

**THE COURT OF FINANCIAL COMMISSIONER REVENUE
(COMMISSIONER AGRARIAN REFORMS)
JAMMU AND KASHMIR AT JAMMU**

FILE NO.
325/FC-AP

DATE OF INSTITUTION
11.11.2013

DATE OF DECISION
24.06.2015

- 1) ANIL KUMAR S/O BISHAN DASS R/O VILLAGE RAMNAGAR, TEHSIL AND DISTRICT KATHUA;
- 2) RAJESH KUMAR S/O -----DO-----;
- 3) ASHOK KUMAR S/O -----DO-----;
- 4) REVA D/O -----DO-----;
- 5) PUSHPA DEVI WD/O -----DO-----.

(PETITIONERS)

VERSUS

- 1) SUSHIL SHARMA S/O HARI DASS R/O 3367, SECTOR 45-D, CHANDIGARH;
- 2) ANIL SHARMA S/O -----DO-----;
- 3) RUMIL SHARMA S/O -----DO-----;
- 4) SHASHI SHARMA D/O -----DO-----;
- 5) UMA SHARMA D/O -----DO-----;
- 6) RENU SHARMA D/O -----DO-----;
- (THROUGH ATTORNEY KHUSHIYA RAM SHARMA S/O GANGA RAM SHARMA)**
- 7) KAMAL SHARMA S/O KHUSHIYA RAM SHARMA;
- 8) AMAN SHARMA S/O -----DO-----;
- 9) ANJU SHARMA D/O SHAKUNTLA SHARMA R/O W.NO. 10, KATHUA
- 10) NANCY SHARMA D/O -----DO-----.

(RESPONDENTS)

In the matter of:

- A) Reference dated 16.09.2013 made by the court of the Additional Commissioner (with the powers of the Divisional Commissioner), Jammu in revision petition against the order dated 22.03.1969 passed on mutation No. 163 attested with regard to the land measuring 24 Kanals falling under Khasra No. 235 min in village Ramnagar, Kathua under Govt. Order No. 254-C of 1965;**
- B) Reference dated 16.09.2013 made by the court of the Additional Commissioner (with the powers of the Divisional Commissioner), Jammu in revision petition against the order dated 22.03.1969 passed on mutation No. 164 attested with regard to the land falling under Khasra No. 313 min (06K-10M), 314 min (15M), 316 min (15M), 317 min (02K-10M) in village Ramnagar, Kathua under Govt. Order No. 254-C of 1965;**

For Petitioners --- Nemo
For Respondents --- Advocate Ashok Gupta

J U D G E M E N T

- 1) Admittedly, the facts of the case are that one Hari Dass S/O Bhagwan Dass was a displaced person of 1947. He was allotted the aforesaid land under Cabinet Order No. 578-C of 1954. As per the details in the Form-A (*Alif*), the said allottee had a wife namely, Maya Devi, a daughter, Shakuntla Devi and a brother, Bishan Dass. On 22.03.1969, the Tehsildar Kathua attested the two simultaneous mutations bearing No. 163 and 164 by virtue of which the ownership rights over the said land were conferred upon Hari Dass.
- 2) Aggrieved, the petitioners herein filed two revision petitions challenging both the mutations before the Divisional Commissioner, Jammu who

transferred the same to the Additional Commissioner (with powers of the Divisional Commissioner), Jammu for disposal under law. After a thorough perusal of the relevant record, the court below observed that the mutation granting all proprietary rights in favour of Hari Dass, ignoring other family members, is against the very spirit of the said Cabinet order which clearly enshrines that all the legal heirs of the person, who was head of the family in the original allotment, are entitled to get ownership rights. It also emerges from the record that the mutation was attested in a camp far away from the village, where the disputed land is situated, and further no witnesses seem to be recorded on the mutation from that village. The court below has accordingly submitted the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smtv) with the recommendation to set aside the impugned mutations and to remand the case to the Tehsildar concerned for a *de novo* enquiry into the matter and for passing fresh orders after affording an opportunity of being heard to both parties.

- 3) This court has carefully gone through the case file as well as the other allied records. Indeed, there is no doubt that Bishan Dass was also a member of the family to which the land was originally allotted. Thus, the ownership rights were to be granted to all members of the said family by taking into consideration Rule 15 (B) of the Cabinet Order No. 578-C. Further, the respondents herein have alleged that Bishan Dass had disintegrated from the family and a ration card also exists in his name alongwith payment of some ex gratia relief in his favour. But they have not been able to prove these assertions beyond any reasonable doubt as to how these documents are relevant in the matter. Moreover, they have just provided a photocopy of some certificate regarding submission of a declaration for ex gratia relief which is not enough. The petitioners on the other hand, before the court below, have claimed that it was Bishan Dass who was in actual cultivating possession of the land, whereas Hari Dass had moved to Chandigarh and taken employment there as a Clerk in the Punjab Education Board.
- 4) Further, it appears that after the death of the said Hari Dass, an inheritance mutation No. 325 dated 21.12.1996 was attested. This mutation seems to have been set aside by the Assistant Commissioner Revenue, Kathua who

remanded the case to the Tehsildar, Kathua for taking further necessary action. The Tehsildar, Kathua has attested the mutation No. 423 giving the said land to the petitioners and the respondents herein which also appears to have been set aside. An appeal was filed before the court below challenging the order dated 07.10.2011 vide which the mutation No. 423 was set aside by the Assistant Commissioner Revenue, Kathua. After considering the matter from all angles, this appeal was dismissed by the court below vide order dated 16.09.2013.

- 5) For the reasons aforesaid and after a careful reflection over the matter, the references made by the court below are accepted. The impugned mutation Nos. 163 and 164 both dated 22.03.1969 are set aside. The mutation No. 325 dated 21.12.1996 and mutation No. 423 dated 09.04.2010 shall remain quashed. The case is remanded back to the Tehsildar concerned for a de novo enquiry into the matter and for taking further appropriate necessary action. No costs. Interim directions, if any, shall stand vacated. The case file be relegated to records after due completion.

Sd/-

**(Dr. Arun Kumar) IAS
Financial Commissioner Revenue
(Commissioner Agrarian Reforms)
Jammu and Kashmir, Jammu**

Announced today on this the **24th day
of June, 2015** under my hand and Seal
of this Court.