

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

FILE NO
470/FC-ARC/AP

DATE OF INSTITUTION
25.08.2014

DATE OF DECISION
28.05.2015

- 1) KAMLA DEVI W/O LATE ARJUN NATH R/O RATNIPORA, TEHSIL AND DISTRICT PULWAMA A/P QUARTER NO. 2, BLOCK NO. 3163, MIGRANT TOWNSHIP, JAGTI, NAGROTA, JAMMU;
- 2) RAMESH KOUL S/O LATE MADUSUDAN R/O RATNIPORA, TEHSIL AND DISTRICT PULWAMA A/P H. NO. 21, LANE NO. 3, BUTA NAGAR, JAMMU;
- 3) JAWAHIR LAL KOUL S/O LATE SHAMBU NATH R/O RATNIPORA, TEHSIL AND DISTRICT PULWAMA A/P H. NO. 28, LANE NO. 4, BUTA NAGAR, JAMMU;
- 4) BUSHAN LAL KOUL S/O SHAMBU NATH R/O RATNIPORA, TEHSIL AND DISTRICT PULWAMA A/P H. NO. 29, LANE NO. 4, BUTA NAGAR, JAMMU.

(APPELLANTS)

VERSUS

- 1) STATE OF JAMMU AND KASHMIR THROUGH DISTRICT MAGISTRATE, PULWAMA;
- 2) TEHSILDAR, PULWAMA;
- 3) ALI S/O ISMAIL GANAI R/O RATNIPORA, TEHSIL AND DISTRICT PULWAMA;
- 4) AZIZ S/O -----DO-----.

(RESPONDENTS)

In the matter of:

Appeal against the order dated 31.03.1982 passed under Sec. 4 of the Agrarian Reforms Act, 1976 on mutation No. 996 with regard to land measuring 02 Kanals and 09 Marlas in village Ratnipora, Tehsil and District Pulwama.

For Appellants --- Advocate K. L. Pandita

For Respondent No. 3 & 4 --- *Ex Parte*

J U D G E M E N T

- 1) The present controversy pertains to land measuring 02 Kanals and 09 Marlas falling under Khasra No. 2440/1553 in village Ratnipora, Tehsil and District Pulwama. This land was in the ownership of one Arjun Nath, husband of appellant No. 1 herein and the other co-sharers. The Tehsildar (AR), Pulwama attested the impugned mutation No. 996 dated 31.03.1982 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. Accordingly, one Ali and his brother Aziz both sons Ismail Ganai were declared as prospective owners.
- 2) Aggrieved, the appellants have challenged the impugned mutations in appeal before this court on various grounds. The respondents were summoned to cause appearance but they preferred absence despite service. They were, therefore, set ex parte on 10.03.2015.
- 3) This court has gone through the case file as well as the other connected record. The main assertion made by the appellants is that no opportunity of being heard was provided to them and that the impugned mutation was pre-dated and attested at the back of the owners. Obviously, when the proceedings under Sec. 4 of the Agrarian Reforms Act, 1976 are initiated, it becomes more important to hear and call objections from the actual owners of the land. But the same has not been done in the present case. In addition, 07 Marlas of land out of the land under consideration has been shown as "**Kuhl**" which is a category of common land. No one can be a Prospective Owner of

such a land under Sec. 4 of the Agrarian Reforms Act. Thus, the impugned mutation deserves to be set aside.

- 4) 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.
- 5) Analysing the entire facts and circumstances of the case and for the reasons aforesaid, the impugned mutation No. 996 dated 31.03.1982 is 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**; to establish as to who exactly was cultivating the land under consideration in Kharif, 1971 and to take appropriate necessary action thereafter including recovery of rent u/s 13 of the said Act. 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 28th day
of May, 2015 under my hand and Seal
of this Court.