

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

<u>FILE NO</u>	<u>DATE OF INSTITUTION</u>	<u>DATE OF DECISION</u>
299/FC-AP	27.05.2013	21.04.2015

- 1) BALBIR SINGH S/O SAIN DASS R/O DHANORE, TEHSIL AND DISTRICT KATHUA;
 - 2) NARINDER SINGH S/O -----DO-----;
 - 3) CHAMAN SINGH S/O -----DO-----;
 - 4) PARVEEN SINGH S/O -----DO-----;
 - 5) KARAN SINGH S/O -----DO-----;
 - 6) RADHU DEVI D/O -----DO-----;
 - 7) BIMLA DEVI D/O -----DO-----;
 - 8) KAMLA DEVI WD/O -----DO-----;
- (PETITIONERS)**

VERSUS

- 1) HARBANS SINGH S/O SANTU R/O DHANORE, TEHSIL AND DISTRICT KATHUA;
 - 2) SANSAR SINGH S/O -----DO----- ;
 - 3) MAJOR SINGH S/O -----DO-----.
- (RESPONDENTS)**

In the matter of:

Revision petition against the order dated 09.03.2013 passed by the Divisional Commissioner, Jammu whereby the revision petition against the order dated 04.06.2009 passed by the Deputy Commissioner, Kathua has been dismissed.

For Petitioners --- Advocate Z. A. Qazi
For Respondents --- Advocate P. S. Pawar

JUDGEMENT

- 1) The present dispute has its origin in the time when the Big Landed Estates Abolition Act, 1950 came into force. It appears that Daleepu and Santu both sons of Gopalu were cultivating the land falling under Khasra No. 611, 613, 614 and 813/356 in village Dhanore, Tehsil and District Kathua. However, in the process of conferment of ownership rights on the actual tillers of land under the aforesaid Act, mutation No. 217 dated 12 *Jeth*, 2008 Bk. was attested by virtue of which one Tindu S/O Shamma was declared as an owner of the land measuring 21 Kanals and 08 Marlas falling under Khasra No. 813/356. Aggrieved, Daleepu challenged this mutation in appeal before the Deputy Commissioner (Collector), Kathua who vide order dated 06.06.1963 set aside the said mutation. Resultantly, mutation No. 530 dated 18.02.1969 was attested whereby Daleepu was declared as owner of the said land. Later, for reasons unknown, Santu was recorded as protected tenant of his brother, Daleepu with regard to this land.
- 2) The present cause of action arose when after the death of Santu, the Tehsildar Kathua attested the mutation No. 764 dated 08.04.1999 devolving the tenancy rights (protected) upon his legal heirs, the respondents herein. The petitioners herein challenged this mutation in appeal before the Deputy Commissioner (Collector) Kathua. The crux of observations made by the DC, Kathua vide the impugned order was that a protected tenant is entitled to get the ownership rights under the Agrarian Reforms Act, 1956 but the owner of the land is the real brother of the said tenant. Thus, under the exemption clause of the said Act, he was not competent to get the ownership rights over this land. Further, in 1963-64, land was requisitioned by Army whereafter no question arises on the cultivating rights after the commencement of the said Act. Nevertheless,

rights of Santu as protected tenant are undisputed, well established and have never been challenged by Daleepu or his legal heirs. The same rights have been transferred to his legal heirs, which are absolutely regular and valid in the eyes of law.

- 3) Another important observation made by the DC, Kathua was that the legal heirs of Santu are the only interested parties, who were present when the impugned mutation was attested. No interests or rights of the petitioners herein have been affected and thus, no question of violation of principles of natural justice is involved. In this backdrop, the Deputy Commissioner (Collector) Kathua upheld the mutation No. 764 dated 08.04.1999.
- 4) Dissatisfied, the petitioners herein assailed the order dated 04.06.2009 passed by the Deputy Commissioner (Collector), Kathua in revision before the Divisional Commissioner, Jammu. The Divisional Commissioner, Jammu agreed with the findings of the Deputy Commissioner (Collector), Kathua and held that it was not necessary to hear the petitioners before devolving the tenancy rights of Santu on his successors.
- 5) The more significant and substantial question of law involved in the instant case is whether a person can be a tenant of his brother. The provisions of the Agrarian Reforms Act, 1976 authorise law of personal cultivation and in an ordinary course, a person can't be a tenant of his brother. But **Sec. 3 (h) (i)** of the said Act lays down that the lands requisitioned under any law for the time being in force shall be exempted from the operation of the said Act. The respondents have submitted that the land under consideration was occupied by the Army in 1962 and rent was paid for the same to Santu during his life time. They also plead that the land in question was given to Santu in terms of a family settlement and that mutation No. 764 dated 08.04.1999 was attested in presence of Sain, the father of petitioner Nos. 1 to 7 and husband of petitioner No. 8, who raised no objections. Thus, the land under consideration does not fall within the ambit of the said Act.
- 6) One of the grounds of challenge raised by the petitioners is that initially the father of the respondents was entered as "*gair marusi*" in the record and later he was made a protected tenant. But they have not provided the relevant record from which it may be ascertained as to how the case has

developed since 1950. Therefore, this court is left with no option but to go by the assertion of the respondents.

- 7) In view of what has been observed above, the revision petition being devoid of merit fails and is, therefore, dismissed. The order impugned dated 09.03.2013 passed by the Divisional Commissioner, Jammu is upheld. 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 **21st day
of April, 2015** under my hand and Seal
of this Court.