

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

FILE NO.
353/FC-AP/2014

DATE OF INSTITUTION
12.01.2015

DATE OF DECISION
26.08.2015

1) MANI RAM S/O HOSHIARA R/O VILLAGE CHHAJWAL, TEHSIL AND DISTRICT SAMBA;

(PETITIONER)

VERSUS

1) MANI RAM S/O BHULLA R/O CHAK CHHIBA KALAN, TEHSIL AND DISTRICT SAMBA;

2) TILAK RAJ S/O MANI RAM R/O -----DO-----;

3) ROMESH LAL S/O -----DO-----;

4) RAJESH KUMAR S/O -----DO-----.

(RESPONDENTS)

In the matter of:

Reference dated 30.12.2014 made by the Additional Commissioner (with powers of Divisional Commissioner), Jammu and Kashmir in revision against the order dated 29.01.2011 passed by the Additional Deputy Commissioner (Collector) Samba in case titled, "Mani Ram & others Vs. Mani Ram".

For Petitioner --- Advocate L. K. Sharma (Before the court below)

For Respondent No. 2 --- Advocate Dara Singh (For all before the court below)

J U D G E M E N T

- 1) The present case concerns land measuring 01 Kanal and 05 Marlas falling under Khasra No. 84 min in the residential village of the petitioner. It is alleged that this land was purchased by the respondents herein from the petitioner and his two brothers through an “agreement to sell” in the year 1980. A controversy arose when the Tehsildar, Samba attested the mutation No. 705 (**Sehat Kasht**) dated 03.03.2010 correcting *girdawari* entry of *Kharif*, 2009 in favour of the respondents with regard to the 15 Marlas of land falling under the same Khasra number. However, later another mutation No. 711 (**Sehat Kasht**) dated 02.05.2010 was attested whereby the petitioner was shown as “*Qabiz*” on the said 15 Marlas of land in *Rabi*, 2010.
- 2) Because the respondents names were crossed out from the records, they filed an appeal before the Additional Deputy Commissioner (Collector), Samba challenging both these mutations. Their grievance was that although they had purchased 01 Kanal and 05 Marlas of land but in the first instance, a mutation was not only attested for 15 Marlas only but by another mutation those 15 Marlas too were taken away. After considering their claims, the Collector held that the mutation No. 711 was attested without any amendment in the earlier mutation after taking sanction for reviewing the same and therefore, ordered to set it aside. He thereafter remanded the case to the Tehsildar (S) Samba with the direction to examine mutation No. 705 on the spot and if it is found as per the ground position, the same shall be allowed to sustain.
- 3) In order to get the issue settled, the petitioner herein filed a revision petition challenging the order passed by the Additional Deputy Commissioner (Collector), Samba before the Divisional Commissioner, Jammu who transferred the same to the Additional Commissioner (with powers of the Divisional Commissioner), Jammu for disposal. While dealing with the case, the court below raised certain queries which are: a) Could the Additional Deputy Commissioner (Collector), Samba entertain the appeal directly or he was to be so authorised by the District Collector first?.

- b) The land has been transferred through an “agreement to sell” but there is no clarity on whether such an agreement contravenes the provisions of the Agrarian Reforms Act, 1976?. c) What is the relationship of 01 Kanal and 05 Marlas with the other 15 Marlas involved and whether or not it is forcefully occupied by the respondents as alleged by the petitioner?.
- 4) It was held by the court below that the order passed by the Additional Deputy Commissioner, Samba does not provide a cogent reply to these questions. Moreover, no opportunity of being heard was provided to the petitioner herein while passing the said order. Keeping these factors into consideration, it has submitted the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smtv) with the recommendation to set aside the order passed by the Additional Deputy Commissioner, Samba and to remand the case to the Deputy Commissioner (Collector) Samba to hear the appeal of the respondents herein afresh after giving opportunity of being heard to both the parties.
- 5) A study of the case file vis-à-vis the revenue record shows that the court below has quite comprehensively pondered upon the issues involved in the matter. But the preliminary point which needed appraisal of both the courts below was with regard to the type of mutation in question. When we peruse the kinds of mutations classified in the Standing Order 23-A, a **Sehat Kasht** mutation nowhere finds a place. It appears that the term has been coined by the revenue officers on their own when in fact no such mutation should be attested which is totally against the law.
- 6) Thus, keeping in view the facts and circumstances of the case and for the reasons aforesaid, the reference made by the court below is NOT accepted. However, the order dated 29.01.2011 passed by the Additional Deputy Commissioner, Samba along with the mutation No. 705 dated 03.03.2010 and mutation No. 711 dated 02.05.2010 are all set aside. The case is remanded to the Collector (AR) Samba for a **de novo** enquiry into the matter and for taking further necessary appropriate action in the matter. It shall be specifically seen as to whether or not any of the provisions of the Agrarian Reforms Act, 1976 have been violated. It shall thereafter be ensured that mutations are attested on the basis of duly registered sale

deeds and not on the basis of mere “agreement to sell” which is no document and which is merely a clever device to avoid payment of stamp duty. 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.