

**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>
<b>375/FC-AP</b>	<b>28.02.2014</b>	<b>22.04.2015</b>

1) MADAN LAL S/O BUTI RAM SHARMA R/O H.NO. 28/8, KABIR BASTI  
AKHNOOR, JAMMU

**(PETITIONER)**

**VERSUS**

- 1) KRISHAN LAL KAPAI S/O SHIV SARAN R/O 75/5, AKHNOOR, JAMMU;
- 2) SANTOSH WD/O RAM LAL R/O EP 585, PEER MITHA, JAMMU;
- 3) ASHOK KUMAR S/O RAM LAL R/O PEER MITHA JAMMU;
- 4) RAJNI BALA D/O RAM LAL R/O EP 585, PEER MITHA JAMMU;
- 5) BANSI LAL S/O DURGA DASS R/O LAST MORH MATADOR TERMINUS,  
JANIPUR COLONY, JAMMU.

**(RESPONDENTS)**

In the matter of:

**Case remanded by the Divisional Bench of the  
Hon'ble High Court of J&K in LPAOW No. 253/2001,  
CMA No. 146/2003 decided on 27.01.2014 in case  
titled, "Krishan Lal Kapahi & others Vs. Financial  
Commissioner Revenue, J&K & others".**

For Appellant --- Sh. Atma Ram

For Respondents --- Advocate Amit Gupta

**ORDER**

- 1) The present case has had a stretched history of acrimony between the parties since 1981. The subject matter of the controversy is land measuring **06 Kanals and 09 Marlas falling under Khasra No. 14 and 15 in village and Tehsil Akhnoor, District Jammu**. Long back, the predecessor-in-interest of the respondents had constructed a temple known as **Mandir Shri Laxmi Narayan Ji** on 04 Marlas of land out of the aforesaid land. Of late, a dispute arose between the petitioner, manager of the said temple and the respondents/predecessor-in-interest of the respondents.
- 2) It appears that the Deputy Commissioner, Jammu had appointed the petitioner herein as the manager of the said temple. The Tehsildar Akhnoor on 07.11.1981 attested the mutation No. 79 whereby the order of his appointment was incorporated in the revenue record. This mutation was challenged in revision before the Director Land Records (with powers of Divisional Commissioner, appeals), Jammu who disposed of the case on 16.05.1987 with the recommendations to the then Financial Commissioner, Revenue to set aside the order impugned and to remand the case to the Tehsildar Akhnoor for fresh disposal. On 06.12.1988, the reference was accepted by this court. Complying with the directions, the Tehsildar Akhnoor attested the mutation No. 86 dated 23.12.1991.
- 3) Aggrieved, the petitioner herein assailed mutation No. 86 in appeal before the Additional Commissioner (with powers of the Divisional Commissioner) Jammu. Treating the appeal as a revision, the court below while deciding the case on 10.09.1996 submitted it to the then Financial Commissioner, Revenue with the recommendations that the petitioner herein may be allowed to continue as the manager of the said temple and the land under dispute be allowed to remain in the possession of the respondents herein.
- 4) Earlier this court had held that some land, out of the land in question, has been recorded as **"Gair Mumkin Talab"** which is a "common land" and should be regulated by the Common Lands Act. Secondly, the land falling under Khasra No. 15 was not in the personal cultivation of the respondents on the determinant date and therefore, it has escheated to the State under

the provisions of the Agrarian Reforms Act, 1976. Thirdly, that the land comprising both the Khasra numbers having been donated through *Sankalp* to the temple and been recorded in occupation of Baba Lal Dass, the rights of the respondents/predecessor-in-interest over the land stood extinguished. Resultantly, on 17.02.1999 this court ordered to set aside mutation No. 86.

- 5) This order dated 17.02.1999 was challenged in a writ petition before the Hon'ble High Court of Jammu and Kashmir. The Hon'ble court agreed with the conclusion drawn by the Financial Commissioner, Revenue and held that the land falling under Khasra No. 14 is undoubtedly a "**common land**" within the meaning of the Common Lands Act and therefore, the respondents herein ceased to have any right over the same. Further, it was held by the Hon'ble court that the whole land under consideration has vested in the temple whereafter the order impugned was upheld.
- 6) This order of the Writ Court was challenged in a LPA before the Divisional Bench of the Hon'ble High Court. The Hon'ble D.B. disposed of the matter by observing that whether the proprietary land can be treated as "**common land**" within the meaning of the J&K Common Land (Regulations) Act and whether land falling under Khasra No. 15 would fall within the purview of the J&K Agrarian Reforms Act, 1976 are questions that have been left unaddressed and would have been better dealt with had the parties been given an opportunity to put forth their stand. The order dated 17.02.1999 passed by this court was in that background set aside and the matter remanded to this court for fresh disposal after hearing both the parties.
- 7) This court has meticulously gone through the case file as well as the developments made in the case from time to time. It has been observed that the parties were required to adduce evidences with regard to the express observations made by the Divisional Bench of the Hon'ble High Court. But neither parties have explained their stand on the applicability of either the J&K Common Lands Act or the Agrarian Reforms Act, 1976 to the land under consideration. On the other hand, the counsel for the respondents blandly submitted that no objections are required to be filed in the matter.

8) Justice can be better served in such a case by holding an enquiry on the spot and in presence of both the parties. Thus, in view of what has been observed above, the case is remanded to the Tehsildar concerned for an on-the-spot enquiry in presence of both parties and other respectable citizens of the area. The provisions of both the Acts as spelt out by the Hon'ble High Court and the other laws for the time being in force shall be kept in mind while dealing with the case. In any case, the case shall be disposed of within a maximum period of 60 days hereof. The parties are directed to appear before the Tehsildar concerned on the first court day of May, 2015. 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 **22<sup>nd</sup> day**  
**of April, 2015** under my hand and Seal  
of this Court.