

**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) JAGDEV DUTTA S/O OM PARKASH R/O PAREL, TEHSIL AND DISTRICT SAMBA;
 - 2) PREM DUTTA S/O -----DO-----;
 - 3) SUBASH DUTTA S/O -----DO-----;
 - 4) SATISH DUTT S/O -----DO-----;
 - 5) DAVINDER DUTTA S/O -----DO-----;
 - 6) VASHINO DUTT S/O ISHER DASS R/O -----DO-----;
 - 7) GOUTAM DUTTA S/O PITAMBER NATH DUTTA R/O -----DO-----;
 - 8) SANJAY DUTTA S/O -----DO-----;
- (PETITIONERS)**

VERSUS

- 1) STATE OF J&K THROUGH TEHSILDAR SAMBA;
- (RESPONDENT)**
- 2) SHANTA KUMARI D/O ISHER DASS R/O PAREL, TEHSIL AND DISTRICT SAMBA;
 - 3) KAMALA KUMARI D/O -----DO-----;
 - 4) NEELAM SHARMA D/O OM PARKASH R/O -----DO-----;
 - 5) DARSHNA DEVI D/O -----DO-----;
 - 6) MEENA CHIBBER D/O -----DO-----;
 - 7) ANJU DUTT D/O PITAMBER NATH DUTTA R/O -----DO-----.

(PROFORMA RESPONDENTS FROM 2-7 DELETED)

In the matter of:

Revision petition against the order dated 26.08.2008 (BK) passed by the Tehsildar Samba on mutation No. 22 under the Big Landed Estates Abolition Act, 2007 (BK) in respect of khasra No. 12 (179K-19M), 38 (03K-01M), 52 min. (12K-17M), 67 (06K-15M), 68 (12K-15M), 80/1 (167K), 16 (03K-01M), 31 (04K-11M), 35 (19M), 65 (01K-11M), 66 (06K-03M) and 32 (06K-03M) totalling to 535 Kanals and 02 Marlas.

For Petitioners --- Advocate S. N. Gupta/S. K. Kapoor
For Respondent No. 1 --- Revenue Attorney/Assistant Revenue Attorney

J U D G E M E N T

- 1) The concise facts of the case are that one Isher Dass and his brother Ram Parkash, both sons of Thakur Dass, were the owners of landed property of more than 500 Kanals falling under different khasra numbers in village Parel, Samba. This land came under the purview of the Big Landed Estates Abolition Act, 2007 (BK). Accordingly, the Tehsildar Samba attested the mutation No. 22 dated 26.08.2008 (BK) by virtue of which the rights and interests of the ex owners were extinguished and vested in the state.
- 2) Aggrieved, the petitioners herein have filed the present revision petition before this court on various grounds. Initially, the petitioners were attending the case but after sometime they discontinued their appearance. The revision was, therefore, dismissed in default on 20.02.2013. Later, they filed an application for restoration of the same citing many reasons. So this court felt it just and proper to dispose of the matter on merits.
- 3) The focus of averments made by the petitioners is that most of the land under consideration was unculturable falling under the exemption clause of the Big Landed Estates Abolition Act. The Tehsildar, Samba by

extinguishing the owner's rights over these lands has done a great misdeed. The Revenue Attorney while countering the assertions made by the petitioners has filed detailed written objections in the matter. It has been observed that **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. Thus, the lands which were categorised as unculturable should have not 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 amended. **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) In addition, 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 (Smt.) expressly prohibits the transfer of such lands or any interest therein barring 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, therefore, there is a need to keep a hawk's eye over the usage of these lands in accordance with the well developed mechanism placed by the Govt. in this regard.

6) For the reasons aforesaid and after a thoughtful consideration of the matter, the order dated 26.08.2008 passed on impugned mutation No. 22 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. 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.