

**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>
375/FC-ARC/AP	24.09.2012	19.11.2014

1) DALIP KUMAR S/O GURAN DITTA R/O CHAK SALARIAN TEHSIL AND DISTRICT SAMBA.

(APPELLANT)

VERSUS

1) ASSISTANT COMMISSIONER REVENUE, SAMBA;
2) MADHU PARMAHANS, SOLE TRUSTEE SAHIB BANDAGI ASHRAM, HQ RANJARI (BAGLA) TEHSIL AND DISTRICT SMABA AND OTHERS.

(RESPONDENTS)

In the matter of:

Appeal against order dated 07.08.2012 passed by the Assistant Commissioner Revenue, Samba transferring the case titled “Dalip Kumar Vs. Madhu Param Hans and others” to the Tehsildar Samba with the direction to initiate proceedings under Sec. 105 of the Land Revenue Act, 1996 (Smt.) and with the prayer to set aside the same.

For Appellant --- Adv. S.N.Gupta

For Pvt. respondent --- Adv. Ashok Gupta

JUDGEMENT

- 1) The summarised facts of the case are that one Guran Ditta S/O Manga Ram R/O village Chak Salarian, Tehsil and District Samba was conferred with the ownership rights over land measuring 02 Kanals and 10 Marlas falling under Khasra No. 102 in his residential village under Sec. 8 of the Agrarian Reforms Act, 1976. He died on **18.09.2006** leaving behind a widow namely, **Bhavi Devi**, 04 sons namely, **Ajit Kumar, Tilak Raj, Dalip Kumar, Jagdish** and 04 daughters namely, **Preeto Devi, Jeeto Devi, Santosh Kumari and Sawarn Devi**. As a result, the said land devolved upon all these legal heirs in equal shares by virtue of attestation of mutation No. 152.
- 2) For unknown reasons (there is a 'claim' that the land was "donated" to the respondent No. 2 by the siblings of the petitioner), the land under consideration went in the possession of the Sahib Bandagi Ashram belonging to the respondent No. 2. The appellant herein filed a petition before the Collector, Agrarian Reforms, Samba under Sec. 19 (3) (d) and Sec. 28-A of the Agrarian Reforms Act, 1976 for restraining the Co-sharers not to alienate the land and to direct the Patwari Halqa concerned not to issue any **fard intikhab** as well as taking action under Sec. 28-A. In the first instance, the court below directed the revenue officials not to issue any sort of **fard intikhab** till the disposal of the case. However, acting otherwise on 07.08.2012, the court below passed the impugned order directing the Tehsildar Samba to initiate proceedings under Sec. 105 of the Land Revenue Act, 1996 (Smt.).
- 3) Dissatisfied, the appellant has filed the present appeal assailing the impugned order on various grounds. In order to ascertain the factual position, this court appointed the Additional Deputy Commissioner, Samba as enquiry officer in the matter and asked him to furnish a detailed report which has been submitted vide No. ADCS/Rdr/26 dated 23.05.2014. This court has examined the report of the enquiry officer and the objections filed by the appellant in this regard along with the other connected record. Despite ample opportunity provided to the private respondent since 02.04.2013,

no para-wise comments could be furnished by him. Consequently, his right to rebut was closed on 25.09.2013. Coming now to the Enquiry report of the ADC, Samba submitted on 23.05.2014, it is observed that the Collector, Agrarian Reforms, Samba has gone off on a tangent by directing the Tehsildar Samba to initiate proceedings under Sec. 105 of the Land Revenue Act. The matter was required to be decided in the light of the relevant provisions under which it was pending for disposal. If at all, the court below wanted analysis of the case from that point of view, the appellant could have only been advised to approach the Tehsildar concerned for partition of land.

- 4) Moreover, it is not clear as to whether the impugned order has been passed in reference to the matter which was already pending before the Collector Agrarian Reforms, Samba or on a new application/petition as its subject matter is related to partition under Sec. 105 of the Land Revenue Act. Technically speaking, the court below has no jurisdiction to take note of the cases under this provision and therefore, the order passed by it exceeds jurisdiction.
- 5) What is more, the report of the enquiry officer indicates that the conversion of land in question has taken place without any permission of the competent authority. The court below must have examined this aspect of the case also. Interestingly, the action of the court below has totally changed the course of the proceedings. This court has viewed the matter from different angles and subsequently, is of the opinion that there are some unanswered questions in the case and reply thereof shall set the whole controversy at rest, which are; **(A)** How and when the land under consideration went out of the possession of the appellant and other co-sharers?; **(B)** Did it happen before or after **18.09.2006** which is the day petitioner's father died?; **(C)** Under what capacity is the Ashram holding possession of the said land?; **(D)** How and by whom the conversion (From Agrarian) has been made on the disputed

land?; **(E)** Who has constructed the building on the land, with whose permission and for what purposes?.

- 6) Thus, for the above stated reasons and after a careful reflection on the matter, the impugned order is set aside. The case is remanded to the Collector Agrarian Reforms, Samba for **de novo** enquiry in the matter with special reference to the issues pointed out by this court and others which are likely to come up during the course of proceedings. If the Court/Office below finds that there is any violation of the provisions of the Agrarian Reforms Act, 1976, specifically the ones relating to alienation, or any other law for the time being in force, it shall take action accordingly. In case not competent in this behalf, it shall forward the case along with specific recommendations to the authority competent to take action in the matter. All the exercise shall be completed within a period of 60 (Sixty) days hereof along with the submission of a compliance report in this regard. 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 **19th day of**
November, 2014 under my hand and seal
of this Court.