

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

FILE NO.
318/FC-AP

DATE OF INSTITUTION
08.10.2013

DATE OF DECISION
28.05.2015

- 1) PARSHOTAM LAL S/O BUA DITTA R/O SANOORA A/P KHAKHYAL, TEHSIL AND DISTRICT KATHUA;
- 2) DHARAM PAL S/O -----DO-----;
- 3) LEGAL HEIRS OF RAJINDER KUMAR S/O -----DO-----;
- 4) SUBHASH CHANDER S/O -----DO-----;
- 5) GOUTAM LAL S/O -----DO-----;
- 6) TILAK RAJ S/O -----DO-----;
- 7) VIJAY KUMAR S/O KANTHU R/O SANOORA, TEHSIL AND DISTRICT SAMBA
- 8) KEWAL KRISHAN S/O -----DO-----;
- 9) RAM MURTI S/O -----DO-----;
- 10) AMRISH DUTT S/O CHHAJU RAM R/O SANOORA, TEHSIL AND DISTRICT SAMBA A/P PATHANKOT PUNJAB.

(PETITIONERS)

VERSUS

- 1) BAL KRISHAN S/O SARDA R/O MAHTABPUR, TEHSIL AND DISTRICT KATHUA;
- 2) DES RAJ S/O -----DO-----;
- 3) OM PARKASH S/O SARDA R/O SHASTRI NAGAR, KATHUA;
- 4) SHAM LAL S/O GOPAL DASS R/O SANOORA, TEHSIL AND DISTRICT SAMBA;
- 5) SURJEET KUMAR S/O -----DO-----;
- 6) RANJEET KUMAR S/O -----DO-----;
- 7) BIMLA DEVI D/O -----DO-----;
- 8) GEETA DEVI D/O -----DO-----;
- 9) ANITA DEVI D/O -----DO-----;

- 10) REKHA DEVI D/O -----DO-----;
11) SUREKHA DEVI D/O -----DO-----;
12) SHAKUNTLA DEVI WD/O -----DO-----.

(RESPONDENTS)

In the matter of:

Reference dated 19.08.2013 made by the court of the Additional Commissioner (with powers of Divisional Commissioner) Jammu in revision petition against the order dated 04.02.1980 passed on mutation No. 548 by the Tehsildar Agrarian Reforms, Hiranagar under the Big Landed Estates Abolition Act, 2007 (BK) by virtue of which the rights over land falling under Khasra No. 1602/1111 (12K-03M), 1604/1114 (05K-03M), 1608/1115 (01K-17M), 1612/1123 (01K-19M), 1616/1125 (06K-14M) and 1620/1127 (07K-18M) totalling 35 Kanals and 14 Marlas were extinguished from the ownership of Ram Pyari D/O Totu Wd/O Gandharb Singh.

For Petitioner Nos. 1-9 --- Advocate S. N. Gupta

For Respondents --- Adv. Abhishek Wazir, Adv. Danish Butt

J U D G E M E N T

- 1) The summarised facts of the case are that one Ram Pyari D/O Totu Wd/O Gandharb Singh was an owner of the land described herein above. The Tehsildar, Agrarian Reforms, Hiranagar attested the impugned mutation No. 548 dated 04.02.1980 under the provisions of the Big Landed Estates Abolition Act, 2007 (BK) whereby the ownership rights of the ex owner over

the said land were extinguished and devolved upon one Sarda S/O Ruda R/O Sanoora, Samba.

- 2) Aggrieved, the petitioners herein challenged the impugned mutation in revision before the Divisional Commissioner, Jammu who transferred the same to the Additional Commissioner (with powers of the Divisional Commissioner), Jammu for disposal under law. The court below while exercising the revisional jurisdiction in ex parte proceedings observed that the attesting officer had ignored the entries of *Jamabandi (Kharif), 1971* vis-a-vis the cultivating possession of the petitioners. Moreover, the verification of the entries in the revenue record of *Kharif, 2007 (BK)* has not been done. Placing reliance on these facts and circumstances, the court has submitted the instant case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smvt) with the recommendation to set aside the impugned mutation and to remand the case to the Tehsildar concerned for passing fresh orders.
- 3) Elaborating the observations made by the court below, it is noted that after the commencement of the Agrarian Reforms Act, 1976, the land under consideration ought to have been dealt with under the provisions of the said Act only and not under the Big Landed Estates Abolition Act. If a tiller, therefore, was cultivating some land in *Kharif, 1971*, that person should have been conferred with the ownership rights exclusively under the Agrarian reforms Act. The revenue record appended with the case file shows that some of the land was under the cultivation of Sarda whileas some was being cultivated by Khandu in *Kharif, 1971*. Therefore, in order to reach a just conclusion a fresh enquiry is required to be initiated purely under the provisions of the Agrarian Reforms Act, 1976.
- 4) Moreover, Sec. 32 of the Agrarian Reforms Act, 1976 provides that the provisions of this Act and the rules and instructions issued thereunder shall only have effect notwithstanding anything contained in any other law or any custom or usage or in any contract, express or implied or in any instrument inconsistent with the provisions of this Act. It means that the tillers of the land were to be handled under the terms and conditions of this Act only.

- 5) For the reasons aforesaid and after a careful reflection over the matter, the reference made by the court below is accepted. The order dated 04.02.1980 passed on mutation No. 548 is accordingly set aside. The case is remanded to the Tehsildar concerned for a *de novo* enquiry into the matter 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 **28th day
of May, 2015** under my hand and Seal
of this Court.