

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

FILE NO.
58/FC-AP

DATE OF INSTITUTION
22.10.2012

DATE OF DECISION
24.06.2015

1) CUSTODIAN EVACUEE PROPERTY, JAMMU.

(PETITIONER)

VERSUS

1) STATE OF J&K;

2) LEGAL HEIRS OF SIRAJ DIN S/O MANGTHU R/O BIRPUR, TEHSIL SAMBA

(RESPONDENTS)

In the matter of:

Reference dated 15.12.2010 made by the court of the Joint Settlement Commissioner, Jammu in revision petition against the order dated 04.09.1977 passed on mutation No. 1268 by the Tehsildar Samba whereby he has ordered for correction of parentage of Hassan Din Evacuee as Zia instead of recorded parentage as Zabra.

For Petitioners	---	Advocate Sheikh Abdul Gani
For Respondents	---	Nemo

J U D G E M E N T

1) The summarised facts of the case are that one Hassan Din S/O Jabra (Evacuee) was an owner of the land falling under Khewat No. 176 and 182 alleged to be an evacuee property in village Birpur, Tehsil and

District Samba. Similarly, he along with Siraj Din was owner of land falling under Khewat No. 177 in the same village. On 04.09.1977, the Tehsildar Samba attested the impugned mutation No. 1268 (**Sehat Naam**) by virtue of which the name and parentage of Hassan Din S/O Jabra was “corrected” as Hassan Din S/O Zia.

- 2) Aggrieved, the petitioner herein filed a revision petition challenging the impugned mutation before the Joint Settlement Commissioner, Jammu. The court below in an *ex parte* disposal of the case observed that the class of impugned mutation has been mentioned as “**Sokhta Record**” (Burnt record). Technically, this category of mutation does not find a place in the classes of mutation defined under Para 19 of the Standing Order 23-A. Moreover, the impugned mutation confers occupancy tenancy rights to the respondents allegedly on the basis of a sale deed but there is nothing to prove as to whether there was really any such agreement between the parties or not. There was no registered document which could justify the action of the attesting officer. In this background, the court below has 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 mutation.
- 3) A perusal of the relevant record clearly indicates that the class of mutation as written in the impugned mutation is not “**Sokhta Record**” (Burnt record) but it is a **Sehat Naam** mutation. If it was an evacuee property as is clear from the revenue record, how the parentage of Hassan Din could be corrected. It appears that the impugned mutation has been attested in a disguised manner i.e. what could not be done directly has been done in an indirect way. It does not clearly express the intentions of the attesting officer as to what he actually wanted to do by changing the parentage of Hassan Din and why. The order passed on the impugned mutation is thus vague and cryptic which can’t stand the test of law.

4) In view of what has been discussed above, the reference made by the court below is accepted. The order dated 04.09.1977 passed by the Tehsildar, Samba on mutation No. 1268 is set aside. The case is remanded to the Tehsildar concerned for a **de novo** enquiry into the matter in presence of all the concerned, including the Custodian department, and for taking further appropriate necessary action. The evacuee status of the property shall also be ascertained in the process. 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.