

**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>222-23/FC-ARC/AP</b>	<b>03.02.2009</b>	<b>22.04.2015</b>

- 1) LEGAL HEIRS OF JANKI NATH BHAT S/O GOVIND RAM BHAT R/O KILAM BOZGAM, TEHSIL DEVSAR, DISTRICT KULGAM;
- 2) DAYA KRISHAN BHAT S/O-----DO-----;
- 3) RADHA KRISHAN BHAT S/O -----DO-----;
- 4) PRAN NATH CHICHHAN S/O AFTAB RAM R/O -----DO-----  
**(THROUGH BHUSHAN LAL BHAT S/O JANKI NATH BHAT R/O KILAM BOZGAM, TEHSIL DEVSAR, DISTRICT KULGAM A/P MUTHI, JAMMU, ATTORNEY HOLDER).**

**(APPELLANTS)**

**VERSUS**

- 1) GULL MOHD. BHAT S/O HASSAN BHAT R/O KILAM BOZGAM, TEHSIL DEVSAR, DISTRICT KULGAM;
- 2) MOHD. MAQBOOL BHAT S/O -----DO-----
- 3) TEHSILDAR AGRARIAN REFORMS, KULGAM. **(RESPONDENTS)**

In the matter of:

- A) Appeal against the order dated 18.06.1989 passed under Sec. 4 of the Agrarian Reforms Act, 1976 on mutation No. 1063 with regard to land measuring 01 Kanal falling under Khasra No. 846 in village Kilam Bozgam, Tehsil Devsar, Kulgam;
- B) Appeal against the order dated 29.09.1989 passed under Sec. 8 of the Agrarian Reforms Act, 1976 on mutation No. 1064 with regard to the aforesaid land.

For Appellants --- Advocate D.N.Trisal, Advocate M.L.Bhat

For Respondent No. 1 & 2 --- Advocate Haji H.R.Salati

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

- 1) The present controversy pertains to land measuring 01 Kanal falling under Khasra No. 846 min. in village Kilam Bozgam, Tehsil Devsar, District Kulgam. This land together with 09 Marlas of other land in the same Khasra No. was in the ownership of the appellants and some others. The Tehsildar Agrarian Reforms, Kulgam, however, attested the impugned mutation No. 1063 by virtue of which the rights and interests of the ex owners over the said land were extinguished u/s 4 of the Agrarian Reforms Act, 1976 and vested in the state. One Ghulam Hassan Bhat, father of respondent No. 1 and 2 was declared as prospective owner. Later, another mutation No. 1064 u/s 8 of the Agrarian Reforms Act, 1976 was attested and the prospective owner was made the absolute owner of the land under consideration.
- 2) Aggrieved, the appellants have challenged the impugned mutations in appeal before this court on various grounds. On 31.05.2011, this court felt it just and proper to transfer the case to the court of the Joint Financial Commissioner for disposal on merits. However, as the said court lacked jurisdiction to try the cases under the Agrarian Reforms Act, 1976, the case was re-submitted to this court and on 29.05.2014, it was again taken up for routine hearing.
- 3) Controverting the assertions made by the appellants, the respondents have filed detailed written submissions which have been duly examined by this court. The foremost question which needs appraisal is regarding the issue of condonation of delay in the matter. This court is of the opinion that the merits of the case outweigh this interim issue and by not condoning the limitation may result in some illegality to

prevail over the just provisions of law. In that background, the delay in filing the appeals is liable to be condoned.

- 4) The focus of averments made by the appellants is that they were not provided an opportunity of being heard while attesting the impugned mutations. But it is not possible to settle this controversy as only *parat patwar* of both the mutations is tagged on with the case file. It is not clear then as to who at all were present when the impugned mutations were attested.
- 5) The second and the more significant assertion of the appellants is regarding the communiqué No. 116/OQ dated 28.05.2008 of Tehsildar Devsar addressed to the Deputy Commissioner, Kulgam which was sent after calling for a report from the Naib Tehsildar and the patwari concerned. The Tehsildar had himself conducted an enquiry on the spot and was of the view that the respondent Nos. 1 and 2 or their father were never the tenants of this land nor did they ever purchase this land. He then recommended to the Deputy Commissioner, Kulgam that since the mutations had been attested at the back of the appellants, they may be declared as null and void. Interestingly, it is seen that in the written objections filed by the respondents, they have not bothered to touch upon this issue inspite of the seriousness of the allegation.
- 6) Further, **Rule 21 of the Standing Order 23-A** lays down that the Field Qanungo should see as to whether the ***Surat Sabiq*** is correct as per the ***Jamabandi***. He must compare and attest by personal examination the papers to ensure that every entry made by the Patwari in the ***Parat Patwar*** and the ***Parat Sarkar*** is correct. He must also note in the ***Parat Sarkar*** that he has done so with the date below his report with his signatures on both the **Parats**. But the same has also not been done in the impugned mutations.

7) Having gone through the connected record and after a careful reflection over the entire matter, the delay in filing the appeals is condoned and the appeals are allowed. The impugned mutation No. 1063 dated 18.06.1989 and mutation No. 1064 dated 29.09.1989 are set aside. The case is remanded to the District Magistrate (Collector), Kulgam for a ***de novo*** enquiry under the **Jammu and Kashmir Migrants immovable property (Preservation, Protection and Restraint on distress sales) Act, 1997** and for taking further appropriate necessary action including payment of rent/compensation to the appellants as due u/s 13 of this Act. The District Magistrate shall also establish if the respondents are indeed working in the Police Department, as mentioned by the Tehsildar Devsar in his report dated 28.05.2008; and if affirmative, recommend to their superiors for suitable action against them for conduct unbecoming of a Govt. servant. A compliance report be submitted to this court within 60 days of the issue of this order. 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**

Announced today on this the **22<sup>nd</sup> day**  
**of April, 2015** under my hand and Seal  
of this Court.