

**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>
276/FC-AP	21.02.2013	26.08.2015

- 1) KRISHANA DEVI D/O LATE BHUKHU R/O VILLAGE KHANPUR (NAGROTA),
JAMMU;
- 2) GIANO DEVI D/O -----DO-----;
- 3) DURGI DEVI -----DO-----;
- 4) CHANCHALA DEVI -----DO-----;
- 5) VIDYA DEVI -----DO-----.

**(PETITIONER NO. 1 & 5 THROUGH ATTORNEY HOLDER ONKAR GIRI
AND PETITIONER NO. 3 THROUGH ATTORNEY HOLDER RAM GIRI)**

(PETITIONERS)

VERSUS

- 1) LRS OF RAJ KUMAR S/O LATE BHUKHU R/O VILLAGE KHANPUR
(NAGROTA), JAMMU;
- 2) GIAN CHAND S/O -----DO-----;

(RESPONDENTS)

- 3) SHANTI DEVI D/O LATE BHUKHU R/O VILLAGE KHANPUR (NAGROTA),
JAMMU.

(PROFORMA RESPONDENT)

In the matter of:

**Reference dated 12.02.2013 made by the court of the
Settlement Commissioner, Jammu and Kashmir in
revision petition against the order dated 05.03.2011
passed by the Settlement Officer (Collector), Jammu
wherein he has accepted the appeal of the respondent**

**No. 1 & 2 against the mutation No. 383 of village
Khanpur (Nagrota), Jammu.**

For Petitioner Nos. 1 & 5 --- Onkar Giri (Attorney Holder)
LRs of Respondent No. 1 --- Advocate k. R. Sharma
For Respondent No. 2 --- In person

J U D G E M E N T

- 1) The brief facts of the case are that one Bhukhu, father of the petitioners and the respondents was a protected tenant of the land measuring 45 Kanals and 11 Marlas falling under Khasra Nos. 149, 150, 176 and 198 in village Khanpur, Jammu. This land came under the purview of Agrarian Reforms Act, 1976 and all rights, title and interests of the ex-owners over it were extinguished and vested in the State. Consequently, mutation No. 286 was attested under Sec. 4 of the said Act by virtue of which the said tenant was declared as prospective owner. As a part of the due process, another mutation No. 374 dated 27.06.1989 was attested under Sec. 8 of the same Act whereby Bhukhu was conferred with the ownership rights over the said land. It appears, however, that he had died much earlier (11.09.1978) and, therefore, mutation No. 383 dated 30.04.1990 was attested on account of which the inheritance of the *propositus* was devolved upon all the parties herein in equal shares.
- 2) When a dispute arose between the parties herein, the respondents Nos. 1 and 2 challenged the mutation No. 383 before the Joint Commissioner (AR) in appeal which was dismissed in default on 29.11.2001. Subsequently, they again brought a similar action before the Settlement Officer, Jammu in an appeal which came to be dismissed as withdrawn on 19.12.2008. Surprisingly, the said mutation was once again called in question in an appeal before the Settlement Officer (Collector), Jammu who vide order dated 05.03.2011 set it aside focusing on the ground that mutation No. 374 was attested on 27.06.1989 conferring ownership rights on the said Bhukhu when he had died on 11.09.1978. In addition, a mutation No. 288 dated 19.02.1981 also stood attested whereby the protected tenancy rights of Bhukhu were devolved upon the respondents herein with regard to land measuring 26 Kanals and 04 Marlas falling under Khasra No. 149 and 150 only.

- 3) As the names of the petitioners herein were crossed out against the land under consideration, they assailed the order passed by the Settlement Officer (Collector), Jammu before the Settlement Commissioner, J&K in revision. Considering the case in the light of the relevant laws related to the Agrarian Reforms vis-à-vis the tenancy, the court below observed that the requisite mutations have been attested under the provisions of the Agrarian Reforms Act, 1976, and that the Naib-Tehsildar passed the orders on mutation No. 288 dated 19.02.1981 devolving inheritance of protected tenancy on the respondents No. 1 and 2. This was followed by orders passed on mutation No. 383 dated 30.04.1990 devolving inheritance of Bhukhu on the petitioners and the respondents, respectively, in equal shares. Thus, the orders passed on mutation No. 383 are in conformity with the law which were a logical conclusion of the process transcending mutation Nos. 286 and 374 attested under Sec. 4 and 8 of the Agrarian Reforms Act, 1976. However, the said court while exercising *suo moto* powers under Sec. 15 of the Land Revenue Act, 1996 (Smtv.) has opined that the mutation No. 288 attested by the Naib-Tehsildar concerned needs to be set aside. In this background, the court below has submitted the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smtv.) for confirmation of the orders.
- 4) This court has gone through the case file as well as the connected record and observes that the court below has gone a little off the track by not going into the actual technical requirements applicable to the case. If Bhukhu had died prior to the attestation of mutations under Sec. 4 and 8 of the Agrarian Reforms Act, 1976, as has been established by the court below, then the detailed procedure under Rule 12 of the Agrarian Reforms Rules, 1977 had to be followed. But this important aspect has been overlooked by the court below. Also, Bhukhu was a protected tenant of the land measuring 45 Kanals and 11 Marlas falling under the above stated four khasra numbers but mutation No. 288 was attested with regard to the land measuring 26 Kanals and 04 Marlas only in favour of the respondent No. 1 and 2 and there was no mention of the other two khasra numbers. Therefore, this mutation has also not been attested as per the facts and circumstances.
- 5) Over and above these issues, it is also alleged that the respondent Nos. 1 and 2 have also sold some land vide sale deeds dated 31.01.1998, 14.02.1998 and

06.04.1998. The ownership rights of this land were conferred upon Bhukhu under the Agrarian Reforms Act, 1976 and were then transferred in succession to his legal heirs. However, Sec. 28-A provides that no person who is vested with ownership rights under this Act shall transfer such land or rights therein in any manner whatsoever to any person other than the Govt. It further lays down that any transfer of the land or rights therein made in contravention of this provision shall be null and void. The person who has contravened this provision shall after being given an opportunity of being heard, be dispossessed of such land by a Revenue Officer, not below the rank of Tehsildar and the land shall vest in the State and shall be disposed of in accordance with the provisions of Sec. 15 of this Act. Thus, there is a need to ascertain as to whether any such transfer as mentioned above has taken place in the matter or not.

- 6) Analysing the facts and circumstances of the case and for the reasons aforesaid, the reference made by the court below is NOT accepted. However, all mutation Nos. viz. 286 attested under Sec. 4 of the Agrarian Reforms Act, 1976, 374 dated 27.06.1989, 383 dated 30.04.1990 and 288 dated 19.02.1981 are set aside. The case is remanded to the Tehsildar concerned for a *de novo* enquiry into the matter in presence of all the concerned and for taking further appropriate necessary action with special reference to the observations made by this court. 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 **26th day**
of August, 2015 under my hand and seal
of this Court.