انڈکس

نمبر رجسٹر	تاریخ رجوع	نام فریق	تاریخ فیصلہ	نام حاکم	اعلان
303/FC-AP	26.9.23	شتوپیان			

عنوان مقدمہ:- فاروق احمد نائیکو بنام سرکار/مسماۃ نسیمہ

اپیل بنام/ضرر حکم مخالف:- Revision u/s 15 of LRA against the order dt:-17-3-16 of Addl. Commr. Kashmir

تاریخ	نمبر شمار	تعمیم کاغذات	تعداد قطعات	نمبر شمار	تعمیم کاغذات	تعداد

Faroog Ahmad Naikoo & Anr.

v/s

Addl. Commr. Kashmir / Mst. Naseema.

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1

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BEFORE THE HON'BLE CO[redacted]T FINANCIAL COMMISSIONER (REVENUE) JAMMU AND KASHMIR AT SRINAGAR

Revision Petition No...../2023

IN THE CASE OF: -

1. Farooq Ahmad Naikoo
2. Showkat Ahmad Naikoo

Sons of Late Gh. Hassan Naikoo

Residents of Babapora Tehsil and Sub-Division Zainapora District Shopian.

..... Petitioners

VS.

1. Additional Commissioner Kashmir Srinagar, C/o: Divisional Commissioner Kashmir, Srinagar.
2. Tehsildar Zainapora, District Shopian.
3. Mst. Naseema D/o Late Ghulam Nabi Naik R/o: Khanyar, Srinagar.

.....Respondents

RAK(S) 26/09

IN THE MATTER OF: - ***Revision Petition under Section 15 of Jammu and Kashmir Land Revenue Act, Svt.1996 (1939 A.D) against order dated 17-03-2016 passed by the Ld. Additional Commissioner Kashmir on an application filed by respondent No.3 bearing file No. 597 with prayer that the aforementioned order dated 17-03-2016 be quashed and set aside.***

MAY IT PLEASE YOUR HONOUR;

THE REVISION PETITION IS HUMBLY SUBMITTED AS UNDER: -

1. That the petitioners are domiciles of U.T of J&K and Citizens of Republic of India as such, have got right to invoke the revisional jurisdiction of this Hon'ble Court for protection of their rights and are tendering the instant Revision Petition against the order dated 17th of

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March 2016 passed by the Court of Additional Commissioner Kashmir on an application filed by respondent No.3.

2. That at the outset, the petitioners submit that the Hon'ble High Court of Jammu and Kashmir in Letters Patent Appeal (LPA) bearing LPA No.205 of 2022 in OWP No.783/2016 titled Farooq Ahmad Naikoo and another vs. U.T of J&K and Ors. has granted the petitioners liberty vide order dated 16th of September 2016 to avail the appropriate remedy against the order dated 17th of March 2016 within a period of two weeks from the date of issuance of order passed by the Hon'ble Division Bench and has directed the parties to maintain status-quo. A copy of the order dated 16th of September 2023 passed by the Hon'ble Division Bench in the LPA No.205/2022 is annexed herewith as **ANNEXURE-I.**

3. That the dispute between the father of the petitioners namely Ghulam Hassan Naik and respondent No.3 i.e., Mst. Naseema arose regarding the proprietary land belonging to father namely Gh. Nabi Naik and same was resolved by the then Hon'ble Revenue Minister by passing of order dated 25-11-1983 in case titled Gh. Hassan Naik etc. vs. Mst. Naseema and according to the land belonging to the deceased estate holder namely Gh. Nabi Naik (Naba Naik) was distributed as per Shariat and 14 (fourteen) shares were given to Gh. Hassan (father of the petitioners), 7(seven) shares to Mst. Naseema (respondent No.3) and 3(three) shares to widow Mst. Zeeba out of 24 shares as is reflected in the revenue records more particularly Mutation Order No.474. Thereafter, respondent No.3 Mst. Naseema gifted away her proprietary land except 4(four) Kanals in favour of the petitioners and same was reflected under Mutation order No.875, the widow Mst. Zeeba has given her share of proprietary land to the petitioner No.1 vide Mutation order No.877 and the respondent No.3 vide Mutation order No.904 transferred 2(two) Kanals of land to petitioners and 2(two) were transferred in favour of Shabir Ahmad S/o Gh. Ahmad Naik against consideration as is reflected in the Revenue records.

The petitioners are owners in possession of land which they have inherited from their father, grandmother and purchased from respondent No.3 situated at village Babapora Tehsil Zainapora District

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Shopian. The respondent No.3 at the back of the petitioners filed an application before the respondent No.1 who without having any jurisdiction, authority or competence to entertain the same has passed the order dated 17-03-2016 and by virtue of the said order, the respondent No.1 has directed the Tehsildar Zainapora to implement the order of the Hon'ble Revenue Minister dated 25-11-1983 in letter and spirit and hand over the possession of the land to the respondent No.3. The order dated 25-11-1983 passed by the Hon'ble Revenue Minister has been already implemented and in pursuance of the said order, the respondent No.3 has already taken her share in the property and she has sold her share of property to the petitioners and one Shabir Ahmad Naik which fact is not disputed by her. The respondent No.1 has passed a blanket order whereby all mutations attested and mentioned above with regard to the land of the petitioners have been set aside without hearing the petitioners. The application filed by the respondent No.3 is neither a Revision Petition nor an appeal as is envisaged under the provisions of the J&K Land Revenue Act, Svt. 1996, (1939 A.D). The order dated 17-03-2016 is perse illegal and without competence as the Ld. Additional Commissioner Kashmir should not have entertained the application and can adjudicate only the cases which are transferred to him by the Ld. Additional Commissioner Kashmir. In fact, the respondent No.3 is related to the Additional Commissioner and in order to shower undue advantage and benefits to her, the Ld. Additional Commissioner Kashmir exceeded his jurisdiction and passed an order ignoring the fact that the order dated 25-11-1983 impressed upon mutation No.474 has been already implemented on ground and parties have created 3rd party interests from 1983 to till date and the Ld. Additional Commissioner Kashmir has tried to unsettle the settled things by passing the impugned order dated 17-03-2016. A copy of the order dated 17-03-2016 is annexed herewith as **ANNEXURE-II.**

4. That the petitioners are aggrieved of the order dated 17-03-2016 passed by the Additional Commissioner Kashmir on an application filed by Mst. Naseema (respondent No.3) bearing file No.597 and before submitting the grounds on the basis of which the impugned order is

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assailed, it will be profitable to give brief resume of the facts which are stated as under: -

i. That the petitioners submit that the Hon'ble High Court of Jammu and Kashmir in Letters Patent Appeal (LPA) bearing LPA No.205 of 2022 in OWP No.783/2016 titled Farooq Ahmad Naikoo and another Vs. U.T of J&K and Ors. has granted the petitioners liberty vide order dated 16th of September 2016 to avail the appropriate remedy against the order dated 17th of March 2016 within a period of two weeks from the date of issuance of order passed by the Hon'ble Division Bench and has directed the parties to maintain status-quo.

ii. That the petitioners feeling aggrieved of the order dated 17-03-2016 passed by the Ld. Additional Commissioner Kashmir and were constrained to approach the Hon'ble High Court of J&K by filing Writ Petition titled Farooq Ahmad Naikoo and Anr. Vs. State of J&K and Ors. bearing OWP No.783/2016 and prayed for the following reliefs and reliefs are extracted and reproduced as under: -

A. Writ of Certiorari, quashing the impugned order dated 17-03-2016 passed by the respondent No.1 forming ANNEXURE-A to this writ petition.

B. Writ of Prohibition, prohibiting the respondent No.2 and 3 from causing any unlawful, unwarranted and illegal interference with the possession of the land of the petitioners situated at village Babapora, Zainapora which they have inherited and obtained through sale, Hibba and Will Deeds.

C. This Hon'ble Court may pass any other order or direction which it deems just and proper under the facts and circumstances of the case in favour of the petitioner and against the respondents, same may be in consonance with justice and equity.

5. That the respondent Tehsildar has filed a reply to the Writ Petition of the petitioners and admitted the contents of the Writ Petition and has given the details of the Mutation orders which have been passed from time to time after 25-11-1983. Copies of Revenue extracts, compromise

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Agreements signed by parties from time to time and reply affidavit are annexed herewith as **ANNEXURE-III & IV.**

6. That during the pendency of the Writ Petition, the Tehsildar Zainapora conducted enquiry in the matter and a detailed report was prepared and same was brought to the notice of the Hon'ble High Court by the petitioners by filing an application. A copy of the report prepared by Tehsildar Zainapora is annexed herewith as **ANNEXURE-V.**

7. That the Writ Petition bearing OWP No.783 of 2016 came for the consideration of the Hon'ble High Court and was decided on 02-09-2022 and Hon'ble Writ Court directed that in the Writ Petition, disputed questions and facts are involved which cannot be decided while exercising writ jurisdiction under Article 226 of the Constitution of India, however, petitioners are at liberty to seek appropriate remedy under law in case if anything contrary to the order passed by the Hon'ble Revenue Minister dated 25-11-1983 is being done. Copy of the order dated 02-09-2022 is annexed herewith as **ANNEXURE-VI.**

8. That the petitioners feeling aggrieved of the order dated 02-09-2022, filed the Letters Patent Appeal (LPA) bearing LPA No.205/2022 and Hon'ble Division Bench was pleased to direct the maintenance of status-quo on 21-10-2022. It is pertinent to mention here that after passing of the order dated 02-09-2022, the concerned Patwari on the directions of the respondent Tehsildar tried to dispossess the petitioners. A copy of the notice issued by Patwari and interim order passed by Hon'ble Division Bench are annexed herewith as **ANNEXURES-VII & VIII.**

9. That the LPA No.205/2022 came for consideration of the Hon'ble Division Bench on 16-09-2023 and Hon'ble Division Bench was pleased to dispose of the LPA and granted liberty to the petitioners to file the Revision Petition which is an alternative remedy to the Writ Petition before this Hon'ble Court and directed that status-quo will remain in force till the Revision Petition is filed by petitioners. It was also made clear by the Hon'ble Division Bench in this order dated 16-09-2023

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that the Authority Concerned shall consider the grievance of the appellants/ petitioners without being influenced in any manner in respect of any observation either made by the Writ Court or by this Court and shall arrive at conclusion independently.

10. That the petitioners in view of the liberty granted by the Hon'ble Division Bench of the J&K High Court are preferring the Revision Petition against the order dated 17-03-2016 and are assailing the said order on the following grounds and the grounds are taken in alternative without prejudice to one another: -

a. For that, the order dated 25-11-1983 issued by Hon'ble Revenue Minister has been implemented in letter and spirit and respondent No.3 was given possession of her share as per Muslim Personal Law Relating to Property and by virtue of sale, she has transferred 2-Kanals of land to the petitioners and 2-Kanals to one Shabir Ahmad Naik S/o Ghulam Ahmad Naik R/o Babapora Zainapora and by virtue of compromise deed which was entered by the parties in case tilted Mst. Naseema Vs. Farooq Ahmad Naikoo & Ors., the respondent No.3 has also relinquished her interest if any while entering into compromise deed with the petitioners on the intervention of the respectables of the community on 05-12-2013 and Sub-Divisional Magistrate Zainapora on 15-04-2015. Earlier, the Respondent No.3 was present while mutations were attested and she had unequivocally stated that she will not claim any interest in any property which is in possession of the petitioners and the said fact is substantiated by the Mutation attested on 07-07-2012. The respondent No.3 has no interest in the matter as such, the order passed by the respondent No.1 on 17-03-2016 is contrary to the records and without jurisdiction, is liable to be quashed and set-aside.

b. For that, the respondent No.3 has no claim over the land and by sheer misrepresentation of facts, she has obtained order dated 17-03-2016 and the said order is without jurisdiction and the respondent No.1 has passed a blanket order by virtue of which all

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mutations regarding the land of the deceased Naba Naik have been set-aside. This respondent No.1 has not taken into consideration that the respondent No.3 has transferred 4-Kanals of land in favour of petitioners and one Shabir Ahmad Naik and same has been mutated under No. 904 and by virtue of order dated 17-03-2016, the said mutation has been also set aside. The respondent No.1 has adopted a novel procedure and on application which is neither Revision Petition nor appeal as is envisaged under Land Revenue Act and has set-aside the mutations by passing the blanket order and has subjected the petitioners to hardships. The respondent No.3 has already sold her share of property to the petitioners and one Shabir Ahmad Naik, as such, the order passed by the respondent No.1 is without any jurisdiction and has been passed with malafide intentions.

c. For that, the respondent No.3 has engaged services of a counsel and the petitioner No.2 who was present in the Court along with documents, was not heard and was not given chance to engage the services of a counsel. The respondent No.1 has not given him any opportunity to project his case and has not considered the documents like compromise which was entered by the parties in the Court of Sub-Judge, Shopian and compromise entered by the parties with the help of the respectable of the community. The respondent No.1 while disposing of the application has not considered the documents as the respondent No.3 has already taken her share as per the orders of the Hon'ble Revenue Minister, as such, there is total violation of principles of natural justice and as such, the impugned order dated 17-03-2016 needs to be set-aside and quashed.

d. For that, the respondent No.1 has no jurisdiction to entertain the application of the respondent No.3 and respondent No.1 has abused his authority and by passing a blanket order in favour of the respondent No.3, and in case the Respondent No.3 is aggrieved she has to challenge the mutations attested from time to time by

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availing appropriate remedies, as such, the order is bad in law and liable to be quashed and set-aside.

11. That the petitioners are seeking leave of this Hon'ble Court to take additional legal arguments at the time of hearing of this Revision Petition.

12. That this Revision petition is supported by duly sworn affidavit.

***In the premises**, it is, therefore, prayed that this Hon'ble Court may be pleased to allow this Revision Petition and quash and set-aside the order dated 17-03-2016 passed by the respondent No.1 forming **ANNEXURE-II** to this Revision Petition and directed the respondent No.2 not to cause any unlawful, unwarranted and illegal interference with the possession of the land of the petitioners situated at village Babapora, Zainapora which they have inherited through sale, Hibba and Will Deeds.*

Any other writ, order or direction which this Hon'ble Court deems fit and proper in the facts and circumstances of this case may also be passed in favour of the petitioners and against the respondents same may be inconsonance with justice and equity.

PETITONERS THROUGH COUNSEL

Bilal Ahmad Malla
(Advocate)

Dated: 26.09.2023.
Place: Srinagar

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