

THE COURT OF FINANCIAL COMMISSIONER REVENUE
[APPELLATE AUTHORITY UNDER J&K MIGRANTS IMMOVABLE PROPERTY
(PRESERVATION, PROTECTION AND RESTRAINT ON DISTRESS SALES) ACT, 1997]
JAMMU AND KASHMIR AT JAMMU

| <u>FILE NO.</u> | <u>DATE OF INSTITUTION</u> | <u>DATE OF DECISION</u> |
|-----------------|----------------------------|-------------------------|
| 13/FC-AP | 11.05.2010 | 28.05.2015 |

- 1) AUTAR KRISHAN S/O GANESH DASS R/O CHOWDHARYGUND, TEHSIL AND DISTRICT SHOPIAN A/P H.NO. 25, SECTOR-02, DURGA NAGAR, JAMMU;
 - 2) CHOONI DEVI D/O -----DO-----;
 - 3) KOUSHALYA DEVI D/O -----DO-----;
 - 4) TOSHA DEVI D/O -----DO-----;
 - 5) DOORA DEVI D/O -----DO-----.
- (APPELLANTS)**

VERSUS

- 1) DISTRICT MAGISTRATE (DEPUTY COMMISSIONER), SHOPIAN;
 - 2) GUL SHAH S/O LATE GAFFAR SHAH R/O VILLAGE VEHIL, TEHSIL AND DISTRICT SHOPIAN.
- (RESPONDENTS)**

In the matter of:

Appeal in terms of Sec. 7 of the J&K Migrants Immovable Property Act against order dated 25.03.2010 passed by the respondent No. 1 against the import of directions dated 01.06.2009 passed by the Hon'ble High Court in OWP NO. 820/2006.

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| For Appellants | --- | Adv. J. M. Razdan/Adv. M. L. Bhat |
| For Respondent No. 2 | --- | Advocate Danish Butt |

JUDGEMENT

- 1) The summarised facts of the case are that one Pt. Ganesh Dass, father of the appellants herein was an owner of the landed property falling under Khasra No. 41, 84, 86, 94, 95, 108, 123 and 205. The mutation No. 163 dated 25.05.1981 was attested (Attesting Officer not known) with regard to land measuring 15 Kanals and 15 Marlas falling under these Khasra numbers correcting the *girdawari* entries in favour of one Ahmed and his brother Gulla Shah both sons of Gaffar Shah (Half) and Abdul Hamid, Bashir and Abdul Rashid all sons of Gullah Mohd. Shah (Half) from *Kharif*, 1971. Later, mutation No. 172 dated 04.01.1983 under Sec. 4 and mutation No. 221 dated 09.01.1988 under Sec. 8 of the Agrarian Reforms Act, 1976 was also attested in their favour.
- 2) Aggrieved, the appellants herein challenged mutations No. 172 and 221 before this court on various grounds. Earlier, this court had observed that the impugned mutations were attested by a Revenue Officer who was not competent to do so. Moreover, before attesting the mutation, the Revenue Officer ought to have summoned all the concerned parties, should have himself gone to the spot, conducted an enquiry as to the veracity of the facts before satisfying himself that the entry of *Kharif*, 1971 needed to be rectified. All this does not appear to have been done. Also, a proviso to Rule 14 of the Agrarian Reforms Rules, 1977 (inserted vide SRO 244 of 1981) lays down that no Naib-Tehsildar shall attest any disputed mutation or a mutation where the correction of any entry of khasra *girdawari* is involved unless empowered to do so. The impugned mutations were, therefore, set aside vide this court order dated 13.02.2013.
- 3) Prior to the challenge, the appellants had moved the Hon'ble High Court in OWP No. 820 of 2006. The Hon'ble High Court vide order dated 01.06.2009 had directed the Deputy Commissioner (District Magistrate), Shopian to hold an enquiry with regard to the unauthorised occupation of respondent No. 2 herein and in case found affirmative, he will remove the encroachment within a period of 03 months.
- 4) Complying with the directions of the Hon'ble High Court, the Deputy Commissioner, Shopian conducted a detailed enquiry into the matter and found that the legal heirs of Ganesh Dass are entitled to a share of land

measuring 07 Kanals and 04 Marlas under Khewat No. 3 and 08 Marlas under Khewat No. 17. By virtue of mutation No. 172 (Sec. 4) dated 04.01.1983 and mutation No. 221 (Sec. 8) dated 19.01.1988, land measuring 13 Kanals and 08 Marlas falling under Khasra No. 86 (15M), 108 (06K-02M), 123 (15M), 205 (15M), 94 (01K-07M), 95 (01K-05M) and 41 (01K-09M) was mutated in the name of Gul shah (Half) and Bashir Ahmed, Abdul Hamid and Abdul Rashid sons of Muma Shah (Half). The mutations have been prima facie attested prior to migration. Further, one Gani Rather S/O Qadir R/O Vehil Chatawatan, Shopian has got the land including residential house situated at Chowdhrigund, Shopian from Ganesh Dass and shamilat land under khasra No. 234/739/71 (02K-02M), 238/236/71 (02K-17M), 186 (06K), 94 (01K-07M), and other proprietary land falling under Khasra No. 95 (02K-10M), 108 (05K-19M), 343 (05M), 91 (03K-01M), 287 /71 (01K-05M) AND 288/186 (01K-10M) by virtue of notary executed agreement dated 07.09.1981. The respondent No. 2 herein (Half) and Bashir Ahmed, Abdul Hamid and Abdul Rashid (Half) also got this land from Gani Rather by way of an attorney executed agreement on 01.08.1982. The Deputy Commissioner, Shopian vide order dated 25.03.2010 observed that the land under consideration, therefore, does not fall within the ambit of J&K Migrants Immovable property Act and the respondent No. 2 herein is not an illegal occupant.

- 5) The appeal having been filed u/s 7 of the Migrants Act, it is noted the same has been filed on 30.04.2010 when it should have been, as stipulated u/s 7 (2) of the said Act, filed within 15 days of the passing of the impugned order dated 25.03.2010. However, the appellants plead that they being migrants in Jammu, they could obtain a copy of the impugned order, that was passed in Shopian only on 22.04.2010. Totally in the interest of justice, therefore, a lenient view is taken and the case is taken up for disposal on merits.
- 6) This court has gone through the case file and observes that the appeal was dismissed in default on 01.07.2011 for continuous absence of the appellants. However, they filed an application for its restoration citing certain reasons. After an analysis whereof, this court felt it just and proper to restore the appeal to its original status on 19.02.2013.

- 7) It is noted that the order passed by the Deputy Commissioner, Shopian takes force from the mutations attested under Sec. 4 and 8 of the Agrarian Reforms Act, 1976 which have subsequently been set aside by this court. In addition, a notarised agreement/attorney agreement was also the base of the said order which too has no relevance in law. **Sec. 17 of the Jammu and Kashmir Registration Act, 1977 (1920 AD)** provides for the compulsory registration of instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property. This procedure which is duly established by law has been transgressed in the instant case which has caused a loss to the exchequer of the state. However, it is not for this court to examine the genuineness of a notarised agreement, except to order that the same cannot be given effect in revenue records unless decreed by a civil court.
- 8) Analysing the facts of the case and for the reasons aforesaid, the order dated 25.03.2010 passed by the Deputy Commissioner, Shopian is set aside. The matter is remanded to the District Magistrate, Shopian for a *de novo* enquiry under the **Jammu and Kashmir Migrants immovable property (Preservation, Protection and Restraint on distress sales) Act, 1997** and for further appropriate necessary action, including recovery of rent u/s 13 of the said Act, after a suitable verdict about the genuineness of the notarised agreements is received from the civil court. 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 **28th day of May, 2015** under my hand and Seal of this Court.