

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

FILE NO.
344/FC-AP

DATE OF INSTITUTION
12.12.2014

DATE OF DECISION
26.08.2015

- 1) MUNIR HUSSAIN S/O MOHD. DIN @ MANNI R/O VILLAGE BANPAT,
TEHSIL HAVELI, DISTRICT POONCH;
 - 2) FERUZ DIN S/O -----DO-----.
- (PETITIONERS)**

VERSUS

- 1) STATE OF JAMMU AND KASHMIR;
 - 2) MOHD. LATIF S/O MOHD. DIN R/O VILLAGE BANPAT, TEHSIL HAVELI,
DISTRICT POONCH.
- (RESPONDENTS)**

In the matter of:

Reference dated 03.12.2014 made by the court of the Additional Commissioner (with powers of Divisional Commissioner) Jammu in revision petition against the judgement and the order dated 11.03.2010 passed by the Assistant Commissioner, Poonch whereby it has been ordered that out of Survey No. 465/1 measuring 50 Kanals, 45 Kanals be taken out of the entry of Misl Haqiyat of 1961-62, Jamabandi of 1994-95 and mutation No. 129/1 and only 05 Kanals be recorded in the name of the petitioners.

For Petitioners	---	Nemo
For Respondent No. 2	---	Nemo
For State	---	ARA

J U D G E M E N T

- 1) The brief background of the case is that on a complaint by the inhabitants of village Banpat, the Assistant Commissioner Revenue, Poonch summoned the revenue record of the said village and conducted an in-depth verification of the Registers *Khasra Girdawari* from 1970 till 11.03.2010, *Jamabandi* of 1994-95, *Misal Haqiyat* of 1961-62 and mutation No. 129/1. It was then disclosed that the *Khasra Girdawari* of 1972 had an entry of land measuring 05 Kanals falling under Khasra No. 465/1 in the name of Manni S/O Faqir Gujjar but the quantum of land was subsequently tampered and raised to 50 Kanals. It appears that in the year 1992, a mutation No. 129/1 (***Sehat Indraj***) was attested by the Naib-Tehsildar concerned by virtue of which 05 Kanals of land was changed into 50 Kanals and *inter alia* the word 'Regularise' was recorded in the said mutation. Taking note of this patent illegality, the Assistant Commissioner Revenue, Poonch while exercising the powers of the Collector, Agrarian Reforms set aside the said mutation and directed the Tehsildar to expunge the entry of 45 Kanals from the *Jamabandi* as well.
- 2) A revision then came to be filed against the order of the Assistant Commissioner Revenue, Poonch which was dismissed by the Additional Commissioner (with powers of the Divisional Commissioner), Jammu vide his order dated 12.06.2012. However, a review application was later filed by the petitioners herein for rehearing the revision petition on merits. Admitting the same, the court below observed that the enquiry held by the Assistant Commissioner Revenue, Poonch with regard to the tampering and manipulations of the entries from 05 Kanals to 50 Kanals may be alright. But he was supposed to deal with the case as a Revenue Officer i.e., Assistant Commissioner Revenue only as per the directions of the Deputy Commissioner, Poonch. Contrary to it, he passed the order in the capacity of the Collector, Agrarian Reforms. At the same time, a finding was made by him that mutation No. 129/1 was totally illegal because of the wrong jurisdiction exercised by the Naib-Tehsildar. The AC (R) was not enjoying the powers of a Collector under the Land Revenue Act. 1996 (Smvt.) and could not, therefore, pass such an order. This order, on the face of it is illegal, wrong and *void-ab-initio* to the extent of setting aside the order passed on the said mutation.

- 3) Viewed thus, the court below felt that the revision petition needs to be allowed and the impugned order dated 11.03.2010 passed by the Assistant Commissioner Revenue (Collector Agrarian Reforms) be set aside alongwith the modification of the order dated 12.06.2012 passed by the Additional Commissioner (with powers of the Divisional Commissioner), Jammu. It has recommended that the Deputy Commissioner, Poonch should hold a fresh enquiry as to the legality of the mutation No. 129/1 and pass further appropriate orders. It has accordingly submitted the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smvt) for favour of final orders.
- 4) First of all, this court notes with astonishment as to why no subordinate revenue authority has taken cognizance of mutation No. 129/1 in its real perspective. This mutation has been allocated a divisible (Bata) serial number, viz., 129/1. **Rule 9 of the Standing Order 23-A** which deals with the subject of attestation of mutations lays down that the serial number of mutation cases for each village should be continuous for the whole term of the settlement and each case should be given a separate serial number. No instance has been provided in the said standing order or any other law for the time being in force where a mutation can be assigned a divisible number. If the circumstances so warranted, a mutation could have been attested by allotting it a serial number next to the last/latest entered/attested mutation concerning that village. However, the same has not been done in the instant case. A mutation can't be allotted a number at the sweet will of the revenue authorities, e.g., any divisible number like 129/1, 129/2 and so inserted in the records. This means that the record has been manipulated and the impugned mutation inserted later malafidely just to give benefit to the petitioners.
- 5) Further, this court observes that the Assistant Commissioner Revenue, Poonch had conducted an enquiry and put forth some facts warranting action. The petitioners in their revision petition have not bothered to touch this issue as to whether any tampering has been made in the records or not. The court below has pointed out certain illegalities in the order passed by the Assistant Commissioner Revenue but those technicalities can in no way overrule a fundamental illegality.
- 6) Moving a step ahead, it is observed that a major chunk of land in Khasra No. 187 is shown as "**Kap**". These lands have undoubtedly a special significance in

the state of Jammu and Kashmir. **Sec. 20-B of the Big Landed Estates Abolition Act, 2007 (Smt.) expressly prohibits the transfer of such lands or any interest therein** barring even any registration of documents in this behalf. None of the subordinate revenue agencies has bothered to see the kind of land involved in this case.

- 7) In addition, the proviso to Sec. 13 of the Agrarian Reforms Act, 1976 lays down that the **land recorded as Orchard, Arak, Kap, Kah Krisham or of a class notified under clause (f) of Sec. 3 shall not be put to any use other than such Orchard, Arak, Kap, Kah Krisham or for growing fuel and fodder, as the case may be, subject to sub-section (1) of Sec. 15 in the case of an orchard.** It is also required to be seen, therefore, as to whether the usage of this land is same or it has been put to some other use.
- 8) For the reasons aforesaid and after a careful reflection over the matter, the reference made by the court below is **NOT** accepted. In the supervisory powers vested in this court under Sec. 8 of the Land Revenue Act, 1996 (Smt.) and revisional jurisdiction under Sec. 15 of the said Act, all proceedings taken or actions done or purported to have been done in the records with regard to the Khasra No. 465/1 after 1961-62, when the Misl Haqiyat was prepared, are hereby quashed. The impugned mutation No. 129/1 is also set aside. The case is remanded to the Deputy Commissioner, Poonch for a **de novo** enquiry into the matter and for taking further appropriate necessary action. If need be, he shall also get the matter investigated through the Crime Branch, J&K Police. 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 **26th day
of August, 2015** under my hand and seal
of this Court.