

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

FILE NO.
230/FC-AP

DATE OF INSTITUTION
28.02.2012

DATE OF DECISION
26.08.2015

1) LRS OF SATINDER PAUL S/O LATE LALA SARDARI LAL R/O VILLAGE BISHNAH, TEHSIL BISHNAH DISTRICT JAMMU.

(PETITIONER)

VERSUS

1) KARTAR SINGH S/O SADHU SINGH R/O VILLAGE CHAK AVTARA, TEHSIL BISHNAH, DISTRICT JAMMU;

2) BIKRAM SINGH S/O KARM SINGH R/O VILLAGE CHAK AVTARA, TEHSIL BISHNAH, DISTRICT JAMMU;

3) YOG RAJ SINGH S/O -----DO-----;

(RESPONDENTS)

4) VIDYA SAGAR S/O SH. KHAZAN CHAND ALIAS KHAZANA R/O H. NO. 101 WARD NO. 3, CHAK AVTARA, BISHNAH.

(INTERVENER)

In the matter of:

Revision petition against the order dated 18.04.2012 passed by the Learned Settlement Commissioner, J&K by virtue of which he has upheld the order dated 14.11.2009 passed by the Settlement Officer, Jammu with the prayer to set aside both the orders.

For Petitioner	---	Advocate M. L. Sharma
For Respondents	---	<i>Ex Parte</i>
For Intervener	---	Advocate Subhash Makhnotra

J U D G E M E N T

- 1) The instant controversy pertains to the land measuring 01 Kanal falling under Khasra No. 289 in village Chak Avtara, Tehsil Bishnah, District Jammu. On 23.05.1997, the Tehsildar, Bishnah passed an order on '**Farad Partal**' by virtue of which the kind of this land was changed to "**Gair Mumkin Plinth**" from "**Gair Mumkin Rasta**" (Common Land). This 01 Kanal of land was a part of the *shamilat* land measuring 10 Kanals and 11 Marlas under the said Khasra number.
- 2) This order of the Tehsildar, Bishnah was challenged by one Vidya Sagar in revision petition before the Divisional Commissioner, Jammu. The court below vide its order dated 13.08.2004 had dismissed the revision petition on the ground of lack of jurisdiction. A review petition was also filed against the said order but that too had met with the same fate. In the second round of litigation, the respondents herein challenged the order dated 23.05.1997 before the Settlement Officer (Collector), Jammu who after a thoughtful analysis of the case vis-a-vis the revenue records observed that the land falling under Khasra No. 289 has been "**Shar-e-aam**" from the very beginning which has been used for the common purposes of the people of the area and their right of user could in no way be allowed to be interfered with or obstructed by any person. The order of the Tehsildar, Bishnah and the *girdawari* entry made on the basis of "**fard badar**" is wrong and unwarranted and violates the basic principles of the law. Thus, the order of the Tehsildar, Bishnah along with the *girdawari* entry from *Rabi*, 1997 was ordered to be deleted. The Settlement Officer (Collector) Jammu vide his order dated 14.11.2009 had directed the Tehsildar, Bishnah to take necessary action/eviction proceedings under the J&K Common Lands Regulation Act, 1956 against all encroachers of the land falling under Khasra No. 289.
- 3) This order of the Settlement Officer (Collector) Jammu was challenged in a revision petition before the Settlement Commissioner, Jammu and

Kashmir. Backing the observations made by the Settlement Officer, the court below held that the land under consideration is recorded as **“shar-e-aam”** (*Gair Mumkin Raasta*) under *Shamilat Deh* which means that it was a pathway for the common use of the villagers. Such *shamilat* lands which are reserved for the common purposes of the villagers are neither partible nor any individual can encroach upon such land or alienate his right in favour of any one even though he may be a joint owner of the said land. In this background, the court below dismissed the revision petition and upheld the orders passed by the Settlement Officer (Collector), Jammu.

- 4) Dissatisfied, the petitioner herein challenged the order passed by the Settlement Commissioner, Jammu and Kashmir as well as that of the Settlement Officer (Collector) Jammu in revision before this court on various counts. The respondents were put to notice but since they didn't appear even after service of summons through registered post, they were set *ex parte* on 03.03.2015.
- 5) A perusal of the revenue records clearly shows that the land under consideration is **“Gair Mumkin Raasta”** (Common Land). Both the courts below have adjudicated upon the issues in quite a logical and rational way. Indeed, it is noted with regret that common properties have become an easy target of encroachment. The public authorities have always to fight hard wherever any encroachment of common land is spotted which unnecessarily results in the wastage of public resources.
- 6) Moreover, taking a serious note of the encroachments on “common lands” in India, the Hon'ble Supreme court of India in the case titled, **“Jagpal Singh & others Vs. State of Punjab”** has expressed great concern for their retrieval. The Apex court after examining the matter from diverse angles observed as to how in large parts of the country, common village lands have been grabbed by unscrupulous persons

using muscle power, money power or political clout, and how in many States now there is not an inch of such land left for the common use of the people of the village, though they may thus exist on paper. The Hon'ble Apex court had accordingly directed all states to remove all such encroachments forthwith.

- 7) For the reasons aforesaid and after a careful reflection over the matter, the revision petition is NOT allowed. The order dated 18.04.2012 passed by the Settlement Commissioner, Jammu and Kashmir as well as the order dated 14.11.2009 passed by the Settlement Officer (Collector) Jammu are both upheld. The Tehsildar concerned is directed to immediately proceed on the spot to remove all encroachments under the due process of law. A compliance statement shall be submitted to this court within 30 days from the date 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, Jammu

Announced today on this the **26th day**
of August, 2015 under my hand and seal
of this Court.