

**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>459/FC-ARC/AP</b>	<b>24.12.2013</b>	<b>22.04.2015</b>

1) NAZIR HUSSAIN S/O BAHADUR ALI R/O VILLAGE BEHRAMGALLA, TEHSIL SURANKOT, DISTRICT POONCH.

**(PETITIONER)**

**VERSUS**

- 1) ABDUL GANI S/O JAMAL DIN R/O VILLAGE CHANAN SHER, TEHSIL SURANKOTE, DISTRICT POONCH;
- 2) ADDITIONAL DEPUTY COMMISSIONER, POONCH;
- 3) TEHSILDAR, SURANKOT.

**(RESPONDENTS)**

In the matter of:

**Reference dated 27.01.2015 made by the court of the Additional Commissioner (with powers of Divisional Commissioner) Jammu in revision petition against the order dated 28.08.2012 passed by the Additional Deputy Commissioner, Poonch wherein the appeal filed by the petitioner against the order dated 03.08.1994 passed by the Tehsildar Surankot on mutation No. 321 has been upheld.**

For Petitioner --- Advocate Om Raj Gorla.  
For Respondent No. 1 --- Nemo

## J U D G E M E N T

- 1) In brief, the present controversy pertains to the **land measuring 14 Kanals and 06 Marlas falling under Khasra No. 2 in village Behramgalla, Tehsil Surankot, District Poonch**. This land was in the ownership of Ghulam Mohammed and others. However, one Bahadur Ali S/o Ahmu together with Mohammed Hussain S/O Kala was its share holder. The Tehsildar, Surankot attested the mutation No. 321 (***Sehat Indraj***) dated 03.08.1994 whereby the land under consideration was entered in the cultivating possession of Abdul Ghani, respondent No. 1 herein.
- 2) Aggrieved, the petitioner herein challenged the mutation No. 321 in appeal before the Additional Deputy Commissioner, Poonch. After hearing both the parties and examining the relevant record, this court observed that the respondent No. 1 herein has been in possession of the said land since 1971. The appeal was filed on behalf of a son of Bahadur Ali but the other co-sharer, Mohammed Hussain S/O Kala remained silent over the matter which speaks about the possession of respondent No. 1 herein. Moreover, the appeal was filed after a gap of 16 years of the attestation of the mutation which too points towards the established possession of the respondent since long. Further, the *girdawari* entry has been made in favour of respondent No. 1 from kharif, 1971 by the Circle Officer who was competent to take a decision under the Agrarian Reforms Act, 1976. Therefore, the impugned mutation was upheld.

- 3) Dissatisfied, the petitioner herein challenged the order passed by the Additional Deputy Commissioner, Poonch in revision before the Divisional Commissioner, Jammu who transferred the same to the Additional Commissioner (with powers of Divisional Commissioner), Jammu for disposal under law. The court below examined the matter chiefly from the jurisdictional point of view and observed that it was incumbent upon the Additional Deputy Commissioner, Poonch to return the case file to the petitioner herein for being presented to the Deputy Commissioner (Collector) first. It was only the Deputy Commissioner (Collector) who was competent to hear appeal under the Land Revenue Act or by himself through other collectors under his control. The court below held that since the impugned order has been passed by a court which was otherwise not competent to entertain the appeal, it, therefore, without going into the merits of the case held that the matter is required to be dealt with by the Deputy Commissioner (Collector). On these grounds, the court below has referred the matter to this court under Sec. 15 (3) of the Land Revenue Act with the recommendation to set aside the order passed by the Additional Deputy Commissioner, Poonch and to remand the matter to the Deputy Commissioner (Collector), Poonch for fresh disposal. The parties were accordingly directed to appear before this court on 16.02.2015.
- 4) So far as the order passed by the court of the ADC, Poonch is concerned, it was adjudicated off admittedly in a casual manner without considering the substantial questions of law involved. How was it material, if the other co-sharer had not challenged the mutation? It was more than enough that an aggrieved (more or less illiterate) person had come to seek redressal of his grievances. The court below has similarly held that the ADC, Poonch was not competent to hear the appeal but if the village is not de-notified for

settlement purposes, the ADC, Poonch remained competent to take notice of and decide the case in the capacity of a Collector by virtue of SRO 536 of 1999. Furthermore, with regrets it is observed that the Revenue Attorney too was very casual in filing the written objections before the court below.

- 5) Leaving the jurisdictional aspect aside, a critical analysis of the record tagged on with the case file indicates that the type of land under consideration along with the other land in Khasra No. 2 is "**Kap**". **Sec. 20-B of the Big Landed Estates Abolition Act, 2007 (Smvt.) expressly prohibits the transfer of such lands or any interest therein.** By attesting mutation No. 321, the Tehsildar Surankote has transgressed this very significant provision of the law. In addition, the proviso to Sec. 13 of the Agrarian Reforms Act, 1976 lays down that the **land recorded as Orchard, Arak, Kap, Kah Krisham or of a class notified under clause (f) of Sec. 3 shall not be put to any use other than such Orchard, Arak, Kap, Kah Krisham or for growing fuel and fodder, as the case may be, subject to sub-section (1) of Sec. 15 in the case of an orchard.**
- 6) Furthermore, Sub-section 3 of this Sec. 13 provides that the rights, title and interests in land of any person who, except for reasons beyond his control, fails to utilize the land in accordance with, or utilises land in contravention of, the provisions of sub-section (1) or lets land to a tenant in contravention of the provisions of sub-section (2) shall, after such enquiry, as may be prescribed, vest in the state. The attesting officer has noted that the land under consideration is under cultivation of the respondent No. 1 herein, which if true is illegal prima facie. Thus, the impugned mutation has violated many provisions of the above stated Act which are considered as the heart and soul of this Act.

7) In view of what has been observed above, the reference dated 21.01.2015 made by the court of the Additional Commissioner (with powers of Divisional Commissioner) Jammu is NOT accepted. The order dated 26.08.2012 passed by the ADC Poonch and the order dated 03.08.1994 passed on mutation No. 321 are also set aside. The case is remanded to the Tehsildar concerned for a **de novo** enquiry into the matter with special reference to the observations made by this court and for taking further appropriate necessary action. 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.