

**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>
<b>250/FC-AP</b>	<b>27.11.2012</b>	<b>10.03.2015</b>

- 1) HASAN MOHAMMED S/O KHAIJAN R/O VILLAGE DAWARA BANDI, TEHSIL AND DISTRICT JAMMU THROUGH LR<sub>s</sub>, MST. RAMZAN BIBI (WIDOW) AND MALOOK ALI (SON);
- 2) AZIZ DIN S/O FAKAR DIN @ FAKROO R/O VILLAGE DAWARA, TEHSIL AND DISTRICT JAMMU;
- 3) MOHAMMED HUSSAIN S/O AZIZ DIN R/O -----DO-----;
- 4) JAMAT ALI S/O SARDAR ALI R/O -----DO-----;
- 5) NOOR DIN S/O MOHAMMED ISRAIL R/O VILLAGE DAWARA BANDI, TEHSIL AND DISTRICT JAMMU.

**(PETITIONERS)**

**VERSUS**

- 1) STATE OF JAMMU AND KASHMIR THROUGH COMMISSIONER/SECRETARY FOREST DEPARTMENT, JAMMU;
- 2) DIVISIONAL FOREST OFFICER, URBAN CITY FORESTS, MAHAMAYA, JAMMU;
- 3) STATE OF J&K THROUGH DEPUTY COMMISSIONER, JAMMU (MADE PARTY ON 28.05.2014)

**(RESPONDENTS)**

In the matter of:

**Revision against the judgement and order dated 30.07.2012 passed by the Additional Commissioner, Jammu dismissing the revision petition against the order dated 16.03.2012 passed by the Deputy Commissioner, Jammu dated 17.07.2013 setting aside the mutation No.**

**134 attested under Govt. Order No. LB/6-C and S/432 for land measuring 30 Kanals falling under Khasra No. 59/41 min and further quashing the entries in the Khasra Girdawari with regard to land measuring 05 Kanals and 10 Marlas in favour of petitioner No. 2, 10 Kanals in the name of petitioner No. 2 and 13 Kanals in the name of petitioner No. 5 falling under the same Khasra No. in village Dawara, Jammu.**

For Petitioner --- Advocate Rameshwar P. Sharma

For Respondent No. 1 & 2 --- Advocate Jagpal Singh

For Respondent No. 3 --- ARA

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

- 1) The present dispute concerns land measuring 30 Kanals falling under Khasra No. 59/41 min at the above noted location. It is alleged that the Tehsildar Settlement, Jammu attested mutation No. 134 under Govt. Order No. LB/6-C and S/432 conferring the ownership rights of the same on the petitioner No. 1 herein. The subject matter under deliberation also includes land measuring 15 Kanals and 10 Marlas for which *girdawari* entries stood in the name of petitioner No. 2 and 13 Kanals in the name of petitioner No. 5 as well as other lands in the same Khasra number.
- 2) The respondents No. 1 & 2 inform that, the Forest department, Government of Jammu and Kashmir has been entrusted with an important task of construction and upkeep of **Tawi Herbal Eco Park at Mahamaya City forest** in an area of about 78 Hectares. During the fencing of the said area by the department, the petitioners herein along with some others started interfering and hindering the project work allegedly claiming to be in possession of 65 Kanals of land at the site of the park. However, before this issue could be resolved, the Divisional Forest Officer, Urban Forestry Division, Jammu came to know of the impugned mutation and the allegedly

illegal *girdawari* entries in favour of the petitioners herein. He then, vide his letter dated 30.01.2012 requested the Divisional Commissioner, Jammu for cancellation of the above stated mutation as well as the *girdawari* entries citing various reasons. Looking at the emergent nature of the issue, the Divisional Commissioner, Jammu vide his letter dated 01.02.2012 forwarded the said communication to the Deputy Commissioner, Jammu to get the matter thoroughly enquired into through a team of Revenue officers and to take appropriate necessary action thereafter.

- 3) Initially, the Deputy Commissioner, Jammu directed the ASO, Jammu to conduct an on-the-spot verification and submit a report, which was duly submitted on 04.02.2012. The Enquiry officer had observed that the spot of dispute falls under Khasra No. 56 which is recorded in the name of the State and in possession of the Forest department and that the same is ***gair mumkin jhar***. Also the *girdawari* entries of the petitioner No. 1 against the Khasra No. 59/41 are since Kharif, 1970 and hence the land did not qualify for LB/6-C and S-432. Thus, he recommended that the mutation No. 134 attested under these two orders be set aside. Further, he was of the view that **Khasra No. 1, 3, 4, 40, 54, 55, 56, 57/39 and 59/41** are recorded in the name of state and there are a number of illegal *girdawari* entries in the name of different persons. He also suggested that the same should be deleted after proper verification.
- 4) Later, after the revelation of some important and new facts in the matter, the Deputy Commissioner, Jammu appointed a committee of revenue officers consisting of Assistant Commissioner (R), Assistant Commissioner (G), Assistant Settlement Officer, Tehsildar (T) and Tehsildar (S) all from District Jammu to conduct a further enquiry and to furnish its findings within a week's time. While examining the relevant record, the key observations made by the committee were that the attesting officer has attested the mutation No. 134 dated 28.03.2010 out of jurisdiction. The kind of soil in Khasra No. 59/41 was not within the purview of the LB/6-C and S/432. Moreover, the committee pointed out another mutation dated 17.03.2010 attested by the Naib Tehsildar Khas, Jammu on the basis of a

sale deed which is similarly numbered as 134 and is stated to be genuine. The conclusion of the committee in this regard was based on a comparison of machine numbers allotted to the empty mutations. Further, it was found that the *girdawari* entries for land measuring 05 Kanals and 10 Marlas in the name of Aziz Din S/O Fakar Din, petitioner No. 2 are existing in the records prior to 1990; whereas, 10 Kanals in his name, 13 Kanals in the name of Mohd. Hassan, petitioner No. 3, 28 Kanals and 15 Marlas in the name of Noor Din S/O Mohd. Israel, petitioner No. 5 and others seems to be inserted.

- 5) Thus, discovering the entries as unauthorised and tampered, the committee recommended to the Deputy Commissioner, Jammu for rectification of these entries with regard to 30 Kanals of land covered in mutation No. 134 attested under order No. LB/6-C and S/432 as well as land measuring 51 Kanals and 15 Marlas that should now be entered in the name of the Forest department.
- 6) Consequently, the Assistant Commissioner (R), Jammu on the instructions from the Deputy Commissioner, Jammu vide letter No. DCJ/SQ/2011-12/9334 dated 16.03.2012 directed the Tehsildar Jammu to implement the recommendations of the committee and to expunge the illegal entries within a week. Earlier when the matter was being probed, one Fata Mohd. S/O Sarajudin filed an appeal against the mutation No. 134 dated 28.03.2010 before the Settlement Officer, Jammu on 13.02.2012. During the pendency of the appeal, the Assistant Settlement Officer, Jammu requested the Settlement Officer, Jammu to set aside the said mutation being against law so that encroachment on forest land is stopped forthwith. Thereafter, the Settlement Officer after examining the matter from different angles set aside the said mutation on 25.02.2012.
- 7) The petitioners herein challenged the letter dated 16.03.2012 of the Deputy Commissioner, Jammu in revision before the Additional Commissioner (with powers of Divisional Commissioner) Jammu. The court below after hearing both the parties held that the petitioners have failed to array the Deputy Commissioner as party respondent despite being a necessary party. **Secondly**, the communication of the Deputy

Commissioner, Jammu to the Tehsildar Jammu is not a final order and is, therefore, unappealable. **Thirdly**, the procedure adopted by the Deputy Commissioner, Jammu in setting the things right are well within his jurisdiction. **Fourthly**, the type of land under consideration is ***gair mumkin jhar*** and belongs to the state, therefore, any entry made unauthorizedly in the revenue record against the spot position is unwarranted. Lastly, the petitioner's case has already been disposed of by the court of Sub Judge (CJM) Jammu for permanent prohibitory injunction against them which was upheld by the Principal District Judge, Jammu. A writ petition was also filed in the Hon'ble High court which was disposed of by confirming the orders of the lower courts. It was categorically held by the court below that the petitioners can't have any right to grab the state land under any pretext. Thus, on these counts, it dismissed the revision petition.

- 8) Dissatisfied, the petitioners herein have challenged the order passed by the Additional Commissioner, Jammu as well as the communication of the Deputy Commissioner, Jammu before this court on many grounds. This court has looked deep into the case file as well as the allied particulars and is satisfied that the Additional Commissioner, Jammu has rightly addressed the controversy. The views expressed are quite logical and vivid.
- 9) Heading a step forward, it has been factually ascertained by the committee that the mutation No. 134 attested under Order No. LB/6-C and S/432 is a doctored one and actually does not exist, besides pointing out insertions and tampering in the records. This mutation has already been set aside by the Settlement Officer Jammu on 25.02.2012. Interestingly, the petitioner No. 1 does not seem to be aggrieved of the said order and has not challenged the same before any fora. It looks that now the petitioners are only disappointed with the deletion of the *girdawari* entries.
- 10) Nonetheless, the mutation No. 134 has been attested against the mandate of law. **Firstly**, Order No. LB/6-C can be invoked in favour of a person who actually cultivates and possesses land since 1957-58. In the instant case, the petitioner No. 1 did not meet this criterion. **Secondly**, in the *Jamabandi* of 1967-68, all land in Khasra No. 59/41 has been shown as ***gair mumkin jhar***. No mutation under order No. LB/6-C can be attested with regard to such

lands as these are not meant for cultivation. It is very clear that some manipulation has been made whereby the land covered in the said mutation has been shown as **Banjar Qadim**. However, proviso appended to Rule 2 of LB/6-C specifically bars allotment of such lands. **Lastly**, Rule 2 (iii) of the said order keeps the lands held by a Govt. department or an institution under the State out of the purview of this order.

- 11) Indeed, the land falling under both Khasra Nos. 59/41 and 56 belongs to the state which has been shown in possession of the forest department except for the land against which illegal and unauthorized entries have been made. Significantly, the Government is an owner of big chunks of lands scattered throughout the state and it is everyone's duty to respect and protect the properties belonging to the state, more so when it is a forest. If a person comes and encroaches on Government land, he should be evicted there from as soon as it comes to the notice of public authorities irrespective of any entry made in the records.
- 12) Sec. 133 (2) (c) of the land revenue Act, 1996 (1939 A.D) provides that when any person, without due authority, has taken possession of land belonging to the Government, a Revenue Officer empowered in this behalf by the Government of his own motion or on an application of any interested person, may eject the person so encroaching upon or cultivating such land and take possession of the same without paying any compensation for crops or improvements, and may also, by order duly proclaimed, forbid repetition of the encroachment. The law is very clear regarding encroachments on state land. Thus, no public functionary is authorised to make entries in respect of these lands.
- 13) More to the point, Sec. 13 of the Agrarian Reforms Act, 1976 lays down that no person shall hold land otherwise than for personal cultivation. If any person contravenes this provision, all his/her rights, interests and title in the land shall vest in the state. This provision applies *mutatis mutandis* to the state lands also meaning thereby that after the commencement of this Act, no one can be a tenant of state land. What is required to be considered is that the land in either case has to vest in the state. Thus, it is again clear

that any entries made on state land in favour of an illegal encroacher are to be treated as null and *void ab initio*.

- 14) We all know that the forests play a vital role in regulating the climate and conserving biodiversity. The forest lands in the country in general and in our state in particular are shrinking at an alarming pace. Indeed, this is causing environmental degradation which in turn threatens the livelihood of people with unseasonal rains, floods and drought. Encroachment on forest land also means destruction and extinction of many plants and animal species, many of whose true value may be left undiscovered. Therefore, this court is of the opinion that any encroachment on the forest land must NOT be tolerated.
- 15) Having considered the facts and circumstances of the case and after a careful reflection on the matter, the revision petition being devoid of merits fails and is, therefore, dismissed. All the illegal entries made in the revenue record in state land in respect of Khasra No. 59/1 and 56 as well as other Khasra numbers referred to by the ASO, Jammu are hereby quashed. Any act done or purported to have been done on the basis of these entries against these Khasra numbers is also declared as null and *void ab initio*. The forest department is engaged in the construction of a public property and this court appreciates the role of the forest officials who have brought such an illegal act to the notice of the revenue department for rectification. The petitioners are directed to pay a cost of **Rs. 20000/- (Rupees Twenty Thousand only)** to the forest department for this unnecessary litigation and undue harassment resulting into wastage of precious time and resources of the state. The petitioners are warned to desist from any such future misuse of the large heartedness of the legal and constitutional framework of this country which is not for protecting encroachers despoiling the ecology and environment of our state.
- 16) The forest department is in turn directed to identify forest lands which are similarly under encroachment and to report the same to the respective Deputy Commissioners. All the Deputy Commissioners in the state are directed to ensure eviction of illegal encroachers reported to by the forest department from such lands after following proper procedure. The officers

may also seek the help of Crime Branch, J&K Police to which the matter already stands referred for investigation. Let this case be listed after every two months on the first court day of the month for an examination of the compliance and work done by the Deputy Commissioners as well as the forest department. 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 **10<sup>th</sup> day of  
March, 2014** under my hand and Seal of  
this Court.