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BEFORE THE HON'BLE COURT OF JOINT FINANCIAL COMMISSIONER (REVENUE) JAMMU AND KASHMIR AT SRINAGAR

Application No..... /2023

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/Applicants

VS.

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

.... RESPONDENTS/-NON-APPLICANTS

IN THE MATTER OF:-

Application seeking dispensation of certified copy of order dated 17-03-2016 passed by the Additional Commissioner Kashmir on an application filed by respondent No.3 bearing file No.597.

MAY IT PLEASE YOUR HONOUR;

The Application is most humbly submitted as under: -

1. That the petitioners are aggrieved of the order dated 17-03-2016 passed by the Court of Additional Commissioner Kashmir on an application filed by respondent No.3 bearing file No.597 and said order was assailed by petitioners before the Hon'ble High Court through the medium of the Writ Petition bearing OWP No. 783/2016 and also an appeal was filed against the order dated 02-09-2022

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bearing LPA No.205/2022 and said LPA came to be decided on 16-09-2023 and petitioners were granted liberty by the Hon'ble Division Bench to assail the order dated 17-03-2016 through appropriate proceedings and within a period of two week and the Hon'ble Division Bench of High Court of J&K directed maintenance of status-quo.

2. That the petitioners/applicants are seeking dispensation of the certified copy of the order dated 17-03-2016 passed by the Additional Commissioner Kashmir on the ground that very short time has been granted by the Hon'ble High Court and in case the applicants will wait for the issuance of the certified copy of the order, the applicants/petitioners shall suffer irreparable loss as the interim order granted by the Hon'ble Division Bench shall loose its force and petitioners shall suffer irreparable loss.

3. That this application is supported by a duly sworn affidavit.

In the premises, it is therefore, humbly prayed that this Hon'ble Court may be pleased to allow this application and requirement of filing of certified copy of order date 17-03-2016 may be dispensed with and petitioners/applicants undertake that they will produce the said certified copy of the order as and when same is received by them from the Court of Additional Commissioner Kashmir, same may be in consonance with justice and equity.

PETITONERS THROUGH COUNSEL

Bilal Ahmad Malla
(Advocate)

DATED: 26***-09-2023***

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IN THE CASE OF: -

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VS.

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

.... RESPONDENTS/-NON-APPLICANTS

IN THE MATTER OF :-

Application under Section 5 of Limitation Act,1963 seeking condonation of delay in preferring the accompanying Revision Petition against order dated 17th of March 2016 passed by the Court of Additional Commissioner Kashmir on an application filed by respondent No.3, bearing file No.597.

MAY IT PLEASE YOUR HONOUR;

The application is most humbly submitted as under: -

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1. That the petitioners/applicants have preferred the accompanying Revision Petition before this Hon'ble Court against order dated 17th of March 2016 passed by the Court of Additional Commissioner Kashmir.

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.

3. That the dispute between the father of the petitioners namely Gh. 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 an 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 and same is reflected in the revenue records more particularly Mutation 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

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village Babapora Tehsil Zainapora District 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 the 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 as mentioned above with regard to the land of the petitioners have been set aside without hearing the petitioners and 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 could not have entertained the application as he 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.

4. That the petitioners have assailed the order dated 17th of March 2016 before the Hon'ble High Court within a time and now the Hon'ble High Court has granted a liberty to petitioners to assail the

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order dated 17th of March 2016 and time which the petitioners spended in the Hon'ble High Court of J&K needs to be condoned in view of the Section 14 of the Limitation Act, 1963 and pursuant to the liberty granted by the Hon'ble High Court vide order dated 16th of September 2023 and the delay which has occasioned in preferring the Revision Petition be condoned and accompanying Revision Petition be decided on its merits.

5. That this application is supported by a sworn affidavit.

In the premises, *it is therefore humbly prayed that this Hon'ble Court may be pleased to allow this application and the delay which as occasioned in preferring the accompanying Revision Petition may be condoned and the accompanying Revision Petition may be taken on record and decided on merits.*

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 petitioners and against the respondents, same may be in consonance with justice and equity.

PETITONERS THROUGH COUNSEL

Bilal Ahmad Malla
(Advocate)

DATED: 26-09-2023

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