

**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>
173/FC/ARC/AP	17.10.2007	23.12.2014

LEGAL HEIRS OF KRISHAN LAL S/O GOKAL CHAND R/O H.NO. 582/EP,
MOHALLA PIR MITHA, JAMMU.

(APPELLANT)

VERSUS

LEGAL HEIRS OF BALAK RAM S/O FAQUIR CHAND R/O VILLAGE GIDAR
GALIAN, TEHSIL AND DISTRICT JAMMU.

(RESPONDENT)

In the matter of:

- A) Appeal against mutation No. 95 dated 22.09.1982 attested with regard to the land measuring 40 Kanals falling under Khasra No. 2 min. (36K-00M) and 314/2 (04K-00M) in village Gidar Galian, Jammu by virtue of which occupancy tenancy rights under Sec. 3-A of the Agrarian Reforms Act, 1976 have been conferred on the respondent herein;**
- B) Appeal against mutation No. 197 dated 06.06.1989 attested with regard to the land measuring 16 Kanals falling under Khasra No. 2 min. In village Gidar Galian, Jammu by virtue of which occupancy tenancy rights under Sec. 3-A of the Agrarian**

Secondly, since no allotment order favouring either party was produced, therefore, occupancy tenancy rights under the said provision can't be granted. Lastly, the possession of the land under consideration has passed on to the BSF and it is to be seen as to the date when the BSF came in possession.

- 3) Aggrieved, Parmeshwari Devi and another (**Legal heirs of the petitioner herein**) challenged this order in revision before the Jammu and Kashmir Special Tribunal. The Special Tribunal disposed of the matter observing that column 14 of the impugned mutation No. 95 shows that the land was allotted to Balak Ram as evacuee property and was in his possession since Kharif, 1971. Apparently, on the basis of this entry, occupancy tenancy rights under Sec. 3-A of the Agrarian Reforms Act were conferred on him. The appellate court agreed with this court that no allotment with regard to the shamilat land can be made in favour of any person but held that there is no bar in making allotment of shamilat land if it is declared evacuee property. Consequently, if it is found that the same is in personal cultivation of a particular individual since Kharif, 1971, occupancy tenancy rights are to be conferred on the said party. Hence, on 23.08.2007, the case was remanded back to this court to hear the parties including the Custodian, Evacuee Property, Jammu.
- 4) Since then, the case is on the dockets of this court. An examination of the case file and the related revenue record shows that there still remain some unanswered questions in the matter. This court is, therefore, of the considered opinion that answers to the same are necessary to set the whole controversy at rest; The questions are: **A)** What is the refugee status of the parties? **B)** When did the parties come in possession of the land and when did they leave the same to the BSF? **C)** Was the land under consideration validly allotted to the parties and if so, were they in the personal cultivation thereof in Kharif, 1971? **D)** Is the land under consideration declared as an evacuee property or not?.
- 5) Having considered the facts and circumstances and for the reasons discussed above, both the impugned mutations are, therefore, set aside. The matter is remanded to the Tehsildar concerned for a **de novo** enquiry with special reference to the above mentioned observations made by this court. The exercise shall be completed within a period of 90 days hereof in presence of the parties and other respectable citizens of the area. The representatives of Custodian, Evacuee Property, Jammu and the BSF, respectively shall also be heard. 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 **23rd day of
December, 2014** under my hand and Seal
of this Court.