

**Before Shaleen Kabra, IAS, Financial Commissioner (Revenue) /
Commissioner Agrarian Reforms, J&K, Jammu**

File No.
1062/FC-AP
&1063/FC-AP

Date of Institution
17.03.2021

Date of Decision
03.06.2022

In the case of:

1. Neelam Sambyal (Aged 36 years) Wd/o Sh. Ghar Singh.
 2. Sahil Singh (Age 13 years) S/o Sh. Ghar Singh (minor through mother Neelam Sambyal).
 3. Mehak (Age 10 years) D/o Sh. Ghar Singh (minor through mother Neelam Sambyal).
 4. Gopal Singh (Age 38 years) S/o Sh. Prem Singh.
 5. Ashok Singh (Age 33 years) S/o Sh. Prem Singh.
- All residents of Village Bara, Tehsil Vijaypur, District Samba.

.....**Petitioners.**

Versus

1. Union Territory of Jammu and Kashmir through Divisional Commissioner, Jammu.
2. Deputy Commissioner, Samba.
3. Sub-Divisional Magistrate, Vijaypur.
4. Tehsildar, Vijaypur.

.....**Respondents**

In the matter of:

Revision Petition against Order No. OQ/TV/180 dated 18.07.2020 passed by respondent No. 4 Tehsildar Vijaypur with regard to the application filed by petitioners for attestation of Mutation qua land measuring 15 Kanals falling under Khasra No. 223/92 situated at Village Bara, Tehsil Samba now Vijaypur District Samba pursuant to the directions of the Hon'ble High Court dated 21.11.2017 passed in OWP No. 1765/2014 titled Neelam Sambyal & Ors. V/S State of J&K & Ors.

In the case of:

And

1. Ravinder Kanta (Aged 70 years) Wd/o Sh. Krishan Singh.
 2. Daljit Singh (Age 55 years) S/o Sh. Krishan Singh.
 3. Ajit Singh (Age 45 years) S/o Sh. Krishan Singh
 4. Harjeet Singh (Age 43 years) S/o Sh. Krishan Singh.
- All residents of Village Bara, Tehsil Vijaypur, District Samba.

.....**Petitioners.**

Versus

1. Union Territory of Jammu and Kashmir through Divisional Commissioner, Jammu.
2. Deputy Commissioner, Samba.
3. Sub-Divisional Magistrate, Vijaypur.
4. Tehsildar, Vijaypur.

.....**Respondents**

In the matter of:

Revision Petition against Order No. OQ/TV/241 dated 26.08.2020 passed by respondent No. 4 Tehsildar Vijaypur with regard to the application filed by petitioners for attestation of Mutation qua the land measuring 19 Kanals falling under Khasra No. 223/92 situated at Village Bara, Tehsil Samba now Vijaypur District Samba pursuant to the directions of the Hon'ble High Court dated 21.11.2017 passed in OWP No. 1729/2014 titled Ravinder Kanta & Ors. V/S State of J&K & Ors.

Present: -

Advocate Rakesh Chargoatra for Petitioners.

Assistant Revenue Attorney with Deputy Commissioner, Samba for Respondents.

ORDER

A brief resume of the matter in hand is that Tehsildar Vijaypur issued notices under No's. 196 and 199/OQ, both dated 13.10.2014 to the predecessors- in - interest of petitioners herein with the direction to appear



before him alongwith the legal documents pertaining to holding of the state land covered under survey No. 223/92 of village Bara, Tehsil Vijaypur, failing which eviction proceedings shall be initiated. Aggrieved, the petitioners approached the Hon'ble High Court by way of Writ Petitions and the Hon'ble High Court vide order dated 11.11.2014 directed maintenance of status quo on spot. The said Writ Petitions were disposed of vide order dated 21.11.2017 with the direction that in case the petitioners file an application seeking mutation of land in question within 10 days from the date of receipt of certified copy of this order, the Tehsildar shall decide the said application in light of the Govt. Order No. LB-6/C of 1958 dated 05.06.1958 read with Govt. Order No. S-432 of 1966 dated 03.06.1966 within 4 weeks thereafter, by a speaking order and till the said application is decided by the Tehsildar, the ad-interim directions, if any, granted earlier shall continue. Complying with the directions of the Hon'ble High Court, two applications, one by Neelam Sambyal & Ors. and another by Ravinder Kanta & Ors. were filed by the petitioners before Tehsildar, who vide orders dated 18.07.2020 and 26.08.2020 respectively rejected the claim of the petitioners for attesting the mutations under Govt. Orders LB-6/C and S-432. These orders of Tehsildar were challenged by way of Writ Petitions, WP(C) No. 479/2021 and WP(C) No. 480/2021 but the same have been dismissed as withdrawn by the Hon'ble High Court vide order dated 15.03.2021 with the liberty to the petitioners to avail of the remedies available against the impugned orders under the Land Revenue Act and accordingly the present petitions. It is also worthwhile to mention here that the petitioners have also filed contempt petitions against the Tehsildar for non-compliance and willful disobedience of the order dated 21.11.2017 of Hon'ble High Court and the Tehsildar has also filed statement of facts before the Hon'ble High Court.

2. The dispute as is seen from the revision petitions concerns state land measuring 19 Kanals under survey No. 223/92 which the petitioners in petition titled Ravinder Kanta & Ors. V/S UT of J&K & Ors. plead to have been allotted to their predecessor, Kamal Singh in 1954 and state land measuring 15 Kanals under same survey No. which the petitioners in

petition titled Neelam Sambyal & Ors. V/S UT of J&K & Ors. plead has been in the possession of their predecessor even prior to 1958.

3. The parties were put to notice and after completing the service, official respondents represented by Assistant Revenue Attorney With Deputy Commissioner, Samba filed written objections, copy whereof was provided to Ld. Counsel for petitioners as well and thereafter the case was argued orally by both the parties.
4. Before proceeding to the merits of the case, Ld. Counsel for the petitioners pointed out that the official respondents have demolished the boundary wall/Chowkidari shed raised by the petitioners on spot in violation to the status quo order of Hon'ble High Court. It is also said that the impugned orders have been back dated to avoid contempt proceedings as the said orders were disclosed only when statement of facts was filed by Tehsildar on 02.01.2021 in the contempt petition.
5. Ld. Counsel for petitioners in his arguments stated that Tehsildar has wrongly rejected his applications by holding that nature of land as **Ghair Mumkin Devak** and so no mutation under Govt. Orders referred to above can be attested. The land as pleaded by the Ld. Counsel is recorded as **Sailaab** on the crucial date of Kharief 1957-58 contrary to what has been held by the Tehsildar and otherwise also there is no bar in the Govt. Order LB-6/C to confer status of tenant-at-will for occupants of state land, nature of which is Ghair Mumkin. It is also said that the petitioners are not unauthorized occupants of the land in question but the same has been allotted to their predecessor.
6. The change of entries as mentioned in the impugned orders has been rebutted by arguing that the name of Sindoor Singh has continued till 1966 only and thereafter it is again Kamal Singh, whose entry is recorded and otherwise also Sindoor Singh being real brother of Kamal Singh, his cultivation can always be treated as self cultivation of Kamal Singh allottee. Similarly with regard to the entry in favour of Baldev Singh in other petition it is said that the entry was recorded only for 2 Kanals of Land and that too till 1962 after which the entry of Prem Singh continues and the possession



of petitioners on spot has been admitted by the revenue authorities in their reports submitted from time to time.

In response to the objections of official respondents, Ld. Counsel for petitioners pleaded that the matter as pointed out by the respondents has not been dismissed by Hon'ble High Court but in fact has been relegated to this Court under Land Revenue Act. The allegation of land having been transferred by the petitioners too is denied for want of any documentary evidence and cultivation is said to have never been abandoned. By relying upon the judgments of Hon'ble High Court related to the subject, Ld. Counsel justified his claim over the land in question for attestation of mutations under Government Orders referred to above. Relevant portions of the said judgments are reproduced as under:

(i) **LPA (OW) No. 8/2000-date of decision 15.04.2004**

"Kewel Krishan V/S State & Ors."

Government Orders LB/6 giving right to the persons who had been in continuous cultivating possession of state land, to be regarded as tenants at will and Government Order No. S-432 holding them entitled to get ownership rights -whether the right conferrable under Government Order LB-6 is dependent on attestation of a mutation- held right to be recorded as tenant-at-will is substantive and independent right and emanates from Government Order No. LB-6-attestation of mutation is of no consequence so far as right conferred under LB-6 is concerned- Ban imposed by Government Order NO. 158 of 1989 on Mutations pursuant to Govt. Order No. LB-6 and S-432 held arbitrary exercise of power and such Govt. Order does not affect the rights conferred by Govt. Orders LB-6 and S-432.

(ii) **Mohi-Ud-Din Sikandar and Ors. V/S State & Ors.**

Ahmad Ganie V/S State & Ors -Date of decision- 25.09.1985

As to whether Mutations were effected in favour of the petitioners or not is of no consequence they were in possession of the said

land under valid orders, instructions and Cabinet decision. Under the scheme which emanate from the said instructions and orders, their possession of the land cannot be said to be illegal or bad in any manner over the parcels of land which were mutated in their favour. They had right to remain in possession of the said land without mutations being in their favour. Mutations were attested only to ascertain land revenue which was to be paid by the petitioners as tenants-at-will in their favour.

(iii) *Rights are vested and divested from the day when statute is promulgated*

SLJ(2004) II 617; KLJ 1986 page 30.

(iv) **PIL No.19/2011 titled Prof. S. K. Bhalla V/S State and Ors.(04.12.2020)**

We make it clear that because of the enactment being declared un-constitutional, the position as on date of coming into force of this Act or on the date of transfers under the Jammu and Kashmir state land (vesting of ownership to the occupants) Act, 2001 (Roshni Act) would stand restored.

A prayer has been made by the Ld. Counsel to set aside the impugned orders with a further direction to the Tehsildar to attest mutations in favour of the petitioners under above said Govt. Orders.

8. Assistant Revenue Attorney with Deputy Commissioner, Samba on behalf of Official Respondents justifies the impugned orders by arguing that conditions precedent to attestation of mutations under Govt. Orders LB-6 and S-432 are missing in the instant case as the land in question is recorded as **"Ghair Mumkin Devak"** and also that the possession of the petitioners has not remained continuous. It is also said that the land is under the possession of Revenue Department and the entries of the petitioners have been deleted by the then Tehsildar by writing "Fard Partal" on 22.06.2016 and that the possession of the land was illegally transferred by the petitioners to one Anil Nagotra S/o Om Parkash R/o Trikuta Nagar, Jammu for which Tehsildar has also lodged an a FIR.

9. **Heard.**

The averment of Ld. Counsel for the petitioners that the impugned orders are back dated and eviction on spot was carried out by the Tehsildar in violation of status quo order of the Hon'ble High Court need not to be deliberated upon by this Court because of the pendency of the contempt petitions before the Hon'ble High Court against the Tehsildar who also has filed his statement of facts in the said contempt petitions.

11. Since the whole controversy revolves round the Govt. Orders LB-6/C and S-432, it will be proper to place on record the said Govt. Orders.

I) Revenue and Rehabilitation Department Order No. LB/6-C of 1958 dated 05.06.1958.

It is ordered that the occupants of State land including that vested in the State under the provisions of the Big Landed estates Abolition Act, 2007 and that from which ejectment was ordered under Council Order No. 40-C of 1944 but ejectment has not taken place till Kharif 1957-58 be recorded as tenants-at-will (under the State) in respect of the area in their cultivating possession or occupation in Kharif 1957-58 subject to the following conditions, namely:-

- 1 (a) *The occupant shall pay land revenue at-*
 - (i) *Rs. 10 per kanal, where the land is an Orchard, maliari land or a seed farm:*
 - (ii) *Rs. 5 per kanal, where the land is a plantation of trees other than fruit trees or is covered by a shop or other structure used for commercial purposes:*
 - (iii) *Rs. 2.40 per kanal, where the land is covered by a residential building or is used for raising grass:*
 - (iv) *village rates including cesses and other dues for the time being in force in case of land other than that mentioned in sub-clause (i), (ii) and (iii).*
- (b) *The arrears of revenue as calculated under clause (a) shall be paid from the date of occupation subject to a maximum of fifteen years prior to Kharif 1957-58, provided that the arrears for more than five years but less than 10 years may*

be paid in three and those for more than ten years in five equal annual instalments.

(c) The occupants shall not-

(i) Transfer the land or any interest therein; or

(ii) Sublet the land for more than two successive harvests or, with the permission in writing of a revenue officer not below the rank of a Tehsildar, for more than three years; or

(iii) Where the land is used for growing paddy, maize or wheat crop, convert it into an orchard or plantation or otherwise render it unfit for the cultivation of such crops; or

(iv) Fail to cultivate the land for more than one year or neglect to conform to standards of cultivation prevalent in the village.

Explanation:- The land covered by a "Shop" or "structure used for commercial purpose" or "residential building" shall be deemed to include the land appurtenant to such shop, structure or residential building.

2. Nothing contained in paragraph, I shall apply to such land as is:-

(i) Held by occupants, who do not reside or own any land in the village in which the land occupied is situate;

(ii) Recorded or used as pathway, grazing ground, graveyard, cremation ground, camping ground, kuhl (irrigation channel) or forest, demarcated or otherwise including Berun line;

(iii) Held by any Government Department or institution under the control of the Government:



- (iv) *Situated on a hill slope and likely to be affected by erosion:*
- (v) *Situated within the limits of a Municipality, [a Town Area], a Notified Area or a Cantonment or in areas to which rules for the grant of land for building purposes or other rules and orders in respect of Nazool lands for the time being in force extend;*
- (vi) *Allotted to or left with the displaced persons under the provisions of Cabinet Order No. 578-C of 1954 dated 7th May, 1954.*
- (vii) *In excess of 100 Kanals: or is held by occupants whose ownership or tenancy holding or both together with the area so occupied exceeds 100 Kanals to the extent only of such excess:*


Provided that it is not laid with an orchard or that there are no permanent structure standing thereon.

- (viii) *held by a displaced family or a person other than a displaced person, in excess of the unit prescribed under Cabinet Order No. 578-C of 1954 dated 7th May, 1954;*

Provided that land so cultivated was neither virigin nor was recorded as Banjar Qadim or 'Ghair Mumkin during the last settlement and was not such at the time when it was broken.

3. No land of which the possession or occupation is sought to be regularised in accordance with these provisions shall be deemed to include trees of any description standing thereon but the occupants thereof shall be responsible for the preservation, maintenance and upkeep of such trees.

4. A tenant-at-will who does not accept or who contravenes any of the conditions laid in paragraph 1 and the [transferee] or sub-lease of such a tenant shall be ejected and the land revenue calculated under clause



(a) of paragraph 1 for the period of occupation shall, subject to a maximum of 15 years, be recovered from him.

II) Government Order No. S 432 of 1966 dated 03.06.1966

It is ordered that proprietary rights be conferred on the cultivators of State lands who are permanent residents of the State and have already been declared as tenants-at-will in terms of Government Order No. LB/6-C of 1958 subject to the conditions that:-

- (1) Land is held by them in self cultivation continuously from Kharif 1957-58:*
- (2) The areas of the land given on proprietary rights should not exceed two acres of Abi and four acres of Khushki in Kashmir Province including the District of Ladakh and four acres of Abi or 6 acres of Khushki in the Jammu Province, in both cases including the land already held in ownership rights:*
- (3) No right should be conferred in respect of land entered in records or used as Kahcharai or for any common purpose or orchard, tree plantations, shop sites, land under structures used for commercial purpose and residential buildings;*
- (4) The grantee shall use it for agricultural purposes only and shall not be entitled to alienate it without the previous permission of the Government:*
- (5) The grantee shall be liable to pay the land revenue including cesses and other dues as provided for in the orders by which they are declared as tenants-at-will.*

II. Any violation of the condition of the grant as detailed above shall make the grant liable to forfeiture.



From the plain reading of Govt. Order LB-6/C it is clear that lands recorded as **Ghair Mumkin, Banjar or Virgin** at the time of last settlement do not come within the ambit of said Govt. Order and Ld. Counsel for the petitioners has in his arguments tendered a wrong interpretation of the said proviso by stating that the exemption is to be read only with the preceding sub-clause viii of the Govt. Order LB-6/C.

12. It is not mere occupation/cultivating possession on the crucial date of Kharief 1957-58 that is required for conferment of tenant-at-will status under Govt. Order LB-6/C and subsequent ownership rights under Govt. Order S-432 but certain conditions as spelt out in the said Govt. Orders are required to be met with to qualify for conferment of such rights. The petitioners neither in their petition are making a whisper about being compliant to one of the vital conditions i.e payment of land revenue nor have placed any such document on record which would show the land revenue ever having been paid by the petitioners. The possession of the petitioners ought to have been continuous to qualify for the rights as prayed for but the same has not remained continuous and on most occasions the land has remained without any crop as reflected below:-

Year	Name of the record	Name of the owner	Name of cultivator	Khasra No.	Area	Kind of Soil	Crop		Mutation, Kasht and Lagan
							Rabi	Kharief	
2000-01 BK	Jamabandi	Ram Dutta & Ors.	Self Cultivation	223/92	637 k 10 M	Ghair Mumkin Devak	-	-	-
1958	Khasra Girdawari	State	Prem Singh	223/92 min	15 K	Sailaab	Wheat	Vacant	Kasht Prem Singh illegal occupant 13 K and Baldev Singh 2 K
1958-61	-do-	-do-	Kasht Prem Singh illegal occupant 13 K and Baldev Singh 2 K	do-	do-	do-	do-	do-	do-

	do-	do-	do-	do		do		do	Kasht Prem Singh
62 2015	Khasra Girdawari	-do-	Prem Singh	-do-	-do-	-do-	Wheat up to 2011 and vacant onwards	Vacant up to Kharief 78 and from 1979 to 2011 maize	-
2016	Khasra Girdawari	-do-	Prem Singh	-do-	-do-	-do-	Vacant	Vacant	Entry of Prem Singh Cancelled
2016 to 2021	Khasra Girdawari	-do-	Maqbooza Sarkar	-do-	-do-	-do-	Vacant	Vacant	-
1958	Khasra Girdawari	State	Kamal Singh maroosi allottee	223/92	19 K	Sailaab	Wheat	Vacant	Kasht Sindoor Singh real brother Kamal Singh allottee
1958-66	-do-	-do-	Kamal Singh allottee kasht Sindoor Singh real brother	223/92	19 K	Sailaab	Wheat	Vacant up to 1965 and maiz from 1966	-
1967-76	-do-	-do-	Kamal Singh allottee Lagan Nakdhi hasb parta deh	-do-	-do-	-do-	Wheat	Maize	-
1976 (Kharief)	-do-	-do-	Kamal Singh allottee Lagan Nakdhi hasb parta deh	-do-	-do-	-do-	Wheat	Maize	Kamal Singh expired and entry in favour of his son Krishan Singh made
1977-2015	-do-	-do-	Kamal Singh allottee Kasht Krishan Singh	-do-	-do-	-do-	Wheat up to Rabi 2010 & vacant onwards	Maize up to kharief 2010 & vacant onwards	-
2016 (Rabi)	-do-	-do-	Kamal Singh allottee Kasht Krishan Singh	-do-	-do-	-do-	Vacant	Vacant	The entry of Kamal Singh has been cancelled

2016- till date	-do-	-do-	Maqbooza Sarkar	-do-	-do-	-do-	Vacant	Vacant	-
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It is thus clear that the possession has changed from time to time and the cultivation has also been abandoned for a considerable period of time, against the spirit and object of the Govt. Orders referred to herein above. The explanation given by Ld. Counsel that change in entry in favour of Sandoor Singh does not amount to a change as Sandoor Singh is brother of Kamal Singh and his cultivation is always deemed to be self cultivation is not a reasoned argument as the term self cultivation is defined under Agrarian Reforms Act which was enacted in 1976 whereas the change of entry refers to year 1958. The contention of the Ld. Counsel for the petitioners that there is no bar in the Govt. Orders under discussion to confer status of tenant at-will/ ownership for occupants of state land, nature of which is "Ghair Mumkin" is not a logical conclusion drawn by the Ld. Counsel as Para (4) of Govt. Order No. 432 provides that the grantee shall use it for agricultural purpose only" which makes its amply clear that the Govt. Orders relied upon by the petitioners are applicable only to such lands that can be put to agricultural use and not to the lands which are unculturable.

13. - The allotment order relied upon by the petitioners in one of his petitions is a Photostat copy which does not show the issuing authority and such a document does not have any legal sanctity and cannot be taken into consideration. The kind of land shown in the said so called allotment order is "**Mera Awal**", which, however, is nowhere so reflected in any of the revenue documents right from 1944 till date.
14. The petitioners on one hand are praying for attestation of mutations under Govt. Orders LB-6 and S-432 but on the other hand plead in one of the petitions that the impugned order is contrary to Govt. Order No. Rev(LB) 202 of 2007 dated 12.06.2007 whereby the official respondents are enjoined upon to regularize the possession of the petitioners by conferring the proprietary rights. Two contrary stands have been taken with regard to the basis for



conferment of ownership rights which alludes to the likelihood of petitioners themselves being unsure of what to plead for.

15. It is also seen from records that majority of the mutation work under Govt. Order LB-6 and S-432 in the said Village has been completed in year 1962 and 1967 respectively but what prevented the petitioners from approaching the revenue authorities for attestation of mutations in their favour is nowhere brought out by the petitioners in their petitions, and no reason whatsoever has been given for such a belated action by the petitioners. Infact, even their possession on spot is doubtful upto 2007 since they did not bother to apply for regularization of the suit land in their favour under Roshni Act (now repealed).
16. It is most relevant to mention here the celebrated judgment of the Hon'ble High Court in PIL titled Prof. S.K. Bhalla V/S State and Ors. wherein the Hon'ble High Court has held that, *".....removal of encroachments/un-authorized occupation is a task to be executed by the Govt./Revenue Authorities/concern departments. We expect and impress upon all the concerned that the task given its seriousness and magnitude is promptly executed, though in accordance with law, which goes without saying."*
17. Thus, viewed in the context, it becomes clear that the revision petitions are devoid of any merit and it is simply a ploy by the petitioners to possess the state land and accordingly both the revision petitions are dismissed and the orders impugned upheld. Respondents are further directed to take every possible measures to ensure the protection and preservation of the state land.
18. Interim orders, if any, issued by this court are vacated.
19. File to be consigned to records after due completion.

Announced

03.06.2022



**Shaleen Kabra (IAS)
Financial Commissioner (Rev)
J&K**