

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

FILE NO.
441/FC-ARC/AP

DATE OF INSTITUTION
11.12.2013

DATE OF DECISION
28.05.2015

- 1) BRIJ LAL S/O INDER R/O VILLAGE SALEHAR, TEHSIL BISHNAH, DISTRICT JAMMU;
- 2) MAJOR RAM S/O -----DO-----;
- 3) AIJAL KUMAR S/O -----DO-----.

(APPELLANTS)

VERSUS

- 1) TARAWANTI W/O SUNIT SINGH (D/O SANTI DEVI) R/O JANDIALA, PUNJAB A/P VILLAGE SALEHAR, TEHSIL BISHNAH, DISTRICT JAMMU;
- 2) NIHAL SINGH S/O SUNIT SINGH R/O VILLAGE SALEHAR, TEHSIL BISHNAH, DISTRICT JAMMU;
- 3) JAI PAL S/O -----DO-----;
- 4) BHUPINDER SINGH S/O -----DO-----.

(RESPONDENTS)

In the matter of:

Appeal against the order dated 28.01.2013 passed on mutation No. 1201 under Sec. 7 of the Agrarian Reforms Act, 1976 by the Tehsildar (S) R. S. Pura, with the prayer to set aside the same.

For Petitioners --- Advocate S. Raunak Singh
For Respondents --- Advocate G. C. Sharma

J U D G E M E N T

- 1) Briefly stated, the facts of the case are that one Santi Devi was a landlady in village Salehar, Tehsil R. S. Pura, District Jammu whose rights, title and interests over her land were extinguished under the Agrarian Reforms Act, 1976. Invoking the provisions of Sec. 7 of the said Act, she applied for resumption of land for bonafide personal cultivation. The Tehsildar R. S. Pura, however, passed an order dated 4.11.1982 on mutation No. 1201 and held that Tarawanti, respondent No. 1 was not entitled to resume land. It appears that by the time, Santi Devi had died.
- 2) Aggrieved, Tarawanti assailed the validity of order dated 24.11.1982 passed on mutation No. 1201 in an appeal before the Joint Financial Commissioner, Jammu and Kashmir who vide order dated 29.09.1988 set aside the same along with the mutation order No. 1213 attested under Sec. 8 of the Agrarian Reforms Act, 1976. The case was remanded back to the Tehsildar, R. S. Pura for a **de novo** enquiry into the matter and for passing fresh orders. Complying with these directions, the Tehsildar R. S. Pura disposed of the matter vide his order dated 30.01.2002 observing that Tarawanti was not entitled to resume land as she had exceeded the permissible limit under law. In parallel, another order was also passed on mutation No. 1213 again under Sec. 8 of the said Act. These two orders were assailed in a further appeal before the Joint Commissioner, Agrarian Reforms, Jammu who once again set aside the orders passed on mutation No. 1201 (Sec. 7) and 1213 (Sec. 8) and remanded the case back to the Tehsildar (S), R. S. Pura for a **de novo** enquiry into the matter.
- 3) Acting in accordance with the directions, the Tehsildar (S), R. S. Pura conducted a detailed enquiry into the matter and decided the issue of resumption primarily on two points. Firstly, that Tarawanti is the daughter of Santi Devi and she can resume land through her. Secondly, that the family of Tarawanti and that of her mother

constituted two separate family units. Taking these facts into consideration, the Tehsildar concerned has passed an order dated 28.01.2013 on mutation No. 1201 directing that land measuring 03 Kanals and 13 Marlas falling under Khasra No. 1288 from out of the share of Inder be resumed by Tarawati.

- 4) Dissatisfied, the petitioners herein have challenged the order dated 28.01.2013 passed on mutation No. 1201 in appeal before this court on various grounds. Refuting the claims made by the petitioner, the respondents have filed detailed written arguments. This court has gone through the records and observes that the Tehsildar (S), R. S. Pura has intermingled the concept of separate family with resumption. If Tarawati had constituted a separate family unit in Kharif, 1971 and her mother had applied for the resumption of land for her or her family, she can't resume land as none of her rights were extinguished. In the ordinary course, she could resume land only, if she was included in the definition of family on the determinant date and if the total ceiling of the family did not exceed the limit as prescribed under the Agrarian Reforms Act, 1976.
- 5) Another substantial question of law before this court is as to whether a daughter who was married in Kharif, 1971 can resume land when her mother had applied for the resumption. This court is of the opinion that the daughter can resume land in the capacity of her mother's legal heir only. But even then, it is to be seen that the ceiling of land held by her should not exceed the prescribed limit. It is immaterial that she is married outside the state of J&K and is now having a separate family unit.
- 6) Having considered the facts and circumstances of the case and for the reasons aforesaid, the order dated 28.01.2013 passed on impugned mutation No. 1201 by the Tehsildar (S), R. S. Pura is set aside. The case is remanded back to the Tehsildar concerned for a **de novo** enquiry

into the matter with special reference to the observations made by this court and for taking further appropriate necessary action. No costs. Interim directions, if any, in the matter 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.