

**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>
132/FC/ARC/AP	27.06.2007	23.12.2014

- 1) KUSAM SHARMA D/O VACHASPATI R/O 145, RAGHAVPURA, JAMMU;
 - 2) RANJANA SHARMA D/O -----DO-----.
- (APPELLANTS)**

VERSUS

- 1) RAJ KUMAR S/O BANTU R/O VILLAGE PALOURA, TEHSIL AND DISTRICT JAMMU;
 - 2) HEM RAJ S/O -----DO-----;
 - 3) TIRATH RAM S/O DESU R/O TOP SHERKHANIYA, JAMMU;
 - 4) STATE.
- (RESPONDENTS)**

In the matter of:

Appeal against an ex parte order dated 08.12.2006 passed by the Assistant Settlement Officer (Collector Agrarian Reforms) Jammu in a remand case pertaining to mutation No. 1585, 1585/1, 1678, 1610 and 1677 attested with regard to the land falling under Khasra No. 23, 24, 25, 26, 57 and 58 in village Paloura, Tehsil and District Jammu.

For Appellants

--- Advocate M.L.Bhat

For Respondent No. 1 & 2

--- Advocate Kulbhusan Sajgotra

J U D G E M E N T

- 1) Briefly stated, the facts of the case are that one Vachaspati, father of appellants herein had filed three appeals challenging the above stated mutations before the court of the Joint Financial Commissioner, J&K. After examining the relevant record, the said court on 29.05.1989 disposed of all the appeals together with the key observations that while attesting the impugned mutations, no opportunity of hearing was provided to the ex owner. Secondly, some land has been shown as **Gair Mumkin Kotha** and **Orchard** and that there is a separate procedure in the Agrarian Reforms Act, 1976 to deal with such lands. Thirdly, that there is no provision in the Agrarian Reforms Act, 1976 for correction of Girdawari as has been done in the instant case. Accordingly, all the impugned mutations were set aside and the case was remanded to the Assistant Settlement Officer (Collector Agrarian Reforms) Jammu for a **de novo** enquiry in the matter with special reference to the observations made and to take further necessary appropriate action.
- 2) Aggrieved, Tirath Kumar, respondent No. 3 herein (and a legal heir of the alleged tenant Bantu) challenged the order passed by the Joint Financial Commissioner in revision before the J&K Special Tribunal. The Special Tribunal disposed of the matter by setting aside the impugned order solely on the ground that there was no sufficient cause before the Joint Financial Commissioner to condone the delay in the matter. However, the matter was thereafter taken to the Hon'ble High Court of J&K which on 26.02.1999 set aside the order passed by the Tribunal and the order passed by the Joint F.C was upheld. Tirath Kumar then filed an LPA before the Divisional Bench which was dismissed on 10.11.2000. He then filed a review petition which too was dismissed on 03.06.2004.
- 3) Complying to the directions passed by the Joint Financial Commissioner, the Assistant Settlement Officer (Collector Agrarian Reforms) Jammu conducted an

enquiry into the matter. The enquiry officer observed that no land out of the land under consideration has been shown as **Gair Mumkin Kotha or Orchard** in the record. Moreover, the ASO, Jammu has spoken of some payment of Rs. 20,00000/- (Rupees Twenty Lakhs only) to the ex owner by Bantu, the father of the respondent No. 1 & 2. Thus, keeping the facts and circumstances of the case into consideration, he upheld all the mutations mentioned.

- 4) Aggrieved, the appellants herein, who are the daughters of the ex owner Vachaspati, have challenged the order passed by the Assistant Settlement Officer (Collector Agrarian Reforms) Jammu on various grounds. This court has gone through the case file and the other record. It has been observed that one of the principal grounds on which the Joint Financial Commissioner had set aside all the mutations was that no opportunity of being heard was provided to the ex owner of the disputed land at the time of attestation of the impugned mutations. It is, therefore, noted with regret that the enquiry officer has once again NOT provided an opportunity of being heard to the legal heirs of the said ex owner while disposing of the remand case.
- 5) Moreover, the ASO, Jammu has opined that no land out of the disputed land has been shown as **Gair Mumkin Kotha or Orchard**. But, the revenue record placed on the case file indicates that 01 Kanal of land falling under Khasra No. 24 and 09 Marla of land falling under Khasra No. 25 has been shown as **Gair Mumkin Kotha**. Besides, 09 Marlas of land falling under Khasra No. 24 has been shown as **Gair Mumkin Rasta**. Similarly, 09 Marlas of land falling under Khasra No. 25 has been shown as **Gair Mumkin Nalla** and 06 Marlas falling under Khasra No. 26 as **Banjar Kadim**. All these categories had to be dealt with separately as provided under the Agrarian Reforms Act.
- 6) Additionally, this court notes with concern that no revenue record regarding the mutation No. 1585/1 has been annexed with the case file. If at all there is any such mutation, the same is illegal ab initio. **Rule 9 of the Standing Order 23-A** dealing with the subject of attestation of mutations lays down that the serial number of mutation cases for each village should be continuous for the whole term of the settlement and each case should be given a separate serial number. No instance has been provided in the said standing order or any other law for the time being in force where a mutation can be assigned a divisible number. Had the father of respondent No. 1 and 2 been really cultivating the land under consideration as tiller on the determinant date and met all the requirements to

become a prospective owner, a mutation under Sec. 4 of the Agrarian Reforms Act, 1976 could have been attested in that behalf by allotting it a serial number next to the last/latest Entered/Attested mutation concerning that village. If this has not been done, then any mutation attested under Sec. 8 of the said Act on the basis of mutation No. 1585/1 shall be deemed illegal and needs to be set aside.

- 7) Moreover, the order passed by the Joint Financial Commissioner as well as by the Assistant Settlement Officer (Collector Agrarian Reforms) Jammu speaks of a ***Sehat Kasht*** mutation No. 1678 attested for the correction of girdawari entries from kharif, 1971 in favour of Bantu. The same is also illegal and needs to be set aside because there is no such procedure in the Agrarian Reforms Act, 1976.
- 8) Having thus considered the facts and circumstances of the case, all the impugned mutations are set aside. The matter is remanded to the Tehsildar concerned for a ***de novo*** enquiry in the matter and for taking further appropriate necessary action. The exercise shall be completed within a period of 90 days hereof in presence of the parties concerned and other respectable citizens of the area. 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.