

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

FILE NO.
23/FC-AP

DATE OF INSTITUTION
02.07.2010

DATE OF DECISION
28.05.2015

- 1) MOHAMMAD AMIN LONE S/O GULAM HAIDER LONE R/O VILLAGE TRIGAM, TEHSIL AND DISTRICT KISHTWAR;
 - 2) MOHAMMED ARSHAD LONE S/O -----DO-----.
- (PETITIONERS)**

VERSUS

- 1) DIVISIONAL COMMISSIONER, JAMMU;
- 2) COLLECTOR (SDM), KISHTWAR;
- 3) SADIQ HUSSAIN S/O NAZAM DIN R/O ASDNIA BALA, TEHSIL AND DISTRICT KISHTWAR;
- 4) ATIQ BANO D/O -----DO-----;
- 5) RUBIA BANO D/O -----DO-----;
- 6) ALTAF HUSSAIN S/O HUSSAIN SHAH R/O -----DO-----;
- 7) RUBINA BANO D/O -----DO-----;
- 8) LIYAQAT HUSSAIN S/O -----DO-----;
- 9) SHAHMALLA BEGUM W/O -----DO-----;
- 10) ZAHOOR HUSSAIN S/O-----DO-----;
- 11) ZAFFER SHAH S/O MOHAMMAD AMIN SHAH R/O-----DO-----;
- 12) JAMIL HUSSAIN S/O-----DO-----;
- 13) TARIQ HUSSAIN S/O -----DO-----;
- 14) FIDA HUSSAIN S/O -----DO-----;
- 15) SAFDAR SHAH S/O AMIN SHAH R/O -----DO-----.

(RESPONDENTS)

In the matter of:

**Revision petition against the order dated 15.09.2007
passed by the Divisional Commissioner, Jammu, with
the prayer to set aside the same.**

For Petitioners --- Advocate Dara Singh
For Respondent No. 3-15 --- Advocate M. L. Bhat

J U D G E M E N T

- 1) The present dispute concerns *shamilat* land measuring 28 Kanals falling under Khasra No. 1611/110/1 (04K-18M) and 110 (23K-02M) in village Trigam, Tehsil and District, Kishtwar. This land is in the ownership and shareholding of the private respondents herein. On 02.07.1997, the Tehsildar, Kishtwar attested the *Sehat Kasht* mutation No. 985 by virtue of which the *girdawari* entries with regard to the said land were affected in favour of the petitioners herein.
- 2) Aggrieved, the respondents herein challenged the mutation No. 985 in appeal before the Sub-Divisional Magistrate (Collector), Kishtwar. After a thorough examination of the records, it was observed by the Collector that the petitioners had earlier also applied for the correction of *girdawari* entries of 1971 with regard to the land in question. This was dismissed by the Tehsildar concerned by holding that no such alteration in the entries can be made in the wake of the Government order No. LB-133 of 1989 dated 26.05.1989. It was further pointed out that the impugned mutation was attested at the Headquarters and that too without affording an opportunity of being heard to the respondents herein. In that background, the impugned mutation No. 985 dated 02.07.1997 was set aside by the SDM (Collector).
- 3) Dissatisfied, the appellants challenged the order of the Sub-Divisional Magistrate (Collector), Kishtwar in a second appeal before the Divisional Commissioner, Jammu. The court below dismissed the appeal by observing that the SDM has decided the case in the capacity of Collector, Agrarian Reforms and the court below lacked jurisdiction to try the cases arising out

of the Agrarian Reforms Act, 1976. The appellants then moved the J&K Special Tribunal in revision assailing the order passed by the court below. However, their petition was again dismissed as not maintainable but the Special Tribunal provided them a further liberty to approach the appropriate forum in this behalf.

- 4) The petitioners, therefore, challenged the order passed by the Divisional Commissioner, Jammu in revision before this court on various grounds. During an examination of the relevant materials, it is observed that the Sub-Divisional Magistrate had quite reasonably decided the case. Going further, it is noted that the impugned mutation has been attested against the tenets of the Agrarian Reforms Act, 1976. Sec. 13 of this Act lays down that after the commencement of this Act, no person shall hold land otherwise than for personal cultivation (except where tenancy is permitted under this Act) or for residential purposes upto 02 Kanals per family or subject to the Jammu and Kashmir Prohibition on Conversion of Land and Alienation of Orchard Act, 1975 for horticultural purposes or with the previous permission of the Revenue Minister or an officer nominated by him in this behalf for industrial or commercial purposes. This very significant provision has been violated as the order of the Tehsildar, Kishtwar has created a new tenancy.
- 5) Further, the impugned mutation has been attested for correcting the *girdawari* entries (*Sehat Kasht*). Interestingly such a mutation does not find a place in the category of mutations mentioned in the Standing Order 23-A. Further, **Rule 21 of the Standing Order 23-A** lays down that the Field Qanungo should see as to whether the ***Surat Sabiq*** is correct as per the ***Jamabandi***. He must compare and attest by personal examination the papers to ensure that every entry made by the Patwari in the ***Parat Patwar*** and the ***Parat Sarkar*** is correct. He must also note in the ***Parat Sarkar*** that he has done so with the date below his report with his signatures on both the **Parats**. But the same has also not been done in the impugned mutations.
- 6) As for the observation made by the court below that the second appeal was not maintainable as it had arisen out of the Agrarian Reforms Act, 1976, it is

observed that the Sub-Divisional Magistrate, Kishtwar had decided the case in the capacity of Collector under the Land Revenue Act, 1996 (Smvt.) as the mutation had no reference to the Agrarian Reforms Act. The court below was thus quite competent to hear and decide the case. However, this point is now immaterial as this court is now deciding the matter on merits.

7) For the reasons aforesaid and after a thoughtful consideration of the matter, the order dated 01.07.2002 passed by the Sub-Divisional Magistrate (Collector), Kishtwar is upheld. The Order dated 15.09.2007 passed by the Divisional Commissioner, Jammu is set aside. Nonetheless, the impugned mutation shall continue to remain quashed. The case is remanded to the Tehsildar concerned for a *de novo* enquiry into the matter with special reference to the provisions of the Agrarian Reforms Act, 1976 and for further appropriate necessary action thereafter. 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 **28th day of May, 2015** under my hand and Seal of this Court.