

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

FILE NO.
292/FC-AP

DATE OF INSTITUTION
25.04.2013

DATE OF DECISION
28.05.2015

- 1) DAYAL SINGH S/O RASALU @ RASAL SINGH R/O CHAK CHHIBA KHURD,
TEHSIL AND DISTRICT SAMBA.

(PETITIONER)

VERSUS

- 1) STATE OF J&K THROUGH ADDITIONAL TEHSILDAR SAMBA;
2) JOINT SETTLEMENT COMMISSIONER, JAMMU;

(RESPONDENTS)

- 3) SHAIL SINGH S/O SUKHDEV SINGH R/O CHAK CHHIBA KHURD, TEHSIL
AND DISTRICT SAMBA;
- 4) POOJA D/O -----DO-----;
- 5) MANOHAR SINGH S/O RAJ SINGH R/O -----DO-----;
- 6) KULDIP SINGH S/O -----DO-----;
- 7) PURSHOTAM SINGH S/O-----DO-----;
- 8) BALWAN SINGH S/O MILKHI SINGH R/O -----DO-----;
- 9) RASHPAL SINGH S/O-----DO-----;
- 10) LAL SINGH S/O -----DO-----;
- 11) JASBIR SINGH S/O -----DO-----.

(PROFORMA RESPONDENTS)

In the matter of:

**Revision petition against the order dated 25.05.2012
passed by the respondent No. 2 on file No. 543/JSC/AP
dismissing the revision petition filed against the order**

dated 09.07.2008 (BK) passed on mutation No. 27 under the Big Landed Estates Abolition Act, 2007 (Bk) with regard to the land measuring 54 Kanals and 11 Marlas falling under Khasra No. 01 (06K-03M), 21 (01K-11M), 24 (06K-04M), 37 (10K-14M), 47 (12K-11M), 51 (05K-03M), 66 (08K-13M), 61 (01K-13M), 95/34 (19M), 09 (01K-07M) and 07 (11M) of village Chak Chhiba Khurd, Tehsil and District Samba.

For Petitioners --- Advocate S. N. Gupta

For Respondent No. 1-2 --- Revenue Attorney/Assistant Revenue Attorney

J U D G E M E N T

- 1) The concise facts of the case are that one Milkhi Ram & others were the owners of the land referred to herein above. This land came under the purview of the Big Landed Estates Abolition Act, 2007 (BK) and the Additional Tehsildar, Samba attested the mutation No. 27 dated 09.07.2008 (Bk) by virtue of which the rights and interests of the ex owners over the said land were extinguished and vested in the state.
- 2) Aggrieved, the petitioner along with the proforma respondents herein questioned the validity of mutation No. 27 in revision before the court of the Joint Settlement Commissioner, Jammu and Kashmir. After an analysis of the relevant record, the said court observed that the Tehsildar concerned has rightly escheated the land to the state. It is presumed that he had properly verified the spot prior to the attestation of the impugned mutation. Apparently, land falling under Khasra No. 1, 21, 30 and 48 has been recorded as cultivable which was not selected by the ex-owners. In addition, the revision petition was filed after a lapse of 60 years and it is not plausible to relate the present spot position with the one which was prevailing at the appropriate time. Thus, keeping these factors into consideration, the said court dismissed the revision petition.

- 3) Dissatisfied, the petitioner has filed the instant revision petition before this court challenging the order passed by the Joint Settlement Commissioner together with the mutation No. 27. After perusing the relevant record, it is observed that the only substantial question of law involved in the matter is as to whether the unculturable lands were exempted from the operation of the Big Landed Estates Abolition Act, 2007 (BK). **Sec. 4 (2)** of the aforesaid Act lays down that extinction of the right of ownership under Sec. 4 (1) shall not apply to **(a)** a unit of land not exceeding 182 Kanals including residential sites, *Bedzars* and *Safedzars*; **(b)** *Kah-Krisham* areas, *Araks*, *Kaps* and such lands including those used for raising fuel and fodder as are unculturable and **(c)** Orchards. It is true that the Act was not applicable to unculturable lands including some particular categories put forth in the said provision. Thus, the lands which were categorised as unculturable should not have been vested in the state.
- 4) However, after the coming into force of the Agrarian Reforms Act, 1976, the terms and conditions to keep such lands have been modified which have an overriding effect as per Sec. 32 of the said Act. **Sec. 3 (f)** of this Act lays down that the provisions of the Act shall not apply to lands outside the district of Ladakh, which are unculturable or in the form of *Arak*, *Kap* or *Kah-Krisham* or which grows fuel or fodder and belongs to such class as is notified by the Government, not exceeding **04 Standard Acres** per family.
- 5) On top of it, there are two significant provisions of laws which govern unculturable lands throughout the state. **Sec. 20-B of the Big Landed Estates Abolition Act, 2007 (BK) expressly prohibits the transfer of such lands or any interest therein barring even any registration of documents in this behalf.** Secondly, 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.** While dealing with such cases, there is a need to keep a hawk's vigil over the usage of these lands in accordance with the well developed mechanism already in force.

- 6) For the reasons aforesaid and after a thoughtful consideration of the matter, the order dated 25.05.2012 passed by the Jt. Settlement Commissioner, Jammu alongwith the impugned mutation No. 27 passed by the Tehsildar Samba 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 and for further appropriate necessary action thereafter.
- 7) Let a copy of this order be forwarded to all Deputy Commissioners in the State with the direction to constitute forthwith a three member committee headed by the Tehsildar concerned in each Tehsil to see as to whether the above stated provisions have been implemented in letter and spirit. Similarly, a monitoring committee shall be formed at the district level for the purpose. All Deputy Commissioners shall forward a work done and action taken statement to this office after every two months for an administrative review. 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 **28th day**
of May, 2015 under my hand and Seal
of this Court.