

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

FILE NO.
563/FC-AP

DATE OF INSTITUTION
02.02.2009

DATE OF DECISION
24.06.2015

- 1) ANWAR HUSSAIN S/O MIR HUSSAIN R/O VILLAGE NAKA MANJHIARI,
TEHSIL MENDHAR, DISTRICT POONCH.

(PETITIONER)

VERSUS

- 1) MIR MOHAMMAD S/O SHERA R/O JARAN WALI GALI, TEHSIL MENDHAR,
DISTRICT POONCH;
2) MOHAMMAD HUSSAIN S/O MIR MOHAMMAD R/O -----DO-----;
3) MOHAMMAD RASHID S/O -----DO-----;
4) MOHAMMAD SADIQ S/O -----DO-----;
5) FAIZ HUSSAIN S/O NOOR DIN R/O -----DO-----;
6) FAIZ AKBAR S/O -----DO-----.

(RESPONDENTS)

In the matter of:

**Reference dated 16.01.2009 made by the court of the
Divisional Commissioner, Jammu in revision petition
against the order dated 24.09.2004 passed by the
Additional Deputy Commissioner (Collector), Poonch
whereby appeal filed against the order dated
29.11.2000 passed by the Tehsildar, Mendhar has
been set aside in appeal filed by respondents No. 1 to
4.**

For Petitioner --- Advocate S. N. Gupta
For Respondents --- *Ex Parte*

J U D G E M E N T

- 1) Concisely, the facts of the case are that the respondents herein are allegedly in an illegal occupation of state forest land measuring 16 Kanals and 05 Marlas falling under Khasra No. 187 min in village Jaranwali Gali, Tehsil Mendhar, District Poonch. Some villagers of Manjhiari filed a complaint with the Deputy Commissioner, Poonch that the respondents have obstructed their pathway which may be restored. After directions from the Deputy Commissioner, the Tehsildar concerned conducted a detailed enquiry in this regard and found that the land measuring 23 Kanals and 14 Marlas falling under Khasra No. 187 is recorded as “**gair mumkin jungle**”. A pathway also used to exist in this land which was being utilized by the villagers for grazing their cattle and other connected purposes. Accordingly, the Tehsildar concerned directed the eviction of the respondents from the said land under Sec. 133 of the Land Revenue Act, 1996 (Smt.).
- 2) Aggrieved, the respondents herein moved the Additional Deputy Commissioner (Collector), Poonch in appeal challenging the order passed by the Tehsildar, Mendhar. Questioning the locus of the villagers, the Collector allowed the appeal and set aside the order impugned. Interestingly, the Collector relied on a hypothetical reasoning that the Forest Department had no objection to the possession of the respondents over the said land. The case was then remanded back to the Tehsildar, Mendhar for considering the claim of the respondents herein under the J&K State Lands (Vesting of Ownership Rights to the Illegal Occupants) Act, 2001 commonly known as the Roshni Act.
- 3) Dissatisfied, the petitioner herein filed a revision petition before the Divisional Commissioner, Jammu challenging the validity of the order passed by the Additional Deputy Commissioner (Collector), Poonch. During a critical scrutiny of the records, it was observed by the court below that the land under consideration is admittedly forest land (**gair mumkin jungle**). Significantly, Sec. 3 (e) of the Roshni Act clearly reflects the

inapplicability of the said Act to both “forest land and wooded waste”. The Additional Deputy Commissioner, Poonch has, therefore, gone beyond the provisions of the said Act and passed the order impugned which is totally without jurisdiction.

- 4) Passing remarks on the issue of no objection given by the Forest Department, the court below observed that the Tehsildar concerned has passed the order of eviction after a thorough enquiry and affording a reasonable opportunity of being heard to both parties. The Additional Deputy Commissioner, Poonch has brushed aside the findings of facts arrived at by the Tehsildar concerned and has been swayed only by the plea that the Forest Department had not specifically objected to the encroachment. The court below has accordingly submitted the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smvt) with the recommendation to set aside the impugned order.
- 5) The proceedings on the case file shows that the respondents preferred to remain absent throughout the proceedings and therefore, they were set *ex parte* on 18.02.2014. This court has carefully gone through materials placed on the case file and observes that the land falling under the above stated Khasra number is state land which is entered as “*gair mumkin jungle*” in Rabi, 1971. Unfortunately, this entry seems to have not been carried forward for unknown reasons. The court below has rightly returned its findings in this regard and therefore, this court does not find a single reason to disagree with observations made by it.
- 6) Moving a step ahead, it is observed that a major chunk of land in Khasra No. 187 is shown as “**Kap**”. These lands have undoubtedly a special significance in the state of Jammu and Kashmir. **Sec. 20-B of the Big Landed Estates Abolition Act, 2007 (Smvt.) expressly prohibits the transfer of such lands or any interest therein** barring even any registration of documents in this behalf. This court regrets that none of the subordinate revenue agencies has bothered to see the kind of land.
- 7) In addition, the proviso to Sec. 13 of the Agrarian Reforms Act, 1976 lays down that the **land recorded as Orchard, Arak, Kap, Kah Krisham or of a class notified under clause (f) of Sec. 3 shall not be put to any use other**

than such Orchard, Arak, Kap, Kah Krisham or for growing fuel and fodder, as the case may be, subject to sub-section (1) of Sec. 15 in the case of an orchard. It is also required to be seen as to whether the usage of this land is same or it has been put to some other use.

- 8) For the reasons aforesaid and after a careful reflection over the matter, the reference made by the court below is accepted. The order dated 24.09.2004 passed by the Additional Deputy Commissioner (Collector), Poonch is set aside. The case is remanded to the Tehsildar concerned to evict the illegal encroachers from the state land under the due authority of the law. 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 24th day
of June, 2015 under my hand and Seal
of this Court.