

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

FILE NO.
392/FC-AP

DATE OF INSTITUTION
11.10.2013

DATE OF DECISION
02.12.2014

BALAK RAM SHARMA S/O VEER CHAND R/O VILLAGE DANDESAR, TEHSIL
NOWSHERA AND DISTRICT RAJOURI.

(APPELLANT)

VERSUS

LEKH RAJ S/O ROOP CHAND R/O VILLAGE DANDESAR, TEHSIL NOWSHERA
AND DISTRICT RAJOURI.

(RESPONDENT)

In the matter of:

**Appeal against order passed on mutation No. 494
dated 12.05.2006 attested by the Naib Tehsildar
Nowshera under Sec. 3-A of the Agrarian Reforms
Act, 1976 whereby occupancy tenancy rights with
regard to the land measuring 18 Kanals and 07 Marlas
have been conferred on the respondent.**

For Appellant --- Advocate Rakesh Sharma

For Respondents --- Advocate M.L.Bhat

J U D G E M E N T

- 1) The present controversy before this court concerns **evacuee land measuring 16 Kanals and 02 Marlas falling in Khasra No. 423 and State land measuring 02 Kanals and 05 Marlas falling under Khasra No. 423 Min.**

both in village Dandesar, Tehsil Nowshera and District Rajouri. The Naib Tehsildar concerned attested the mutation impugned by virtue of which occupancy tenancy rights under Sec. 3-A of the Agrarian Reforms Act, 1976 have been conferred on the respondent.

- 2) Aggrieved, the appellant filed the present appeal before this court on various grounds. This court has gone through the case file, the written submissions filed by both parties as well as the connected record. The mutation impugned indeed narrates a self explanatory story. **Firstly**, Sec. 3-A of the Agrarian Reforms Act, 1976 lays down that displaced persons cultivating evacuee land personally shall in respect thereof be deemed to be the occupancy tenants and recorded as such. No instance has been noted in the case file where it can be proved that the respondent herein is a displaced person; whereas the appellant claims to be a refugee.
- 3) Obviously, the said provision can be invoked only in respect of the land allotted to a displaced person under the relevant law. The entries in the mutation impugned clearly portray that neither the respondent nor his father was allotted the land under consideration. More so, the father of the appellant whose name figures in the mutation also seems not to be allotted the said land.
- 4) **Thirdly**, land measuring 02 Kanals and 05 Marlas is State land. The occupancy tenancy rights under Sec. 3-A of the said Act can only be granted in case of evacuee land and not with respect to the State land. Thus, the attesting officer has done a mischief by granting these rights to the respondent over State land and that too secretly by attesting the mutation behind the back of the appellant as well as numberdar, chowkidar or other respectables of the village.
- 5) **Lastly**, the type of land under deliberation has been shown as "**Banjar Kadim**" in the impugned mutation which also means that the respondent herein was not cultivating the same. The said provision applies to land in the personal cultivation of the person concerned. This all shows that while the appellant remains in the physical possession of the land, the respondent has managed entries in the record in his favour unauthorisedly.

6) Keeping in view the facts and circumstances of the case and for the reasons aforesaid, therefore, the delay in filing this appeal is condoned and the appeal is allowed. Accordingly, the mutation impugned is set aside. The case is remanded to the Tehsildar concerned for *de novo* enquiry in the matter, including on the displaced status of the parties, and to take appropriate necessary action. 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 **2nd day of
December, 2014** under my hand and Seal
of this Court.