

**In the Court of Financial Commissioner (Revenue) and Commissioner Agrarian Reforms, J&K, Srinagar.**

**File No**  
137/FC-AP

**Date of Institution**  
03/10/2017

**Date of decision**  
13/05/2022

**In the case of:-**

Mahraj Krishan Koul S/o Late Damodhar Koul A/P Quarter  
No. 24 Block J3 Police Colony, Chani Himat Jammu.

**.....Appellant.**

**Versus**

1. Abdul Aziz Wagay
2. Abdul Rehman Wagay Ss/o Ghulam Ahmad Wagay R/o Akhran, Kulgam
3. Ghulam Hassan Wagay S/o Wali Wagay R/o Akhran Kulgam
4. District Magistrate Kulgam
5. Tehsildar Agrarian Kulgam

**.... Respondents.**

**In the matter of:** Appeal under J&K Migrants Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 against Order dated 12.09.2017 of Deputy Commissioner, Kulgam

**Present:**

Advocate: Mir Manzoor Ahmad for Appellant  
Advocate: M.R Thakur for Respondents

**ORDER**

The summarized facts of the case are that mutation no's 602 dated 25.05.1988 and 603 dated 16.06.1988 of estate Akhran Tehsil Devsar attested u/s 4 and 8 of the Agrarian Reforms Act were attested in favour of the Respondents herein for land measuring 06 Kanal 12 Marlas covered under Khasra no. 689. 'Shamboo Nath Koul (ex-owner) alongwith the Appellant herein challenged mutation no. 602 before the Court of Joint Agrarian Reforms Commissioner Srinagar, but the appeal was dismissed for non-prosecution vide order dated 19.03.1991. As per the records, the Appellant approached the District Magistrate Kulgam with a representation to discharge statutory obligations but alleging inaction on part of the District Magistrate, the appellant approached the Hon'ble High Court by way of a writ petition, which was disposed by the Hon'ble High Court vide order dated 13.05. 2014 with the direction to the District Magistrate to deal

with the matter and take a decision after hearing the parties in accordance with the rules governing the matter. Pursuant to the directions of the Hon'ble High Court, Deputy Commissioner, Kulgam vide order dated 12.09.2017 rejected the contentions of the appellant by holding that the Respondents were the actual cultivators of land in question in Kharief 1971 and mutations attested u/s 4 and 8 of Agrarian Reforms Act are believed to be legal and genuine. Aggrieved, the Appellant has approached this Court by way of the instant appeal preferred u/s 7 of the J&K Migrants Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997 (hereinafter Act of 1997).

2. The Parties were summoned who caused presence through their respective Counsels and the matter was argued in detail by both the sides. Ld. Counsel for the Appellant argued that the ex-owner being issueless, adopted him and his brother and referred to the adoption deed registered on 13.10.1969. The possession of the land in dispute is claimed till migration and the mutations attested u/s 4 and 8 of Agrarian Reforms Act in favour of the Respondents are in ex-parte and without any justification. He further pleaded that the Girdawari extracts of 1971 were sought by the Deputy Commissioner from the Regional Director Survey and Land Records, after which the Tehsildar was directed to proceed on spot and seize the land measuring 03 Kanal 06 Marlas, vide order dated 20.07.2015. The other side put a challenge to the above said order of Deputy Commissioner before Financial Commissioner Revenue, who vide order dated 31.07.2015 directed maintenance of status quo but the Deputy Commissioner not complying with the status quo order passed the order dated 03.10.2015 allowing the Private Respondents to reap the harvest. The order impugned in the present appeal is said to have been passed on the basis of enquiry of Additional Deputy Commissioner, who on one hand has held that the Respondents are nowhere recorded in Kharief 1971, but on the other hand held the mutations attested u/s 4 & 8 to be valid despite the land being a migrant property. The order impugned is said to have been passed without providing the appellant an opportunity of being heard, and the Respondents who are unauthorized occupants are to be evicted as required under law. The enquiry held by Additional Deputy Commissioner and reference of recording the statements in the said enquiry report is also said to have

been done at the back of the appellant. It is also said that the appeal preferred against the above said mutation was dismissed for non prosecution by the Joint Agrarian Reforms Commissioner, when the appellant at the relevant point of time had left the valley due to compelling circumstances and was not in a position to pursue the said appeal. Ld. Counsel further argued that an application was moved by the appellant before Additional Deputy Commissioner for setting aside the order of dismissal, but he was told that the records of the case are not available with the said forum.

3. Ld. Counsel for the Respondents on the other hand at the very outset questioned the locus of the appellant by pleading that the Appellant was neither an owner in 1971 nor in 1988 (at the time of attestation of mutation) and therefore has no right to challenge the mutations. The ex-owner is said to have passed away in 1991 and the Appellant can inherit him after his death only, when the mutations under discussion have been attested in 1988. The order dated 31.10.2015 of this Court is also referred to plead that this Court has already dealt with the matter and as such has no jurisdiction in the present appeal. The mutations u/s 4 and 8 are justified by arguing that the same were attested only after the Respondents were found in cultivating possession in Kharief 1971 and from the date of attestation of these mutations, neither the ex-owner nor his legal heirs have any right or concern with the said land. It is also stated that the ex-owner Shambunath was also present at the time of attestation of mutations. The affidavit sworn in by the brother of the Appellant is also referred to by the Ld. Counsel in his arguments which acknowledges the payment of levy by the Respondents and justifying the attestation of mutation.
4. Heard.
5. After going through the entire records the points for determination before this Court are:-
  - i) Alienation of Migrant property through legal processes under specific Acts like attestation of mutations u/s 4 and 8 of Agrarian Reforms Act and treatment of challenges thereto.




- (ii) Fate of change of entries pertaining to Kharif 1971 through Sehat Indraja, Sehat Kasht, recording of statements etc. concerning migrant land.
  - (iii) Addressing grievances of Migrants brought before the competent forum.
- These points shall be addressed after considering the factual matrix and the issues relevant to the present case.

6. The questioning of locus of the Appellant to challenge the mutations raised by Ld. counsel for the Respondents on the ground that the appellant was neither owner in 1971 nor in 1988 is an erroneous argument as the ex-owner Shamboo Nath has executed a deed of adoption, in favour of the Appellant and his brother, which stands registered by Sub-Register Kulgam on 13<sup>th</sup> of October 1969, thus, the Appellant being the successor of Shamboo Nath is very much within his rights to agitate any matter.

Similarly, questioning the jurisdiction of this Court to deal with the Appeal on the pretext of the matter having been earlier heard by this Court is also not a valid argument as earlier this Court had only dealt with an interim order of the Deputy Commissioner dated 20.7.2015 while the order impugned of 2017 is for the first time under consideration before this Court.

7. As is seen from the records the mutations u/s 4 & 8 of the Agrarian Reforms Act have been attested in favour of the respondents in year 1988 i.e. prior to the migration. The appellant along with the ex-owner Shamboo Nath Koul approached the Court of Joint Agrarian Reforms Commissioner through an Appeal, however the appeal got dismissed for non prosecution on 19.03. 1991. The Appellant has attempted to get the matter judicially determined under the Act of 1997 and approaching the Hon'ble High Court rather than pursuing under the Agrarian Reforms Act. The Deputy Commissioner who did not have inherent jurisdiction to adjudicate upon a matter of Agrarian Reforms has, however, passed the impugned order which, being without jurisdiction is required to be set aside. However, the fact remains that the conditions at the relevant point of time were not conducive for the Appellant, being a migrant to pursue the Appeal. Irrespective of the forum chosen or the form in which a grievance is raised, the objective has to be to serve the cause of justice. Therefore, exercising the powers of Commissioner Agrarian Reforms vested in the Financial Commissioner (Revenue), the





Appeal that has been dismissed in default is restored taking note of the circumstances prevailing at that time as well as the spirit of the Act of 1997. In fact, in all the cases of like nature, it is advisable to dispense with the requirement of limitation as and when restoration is sought by an aggrieved party involving immovable property belonging to migrants as has also been held in a series of judgments by various courts that technicalities shall not come in the way of substantial justice. Even in the cases where the alienation of migrant property though has taken place through a legal course but no challenge has been put by the aggrieved party and if so chosen now, the issue of limitation is required to be dealt with leniently provided the aggrieved party convinces the concerned forum before which the challenge is put that he had a sufficient cause for the delayed approach from the date of attestation of mutation to the date of migration.

8. It is also seen from the records that the order impugned is based on the enquiry report of the Additional Deputy Commissioner, which on one hand mentions that the respondents who are the beneficiaries of Section 4 & 8 Mutations are nowhere recorded as cultivators in Kharief 1971, the crucial date for conferment of rights under the Agrarian Reforms Act, but on the other hand upholds the mutations based upon an enquiry and statements even though the enquiry has taken place at the back of the Appellant and any conclusion drawn on the said statements is violative of Principle of Natural Justice. Furthermore, recorded position of Kharief 1971 is a mandatory condition under the law and cannot be given a go by unless in strict accordance with the law.
  
9. Thus, for the aforementioned reasons the Appeal is accepted and the order Impugned is set aside. Further, as stated above, the appeal before Joint Agrarian Commissioner, that has been dismissed in default and restored now is transferred to the Deputy Commissioner concerned being the Commissioner Agrarian Reforms in respect of Immovable property belonging to Migrants, pursuant to S.O 275 dated 13.08.2021. The Deputy Commissioner, shall summon the records of the appeal from the forum where it got dismissed for non-prosecution and restored now and take the same to the logical conclusion after hearing both the parties and



without being influenced by any of the reports/observations made earlier qua the subject matter of dispute. Parties to appear before the Deputy Commissioner on 28.05.2022 who shall not issue fresh summons to the parties present here.

10. Before parting with the judgement, the points for determination before this court referred to above are clarified as under:-

i. So far as item No.(i) is concerned the word alienation under section 2(a) of the Act of 1997 is defined as under:-

Alienation means, sale, gift, mortgage with possession or exchange but shall not include gift in favour of an heir.

However, in a number of cases, the rights pertaining to migrant property have been transferred through legal process like attestation of mutations under Agrarian Reforms Act and the remedy sought though will lie under that particular Act only but going by the spirit of Act of 1997, and taking cognizance of the circumstances prevailing after migration, it is advisable to dispense with the requirement of limitation as the technicalities shall not come in the way of substantial justice as has been held in a series of judgments by the various Courts. However, this is with the caveat that the aggrieved party has to satisfy the competent forum regarding the delay, if any, up to date of migration.

ii. Similarly corrections involving entries of Kharif 1971 pertaining to migrant immovable property either through Sehat Indraj, Sehat Kasht or by recording of statements at the back of the migrant and subsequent conferment of rights under Agrarian Reforms Act is not only contrary to law but also violative of the principle of natural justice. It is to mention here that rule 4 of the Agrarian Reforms Rules clearly provides that the correction/ change can be done only after giving an opportunity of being heard to all the concerned and also after an enquiry on spot. In majority of the cases the corrections are made without associating the migrants with the proceedings and if such a change is objected to by the migrant at any stage, the issue of limitation shall not come in his way.

iii. When any grievance from a migrant is received by the Deputy Commissioner, though not in a proper format, the same shall be treated




under the relevant sections of the Act of 1997 including reference to section 13 with regard to compensation from the unauthorized occupant and if the matter is covered under Agrarian Reforms Act, the grievance shall be treated as an Appeal and cognizance taken by exercising powers as Commissioner Agrarian Reforms which powers have been recently given to the Deputy Commissioners of Kashmir Division vide S.O.275 dated 13<sup>th</sup> of August 2021 in respect of immovable properties of migrants.

11. Interim orders, if any, are vacated. File to be consigned to records after due completion.
12. A copy of this order shall be forwarded to the Divisional Commissioner and all Deputy Commissioners of the Kashmir Division.

**Announced**

13.5.22

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

No:-167-169/FC-AP

Dated:-19-05-2022

Copy to the:-

1. Divisional Commissioner.
2. All Dy. Commissioners of Kashmir Division.
3. Tehsildar Dersar Distt. Anantnag  
For information.