

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

FILE NO.
60/FC-AP

DATE OF INSTITUTION
22.12.2010

DATE OF DECISION
24.06.2015

1) CUSTODIAN EVACUEE PROPERTY, JAMMU.

(PETITIONER)

VERSUS

1) DEWAN SINGH S/O GANDA SINGH R/O NOWSHERA, RAJOURI;

2) CHUNI LAL S/O RAM CHAND MAHAJAN R/O -----DO-----.

(RESPONDENTS)

In the matter of:

Reference dated 15.12.2010 made by the court of the Joint Settlement Commissioner, Jammu in revision petition against the order dated 09.04.1986 passed on mutation No. 38 by the Naib Tehsildar concerned by virtue of which the ownership rights in evacuee property falling under Khasra No. 3, 5, 9, 15, 17 and 20 in village Kotara Jagir have been transferred to the respondents.

For Petitioners --- Advocate Sheikh Abdul Gani

For Respondents --- Nemo

J U D G E M E N T

1) This is a reference made by the court of the Joint Settlement Commissioner, Jammu pertaining to the landed property falling under Khasra No. 3, 5, 9, 15, 17 and 20 alleged to be an evacuee property in

village Kotara Jagir, Tehsil and District Rajouri. The dispute arose when on 09.04.1986, the Naib-Tehsildar concerned attested the impugned mutation No. 38 by virtue of which the ownership rights of the said land were transferred to the respondents on the basis of an alleged "sale deed".

- 2) The petitioner herein filed a revision petition challenging the impugned mutation before the Divisional Commissioner, Jammu who vide his order dated 12.11.1999 transferred the same to the Joint Settlement Commissioner, Jammu for disposal under law. The court below in an *ex parte* disposal of the case observed that the class of impugned mutation has been mentioned as "**Sokhta Record**" (Burnt record). Technically, this category of mutation does not find a place in the classes of mutation defined under Para 19 of the Standing Order 23-A. Moreover, the impugned mutation confers occupancy tenancy rights to the respondents allegedly on the basis of a sale deed but there is nothing to prove as to whether there was any such agreement between the parties or not. There was no registered document which could justify the action of the attesting officer. In this background, the court below has submitted the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smtv.) with the recommendation to set aside the impugned mutation.
- 3) A perusal of the relevant record clearly indicates that the class of mutation as written in the impugned mutation is not "**Sokhta Record**" (Burnt record) but it is attested on the basis of a sale deed. Nevertheless, the order passed on the impugned mutation speaks of some sale of occupancy tenancy rights and destruction of the records in the year 1947. It does not clearly express the intentions of the attesting officer as to what he exactly did want. The order passed on the impugned mutation is vague and cryptic which can't stand the test of law.

4) Analysing the entire facts of the case and for the reasons aforesaid, the reference made by the court below is accepted. The order dated 09.04.1986 passed by the Naib-Tehsildar concerned on mutation No. 38 is set aside. The case is remanded to the Tehsildar concerned for **de novo** enquiry into the matter in presence of all the concerned, including the Custodian department, and for taking further 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 **24th day of June, 2015** under my hand and Seal of this Court.