

**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>375/FC/ARC/AP</b>	<b>23.07.2014</b>	<b>10.03.2015</b>

**A)**

1) INDER SINGH S/O ATTAR SINGH R/O GADI GARH, TEHSIL AND DISTRICT JAMMU. **(APPELLANT)**

**VERSUS**

2) BALBIR SINGH S/O RASHPAL SINGH R/O GADI GARH, TEHSIL AND DISTRICT JAMMU. **(RESPONDENT)**

In the matter of:

**Appeal against the order dated 24.11.2006 passed by the Tehsildar Settlement, Jammu on mutation No. 641 dated 04.02.1988 in remand from the court of the Joint Commissioner, Agrarian Reforms, Jammu.**

**B)**

1) BALBIR SINGH S/O RASHPAL SINGH R/O GADI GARH, TEHSIL AND DISTRICT JAMMU. **(APPELLANT)**

**VERSUS**

2) INDER SINGH S/O ATTAR SINGH R/O GADI GARH, TEHSIL AND DISTRICT JAMMU. **(RESPONDENT)**

In the matter of:

**Appeal against the order dated 24.11.2006 passed by the Tehsildar Settlement, Jammu on mutation No. 641 dated 04.02.1988 of village Hakal conferring occupancy tenancy rights of land measuring 07 Kanals and 10 Marlas in favour of the respondent.**

For Balbir Singh        --- Advocate K.S.Puri  
For Inder Singh        --- Advocate G.C.Sharma

### **J U D G M E N T**

- 1) Briefly stated, the controversy is related to the land measuring 11 **Kanals falling under khasra No. 684/53 Min. in village Hakal, Tehsil and District Jammu.** This land was under the protected tenancy of Attar Singh, father of appellant at 'A' above and his daughter Saran Kour Wd/O Rashpal Singh in equal shares. The Tehsildar Agrarian Reforms, Jammu attested the mutation No. 641 by virtue of which occupancy tenancy rights with regard to land measuring 07 Kanals and 10 Marlas out of this land were conferred on Attar Singh under Sec. 3-A of the Agrarian Reforms Act, 1976. Another mutation No. 909 dated 09.08.2004 was attested whereby Balbir Singh, respondent at 'A' above and son of Saran Kour was conferred with the rights of occupancy tenancy on land measuring 02 Kanals and 09 Marlas falling under the same Khasra number.
- 2) Aggrieved, the appellant and the respondent herein filed three appeals and counter appeals against each other challenging both these mutations, viz. No. 641 and 909, before the Joint Commissioner, Agrarian Reforms, Jammu. The court below while going through the relevant record observed that the families of Attar Singh and Saran

Kour, despite being father and daughter, constituted two separate units. The first was allotted 10 Kanals and 10 Marlas of land while the latter was allotted 09 Kanals and 10 Marlas in village Hakal. Both were, however, conferred occupancy tenancy rights of land measuring 09 Kanals and 19 Marlas only by way of attestation of the above stated mutations. It was held by the court below that the Tehsildar Jammu while attesting the mutation No. 909 had exceeded his jurisdiction and moreover, without possession no rights of occupancy can be granted under Sec. 3-A. Accordingly, both mutations were set aside and the case was remanded to the Tehsildar Settlement Jammu to hold a fresh enquiry in presence of the interested parties. Further, the Tehsildar concerned was directed to pass appropriate orders after verifying the possession on the spot and after keeping in view all the rules and laws laid down for the allotment of land to the displaced persons of 1947 as well as under Sec. 3-A of the Agrarian Reforms Act, 1976.

- 3) Consequently, the Tehsildar concerned conducted a fresh enquiry into the matter with regard to the spot and the record. It was observed that in the *girdawari* of 1971, both Saran Kour and Attar Singh have been entered in cultivating possession of 11 Kanals land in equal shares but land measuring 09 Kanals and 19 only is left on the spot. However, after *Rabi*, 1974, Attar Singh has been shown in possession of 07 Kanals and 10 Marlas of land. Therefore, keeping in view the prevailing facts and circumstances, the Tehsildar concerned passed the order dated 23.11.2006 on mutation No. 641 and upheld the same.
- 4) Dissatisfied, both parties again challenged the order dated 23.11.2006 before the Joint Commissioner, Agrarian Reforms, Jammu in two counter appeals. However, during the pendency of the cases, the Govt. of Jammu and Kashmir abolished the office/court of Joint Commissioner, Agrarian Reforms in the state. Consequently, Balbir

Singh filed a petition before this court for the transfer of both these cases. Accordingly, on 14.10.2014, this court felt it just and proper to transfer the appeals to itself for disposal.

- 5) Since the cause of action and subject matter in both the appeals was the same, therefore, these have been clubbed for joint disposal. This court has carefully gone through the case file along with the written submissions filed by the parties and the other connected record. **Firstly**, it is NOT clear as to whether land under consideration is really an evacuee property or not?. In column 3 of the mutation No. 641, no such mention has found a place which may show that the land under contemplation was declared as such. **Secondly**, column No. 4 of the said mutation shows that there were 11 Kanals of land under the Protected Tenancy of Attar Singh and Saran Kour in equal shares. When the Tehsildar concerned was conducting the enquiry, Inder Singh had admitted that this land was allotted to him in the year 1953-54. If it were so, why did the said allotment not get a mention in the *Jamabandi* of 1959-60?.
- 6) Indeed, the rights of occupancy tenancy under Sec. 3-A of the Agrarian Reforms Act, 1976 can be granted in favour of displaced families/persons with regard to evacuee property only. In the instant case, in order to reach a just conclusion, an answer to the observations made is required.
- 7) Thus, for the reasons aforesaid and after a careful reflection, the mutations No. 641 dated 04.02.1988 along with order dated 23.11.2006 passed on it by the Tehsildar concerned and mutation No. 909 dated 09.08.2004 are set aside. The case is remanded to the Tehsildar concerned for a **de novo** enquiry into the matter specially relating to the claim that in 1947, Attar Singh and his daughter Saran Kour were allotted 20 Kanals of land with 10 Kanals 10 Marlas for Attar Singh and 09 Kanals 10 Marlas for Saran Kour in Khasra No.

684/53 min in village Hakkal; that while LRs of Attar Singh appear to have retained their share, the LRs of Saran Kour have disposed off theirs; how much of their original allotment are the parties in possession of and why; and for taking further appropriate necessary action as warranted under law for the time being in force. The exercise be completed within 60 days of the issue of this order. 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 **10<sup>th</sup> day of  
March, 2015** under my hand and seal of  
this Court.