

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

FILE NO.
292/FC-AP

DATE OF INSTITUTION
07.05.2013

DATE OF DECISION
28.05.2015

- 1) AUTAR KRISHAN S/O GANESH DASS R/O CHOWDHARYGUND, TEHSIL AND DISTRICT SHOPIAN A/P H.NO. 25, SECTOR-02, DURGA NAGAR, JAMMU;
- 2) CHOONI DEVI D/O -----DO-----;
- 3) KOUSHALYA DEVI D/O -----DO-----;
- 4) TOSHA DEVI D/O -----DO-----;
- 5) DOORA DEVI D/O -----DO-----.

(APPELLANTS)

VERSUS

- 1) GULLA SHAH S/O LATE GAFFAR SHAH R/O VILLAGE AND POST OFFICE VEHIL, TEHSIL AND DISTRICT SHOPIAN;
- 2) ABDUL RASHID SHAH S/O LATE GHULAM MOHD. SHAH R/O HERAGAM, TEHSIL AND DISTRICT SHOPIAN;
- 3) ABDUL HAMID SHAH S/O -----DO-----;
- 4) KHALIQ HUSSAIN SHAH S/O LATE BASHIR AHMED SHAH R/O -----DO-----.

(RESPONDENTS)

In the matter of:

**Revision in terms of Sec. 15 of the Land Revenue Act
against the order dated 25.05.1981 passed at the
Headquarter in ex parte with regard to land falling**

under Khasra No. 84, 86, 94, 95, 108, 123 and 205 in village Chowdharygund, Tehsil and district Shopian.

For Appellants --- Adv. J. M. Razdan/Adv. M. L. Bhat
For Respondents --- Advocate Danish Butt

J U D G E M E N T

- 1) The summarised facts of the case are that one Pt. Ganesh Dass, father of the appellants herein was an owner of the landed property falling under Khasra No. 41, 84, 86, 94, 95, 108, 123 and 205 in village Chowdharygund, Shopian. The mutation No. 163 dated 25.05.1981 was attested (Attesting Officer not known) with regard to land measuring 15 Kanals and 15 Marlas falling under these Khasra numbers correcting the *girdawari* entries in favour of one Ahmed and his brother Gulla Shah both sons of Gaffar Shah (Half) and Abdul Hamid, Bashir and Abdul Rashid all sons of Gullah Mohd. Shah (Half) from *Kharif*, 1971. Later, mutation No. 172 dated 04.01.1983 under Sec. 4 and mutation No. 221 dated 09.01.1988 under Sec. 8 of the Agrarian Reforms Act, 1976 was also attested in their favour.
- 2) Aggrieved, the appellants herein challenged mutations No. 172 and 221 before this court on various grounds. Earlier, this court had observed that the impugned mutations were attested by a Revenue Officer who was not competent to do so. Moreover, before attesting the mutation, the Revenue Officer ought to have summoned all the concerned parties, should have himself gone to the spot, conducted an enquiry as to the veracity of the facts before satisfying himself that the entry of *Kharif*, 1971 needed to be rectified. All this does not appear to have been done. Also, a proviso to Rule 14 of the Agrarian Reforms Rules, 1977 (inserted vide SRO 244 of 1981) lays down that no Naib-Tehsildar shall attest any disputed mutation or a mutation where the correction of any entry of khasra *girdawari* is involved unless empowered to do so. The impugned

mutations were, therefore, set aside vide this court order dated 13.02.2013.

- 3) The petitioners have now assailed the order dated 25.05.1981 passed on mutation No. 163 attested to correct the girdawari entries of Kharif, 1971. It is mentioned that Rule 4 of the Agrarian Reforms Rules, 1977 provides that if in the course of attestation of mutations, anyone objects to the correctness of an entry in the *Khasra girdawari*, a Revenue Officer not below the rank of Tehsildar, shall, after giving an opportunity of being heard to all the concerned, conduct an enquiry on spot in respect of such mutation and give his finding thereon either confirming the impugned entry or indicating what entry should be made. The impugned mutation was thus required to be attested on-the-spot and in presence of the parties concerned but instead it was attested at the Headquarters. No opportunity of being heard was provided to the owners of the land. The respondents in their written arguments have claimed that this all was NOT necessary because this was a consented order. However, the respondents have not placed on record a copy of the “consented agreement” between the parties and have also NOT explained on what grounds such a ‘consent’ was given by the late Ganesh Dass for a correction in girdawari. Thus, on all accounts, the impugned mutation is liable to be set aside.
- 4) Further, a cursory look at the impugned mutation shows that the GQ has not compared the old entries with the new ones in the impugned mutation. **Rule 21 of the Standing Order 23-A** lays down that the Field Qanungo should see as to whether the ***Surat Sabiq*** is correct as per the ***Jamabandi***. He must compare and attest by personal examination the papers to ensure that every entry made by the Patwari in the ***Parat Patwar*** and the ***Parat Sarkar*** is correct. He must also note in the ***Parat Sarkar*** that he has done so with the date below his report with his signatures on both the **Parats**. But the same has not been done in the impugned mutation.

5) Analysis the entire circumstances of the case and for the reasons aforesaid, the order dated 25.05.1981 passed on mutation No. 163 is set aside and the position prior to *kharif*, 1971 is restored. The case is remanded to the District Magistrate, Shopian for a ***de novo*** enquiry under the **Jammu and Kashmir Migrants immovable property (Preservation, Protection and Restraint on distress sales) Act, 1997** and for further appropriate necessary action, including recovery of rent u/s 13 of the said Act. 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 **28th day of May, 2015** under my hand and Seal of this Court.