

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

FILE NO.
71/FC-AP

DATE OF INSTITUTION
01.04.2010

DATE OF DECISION
24.06.2015

1) BASHIR AHMED S/O NOOR MOHAMMAD R/O KHARIAN, TEHSIL R. S. PURA, DISTRICT JAMMU.

(PETITIONER)

VERSUS

1) THE DIVISIONAL COMMISSIONER, JAMMU;

2) THE DEPUTY COMMISSIONER, JAMMU;

(RESPONDENTS)

3) THE CUSTODIAN, EVACUEE PROPERTY, JAMMU.

(PROFORMA RESPONDENT)

In the matter of:

Revision against the order dated 25.09.2009 passed by the court of the Divisional Commissioner, Jammu in case titled, "Custodian Evacuee Property, Jammu Vs. Bashir Ahmed" wherein in the current settlement operations of village Kharian, Tehsil R. S. Pura, the landed property of the petitioner measuring 12 Kanals and 12 Marlas falling under Khasra No. 440-old (732-new) and land measuring 04 Kanals falling under Khasra No. 458-old (794-new) was recorded as E.P in cultivation column without proper verification. The Collector, Jammu issued a declaratory decree dated 09.06.2006 for correction of the records and a mutation No. 155 was attested in that regard. The proforma respondent

then filed an appeal before the Divisional Commissioner, Jammu who without touching the real issue set aside the valid inheritance mutation No. 97 dated 23.02.1957 which stand reflected in the ROR without providing an opportunity of being heard to the petitioner to prove as to whether he is governed by the Muslim Law or Customary Law.

For Petitioner --- **Advocate Dara Singh**
For Respondent 1,2 --- **Revenue Attorney**

J U D G E M E N T

- 1) Briefly stated, the facts of the case are that the petitioner herein had filed an application before the Deputy Commissioner (Collector), Jammu regarding some correction in the records. It was alleged that during the current settlement, the land measuring 12 Kanals and 12 Marlas falling under Khasra No. 440-old (732-new) and 04 Kanals falling under Khasra No. 458-old (794-new) was wrongly entered as an evacuee property. After a detailed analysis of the records, the Deputy Commissioner (Collector) observed that the said land was not an evacuee property and consequently vide order dated 09.06.2006 passed a declaratory decree for correction of records in this regard under Sec. 32 of the Land Revenue Act, 1996 (Smtv.).
- 2) As the stakes of the evacuee property were involved in the matter, the Custodian, Evacuee Property, Jammu filed an appeal before the Divisional Commissioner, Jammu challenging the order passed by the Deputy Commissioner (Collector), Jammu. The court below after observing the matter from different angles dismissed the appeal and upheld the order impugned.
- 3) However, during the course of arguments, a new and important fact was brought to the notice of the Divisional Commissioner, Jammu that a mutation No. 97 dated 23.02.1957 was attested whereby the succession of Darvesh Mohammed, the original owner of the land under consideration,

was devolved directly upon his grandson, the petitioner herein, bypassing the sons. The court below held that under *Shariat*, the grandchildren can't inherit the property in presence of sons. The petitioner herein had himself admitted that at the time of death of Darvesh Mohammad, he was survived by two sons namely, Nek Mohammad and his father, Noor Mohammad. Thus, in the presence of those two sons, the property could not have gone directly to the petitioner. A perusal of the mutation No. 97 shows that the mutating officer has not bothered to conduct a thorough enquiry into the matter regarding the survival of the other legal heirs of Darvesh Mohammad. The right to inherit had accrued at the time of the death of the deceased and the date of attestation of the mutation is immaterial. The order passed on the mutation is cryptic and has been passed in a perfunctory manner. Thus, the court below set aside the mutation No. 97 dated 23.02.1957 and remanded the case to the Deputy Commissioner, Jammu for a fresh enquiry and for ascertaining the entitlement of compensation to the petitioner or any other legal heir under the Muslim Personal Law as the property stands acquired by the Government for a public purpose.

- 4) It is against this order of the Divisional Commissioner, Jammu that the petitioner has filed the present revision petition. This court is of the opinion that the only substantial question of law involved in the matter is as to whether a grandson can inherit the property of a deceased under "*Shariat*" when his sons be alive. The same has, however, been examined by the court below in a quite comprehensive and rational manner. This court agrees completely with the findings returned by the court below on the issue. In addition, the petitioner has asserted that the court below has taken a *suo moto* action against the mutation No. 97 in revision and in all cases of revisions, if the order is to be reversed or modified, the Divisional Commissioners are required to make a reference to this court with their opinion for further orders. Looking into it, this court is of the firm view that the court below was hearing an appeal and this was just an additional argument of the counsel for the respondent No. 3. However, even if, the contention of the petitioner be correct, it can be only termed as technical

nitpicking. For all practical purposes, this court has now heard the revision against the order of the Divisional Commissioner, Jammu in which the subject is the mutation No. 97. Also since this court accepts the opinion/observations made by the court below, it is immaterial whether the court below should have made a reference to this court or not, if the ends of justice are suitably met.

- 5) Analysing the entire facts of the case and after a careful reflection over the matter, therefore, the order dated 25.09.2009 passed by the court of the Divisional Commissioner, Jammu is upheld. The mutation No. 97 dated 23.02.1957 is set aside. The case is remanded to the Deputy Commissioner, Jammu for a *de novo* enquiry into the matter and for further appropriate necessary action strictly under "*Shariat*" as already directed by the Divisional Commissioner, Jammu. 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.