

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on: 01.05.2025
Pronounced on:- 24.07.2025**

WP(C) No. 287/2023

1. Harbir Singh, Age 37 years, S/o
Dr. Harbhajan Singh, R/o H. No.
20B DC, Gandhi Nagar, Jammu,
through power of attorney holder
Dr. Balbir Kour Rissam W/o Dr.
Harbhajan Singh R/o House No.
20-B, D/C, Gandhi Nagar, Jammu,

.....Appellant(s)/Petitioner(s)

Through: Mr. V. R. Wazir, Sr. Advocate with
Mr. Razat Sudan, Advocate
Mr. R. P. Sharma, Advocate with
Mr. Rohit Gupta, Advocate

vs

1. UT of J&K through Commissioner/Secretary
Revenue Department, Civil Secretariat, Jammu.
2. Jujhar Singh S/o Lt. Mahant Janak Singh R/o H. No.
49/2 Nanak Nagar, Jammu.
3. Sandeep Singh, S/o S. Jujhar Singh.
4. Satwant Singh S/o S. Jujhar Singh.
5. Jaswinder Kour W/o S. Jujhar Singh.
6. Deputy Commissioner, Jammu.
7. Tehsildar, R. S. Pura.
8. Custodian General, Evacuee Property, Jammu.
9. Custodian Evacuee Property, Jammu.

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG
Mr. F. A. Natnoo, Advocate
Mr. Himanshu Beotra, Advocate
Mr. Faiz Ul Arif Fahmi, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. On the basis of Form-Alif, carrying the names of Janak Singh, Ranjeet Kour w/o Janak Singh, Harbans Kour (alias Joginder Kour) d/o Janak Singh, Harbhajan Singh & Jujhar Singh (respondent No. 2) both sons of Janak Singh, the land measuring 37 kanals 4 marlas (30 kanals-Evacuee Land and 7 Kanals 4 Marlas- State Land), situated at Village-Gondla, Tehsil R.S Pura was allotted to the family comprising of members as mentioned above under Cabinet Order No. 578-C of 1954. Janak Singh expired in the year 1991. Joginder Kour left the family on account of marriage. Sardar Harbhajan Singh and Ranjeet Kour expired in the year 2013 and 2016 respectively. After the demise of Sardar Harbhajan Singh, his son i.e. the petitioner filed an application for partition of land before Revenue Officer under J&K Land Revenue Act, which ultimately landed before the respondent No.7 pursuant to order dated 07.02.2019 passed by the Joint Financial Commissioner, J&K with powers of Commissioner, Agrarian Reforms. Thereafter, the respondent No.7 vide order dated 28.06.2022 directed for affecting the partition of the land mentioned above. Respondent No.2 assailed the order dated 28.06.2022 and order dated 18.07.2022 through the medium of a

revision petition before respondent No. 9, who vide order dated 13.08.2022 dismissed the same. Respondent No.2 filed another revision petition before respondent No.8, thereby assailing the order dated 13.08.2022, but that revision petition was also dismissed vide order dated 30.11.2022.

2. Aggrieved of the orders passed by the respondent Nos.7, 8 and 9, respondent No.2 filed the revision petition before J&K Special Tribunal, Jammu (for short 'the Tribunal') and the learned Tribunal vide order dated 23.12.2022 allowed the revision and remanded the matter to respondent No.7 to conduct fresh and separate proceedings in respect of Evacuee land and State land.
3. The petitioner being aggrieved of the order dated 23.12.2022 has approached this Court for quashing the order passed by the learned Tribunal on the ground that the learned Tribunal has failed to make distinction between the rights envisaged under Cabinet Order 578-C of 1954 and the rights inheritance before the operation of Agrarian Reforms Act and thereafter, when superior rights were granted under section 3-A of the Agrarian Reforms Act. Precisely, the stand of the petitioner is that the Section 67 of the Tenancy Act and not Rule 15-B of the Cabinet Order No. 578-C of 1954 would determine the devolution of interest and the partition of estate.
4. Respondent No.2 in his response has stated that the learned Joint Financial Commissioner (with the powers of Commissioner, Agrarian Reforms), J&K in its order dated 07.02.2019 had

observed that in the normal process, after the death of late Sh. Janak Singh, his interest in the allotted land would devolve as per the provisions of Rule 15-B(2) of the Cabinet Order 578-C of 1954 on the surviving members of his family and thereafter, a review petition filed by the petitioner, was dismissed vide order dated 20.04.2022. The orders of the Joint Financial Commissioner have attained finality, but the respondent No. 7 had overlooked the orders of the Joint Financial Commissioner while deciding the matter. It is further stated that the parties are refugee/allottees of land and they have been allotted the land under the Cabinet Order No. 578-C of 1954 and succession under the said rules is by devolution of interest in terms of Rule 15- B and not under Section 67 of the Tenancy Act. It is a settled law that when there is a conflict between special law and general law, it is the special law which prevails. Respondent No. 2 has in fact supported the order passed by the learned Tribunal and has prayed for dismissal of the writ petition preferred by the petitioner.

5. Respondent Nos. 3 and 5 in their response have followed the stand of the respondent No. 2 and have prayed for the dismissal of the writ petition.
6. Responded No. 7 in his response has stated that land measuring 37 Kanals 4 marlas at village Gondola, Tehsil R.S Pura was allotted to the family of late Shri Janak Singh under the Cabinet Order Number 578-C of 1954. Out of total allotted land, 30

kanals of land was evacuee land and remaining 7 Kanals 4 marlas was State land. Occupancy rights in respect of 30 Kanals of evacuee land were conferred in terms of Section 3-A of Agrarian Reforms Act and the ownership rights were conferred in respect of remaining land measuring 7 Kanals 4 marlas. After the death of Janak Singh, the occupancy rights of 30 Kanals were transferred equally among Ranjit Kaur wife of late Janak Singh, Jujhar Singh s/o Janak Singh and Harbir Singh s/o Harbhajan Singh as per Section 15-B of Cabinet Order Number 578-C of 1954. Similarly, vide mutation No. 53/1, the ownership rights in respect of land measuring 7 Kanals 4 Marlas comprising survey number 88 were transferred equally among 4 legal heirs of Shri Janak Singh, namely, Ranjit Kaur, Jujhar Singh, Joginder Kaur D/o Janak Singh and Harbir Singh. It is further stated that in compliance to the directions of the Joint Financial Commissioner-respondent No.7 he had passed an order dated 28.06.2022 and the land was partitioned among the legal heirs of late Janak Singh as per their shares as recorded in the revenue record vide mutation number 51 and 53/1.

7. Respondent No. 8 and 9, though have not taken any specific stand being the statutory authorities but have prayed for the dismissal of the writ petition.
8. Mr. Ved Raj Wazir, learned Senior Counsel for the petitioner has argued that the rights of the petitioner and respondent No. 2 are to be governed by Section 67 of the Tenancy Act, as the occupancy

rights were conferred upon them in terms of section 3-A of Agrarian Reforms Act and Rule 15-B of the Cabinet Order No. 578-C of 1954 was not applicable at all. He has placed reliance upon the judgment of Division Bench of this Court in '**S.Kirpal Singh vs. S. Suchet Singh and Ors., 2017JKJ ONLINE 8494**' and the judgment of High Court of Punjab and Haryana in case titled '**Mangli Devi vs. Jagmal**', 2022 Latest Case Law 4779.

9. Mr. Faiz Ul Arif Fahmi and Mr. Himanshu Beotra, learned counsels for the private respondents have argued that the rights of the contesting parties are to be determined in terms of Rule 15-B of the Cabinet Order No. 578-C of 1954, as it is the complete code in itself prescribing the mode of devolution of interest in case of death of an allottee and not under Section 67 of the Tenancy Act. They have placed reliance upon the judgments of the Co-ordinate Bench of this Court in case titled '**Kanta Devi vs. Kaki Devi**', 2011(4)JKJ(HC)16 and '**Joginder Kour vs. State of J&K & Ors.**', 2014(2)JKJ(HC)323.
10. Heard learned counsel for the parties and perused the record.
11. From a perusal of the record, it is evident that the land was allotted to family of Janak Singh comprising of Janak Singh, Ranjeet Kour W/o Janak Singh, Harbans Kour (alias Joginder Kour) D/o Janak Singh, Harbhajan Singh & Jujhar Singh (respondent No. 2) both sons of Janak Singh. After the demise of Harbhajan Singh, the respondent No.2 filed an application for partition of land allotted to the family of Janak Singh under

Cabinet Order No. 578-C of 1954. It is also an admitted fact that vide order dated 07.02.2019 passed by the Joint Financial Commissioner, J&K with powers of Commissioner, Agrarian Reforms, the respondent No.7 was directed to conduct fresh enquiry into the matter in presence of the concerned parties and pass appropriate orders as per relevant law/rules. However, while passing the order dated 07.02.2019, the Joint Financial Commissioner, J&K with powers of Commissioner Agrarian Reforms made the following observations:

“Late Janak Singh was allotted land measuring 37 Kanals 18 marlas under Cabinet Order No. 578-C of 1954, out of which 31 Kanals 15 marlas (wrongly mentioned) was evacuee land and remaining 7 Kanal was state land. In the normal process, after the death of Mahant Janak Singh, his interest in the allotted land would devolve as per the provisions of Rule 15-B(2) (substituted by SRO-739 dated 17.12.1976) of allotment of land to Displaced persons Rules on the surviving members of the family.----”

12. The order dated 07.02.2019 was sought to be reviewed but application for review was dismissed vide order dated 20.04.2022. The said order dated 07.02.2019 has attained finality.
13. Be that as it may, without prejudice in respect of observations made by the Joint Financial Commissioner, J&K, this Court would consider the contention raised by the petitioner independently.
14. Learned Senior Counsel for the petitioner has laid much stress on the judgment of the Division Bench of this court in ‘**S. Kirpal Singh vs. S. Suchet Singh and Ors., 2017JKJ Online 8494**’, to bring home a point that once a person becomes an occupancy

tenant under Section 3-A of Agrarian Reforms Act, then succession of occupancy rights shall be regulated by section 67 of the Tenancy Act. The relevant part of the judgment is extracted as under:

“9. So our conclusions are (1) that transfer of occupancy rights u/s 3-A of the Agrarian Reforms Act is permissible only by sale, mortgage or gift. (2) **that the only mode of succession to occupancy rights is as provided in section 67.** (3) that application of section 68 in this case is ruled out because the testator has not executed the will with the permission and consent of the Custodian i.e. the landlord in this case as required under section 68 of the Act which is mandatory.”

(emphasis added)

15. In **S. Kirpal Singh’s** case (supra), the writ court had held that right to transfer by sale, gift or mortgage under section 3-A of Agrarian Reforms Act includes other modes of transfer also. While deciding the above issue, the Division Bench of this Court had held that transfer of occupancy rights by sale, mortgage and gift does not include the transfer by will or testamentary disposition. It appears that Rule 15-B of Cabinet Order No. 1954-C was not brought to the notice of Division Bench and as such, the Division Bench had no occasion to consider the applicability of Rule 15-B of Cabinet Order No. 1954-C *vis-a-vis* the applicability of Section 67 of the Tenancy Act for determination of devolution of interest after the demise of allottee. Thus, the aforesaid judgment of the Division Bench cannot be said to have determined the issue conclusively, in absence of consideration of Rule 15-B of Cabinet Order 578-C. It would be apt to take note

of another judgment of the Division Bench in case titled ***‘Makhan Singh vs. Amar Nath & Ors.’*, 2015(1) JKJ 679**, wherein it has been held as under:

“The allotment of land under Cabinet decision no. 578-C of 1954 to displaced persons from other side of Cease Fire Line (now Line of Actual Control) did not confer ownership rights on an allottee. The authorities involved in relief and rehabilitation of displaced persons did not make allotment of land in favour of such persons individually. The allotment was made to the families so that whole family as a unit was rehabilitated and could cultivate the land for its sustenance. **Rule 15-B lays the mode and manner in which allotted land is to pass in case death of person in whose name it was initially allotted. Since initial allotment was made to the family to keep allotment procedure in tune with the initial object, allotted land is to devolve by survivorship rather than inheritance. The allotted land goes to the surviving members of the family who were present and part of the family at the time of initial allotment and to such person(s) who became part of the family because of marriage or adoption etc. Similarly those who left the family because of marriage and adoption are not to have any part of the land devolving by survivorship.**”

(emphasis added)

16. Learned Tribunal has relied upon the judgements of the Co-ordinate Bench of this court in case, titled, ***‘Kanta Devi vs. Kaki Devi’*, 2011(4)JKJ(HC)16** and ***‘Joginder Kour vs. State of J&K & Ors.’*, 2014(2)JKJ(HC)323**, to arrive at the conclusion that after the demise of original allottee, his interest shall devolve in terms of Rule 15-(B) of Cabinet Order 578-C.
17. In ***‘Kanta Devi vs. Kaki Devi’***, (supra), the issue was raised with regard to the jurisdiction of the civil court to entertain suit for partition of evacuee land, in respect of which occupancy rights were vested in terms of section 3-A of Agrarian Reforms Act. In this case, no reference was made to section 67 of Tenancy Act but it was held as under:

“The fact that in terms of Section 3-A of the Jammu and Kashmir Agrarian Reforms Act, 1976, “Occupancy Tenancy Rights” have been conferred on the displaced persons cultivating evacuees' land personally and that such displaced persons are given right to transfer of occupancy tenancy by sale, mortgage or gift, does not change complexion of the matter. **Section 3-A of the Agrarian Reforms Act, 1976 makes use of the “occupancy tenancy” only to identify the status and rights of displaced persons granted, land under the Allotment of Land to Displaced Persons Rules 1954 and the Evacuees Property Act as also the Rules made there under continue to govern all the matters relating to end, flowing out of allotment of the land to the displaced persons under the Allotment of Land to Displaced Persons Rules 1954.** In terms of Section 3-A of the Agrarian Reforms Act, whereby the displaced persons cultivating evacuees' land personally are to be deemed to be occupancy tenants and recorded as such, does not divest the Custodian in whom evacuee property is vested in terms of Section 5 of the Evacuees Property Act of such property. It is pertinent to point out that in terms of Section 3 of the Agrarian Reforms Act, 1976, the application of Agrarian Reforms Act, 1976 to the evacuees land is restricted to Sections 4(2)(c), 5, 7, 13, 14 and 26(3). It is expressly provided that the provisions of the Agrarian Reforms Act, 1976 would not confer any ownership rights upon a displaced person or other person in any evacuees' land or affect or interfere with the rights of possession or legal obligation of a displaced or other person conferred or imposed by or under any law, rule or order, for the time being in force, in respect of such land. The conferment of Occupancy Tenancy Rights on displaced person in terms of Section 3-A of the Agrarian Reforms Act, 1976, does not divest the authorities under Evacuees Property Act of the jurisdiction to adjudicate rights of the allottees--parties in the present case.

(emphasis added)

18. This Court is of the considered view that mere attestation of mutation under Section 3-A of Agrarian Reforms Act would not make the Cabinet order No. 578-C inapplicable so far as devolution of interest of deceased allottee is concerned, as Section 3-A of Agrarian Reforms Act uses expression “occupancy tenant” only for a limited purpose of status of displaced persons and their right to transfer their occupancy rights subject to the provisions of Alienation of Land Act. It does not affect the devolution of interest of deceased allottee because

already a special provision is in place in the Cabinet Order No. 578-C.

19. This is an admitted fact that the land in question was allotted under Cabinet Order No. 578-C of 1954 and it prescribes the mode of devolution on interest in case of death of an allottee in the manner that if an allottee dies, his interest in the allotted land shall devolve upon other members of his family in whose favour allotment has been originally made or regularised under the rules and those who may have become members of the family by way of marriage, birth or adoption after such allotment excluding those who may have died earlier or may have left the family on account of marriage or adoption. This provision is in fact a complete code prescribing the devolution of interest of deceased allottee. If the allotted land in terms of Cabinet Order (ibid) is an evacuee land, then the authorities under the Act of 2006 shall have the jurisdiction to decide any dispute between the parties. Rule 15-B of Cabinet Order No. 578-C of 1954 does exclude a female member of family, who by marriage moves out of the family before the demise of original allottee, to get any right in respect of allotted land after the demise of original allottee but the rights of the original female allottee are not extinguished just because of her marriage. So far as Section 67 of the Tenancy Act is concerned, it provides the mode of succession to right of occupancy and in case of death of occupancy tenant, the right of succession shall first vest in male lineal descendants, meaning

thereby the females are excluded to succeed to the right of the deceased occupancy tenant in the presence of male lineal descendant. In the order dated 28.06.2022, Joginder Kour is conspicuous by her absence, so far partition in respect of evacuee land is concerned, despite the fact that she was an original allottee, though no interest in respect of share of Janak Singh would devolve upon her even in terms of Rule 15-B of Cabinet Order 578-C. The learned Tribunal while allowing the revision, has considered this aspect of the matter as well and has returned the following findings (Page no 30 of the order impugned):

“It is manifest from the fact that Joginder Kaur, who is an original allottee, though married outside could not have been ignored while determining shares, especially when there is nothing available on record to suggest that she has relinquished her share. Original allottee is not divested of shares in the allotted property even by marriage. This rule applies to the persons falling in the second category of persons, who becomes member after the allotment. It required the officer determining shares for partition to give a definite finding as to who were the persons whether original surviving allottees or the second category of persons, who may have become the members of the family after allotment, who were entitled to the share in the allotted. Without determining this aspect of the matter, the enquiry whatever may have been conducted is incomplete exercise and based on it the rights and interests cannot be set to have being rightly settled.”

20. This Court has examined the order dated 23.12.2022 and finds that the learned Tribunal has observed that respondent No.7 has determined three equal shares in the name of dead person-Ranjeet Kour, petitioner and respondent No.2 only on the basis of earlier mutation Nos. 51 and 51/3, which is not permissible. The opinion formed by the learned Tribunal is un-exceptionable, as to determine the shares of the parties on the basis of mutations is contrary to settled proposition of law that mutation entries neither

create nor extinguish any interest in the landed estate and are meant for fiscal purpose only.

21. In view of what has been considered, discussed and observed above, this Court does not find any reason to interfere with the well-reasoned order passed by the learned Tribunal. Accordingly, this petition is found to be without merit and the same is, accordingly, ***dismissed***.

(RAJNESH OSWAL)
JUDGE

Jammu
24.07.2025
Karam Chand/Secy.

Whether the order is reportable: Yes/No

