

Before Shaleen Kabra, IAS, Financial Commissioner (Revenue) / Commissioner
Agrarian Reforms, J&K,

File No.

1031/FC-AP

Date of Institution

11.03.2020

Date of Decision

01-6-2022

In case titled:

1. Harpreet Singh S/o Late. S. Inder Singh.
2. Charanjeet Singh S/o Late. S. Inder Singh.
3. Surinder Kour W/o Late S. Inder Singh.
(All R/o Mohalla Kamsar W. No 09 Tehsil Haveli District Poonch).

(...Petitioners)

Versus

1. Manjeet Singh
2. Madhumeet Singh
3. Harvinder Singh
(All sons of Mehta Hakam Singh R/o W. No 06 Mohalla Khorinar Tehsil Haveli District Poonch).
4. Mutating Officer, Poonch.

(...Respondents)

In the matter of: Petition under section 15 sub section 1 of the Land Revenue Act smt 1996, whereby, the mutation no. 1643 dated 16.12.1997 of correction of Girdawari has been sanctioned by the mutating officer regarding KAP land bearing Khasra No. 2055 measuring 235K-10M illegally in favour of Mehta Hakam Singh S/o Gurbaksh Singh R/o Khorinar.

Present:

1. Advocate Dara Singh for petitioner.
2. Advocate Anuj Malhotra for respondent.

ORDER

1. The present Revision petition has been filed by the petitioners against mutation no. 1643 dated 16.12.1997, (Sehat Indraj Girdawari), whereunder "Kap land" measuring 235K-10M of village "Shehar Khas" has been recorded in the self cultivation of the father of the respondents. The said mutation is said to have been attested contrary to the procedure prescribed for attestation of mutations as provided in Standing Order 23-A and none of the village officials is said to have been associated with the mutation proceedings.
2. The matter was argued by the parties through their respective counsels. Ld. Counsel for the petitioners besides repeating the grounds taken in the memo of Revision petition pleaded that the land being recorded as "Kap" is to be used for grazing purposes only and its transfer also is prohibited, by making reference of section 20-B of the Big Landed Estates Abolition Act, 2007. It is also argued that the land in question prior to attestation of mutation was recorded in the name of "Ahli Deh" as is evident from Khasra Girdawari, Kharif 1971. He also brought to the notice of the court construction of shops etc on the land.
3. Ld. Counsel for the respondent on the other hand pleaded that the land is recorded in the ownership of the father of the respondents and earlier also the residents had approached different forum with the plea that the land in dispute be kept open for the grazing purposes of the residents of the area, but the same got rejected by all the forums. The orders of Tehsildar, Deputy Commissioner and the Divisional Commissioner have been placed on record in this behalf.

4. The petitioners have put to challenge the mutation no. 1643, which before this Revision petition has been assailed by way of an appeal before Deputy Commissioner Poonch, who vide order dated 30.05.2000 has upheld the same, and also by the Divisional Commissioner Jammu vide order dated 23.03.2004. Without assailing these orders and rather concealing these happenings, the petitioner cannot assail the mutation the way it has been done.

5. However, a strong notice is taken of the fact that the land despite being recorded as "Kap", not only its nature has been changed but also transferred illegally. In this regard, it will be relevant to place on record the relevant para of the judgment dated 01.05.1997 of the Hon'ble High Court in case Maqbool Shah V/s Sitara and Ors:-

i. *"that the correct interpretation of section 20-B of the Big Land Estates Abolition Act would be that it contemplates two separate categories of lands the transfer of which is completely prohibited. In other words the position is that the transfer of Kah-Krisham, Araks and Kaps is prohibited and also transfer of lands which are unculturable including such lands as are used for raising fuel or fodder. Any land, which answers either of the descriptions mentioned above cannot be sold by the owner but only by the government under the circumstances mentioned in the proviso to section 4 (2) b of the Act. We are therefore of the opinion that the Learned District Judge Committed an error of law in holding that section 20-B contemplates only unculturable Kaps and not Kaps as such."*

6. It is relevant to mention here that section 133-BB of the Land Revenue Act clearly provides that *the land which is in the form of grazing land, arak, kap or kah-i-krisham or which grows fuel or fodder and belongs to such class as is notified by the government shall not be used for any other purpose except with the permission of the District Collector who shall accord permission only in accordance to the regulations notified by the Board. Provided further that the transfer of such land or any interest therein shall not be permissible and no documents relating to the transfser of such land shall be admitted to registration.*


7. Accordingly, the revision petition is dismissed to the extent it pertains to mutation no. 1643, but the matter with regard to transfer of Kap lands is taken serious note of and the Deputy Commissioner concerned is directed to initiate proceedings with regard to illegal usage / transfers of Kap land and ensure that the same is preserved for the purpose it is meant. A report of compliance be provided to this court as well.

8. Disposed of accordingly.

9. File to be consigned to records after due completion.

Announced

01-6-2022


Shaleen Kabra (IAS)
Financial Commissioner, Revenue
J&K