

**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> |
|----------------------|----------------------------|-------------------------|
| 438/FC-ARC/AP | 11.12.2013 | 02.12.2014 |

- 1) SACHAN KOUL S/O LATE TRILOKI NATH KOUL R/O QASBA LAR, TEHSIL DARBA LAR AND DISTRICT GANDERBAL A/P SEC. B-2 LAXMIPURAM CHINORE, BANTALAB, JAMMU;
- 2) ROOPA WD/O -----DO-----.

(APPELLANTS)

VERSUS

- 1) JAI KRISHAN S/O LATE SHAMBOO NATH KOUL R/O QASBA LAR, TEHSIL DARBA LAR AND DISTRICT GANDERBAL A/P S.NO. 1 & 3 SAROSATI VIHAR, TOMAL ANAND NAGAR, BOHRI, JAMMU (H.NO. 25 AND S.NO. 2 AT QASBA LAR GANDERBAL);
- 2) RAMESH KUMAR S/O -----DO-----;
- 3) KULDEEP KUMAR S/O -----DO-----.

(RESPONDENTS)

In the matter of:

Appeal against the order dated 07.01.1989 passed on mutation No. 499 concerning village Lar, Tehsil Qasba Lar, Ganderbal with the prayer to set aside the same.

For Appellants --- Advocate D.N.Trisal

For Respondents --- Advocate K.L.Pandita

J U D G E M E N T

- 1) The present controversy before this court concerns land measuring **02 Kanals and 15 Marlas falling under Khasra No. 350 (Min.)** at the above noted location in district Ganderbal. This land comprising 09 shares was in the ownership of Nanda Ram S/O Suraj Ram (Four shares), Som Nath and Triloki Nath both sons of Neel Kanth Ram (Four shares) and one share as unaffected. As per girdawari of 1971, the same was in possession of Prem Nath, Shamboo Nath and Radha Krishan in equal shares as co-sharers (**Hissedaran**) but later in the share holding of Som Nath and Triloki Nath only. Subsequently, on 07.01.1989, the said land was vested in the state and the respondents herein were declared as Prospective owners by virtue of mutation No. 499.
- 2) Aggrieved, the appellants herein filed an appeal before this court challenging the said mutation on various grounds. Earlier, on 05.09.2011, this court felt it just and proper to transfer the case to the Additional Deputy Commissioner (Commissioner Agrarian Reforms), Ganderbal for disposal under law. However, the appellants herein moved this court to transfer the same to Jammu on the ground that both parties reside in Jammu. Accordingly, the case was withdrawn from the court below and transferred to this court for disposal.
- 3) This court has gone through the case file, the written submissions filed by both the parties as well as the connected revenue record. **Firstly**, it is observed that Shamboo Nath, the father of respondents had been in continuous cultivating possession of this land from 1960 until his death in the year 1989 as claimed by the respondents, meaning thereby that he was in possession of the land also on the determinant date, i.e., Kharif, 1971. Accordingly, the impugned mutation had to be attested in his favour declaring him as a Prospective Owner. However, **Rule 12 (2) (b) (iv) of the Agrarian Reform Rules** lays down that if the tiller dies on or after 1st May, 1973 and the mutation of succession relating to him has not been attested, the mutation under this rule shall direct that the deceased tiller be entered as Prospective Owner and thereafter separate mutation shall be written up and attested in accordance with the proviso to clause (a) of sub-section (1) of Sec. 28 of the Agrarian Reforms Act, 1976. This procedure which has been duly established by law has not been complied with in the instant case.
- 4) **Secondly**, if the land was in possession of the father of the respondents herein as has also been shown in column No. 4 of the impugned mutation No. 499, there

was no need of invoking the provisions of the Agrarian Reforms Act, 1976 as he was shown as a share holder among others. After his death, simple mutation was required to be attested to devolve his inheritance in favour of his legal heirs in the ordinary course of law.

- 5) **Thirdly**, Triloki Nath, Father/Husband of the appellants herein has been entered in the column No. 9 of the impugned mutation No. 499 showing him as a shareholder of the land under deliberation. In all circumstances, to uphold the principles of natural justice, he was required to be heard prior to the attestation of the impugned mutation. The same has apparently not been done in the instant case.
- 6) **Fourthly**, the order passed on the mutation attested under Sec. 8 of the said Act is without any date. It is not clear as to on which date it was entered by the Patwari concerned or attested by the attesting authority. Amazingly, this mutation has been entered in the revenue record in Rabi, 1988 which shows that it was attested prior to the attestation of the mutation under Sec. 4 which is illogical. Moreover, the impugned mutation has been incorporated in the revenue record against Kharif, 1985. All these developments have made the case a puzzle.
- 7) **Fifthly**, an examination of the mutation No. 507 attested under Sec. 8 of the said Act shows that there are two orders passed on it conferring ownership rights on different persons amongst the respondents herein. If at all, the attesting officer intended to do this, he was required to have passed a single order regarding the same.
- 8) **Sixthly**, 02 Marlas of the land disputed has been shown as **Gair Mumkin Makan** whileas 03 Marlas as appurtenant to the same. The provisions of Sec. 4 and 8 of the Agrarian Reforms Act, 1976 do not apply to such lands. There is a separate procedure to deal with such type of lands under the said Act.
- 9) **Seventhly, 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 of the papers concerned that every entry made by the Patwari in the **Parat Patwar** and the **Parat Sarkar** is correct. He must also note briefly in the **Parat Sarkar** that he has done so with date below his report with his signatures on both the parats. But the same has also not been done in the impugned mutation as well as the other mutation.

- 10) Finally, a perusal of the certified copy of the impugned mutation No. 499 indicates that **“Signed Tehsildar”** in the impugned mutation appears to have been written sometime later after the issuance of the said copy. This aspect is also required to be examined to confirm that this mutation has actually been attested by an authorised revenue officer.
- 11) For the reasons discussed above and upon careful reflection, the delay in filing this appeal is condoned and the appeal petition is allowed. Accordingly, the impugned mutation No. 499 along with mutation No. 507 is set aside. The matter is remanded to the District Magistrate, Ganderbal for a ***de novo*** enquiry in the matter and for taking appropriate further necessary action under the **Jammu and Kashmir Migrants immovable property (Preservation, Protection and Restraint on distress sales) Act, 1997**, as required. 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 **2nd day of December, 2014** under my hand and Seal of this Court.