

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

FILE NO  
**399/FC/Agr/AP**

DATE OF INSTITUTION  
**06.02.2013**

DATE OF DECISION  
**21.10.2014**

1) SHANTA @ RAJ RANI WD/O DWARIKA NATH R/O NOWGAM, TEHSIL SHANGUS AND DISTRICT ANANTNAG (A/P JANIPUR, JAMMU)  
**(PETITIONER)**

**VERSUS**

1) STATE THROUGH DISTRICT MAGISTRATE ANANTNAG;  
2) TEHSILDAR ANANTNAG;  
3) TEHSILDAR SHANGUS;  
4) MOHD. IBRAHIM GANIE (PATWARI) S/O RASOOL GANIE R/O NOWGAM, TEHSIL SHANGUS AND DISTRICT ANANTNAG;  
5) GHULAM RASOOL GANIE S/O GANI GANIE R/O-----DO-----;  
6) MST. AFROZA W/O MOHD. AFZAL LONE R/O -----DO-----.  
**(RESPONDENTS)**

In the matter of:

**Appeal against the order dated 30.09.1988 passed by the Tehsildar Settlement, Anantnag on mutation No. 1610 attested under Sec. 8 by wrongly mentioning that the appellant has received the levy in connivance with the respondent No. 3 on the recommendation made by the respondent No. 4 who was working as Patwari and is the son of the respondent No. 4. Thereafter attesting the mutation No. 2425 dated 22.08.2003 for devolving 07 Marlas of land on the basis of a gift deed in favour of respondent No. 6 and setting aside the same.**

For Petitioner --- Advocate K.L.Pandita

For Respondent --- Ex Parte

## J U D G E M E N T

- 1) Briefly stated, facts of the case are that Sansar Chand S/O Dillo Ram and Dwarika Nath S/O Amar Chand were the owners of land measuring 02 Kanals and 12 Marlas in equal shares falling under Khasra No. 1306 in village Nowgam, Tehsil and District Anantnag. The Tehsildar Settlement Anantnag attested the impugned mutation on 30.09.1988 whereby one Ghulam Rasool Ganie S/O Gani Ganie was declared as the owner of the said land under Sec. 8 of the Agrarian Reforms Act, 1976.
- 2) Aggrieved, the petitioner has assailed the action of the attesting officer before this court on various grounds. The private respondents were put to notice to appear and defend the case. However, despite issue of registered summons, they did not cause appearance. Therefore, this court set them ex parte on 19.11.2013 and went on to decide the matter on merits.
- 3) While going through the case file it has been observed that the order passed on the impugned mutation is vague as it does not vividly show the intention of the attesting officer. It is not clear under which provision of the Agrarian Reforms Act, 1976 the said mutation has been attested. Firstly, in column No. 12 of the impugned mutation, it has been shown as being attested under Sec. 4 of the above stated Act. However, it has not been declared as State which is the procedural requirement of the said provision and the same was required to be specifically mentioned in the order as well as in column No. 8. Secondly, the order in the impugned mutation shows conferring ownership rights on respondent No. 5 under Sec. 8 of the same Act whereas in column No. 1, it was required to be first shown as vested in the State along with a reference of the mutation attested under Sec. 4 in this behalf.
- 4) Moreover, in column No. 2 of the impugned mutation, the said land has been shown in the cultivating possession of the owners. Technically speaking, if at all anyone else was in the cultivation of the said land, it was obligatory on the part of the Tehsildar concerned to make an enquiry to that effect under Rule 4 of the Agrarian Reforms Rules and then to act accordingly. However, the mutation is silent regarding any enquiry under the said provision. Additionally, as per the Jamabandi of 1970-71, 05 Marlas of land under consideration has been shown as "**Ghair Mumkin Makan**" and 03 Marlas as "**Ghair Mumkin Kothar**". There is a separate provision under the Agrarian Reforms Act, 1976

to deal with such lands. However, this land has also been transferred by invoking a wrong provision which is totally unbecoming a revenue official/officer. This all shows that the impugned mutation has been managed to give benefit to the respondent No. 5 and is required to be set aside.

- 5) Thus, in view of what has been discussed above, the impugned mutation No. 1610 is set aside. As regards the impugned mutation No. 2425, which is an adjunct of the first mutation, this court without going into the merits observes that the same was attested on the basis of a gift deed. Since the subject matter of this mutation (2425) had come from the attestation of the earlier mutation (1610), its fate was dependent on the outcome of the earlier mutation which has been set aside by this court. Therefore, the impugned mutation No. 2425 is also set aside.
- 6) Accordingly, the case is remanded to the Tehsildar concerned for a *de novo* enquiry in the matter in presence of both the parties and other respectable citizens of the area and to restore the previous position in accordance with law. The entire exercise shall be completed within a period of 60 days hereof and a compliance statement shall also be submitted to this court within the same period. The appellant is also free to approach the District Magistrate concerned for appropriate relief under the Migrants Act. Interim directions, if any, shall stand vacated. The case file be relegated to records after due completion.
- 7) The Administrative Officer in the FC (R)<sup>s</sup> office is separately directed to hold an enquiry into the allegation that Resp. No. 4 while working as Patwari in village Nowgam has helped manage the impugned mutation No. 1610 in the name of his father and thereafter mutation No. 2425 in favour of his sister, or not

Sd/-

**(Dr. Arun Kumar) IAS**  
**Financial Commissioner Revenue**  
**(Commissioner Agrarian Reforms)**  
**Jammu and Kashmir, Jammu**

Announced today on this the 21<sup>st</sup> day of  
October, 2014 under my hand and seal of  
this Court.