

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

<u>FILE NO.</u>	<u>DATE OF INSTITUTION</u>	<u>DATE OF DECISION</u>
388/FC-ARC/AP	25.04.2003	29.07.2015
339/FC-ARC/AP	---	---

- 1) GOPAL SINGH S/O LATE THAKUR PRITHVI SINGH R/O MARHEEN CHARKAN, TEHSIL AND DISTRICT SAMBA;
- 2) JASWANT SINGH S/O -----DO-----;
- 3) SAGAR SINGH S/O -----DO-----;
- 4) LRS OF SAIN SINGH S/O JAGAT SINGH R/O-----DO-----;
- 5) TIRLOK SINGH S/O -----DO-----;
- 6) SUBHASH SINGH S/O SANSAR SINGH R/O -----DO-----.

(APPELLANTS)

VERSUS

- 1) CHIRAG DIN S/O LATE LAL DIN R/O MARHEEN CHARKAN, TEHSIL AND DISTRICT SAMBA;
- 2) LRS OF HASHAM DIN S/O -----DO-----;
- 3) SAIN S/O BAHAR DIN R/O -----DO-----;
- 4) LRS OF SHAH MOHAMMAD S/O -----DO-----;

(RESPONDENTS)

In the matter of:

- A) Appeal against the order dated 06.05.1992 passed on mutation No. 593 pertaining to village Marheen Charkan, Tehsil and District Samba;**
- B) Appeal against the order dated 07.05.1992 passed on mutation No. 673 of the above stated village.**

For Appellants --- Advocate H. R. Sharma, Advocate D. R. Khajuria
For Respondents --- Advocate M. L. Bhat, Advocate D. N. Trisal

J U D G E M E N T

- 1) The present dispute is the outcome of an old acrimony between the parties from the time the predecessor-in-interest of both parties were putting in their claims for the land falling under Khasra Nos. 540, 541, 542, 543, 553, 554, 555, 558, 615, 618, 540/944, 920/528, 920/538, 956/533 and 956/534 in their residential village. The controversy has now been passed on to the next generation who are parties to this case. Initially, an application was filed by the respondent No. 3 jointly with the father of respondent Nos. 1 and 2 herein before the Custodian, Evacuee Property, Jammu under Sec. 8 of the Evacuees (Administration of Property) Act, 2006 for determining the evacuee status of the land under consideration and the restoration thereof. The adjudicating authority after going through the relevant record and hearing both sides allowed the application vide its order dated 18.05.1985 and held that the respondents are entitled for the land.
- 2) Aggrieved, the predecessor-in-interest of the appellants filed a revision petition before the Custodian General, Evacuee Property, Jammu and Kashmir challenging the order passed by the Custodian, Evacuee Property, Jammu. Discussing the merits of the case, however, the said court dismissed the revision petition as not maintainable vide its order dated 30.04.1992. It was on the basis of the orders of these two authorities of the custodian department that the Tehsildar concerned attested the impugned mutation No. 593 dated 06.05.1992 under Sec. 4 of the Agrarian Reforms Act, 1976 and mutation No. 673 dated 07.05.1992 under Sec. 8 of the said Act in favour of the respondents.
- 3) In parallel, however, on 20.05.1992, the predecessors-in-interest of the appellants moved the J&K Special Tribunal in revision challenging the order passed by the Custodian General, Evacuee Property, Jammu and

Kashmir. The Special Tribunal while going through the records observed that both the custodian authorities were swayed to hold the respondents entitled to restoration of the land after de-notification. This was merely on the ground that their predecessor-in-interest (Nizam Din) had died in the holocaust of 1947 and that the land had been wrongly notified as an evacuee property. However, both ignored to examine as to what was the nature of the interest held by the evacuees in the property. Under Sec. 8 of the Evacuee (Administration of Evacuee Property) Act, 2006, the interest which was held by an evacuee at the time when the land was declared as evacuee property could only be restored to the legal heirs of that evacuee. In addition, it was held by the H'ble Special Tribunal that if the interest of the evacuee was just that of an occupancy tenant, then the entitlement of the respondents was also to be seen in the light of Sec. 67 of the Tenancy Act. If the occupancy tenants had acquired ownership rights over the land, the same could only then be restored to the respondents. But none of the custodian authorities took this aspect into consideration and also the nature of the property. Thus, the Special Tribunal vide its order dated 24.10.2000 set aside the orders passed by the Custodian General, Evacuee Property, Jammu and Kashmir as well by the Custodian, Evacuee Property, Jammu. The case was remanded to the Custodian, Evacuee Property, Jammu for fresh disposal after hearing both the parties.

- 4) Thereafter, the appellants filed two cumulative appeals before this court challenging both the impugned mutations on various grounds. However, these appeals were dismissed in default twice on 31.08.2005 and 02.04.2008 for want of appearance of the appellants but later were restored for a just conclusion on merits. Obviously, both the impugned mutations were attested on the basis of the orders passed by the Custodian General, Evacuee Property, Jammu and Kashmir as well as the Custodian, Evacuee Property, Jammu. But both these orders had been set aside by the J&K Special Tribunal. Thus, the impugned mutations

can't stand. In fact, as soon as the orders passed by the custodian authorities were set aside, the impugned mutations were required to be quashed forthwith.

- 5) Thus, for this sole reason, the order dated 06.05.1992 passed on mutation No. 593 and the order dated 07.05.1992 passed on mutation No. 673 are both set aside. The parties are directed to appear before the Custodian Evacuee Property, Jammu as already directed by the J&K Special Tribunal vide its order dated 24.10.2000. No costs. Interim directions, if any, in the matter 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 **29th day**
of July, 2015 under my hand and Seal
of this Court.