

**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>
482/FC-ARC/AP	23.12.2014	22.04.2015

1) KRISHAN LAL SHARMA S/O LATE LEKH RAJ SHARMA R/O EP-668,
DALPATIAN, JAMMU. **(APPELLANT)**

VERSUS

1) BAISAKHI S/O RIKHI RAM R/O BAJWAL, TEHSIL SUNDERBANI, DISTRICT
RAJOURI. **(RESPONDENT)**

In the matter of:

A) Appeal against the order dated 31.10.1981 passed by the Tehsildar Sunderbani on mutation No. 979 under Sec. 4 of the Agrarian Reforms Act, 1976 with regard to the land falling under Khasra No. 2401 in village Bajwal, Sunderbani;

B) Appeal against the order dated 20.11.1981 passed by the Tehsildar Sunderbani on mutation No. 1042 under Sec. 8 of the Agrarian Reforms Act, 1976 with regard to the above stated land.

For Appellant --- Advocate Devinder Sharma
For Respondent --- *Ex Parte*

J U D G E M E N T

1) The concise facts of the case are that one **Kahan Chand S/O Balvinder** was an allottee of the land under consideration and mutation No. 763 dated

19.05.1969 was attested under **Government Order No. 254-C of 1965** in his favour by virtue of which ownership rights of the said land were conferred on him as a displaced person. Later, when he died, mutation No. 813 dated 14.08.1970 was attested whereby inheritance of the deceased was devolved upon his wife, Dropati since he had deceased issueless. It appears that the said Dropati had executed a “will deed” bequeathing the said property in favour of the appellant herein. After her death, the “will deed” was incorporated in the revenue record in favour of the appellant by way of attestation of mutation No. 838 dated 14.09.1972.

- 2) After the commencement of the Agrarian Reforms Act, 1976, the Tehsildar Sunderbani attested the impugned mutation No. 979 dated 31.10.1981 extinguishing the rights and interests of the ex owner over the land and vested in the state. The respondent herein was declared as prospective owner. Completing the process for the conferment of ownership rights on the prospective owner, the Tehsildar concerned attested another mutation No. 1042 dated 20.11.1981.
- 3) Aggrieved, the appellant has assailed both the mutations in appeal before this court on various grounds. The respondent was summoned but despite service, he remained absent. Therefore, this court set him *ex parte* on 18.03.2015 and proceeded to decide the matter on merits.
- 4) The primary averment made by the appellant is that DP land can't be brought under the purview of the Agrarian Reforms Act, 1976 and that he was not given an opportunity of being heard at the time of attestation of the impugned mutation. A bare perusal of the impugned mutations shows that he was not present when the impugned mutations were attested. No limitation applies to such cases and the delay in filing this appeal is condoned.
- 5) As per the contents of the impugned mutation No. 979, the appellant was not in possession of the land under consideration in kharif, 1971, rather it was occupied by the respondent. But mutation No. 838 clearly infers that the appellant was in the personal cultivation of the said land on 14.09.1972, that is after the crucial date. This court is, therefore, of the opinion that the whole controversy rests on a mere fact as to who was cultivating the land

in question in Kharif, 1971. Further, 11 Marlas of land under consideration has been shown as "**Ghair Mumkin Kotha**". This land has also been covered under the impugned mutations which is not correct as there is a separate provision under the Agrarian Reforms Act, 1976 to deal with such lands.

- 6) In this background, the appeals succeed and are allowed. The impugned mutation No. 979 dated 31.10.1981 and mutation No. 1042 dated 20.11.1981 to the extent of land covered under Khasra No. 2401 are set aside. The case is remanded to the Tehsildar concerned for a **de novo** enquiry in the matter and for taking further appropriate necessary action. 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, Jammu**

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