

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

FILE NO  
**418/FC/ARC/AP**

DATE OF INSTITUTION  
**02.07.2013**

DATE OF DECISION  
**02.04.2014**

- 1) DEVINDER SINGH S/O LATE RAVI SINGH R/O VILLAGE SARI RAKWALAN,  
TEHSIL AND DISTRICT JAMMU

**(APPELLANT)**

**VERSUS**

- 1) BRIJ NATH S/O BALAJI R/O VILLAGE SARI RAKWALAN, TEHSIL AND  
DISTRICT JAMMU  
2) CHAMAN LAL S/O BALAJI R/O VILLAGE SARI RAKWALAN, TEHSIL AND  
DISTRICT JAMMU

**(RESPONDENTS)**

In the matter of:

**Revision petition against the mutation, No. 370  
dated 25.04.1995, attested, under Sec. 121 of the  
Land Revenue Act, 1996 (Smt.), by the Tehsildar  
Jammu.**

For Petitioner --- Advocate Sandeep Singh

For Respondents --- Ex-parte

**J U D G E M E N T**

- 1) The appellant herein has preferred the present revision petition against the impugned mutation No. 370 dated 25.04.1995 attested under Sec. 121 of the Land Revenue Act, 1996 (Smt.), by the

Tehsildar Jammu, with respect to land measuring 05 kanals and 06 marlas falling under **khasra No. 370 (224 -old) in village Sari Rakwalan, Tehsil and District Jammu.**

- 2) The brief facts of the case are that a piece of land measuring 05 Kanals and 06 Marlas falling in the aforementioned noted location was in possession of the respondents, migrants of Kashmir, who settled in the village during the year 1990-91. The Tehsildar Jammu attested the impugned mutation, under Sec. 121 of the Land Revenue Act, 1996 (Smt.) on 25.04.1995, whereby the title of the said land was conferred on the respondents. Aggrieved, the appellant filed the present revision petition before this court with the prayer to set aside the said impugned mutation.
- 3) When the matter first came up for consideration before this court, it felt just to transfer the same to the Court of the Deputy Commissioner, Jammu for its disposal under law. Accordingly, the matter was taken up in the court below and it directed the Tehsildar (S) Jammu to conduct a local enquiry in the matter. Accordingly, an enquiry was conducted by the Tehsildar (S) Jammu in the matter who thereafter submitted the report to the court below. When the matter again came up for hearing, the said court submitted it back to this court with the observation that competence to hear appeals against the orders under Sec. 121 of the Land Revenue Act, 1996 (Smt.) lies with the Settlement Officers.
- 4) Consequently, this court decided to proceed with the matter. A perusal of the report of the Tehsildar (S) Jammu indicates that the appellant is one of the sons of Sh. Ravi Singh who died long back.

He was survived by minor children who were unable to cultivate the land in question. The respondents, by some means, allegedly unauthorisedly came in cultivating possession of this land. They then managed to get its ownership by way of attestation of a mutation under Sec. 121 of the Land revenue Act, 1996 (Smt.). Prior to the current settlement, the land in question was Shamilat Land. The respondents being outsiders could not and did not have any share in the Shamilat land. They, therefore, cannot have any dispute with the original owners in respect of this land. Additionally, the unauthorised cultivation of land by any person attracts the provisions of Sec. 13 of the Agrarian Reforms Act, 1976 which lays down that after the commencement of this Act, no person shall hold land otherwise than for personal cultivation and if any person contravenes this provision or creates tenancy, all rights, title and interests therein shall vest in the state. In the instant case there was a violation of this provision also. Hence, the Tehsildar (S) Jammu recommended for setting aside the impugned mutation.

- 5) The respondents have acquired the ownership of the land under consideration by way of attestation of mutation under Sec. 121 of the Land Revenue Act, 1996 (Smt.). Technically speaking, the basic mandate of this provision is to decide a question of title of a land and not to confer its ownership on any person. This provision can only be invoked where the mode of acquisition of land by a person is legal and no connected records are available. As is evident from the report of the Enquiry Officer, the respondents are Kashmiri migrants who settled in the village during the year 1990-91. Had they legally acquired the said land, they would have some record of the said acquisition in their hands and mutations would have been attested accordingly. The petitioner admits that the respondents have purchased 08 Kanals of land in the same village from the

cousins of the petitioner's father, but that they have illegally encroached on this additional land of 05 Kanals and 06 Marlas in connivance with the revenue officials. Thus, in the light of facts and circumstances of the case, it becomes hard to believe that the mode of acquisition of the land disputed by the petitioner was legal. On the contrary, had this happened, legally there would have been no need to invoke this provision.

- 6) Another issue which has invited attention of this court is that whether an outsider who is not an original owner of land in a village can have any right in the Shamilat land. It is well known that Shamilat Lands are a peculiar feature of development of village communities in J&K that have historical as well as socio cultural background. Around the cultivated land owned by the original founding families of a village, there are usually huge tracts of waste land called Shamilat land, collectively owned by the village owners over which they would have a right either to reclaim the land themselves or allow others to do so. At the time of the first settlement, formal records were prepared as to what land constituted private property of the original land owners and what constituted the Shamilat Land. The exact area of Shamilat land was also specified. There could be some scope of variation regarding the rights to Shamilat Land but the main structure was that such land belonged to the original owners, to the extent of their individual or collectively private properties and that such property belonged exclusively to them. The fundamental idea is that Shamilat land is not some class of ownerless land. It is a land that is fully owned by the original owners (Khevatdars), but the ownership is **collective** in nature and not **exclusive**.

- 7) If the majority of the original owners so decide, the Shamilat land can be partitioned on a pari pasu basis, prorated against the land owned by them or on the basis of the revenue being paid by them (**Hasab-E-Rasad Khewat**). Unless partitioned, no original owner can be called an exclusive owner of any Shamilat land. Whenever an original owner transfers any khewat land, the transferee would become entitled to a pro rata co-ownership right in the Shamilat land only if it is so agreed between the transferor and the transferee specifically. In the absence of an express provision, the transfer would cover only the Khewat land, and corresponding rights to the Shamilat would remain with the transferor. The rights of such original owners with respect to the Shamilat Land cannot be easily disturbed, since no right over the land can be claimed by any stranger.
- 8) In the instant case, the respondents were not the original owners of land in the village and were strangers. They came in possession of the land only after their migration and the said impugned mutation was attested in their favour just after a period of 04 years from their settlement in the village. Therefore, it can be alleged that the said impugned mutation might have been managed to confer ownership of land on the respondents.
- 9) One of the basic principle of natural justice is that in each and every case, an opportunity of hearing be given to all interested parties. The same has also been embodied in Sec. 121 of the Land Revenue Act, 1996 (Smt.). In the present case, while attesting the said impugned mutation, the appellant was not afforded an opportunity of being heard which is against this Principle.

10) In view of the fact that the respondents have preferred absence throughout the proceedings, as per the report of the village Chowkidar who served the summons, the matter has been heard and dealt with on its merits. The whole proceedings went without hearing the respondents. On 10.12.2013, therefore, this court ordered that this case be decided by setting the respondents as ex parte.

11) Analysing the entire facts of the case and upon an exhaustive consideration of the matter along with the arguments forwarded by the learned counsel for the appellant and for the reasons aforesaid, this revision petition is allowed and the impugned mutation No. 370 is set aside. The case is remanded to the Settlement Officer Jammu with the direction to hold a fresh enquiry in the matter and to take an appropriate action accordingly. An opportunity of being heard shall be afforded to all the interested persons. Ordered accordingly. No costs. Interim orders, if any, passed in this regard, are vacated. File be consigned to record after due completion.

**Sd/-**

**(Dr. Arun Kumar) IAS  
Financial Commissioner Revenue  
(Commissioner Agrarian Reforms)  
Jammu and Kashmir, Srinagar**

Announced today on this the            day of  
March, 2014 under my hand and seal of this  
Court.