

**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>
<b>474/FC-Agr/AP</b>	<b>20.10.2014</b>	<b>28.05.2015</b>

**A)**

- 1) DARSHAN SINGH S/O JEET SINGH R/O LALYAL, TEHSIL AND DISTRICT JAMMU;
- 2) ROMESH SINGH S/O KANCHAN SINGH R/O VILLAGE GHAROTA, TEHSIL AND DISTRICT JAMMU;
- 3) KARTAR SINGH S/O NIRJAL SINGH R/O -----DO-----;
- 4) NASEEB SINGH S/O -----DO-----;
- 5) BAHADUR SINGH S/O MUNSHI R/O -----DO-----.

**(PETITIONERS)**

**VERSUS**

- 1) FAIZ MOHAMMAD S/O FAQIR MOHAMMAD R/O VILLAGE LALYAL, TEHSIL AND DISTRICT JAMMU;
- 2) MOHAMMAD YOUSUF S/O ALI MOHAMMAD R/O -----DO-----;
- 3) SHAM SINGH S/O JEET SINGH R/O VILLAGE LALYAL, TEHSIL AND DISTRICT JAMMU;
- 4) ZALIM SINGH S/O -----DO-----;
- 5) RAJESH SINGH S/O KANCHAN SINGH R/O VILLAGE GHAROTA, TEHSIL AND DISTRICT JAMMU;
- 6) MONA DEVI D/O PRITHVI R/O -----DO-----;
- 7) KAPOOR SINGH S/O MUNSHI R/O -----DO-----;
- 8) CHANCHAL SINGH S/O -----DO-----.

**(PROFORMA RESPONDENTS)**

In the matter of:

**Reference dated 22.04.2014 made by the Settlement  
Commissioner, J&K in revision against the order dated**

**18.12.2009 passed by the Tehsildar (S), Jammu under “Farad Badar” directing entry of 70 Kanals of State land falling under Khasra No. 430 in village Lalyal, Tehsil and District Jammu in favour of respondent No. 1 (40 Kanals) and respondent No. 2 (30 Kanals) by distributing the age old possessory status of the petitioners as occupancy tenants of State land.**

**B)**

- 1) MOHAMMAD YOUSUF S/O ALI MOHAMMAD R/O LALYAL, TEHSIL AND DISTRICT JAMMU;
  - 2) FAIZ MOHAMMAD S/O FAQIR MOHAMMAD R/O -----DO-----;
- (PETITIONERS)**

**VERSUS**

- 1) DR. ROHIT GUPTA S/O KULDEEP RAJ GUPTA R/O H. NO. 45, EXT. II, SUBHASH NAGAR, JAMMU;
  - 2) BACHAN SINGH S/O JEET SINGH R/O VILLAGE LALYAL, TEHSIL AND DISTRICT JAMMU;
  - 3) SHAM SINGH S/O -----DO-----;
  - 4) ZALIM SINGH S/O -----DO-----;
  - 5) ROMESH SINGH S/O KANCHAN SINGH R/O VILLAGE GHAROTA, TEHSIL AND DISTRICT JAMMU;
  - 6) KARTAR SINGH S/O NIRJAL SINGH R/O -----DO-----;
  - 7) PRITHVI SINGH R/O VILLAGE LALYAL, TEHSIL AND DISTRICT JAMMU;
  - 8) NAIB SINGH R/O -----DO-----;
  - 9) MOHAN SINGH R/O -----DO-----.
- (RESPONDENTS)**
- 10) TEHSILDAR SETTLEMENT, JAMMU;
  - 11) PATWARI, KANHA CHAK, JAMMU.

**(PROFORMA RESPONDENTS)**

In the matter of:

**Revision petition against the order dated 29.06.2012 passed by the Settlement Officer (with powers of Collector) Jammu in file No. 783/SOJ in case title, Dr. Rohit Gupta & Others Vs. Mohammad Yousuf & Others”.**

For Petitioner No. 4 --- Advocate K. C. Gupta  
For Respondent No. 1 & 2 --- Advocate Ravi Kumar Sharma  
For others --- Nemo

**JUDGEMENT**

- 1) The present controversy concerns State land measuring 70 Kanals falling under Khasra No. 430 in village Lalyal, Tehsil and District Jammu. One Jeet Singh together with some other persons was the occupancy tenant of this land under Sec. 4 (Class 1) of the Tenancy Act. However, the Tehsildar (Settlement), Jammu vide order dated 18.12.2009 on “*Farad Badar*” declared the respondent No. 1 (in Reference A) as an occupancy tenant of the land measuring 40 Kanals. Similarly, the respondent No. 2 (in Reference A) was conferred with the same rights with regard to the remaining 30 Kanals of land.
- 2) It has been noted that after a short spell of proceedings before the Settlement Officer, Jammu, the matter terminated in the court of the Settlement Commissioner, J&K. After taking an overall view of the facts and circumstances of the records, the court below observed that a ‘*Farad Badar*’ can’t be used for changing the *jamabandi* entries in the subsequent records without orders for their variations except where the variations merely consists in the removal of a clerical mistake and in no way to confer any rights as has been done in the instant case. During the conduct of harvest inspections, the Tehsildar/Naib-Tehsildar/Girdawar is supposed to follow the procedure as mandated in Para 13 and 15 of the Standing Order 22 in order to prevent errors in Khasra *Girdawari* to check the changes and alterations in rights, cultivation and rent noted by the concerned patwari and wherever, latest *jamabandi* has not been prepared, the entries in the Khasra *Girdawari* can be corrected by way of a mutation attested by the Assistant Collector 1<sup>st</sup> Class. The officers while noting

change in the cultivation are supposed to record a note to this effect in the *farad partal* only. The Financial Commissioner Revenue vide circular instructions issued under endorsement No. FC/LS/Misc/CIR-97 dated 06.09.1997, No. FC/LS/1648/97 dated 22.12.1997 and No. FC/LS/Misc/CIR-2011 dated 25.03.2011 has in categorical terms directed the controlling officers to seek orders on mutation in respect of changes noticed in ownership/possession which is also germane to paras 13 and 14 of the Standing Order 22. It is thus amply clear that change in girdawari entry can't be made without holding an enquiry and after adopting due procedure.

3) Regarding the Revision at 'B' above, it was observed by the court below that under Sec. 10 of the CPC a court is debarred from proceeding further in a suit where matter in issue is directly or substantially involved in a previously instituted suit pending in the same or any other court having jurisdiction to grant the relief claimed. But the Settlement Officer had neither the jurisdiction nor is there any law at present for any court to allow conferment of occupancy tenancy rights by correction in records in respect of State land and therefore, on this point the embargo laid under Sec. 10 does not apply to this court for the disposal of the revision. Similarly, Order 23 Rule 1 of the CPC would not come in the way of this court to dispose of the matter. In nutshell, the court below has submitted the case to this court with the recommendations to accept the revision petition at 'A' and set aside the order dated 18.12.2009 passed by the Tehsildar, Settlement Jammu. However, it has dismissed the revision petition at 'B'.

4) This court has carefully gone through the case file and commands that the court below has quite logically addressed the controversy. The reasons spelt out by the Id. Settlement Commissioner for settling the issues are cogent and rational. Moving further, the records indicate that the land under consideration is "**gair mumkin dariya**" which is undeniably an unculturable land. Any encroachment on the same can be ecologically disastrous. After the coming into force of the Agrarian Reforms Act, 1976, these lands are governed under the provisions of this Act. The proviso appended with Sec. 13 of the Agrarian Reforms Act, 1976 lays down that the **lands recorded as Orchard, Arak, Kap, Kah Krisham or of a class notified under clause (f) of Sec. 3 shall not be put to any use other than such Orchard, Arak, Kap, Kah Krisham or for**

**growing fuel and fodder, as the case may be, subject to sub-section (1) of Sec. 15 in the case of an orchard.**

- 5) Likewise, Sec. 133 (2) (c) of the land revenue Act, 1996 (1939 A.D) provides that when any person, without due authority, has taken possession of land belonging to the Government, a Revenue Officer empowered in this behalf by the Government of his own motion or on an application of any interested person, may eject the person so encroaching upon or cultivating such land and take possession of the same without paying any compensation for crops or improvements, and may also, by order duly proclaimed, forbid repetition of the encroachment. The law is very clear regarding encroachments on state land. In fact, no public functionary is authorised to make entries in respect of these lands.
- 6) For the reasons aforesaid and after a thoughtful consideration of the matter, the reference dated 22.04.2014 made by the Settlement Commissioner, J&K is accepted. Accordingly, the order dated 18.12.2009 passed by the Tehsildar (S), Jammu is set aside. The case is remanded to the Tehsildar concerned for a ***de novo*** enquiry into the matter with special reference to the provisions of the Agrarian Reforms Act, 1976 *vis-a-vis* the law governing Aluvian and Diluvian and for further appropriate necessary action thereafter. 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 **28<sup>th</sup> day  
of May, 2015** under my hand and Seal  
of this Court.