

**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>
167/FC-ARC/AP	18.10.2007	23.12.2014

- 1) SHANTA WD/O MADSUDAN R/O NAZUK MOHALLA, TEHSIL AND DISTRICT ANANTNAG A/P LAKARMANDI, JANIPUR, JAMMU;
 - 2) AUTAR KRISHAN RAINA S/O -----DO-----;
 - 3) CHAND JI RAINA S/O ----- DO-----;
 - 4) RAJNEE D/O -----DO-----.
- (APPELLANTS)**

VERSUS

- 1) DISTRICT MAGISTRATE, ANANTNAG;
 - 2) TEHSILDAR, ANANTNAG;
 - 3) MOHD. RAFIQ ADOPTED S/O REHMAN DAR R/O MEERDANTAR, ANANTNAG;
 - 4) MST. HAJARA KHANANASHIN D/O REHMAN DAR R/O -----DO-----.
- (RESPONDENTS)**

In the matter of:

- A) Appeal against order dated 23.01.2002 passed on mutation No. 133 attested under Sec. 8 of the Agrarian Reforms Act, 1976 with regard to land measuring 05 Kanals and 10 Marlas falling under Khasra No. 686 (00K-14M), 688 (00K-11M), 761 (02K-08M), 762 (00K-14M) and 767 (01K-03M) in village Meerdantar, Tehsil and District Anantnag;**
- B) Appeal against the mutation attested under Sec. 4 on the basis of which the above stated mutation has been attested.**

For Appellants

--- Advocate B.L.Kalgotra

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

J U D G E M E N T

- 1) Briefly stated, the facts of the case are that the appellants herein along with some others were the owners of the above stated land. It is alleged that the Tehsildar concerned attested the mutation No. 133 under Sec. 8 of the Agrarian reforms Act, 1976 on the basis of another mutation attested under Sec. 4 of the said Act by virtue of which the respondents No. 3 and 4 herein have been declared as the owners thereof.
- 2) Aggrieved, the appellants have filed the present appeals challenging the impugned mutation on various grounds. Accordingly, the case was taken up for routine hearing and the private respondents were summoned. However, they preferred absence throughout the proceedings even after their presence was sought through publication of the matter in the daily newspapers. Therefore, on 19.11.2014, this court after setting the respondents ex parte proceeded to decide the case on merits.
- 3) This court has diligently gone through the case file and the other connected record. It has been observed that in the impugned mutation No. 133, there is no reference of any mutation attested under Sec. 4 of the Agrarian Reforms Act, 1976 which is a technical requirement in cases of all attestation of mutations under Sec. 8 of the said Act. The father of respondent No. 3 has been shown as Prospective Owner of the land under consideration. But it is not clear as to whether any mutation in this regard was attested or not.
- 4) Secondly, 14 Marlas of land out of the disputed land has been shown as "**Gair Mumkin Kuhl**", i.e., small canal used for irrigation purposes. This land has also been formed part of the land over which ownership rights have been conferred on the respondent No. 3 & 4 which is totally illegal and needs to be corrected.

- 5) Thirdly, in column 4 of the impugned mutation No. 133, Rehman Dar S/O Shaban Dar has been shown as Prospective owner. However, the impugned mutation has been attested conferring ownership rights on respondent No. 3 and 4, his adopted son and ***Khananashin*** daughter, respectively. Technically speaking, when a prospective owner dies, his rights, interests and liabilities are devolved upon the legal heirs under Sec. 28 of the Agrarian Reforms Act, 1976. This procedure which is duly established by law has not been complied with in the instant case.
- 6) **Finally, 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 of the papers concerned that every entry made by the Patwari in the ***Parat Patwar*** and the ***Parat Sarkar*** is correct. He must also note briefly in the ***Parat Sarkar*** that he has done so with date below his report with his signatures on both the parats. But the same has also not been done in the impugned mutation No. 133.
- 7) Thus, upon a meticulous deliberation on the matter and for the reasons aforesaid, the appeals are allowed. Accordingly, the mutation impugned No. 133 is set aside. The matter is remanded to the District Magistrate, Anantnag for a ***de novo*** enquiry under the **Jammu and Kashmir Migrants immovable property (Preservation, Protection and Restraint on distress sales) Act, 1997** in the matter and further appropriate necessary action including recovery of rent from the respondents 3 and 4 U/S 13 of this 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, Jammu

Announced today on this the **23rd day of December, 2014** under my hand and Seal of this Court.