

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

FILE NO.
316/FC-AP

DATE OF INSTITUTION
08.10.2013

DATE OF DECISION
02.12.2014

1) HIMMAT SINGH S/O LATE GURA RAM R/O VILLAGE MAGOWALI,
TEHSIL R.S.PURA AND DISTRICT JAMMU.

(PETITIONER)

VERSUS

1) ASHOK KUMAR **(ADOPTED)** S/O ISHER DASS R/O VILLAGE
MAGOWALI, TEHSIL R.S.PURA AND DISTRICT JAMMU **(THROUGH
ATTORNEY HOLDER JEET SINGH S/O BHULLA RAM R/O VILLAGE
MAGOWALI, TEHSIL R.S.PURA AND DISTRICT JAMMU);**

2) MADAN LAL S/O LATE GURA RAM R/O -----DO-----;

(RESPONDENTS)

In the matter of:

**Reference dated 25.09.2013 made by the court of
the Additional Commissioner (with powers of
Divisional Commissioner) Jammu in revision
petition recommending to set aside the order
dated 08.01.2011 passed on mutation No. 589
attested with regard to the inheritance of Isher
Dass in favour of his adopted son, Ashok Kumar.**

For Petitioner --- Advocate A.G.Sheikh

For Respondent No. 1 --- Advocate Dara Singh

For Respondent No. 2 --- Nemo

J U D G E M E N T

- 1) Briefly stated, facts of the case are that one **Bhulla Ram S/O Radhu** was a displaced person of 1947 who was allotted evacuee land measuring **56 Kanals 11 Marlas** falling under different Khasra numbers in the above stated village under the **Cabinet Order No. 578-C of 1954** by the Joint Rehabilitation Board. The **Form-A** annexed with the case file portrays his other family members namely, Indru as his wife, Jeetu as his daughter and Dharma as brother. However, the **Register Cancellation of 1970** shows that the P.R.O, Jammu appointed Ishar Dass as head of family in place of his brother, Bhulla Ram. Later on, occupancy tenancy rights under **Sec. 3-A of the Agrarian Reforms Act, 1976** were conferred on Isher Dass with regard to the aforesaid land (**Impugned mutation showing only 55 Kanals and 17 Marlas**). Isher Dass had adopted one Ashok Kumar S/O Jeet Singh residence of the same village, respondent No. 1 herein by way of an adoption deed duly registered in the court of **Munsiff, R.S.Pura** on 28.02.1996. After the death of the said occupancy tenant, the Tehsildar (S) R.S.Pura attested the impugned mutation of inheritance in favour of his adopted son.
- 2) Aggrieved, the petitioner herein challenged the action of the Tehsildar (S) R.S.Pura on various grounds by filing a revision petition before the Divisional Commissioner, Jammu who transferred the same to the Additional Commissioner (with powers of the Divisional Commissioner) Jammu. The court below after hearing both the parties and examining the relevant record observed that Radhu was a displaced person of 1947 who had four sons namely, Bhulla Ram, Gura Ram, Isher Dass and Dharam Chand. Technically then, after the death of Radhu, all the family members were entitled for conferment of occupancy tenancy rights under Sec. 3-A of the Agrarian Reforms Act, 1976; whereas these rights were conferred on a single son as has been done in the present case. Consequently, respondent No. 1 herein should be permitted to have a share in the disputed land equivalent to the share of his father only. Moreover, the Cabinet Order No. 578-C of 1954 read with para 15-B and other rules entitles every member of the original allottee equal share in the allotted land. Thus, taking these technicalities into consideration, the

court below opined that the impugned mutation is mala fide and is against the principles of natural justice. Accordingly, under **Sec. 15 (3) of the Land Revenue Act, 1996 (Smvt.)**, it has reported the case to this court with the recommendation to set aside the impugned mutation and to remand the matter to the Tehsildar R.S.Pura for *de novo* enquiry and passing of fresh orders taking into account the original allotment and the entitled share of all the family members including the adopted son, the respondent No. 1 herein.

- 3) However, on 11.11.2013, the respondent No. 1 herein also filed a revision petition before this court challenging the order passed by the Additional Commissioner (with powers of the Divisional Commissioner) Jammu. Later, the petitioner came to know that the order passed by the court below was not final and that the same was pending disposal before this court. As such, the petitioner on 10.12.2014 submitted that his revision petition be treated as objections to the order under deliberation.
- 4) This court has carefully gone through the case file and the other connected record. It has been noted with regret that the court below has not examined the record properly. No instance is found where Radhu is shown as a displaced person as has been observed by the court below; rather in the **Form-A**, his son Bhulla Ram has been shown as such. Later, after the death of the said Bhulla Ram, the P.R.O Jammu appointed Isher Dass as head of the family in place of said Bhulla Ram. The very basis on which the court below has put reliance appears to be incorrect.
- 5) Moreover, the occupancy tenancy rights under Sec. 3-A of the Agrarian Reforms Act, 1976 were conferred on Isher Dass with regard to the disputed land and a mutation was also attested in this regard. The petitioner herein claims that the same has been challenged before the Joint Commissioner Agrarian Reforms, Jammu. This court is of the opinion that the survival of the impugned mutation would depend upon the outcome of that appeal.
- 6) While examining the record, it has also come to the notice of this court that petitioners have annexed a xerox copy of the Register Cancellation for the year 1970 which depicts Gura Ram as one of the family members

of Bhulla Ram whereas, there is no mention of the said name in the certified copy of the same. It seems that some manipulation has been done in the records which needs to be enquired into.

- 7) For the reasons discussed above, therefore, the reference made by the court of the Additional Commissioner (with powers of the Divisional Commissioner) Jammu is accepted to the extent that the case is remanded to the Tehsildar R.S.Pura for a ***de novo*** enquiry. In addition, the Tehsildar concerned is directed to enquire into the issue raised by this court regarding the entry of Gura Ram in the Register Cancellation for the year 1970 and to take 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 **2nd day of
December, 2014** under my hand and Seal
of this Court.