

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

FILE NO.
316/FC-AP

DATE OF INSTITUTION
08.10.2013

DATE OF DECISION
16.12.2014

- 1) SURAT SINGH S/O MAGAR SINGH R/O MANDI GARGALIYAN, TEHSIL AND DISTRICT SAMBA;
 - 2) KHAROOD SINGH S/O -----DO-----;
 - 3) BALWANT SINGH S/O RASALOO R/O -----DO-----;
 - 4) KARTAR SINGH S/O -----DO-----.
- (PETITIONERS)**

VERSUS

- 1) TALIB SINGH S/O JAGAT SINGH R/O MANDI GARGALIYAN, TEHSIL AND DISTRICT SAMBA;
 - 2) BIKRAM SINGH S/O -----DO-----;
 - 3) GEETA DEVI WD/O -----DO-----;
- (CONTESTING RESPONDENTS)**

- 4) PHINDOO (**THROUGH L.R^S**) S/O HAVELI R/O ----- DO-----;
 - 5) BEHARI S/O SARDHU R/O ----- DO-----;
 - 6) DES RAJ S/O -----DO-----;
 - 7) ATTAR CHAND S/O ----- DO-----;
 - 8) SANTU S/O SANCH R/O ----- DO-----.
- (PROFORMA RESPONDENTS)**

In the matter of:

Case remanded by the Hon'ble High Court of Jammu and Kashmir on 10.09.2001 with regard to the land measuring 21 Kanals and 12 Marlas falling under Khasra No. 337 (08 K-10M), 342 (06K-03M), 343 (02K-

**02M) and 345 (04K-17M) in village Rakh Amb Tali,
Tehsil and District Samba.**

For Petitioners --- Advocate C.M.Gupta
--- Advocate S.N.Gupta
For Contesting Respondents --- Advocate M.L.Bhat
For Respondents 5, 6 & 7 --- Advocate A. Gupta

J U D G E M E N T

- 1) Briefly stated, facts of the case are that one Massu Singh and others were the owners of land falling under Khasra No. **337, 342, 343, 345, 346, 357, 356, 357 and 387 in village Rakh Amb Tali, Tehsil and District Samba**. This land came under the purview of the Agrarian Reforms Act, 1976. Consequently, mutation No. 868 was attested under Sec. 4 of the said Act by virtue of which the said land was vested in the State and one Phindu S/O Haveli R/O Mandi Gargaliyan, Tehsil and District Samba (Proforma Resp. No. 4) was declared as Prospective Owner over land measuring 21 Kanals and 12 Marlas [**Khasra No. 337 (08K-10M), 342 (06K-03M), 343 (02K-02M) and 345 (04K-17M)**] and Jai Singh and Balwant Singh both sons of Kesar Singh over land measuring 86 Kanals and 12 Marlas [**Khasra No. 355 (23K-14M), 356 (35K-07M), 357 (14K-03M) and 387 (13K-08M)**].
- 2) Aggrieved, one Talib Singh S/O Jagat Singh R/O Mandi Gargaliyan, Tehsil and District Samba filed an appeal against Phindu (**Contesting Respondent**) and Bikram Singh S/O Jagat Singh and his mother, Geeta Devi (**Respondent No. 2 & 3, respectively**) before the Joint Financial Commissioner challenging the above stated mutation on various grounds. While examining the record, the said court observed that the appellant and the

proforma respondents have been shown in cultivating possession of the land falling under Khasra No. 342 (12K-13M) and 343 (1K-00M) as share holders. Also, the contesting respondent had filed an affidavit asserting that entries recorded in the **Girdawari** with regard to the disputed land are wrong and if the same are set right, he will have no objection. Moreover, the impugned mutation has been attested in absence of the appellant or his father which is in violation of the Standing order 23-A. Thus, on 26.02.1996, the said court set aside the impugned mutation and asked the Tehsildar Samba to proceed on spot and after preparing the **Tatima Shajra**, the land in dispute be recorded in the personal cultivation of the owners under Rule 4 with effect from Kharif, 1971 till that date.

- 3) However, when the order passed by the court of the Joint Financial Commissioner could not be implemented, the said Talib Singh filed a representation before this court for redressal. Accordingly, the relevant record was examined and both the Tehsildars involved in the process were summoned to explain as to why the order has not been executed on the spot. Both Tehsildars submitted that a mutation No. 997 has been attested under Sec. 7 of the Agrarian Reforms Act, 1976 by virtue of which other owners have resumed some land falling under Khasra No. 337 whereas the remaining land falling under other Khasra numbers is recorded in the possession of some other owners since kharif, 1990. Thus, this court after considering the facts and circumstances of the case held that if the mutation under Sec. 4 has been set aside, the mutation attested under Sec. 7 would also fall through. However, no final order was passed on the said mutation for resumption and the matter was only adjourned on one pretext or the other. Therefore, on 17.03.1998, the Tehsildar Samba was categorically directed to take immediate action to give effect to the decision of the Joint Financial Commissioner as there is no constraining factor in this regard. It was further enjoined that in order to restore the possession of the land to the applicant who has been established to be in the cultivating possession thereof on the determinant date, Sec. 27 of the Agrarian Reforms Act, 1976 can be invoked.

- 4) Dissatisfied, Surat Singh and others went in revision against this order before the J&K Special Tribunal which observed that the order passed by the Financial Commissioner Revenue/Commissioner Agrarian Reforms is merely a clarification and a direction to implement the order passed by the Joint Financial Commissioner. The Tribunal further pointed out that the crucial point in the case is that if the petitioner was aggrieved of the order of the Joint F.C, he should have agitated the same before a proper forum. The revision petition was, therefore, dismissed as not maintainable.
- 5) Still unsatisfied, Surat Singh and Kharud Singh sons of Magar Singh and Balwant Singh and Kartar Singh both sons of Rasalu filed a writ petition before the Hon'ble High Court of Jammu and Kashmir regarding the disputed land. The Hon'ble court disposed of the matter by remanding the case to the Joint Financial Commissioner with the observation that he would go into the question as to whether the order passed under Sec. 4 of the Agrarian Reforms Act, 1976 can be legally challenged or not and if it can be, then who is to be treated as person in possession falling within the meaning of "**Personal Cultivation**". The court further held that the order passed by the Joint F.C would not be given effect to. Moreover, the officer who is to decide the matter would be uninfluenced by the observation of the Tribunal or by this court (10.09.2001).
- 6) Finally, the matter has reached this court. While examining the case file and the written submissions filed by the respective parties as well as the connected record, it has been observed that some disputed land falling under Khasra No. 337 was already in the possession of the ex owners; whereas, some land has also been provided to the ex owners in lieu of the vague mutation No. 997 attested under Sec. 7 of the Agrarian Reforms Act, 1976. This way the issue has become a zigzag puzzle which can only be solved after a detailed enquiry on the spot with regard to the following questions; **A)** Which ex owner was entitled to the land under deliberation in Kharif, 1971?; **B)** Who was in possession of the said land at that time?; **C)** What has been the track of the transfer of the land from one person to another after Kharif, 1971 till date?; **D)** What was the role of the tillers of the land in the matter?; **E)** Is the person in possession today legally entitled

to hold the same?; **F)** How many and which family units were having a share in the disputed land?; **G)** To which family unit, the interested parties belonged and the ceiling of such family thereof on the determinant date?.

- 7) For the reasons discussed above and following a careful reflection on the matter, mutation No. 868 is set aside. Further, any proceedings taken or order passed on the mutation No. 997 is also quashed. The matter is remanded to the Tehsildar concerned for a *de novo* enquiry with regard to the observations made by this court as well as by the Hon'ble High Court concerning "**Personal Cultivation**" and for taking appropriate further necessary action thereafter. The exercise shall be completed within a period of 03 months hereof in presence of the parties concerned and other respectable citizens of the area. If during the enquiry, it is found that there is a violation of any of the provisions of the Agrarian Reforms Act, 1976, the enquiry officer shall take action accordingly. In case not competent in this behalf, the officer shall forward the case to the authority competent along with a specific recommendation to take action in this behalf. 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 **16th day of December, 2014** under my hand and Seal of this Court.