

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

FILE NO.
14/FC-AP

DATE OF INSTITUTION
21.06.2010

DATE OF DECISION
21.04.2015

- 1) J&K CO-OPERATIVE HOUSING CORPORATION LTD., 243 NEW PLOT,
JAMMU THROUGH MANAGING DIRECTOR.

(PETITIONER)

VERSUS

- 1) ASHOK KUMAR S/O GOPI CHAND THAKKAR R/O VILLAGE KUD, TEHSIL
CHENANI, DISTRICT UDHAMPUR.

(RESPONDENT)

In the matter of:

**Revision petition against the order dated 12.06.2010
passed by the Divisional Commissioner, Jammu
whereby the order dated 15.07.2006 passed by the
Additional Deputy Commissioner (Collector)
Udhampur setting aside mutation No. 1677 of village
Kud is upheld.**

For Petitioner --- Advocate Amarvir Manhas
For Respondent --- Advocate Harbhajan Singh

JUDGEMENT

- 1) Briefly stated, the facts of the case are that one Subhash Chander S/O Gopi Chand R/O Village Kud, Tehsil Chenani, District Udhampur executed a 'lease deed' in favour of the petitioner herein with regard

to land measuring **33 Kanals and 06 Marlas falling under Khasra Nos. 779 (25K-17M) and 760 (07K-09M)** falling in the residential village of the lessor. This 'lease deed' was duly registered in the court of Sub-Registrar, Chenani on 07.07.1997. Afterwards, it was incorporated in the revenue record with the attestation of mutation No. 1677 dated 17.06.1998 by the Naib Tehsildar concerned.

- 2) Aggrieved, the respondent herein (brother of lessor) filed an appeal against the mutation No. 1677 before the Deputy Commissioner (Collector) Udhampur who transferred the same to the Additional Deputy Commissioner, Udhampur for disposal under law. The crux of observations made by the ADC, Udhampur was that the respondent herein was not provided an opportunity of being heard by the Naib-Tehsildar concerned. Also the Lambardar or other respectable citizens were not present at the time of attestation of the said mutation. More importantly, execution of 'lease deed' was in violation of the provisions of the Agrarian Reforms Act, 1976. Thus, the ADC, Udhampur vide order dated 15.07.2006 set aside the impugned mutation.
- 3) Dissatisfied, the petitioner herein challenged the order passed by the Additional Deputy Commissioner, Udhampur in revision before the Divisional Commissioner, Jammu. After a thorough examination of the record the court below observed that the petitioner herein is a non-state subject who is not entitled to acquire, possess or purchase any land in the state of Jammu and Kashmir. Secondly, the acquisition of property by the corporation on lease basis has created tenancy which is barred under Sec. 13 of the Agrarian Reforms Act, 1976. Thirdly, the respondent herein was not provided an opportunity of being heard by the Naib-Tehsildar concerned at the time of attestation of mutation which is contrary to the Rule 36, 44 and 46 of the Standing Order 23-A. Deliberating the matter from these viewpoints, the court below held

that the impugned mutation was attested against the provisions of the Agrarian Reforms Act, 1976, the J&K Land Alienation Act and the Transfer of Property Act including the Standing Order 23-A.

- 4) Still unsatisfied, the petitioner herein has assailed the order passed by the Divisional Commissioner, Jammu in revision before this court on various grounds. After going through the case file and the written submissions filed by the parties, it is observed that the petitioner herein is engaged in the construction business. Sec. 16 of the Land Alienation Act provides that no transfer of agricultural land either by way of lease or mortgage for non-agricultural use made for a period of more than three years shall be valid without the permission of the Deputy Commissioner concerned. Further, Sec. 13 of the said Act lays down that in no case a lease shall be for more than 21 years. But the contents of lease deed portray that the transfer of land is for a period of 99 years, that too without the permission of the Deputy Commissioner concerned and in transgression of the provisions of the Agrarian Reforms Act, 1976. In addition, the petitioner herein talks about the issue of registration of the society and its members being state subjects but that even if true is immaterial because land is not leased by individual state subjects but by a society which by definition is a non-state subject and can never be issued a state subject certificate. Land acquired by such Govt. bodies as J&K Bank, Vaishno Devi University etc. are a testimony to this restriction that under Sec. 4 of the Act no transfer can be made in favour of a non-state subject. In this background, the order passed by the court below is well reasoned and this court sees no reason to disagree with the same.
- 5) For the reasons aforesaid and after a careful reflection over the entire matter, the revision petition being devoid of merits is dismissed. The order passed by the Divisional Commissioner, Jammu is upheld. The case is remanded to the Tehsildar concerned to initiate stringent

action in the matter with special reference to the violations of the Agrarian Reforms Act, 1976 and the Land Alienation Act and any other law for the time being in force. The impugned mutation No. 1677 dated 17.06.1998 shall remain quashed. 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 **21st day of April, 2015** under my hand and Seal of this Court.