceptions carved out to general principle that in the face of alternate remedy, the present writ petition would not be maintainable.

21. Learned counsel for the petitioner, however, relied upon the judgments of Hon'ble Supreme Court in case *titled Radha Krishan Industries V/s State of Himachal Pradesh & Ors. 2021 AIR(SC) 2114*, which is not applicable to the case of the petitioner as the same has been passed in the contest of the Taxation Law Himachal Pradesh Goods and Service Tax Act, 2017 & *Commissioner of Income Tax & Ors V/s Chhabil Dass Agarwal 2014(1) SCC 603* which is not applicable to the case of the petitioner as the same has been passed in the contest of the Income Tax Act, 1961.

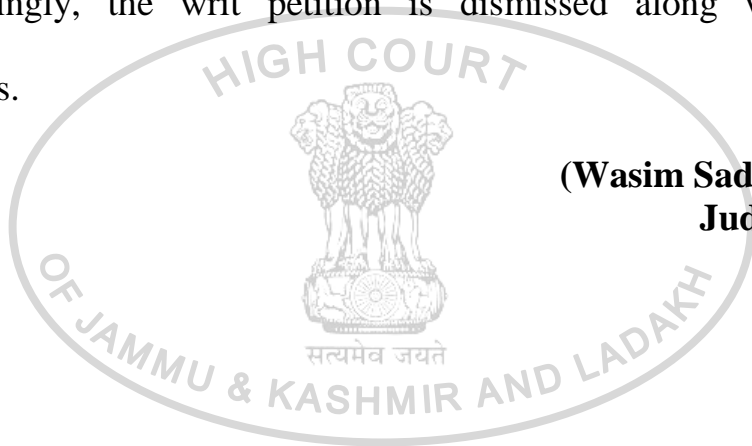
22. As stated above, the law in this regard is well settled and general rule is that in the face of availability of statutory equally efficacious remedy, writ petition is held not maintainable, hence the same is dismissed and the party concerned should be relegated to such alternative remedy (see **Baburam Parkash Chandra Maheshwari v. Antarim Zila Parishad; AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trademarks,**

Mumbai; 1998(8) SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others; 2003(2) SCC 107.

Conclusion-:

23. In view of the settled legal position as discussed herein above and in the given facts and circumstances of the case, this writ petition is held not maintainable, hence the same is dismissed and the petitioner is relegated to the alternative remedy of filing of appeal before the Divisional Commissioner under Section 11 of the Jammu & Kashmir Land Revenue Act or revision before the Divisional commissioner/Financial Commissioner in terms of Section 15 of the Land Revenue Act, if so advised.

24. Accordingly, the writ petition is dismissed along with connected applications.



**(Wasim Sadiq Nargal)
Judge**

Jammu
20.12.2022
Javid Iqbal

Whether the order is speaking? Yes
Whether the order is reportable? Yes