
(2019) 04 J&K CK 0079

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1066 Of 2014, CMP No. 1688 Of 2014

Mohammad Amin Khan & Anr

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Land Revenue Regulation, 1980 — Section 130
Constitution Of India, 1950 — Article 19(1)(f)

Citation : (2019) 04 J&K CK 0079

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : M.Moomin Khan, Irfan Andleeb, N. H. Shah

Final Decision : Disposed Off

Judgement

This petition is founded on the historical events of land reforms that followed the first ever land settlement in the State of Jammu and Kashmir in general and the Valley of Kashmir in particular. The petitioners claim ownership and peaceful possession of just 1 Kanal and 1 Marla of land, duly fenced, comprised in Khasra nos.1594 and 1595 situated in Estate Narsinghar, Tehsil Shehr Khas at Rambagh Bala, Srinagar, having inherited the same from their ancestors, and their claim is founded on the aforesaid historical facts and events. They have prayed for, inter alia, a mandamus, declaring that they have a right to enjoy ownership and peaceful possession of the land, and that the respondents cannot dispossess them from the said land without acquiring the same and paying them compensation in accordance with law.

2. Petitioners' case is that at the time of the first ever land settlement conducted in Shehr Khas, Srinagar, around the year 1891 AD, during the rule of late Maharaja of the State, under the supervision of Sir Walter R. Lawrence, their ancestors, namely, Abdul Aziz Khan and his co-sharers (for brevity hereinafter referred to as the petitioners' ancestor) were in self cultivating joint possession of Khalsa land measuring 1 Kanal and 12 Marlas comprised in Khasra no.1594

Khewat no.40/113 situated in Mouza Narsinghar, Tehsil Khas. Pursuant to the land settlement, the petitioners' ancestor was issued a document, named "Parcha Kitab" under the seal and signature of the competent authority, namely, Lachhan Dass. According to the petitioners, the 'Parcha Kitab' was the only valid revenue document issued at that time to establish the right of a holder of land declared in terms of the Parcha Kitab as "Assami", which contained entries regarding the name of the "Assami" with all relevant and necessary details of the land in his possession together with his share therein and the land revenue charged thereon. The fact that the 'Parcha Kitab' was the only valid revenue document issued at that time to establish the right of a holder of land is borne out by the instructions prepared by the Commissioner Settlement, Mr. W. R. Lawrence, CIE, and issued in Urdu in terms of Council Resolution no.17 dated 22.06.1895 AD, to be followed by Tehsildars and the subordinate staff of the Revenue Department. Under the heading "Maliyaat Arazi wa Parcha Kitab" of the aforesaid instructions, it was, inter alia, mentioned that the 'Parcha Kitab' was very important for an "Assami" because the entries made therein established his right of "Assami". The term "Assami" meant holder of cultivable land, who had come in possession of the land through lawful means and was recognized by the State as the lawful occupant of land in Kashmir. Photocopies of the "Parcha Kitab" and the aforesaid instructions issued under the Council Resolution dated 22.06.1895 AD have been placed on record of this petition as its annexures.

3. According to the petitioners, thereafter, in the year 1933 AD, the late Maharaja, i.e., the Ruler of the State, granted proprietary rights to Assamis in Kashmir Province in respect of the lands held by them under their possession without recovery of any nazrana. In this connection, the Maharaja issued an order dated 08.07.1933 which has been quoted in para 7 of the writ petition. According to the petitioners, their grandfather, Abdul Aziz Khan, who had been declared as Assami alongwith his co-sharers, was thus conferred proprietorship / ownership of the aforesaid land to the extent of his share therein, namely half of 1 Kanal, 12 Marlas of the land, i.e., 16 Marlas, comprised in Khasra no.1594.

4. It is the further case of the petitioners that some more adjoining land had come under the possession and cultivation of their ancestor in as much as ultimately land measuring 1 Kanal and 1 Marla comprised in Khasra nos. 1594 and 1595 to the extent of 11 Marlas comprised in Khasra no.1594 and 10 Marlas in Khasra no.1595 situated in Estate Narsinghar, Tehsil Shehr Khas at Rambagh Bala, Srinagar, devolved upon their father, Abdul Ahad Khan, and, after his death, has been inherited by them.

5. The grievance of the petitioners projected in this petition is that since 2013 respondents 3 and 4 through their subordinate staff have been denying their ownership of the land, and trying to forcibly interfere with their peaceful possession, usage and enjoyment of the aforesaid land under one or the other pretext. Claiming fundamental right to hold, possess and enjoy their aforesaid landed property, the petitioners have approached this Court through this writ

petition for the reliefs prayed for therein.

6. Respondents 1 to 4 in their reply have denied the ownership of the petitioners in the land in question. It is stated by them that the petitioners are not the owners of the land measuring 1 Kanal and 1 Marla falling under Khasra no.1594 and 1595 situated at Estate Narsinghar, Tehsil Shehr Khas at Rambagh Bala, Srinagar. It is stated that according to the latest extract of Jamabandi obtained by them from Tehsildar South, land measuring 11 Marlas comprised in Khasra no.1594 has no tenants (Kashtkar). In an attempt to establish their stand, the respondents have appended with the reply copies of the revenue extracts of Missal Haqiat of the year 1977 BK corresponding to 1920 AD and Jamabandi for the year 1992-93 BK, corresponding to the year 1935-36 AD, obtained by them from the Tehsildar South, Srinagar, as annexures 01 and 02 with the reply. It is further stated by the respondents that as per the latest revenue records available with them, Khasra no.1594 does not fall in Khewat no.40/113, but according to the Jamabandi it is shown to be falling in Khewat no.242; whereas Khasra no.1595 falls in Khewat no.248.

7. So far as the revenue document "Parcha Kitab" is concerned, respondents 1 to 4 have stated that the same pertains to the Revenue authorities who are the best person to reply the said paras. It is, however, averred that the Patwari concerned vide his report submitted on 08.05.2015 to the Tehsildar South has categorically submitted that as per the Intikhab Missal Haqiat of year 1977 BK (i.e., 1920 AD) land measuring 1 Kanal, 12 Marlas under survey no.1594 continued to be Khalsa land and the land measuring 1 Kanal under survey no.1595 also continued to be State land and is presently in illegal possession of the petitioners. It is further averred that till date the land measuring 1 Kanal, 12 Marlas under Khasra no.1594 has not been mutated in favour of the petitioners.

8. Respondents 5 to 8, the revenue authorities, in their reply have stated that the land under Survey nos. 1594 and 1595 is State land as per record of rights. As to the revenue record, "Parcha Kitab", it is stated that there is no record available regarding it in the Patwar record. It is stated that the petitioners have no recorded possession over the land in question as per mutations and also have no spot possession over the land, as such the question of entries of "Parcha Kitab" do not arise at all.

9. I heard learned counsel for the parties and considered the matter.

10. It may be observed here that respondents 1 to 4 have unambiguously admitted the possession of the petitioners over 1 Kanal and 1 Marla of land, comprised in Khasra no.1594 to the extent of 11 Marlas and in Khasra no.1595 to the extent of 10 Marlas. Their case, however, is that they are not recorded as Kashtkar (cultivators) in the extract of the revenue record, annexure O1, vis-a-vis land measuring 11 Marlas comprised in Khasra no.1594, and that the land comprised in Khasra no.1595 is absolutely State land. It is, thus, seen that the land claimed by the petitioners is comprised in two Khasra nos. namely 1594 to

the extent of 11 Marlas and 1595 to the extent of 10 Marlas. Insofar as the land comprised in Khasra no.1594 is concerned, the case of the petitioners is that their ancestor was in possession and was declared as "Assami" with respect to half share in 1 Kanal, 12 Marlas of land comprised in Khasra no.1594, out of which the petitioners have inherited and are presently in possession of 11 Marlas. It is, however, admitted by them that their ancestor came in possession of more land comprised in Khasra no. 1595 which, admittedly, is not part of the land in respect of which their ancestor had been declared as Assami and which is recorded in the "Parcha Kitab". The respondents have expressed non-existence of mention of "Parcha Kitab" in the revenue records. In effect, they express ignorance about any such document. I would, therefore, first deal with existence and nature of this document, "Parcha Kitab", and then that part of the land, which is mentioned therein together with what do the revenue extracts produced and relied upon by the respondents depict and establish.

11. In regard to the nature of the document "Parcha Kitab", the learned counsel for the petitioners produced the original of this booklet before the Court for its examination. From the naked eye look at it, it appears to be an antique made of fibrous brown paper containing the relevant entries mentioned by the petitioners in their petition bearing a stamp of the authority, named Lachhman Dass together with entries of land revenue paid by the petitioners' ancestors from time to time.

12. Further more, the petitioners have referred to annexure ?C? appended to the petition which is a photocopy of the Council Resolution no.17 dated 22.06.1895 contained at page nos. 251 and 252 of the Land Laws in Jammu and Kashmir Vol. (1), by Justice Hakim Imtiyaz Hussain [Srinagar Law Journal Publications, 2007]. This Council Resolution dated 22.06.1895 is in Urdu and contains the instructions formulated by the Commissioner, Settlement, Sir Walter R. Lawrence, for observance by the Tehsildars. I have gone through the relevant pages of the aforesaid Book on Land Laws in the State. The document / Council Resolution, referred to above, contains different sub-headings, including a sub-heading "Maliyat-i-Arazi wa Parcha Kitab" and "Haqooq mutaliqa araziat" which means ?Land revenue and the Booklet? and ?rights concerning the lands?. Under the sub-heading "Maliyat-i-Arazi wa Parcha Kitab", i.e., ?Land revenue and the Booklet? it, inter alia, states that Jamabandi has been done in regard to cultivated lands in Kashmir after measurement and the possessor, i.e., Assami has been given the book called "Parcha Kitab" in which details of every Assami's holding, revenue leviable etc. have been recorded. It further states that "this book is very important for an Assami because by its entries his right of Assami is established. In this book his (Assami's) liability towards the Government is recorded and from the receipt column it becomes known whether he has paid the government's demand". Under the sub-heading "Haqooq mutaliqa araziat", i.e., rights concerning lands, it states that Government in Kashmir is the owner of lands, but in respect of cultivated lands, during settlement, the Government has given right of Assami to those possessors who have agreed / promised to pay

leviable revenue to the Government, and that, as long as the revenue was paid, no interference would be caused with the possession of the Assami or his heirs.

13. So, the aforesaid instructions issued in Urdu vide Council Resolution no.17 dated 22.06.1895 make it manifest and establish that, during the course of first settlement, the Government had issued Parcha Kitab to holders of land which contained the necessary details referred to above, and had given right of Assami to those possessors of cultivated lands who had agreed / promised to pay leviable revenue to the Government. Such possessors / Assamis were recognized by the State as the lawful occupants of Khalsa land in Kashmir. Thus, the contents of the Council Resolution dated 22.06.1895 establish the issue and existence of Parcha Kitab as a revenue document and it was not merely a passbook, but established many of the rights of the Assami. The Council Resolution described it very important for an Assami as by its entries his right of Assami was established. The respondents are not denying or disputing the issue of the aforesaid Council Resolution no.17 dated 22.06.1895 or its contents.

14. It is seen that the entry made in the aforesaid revenue document, namely, the Parcha Kitab, records the petitioners' ancestor, Abdul Aziz Khan as Assami, in possession and cultivation of half of the land measuring 1 Kanal and 12 Marlas comprised in Khasra no.1594 with other details of levy of land revenue etc. The status of the ancestor of the petitioners, namely, Abdul Aziz Khan, vis-a-vis half of the aforesaid land, viz. 16 Marlas comprised in Khasra no. 1594 situated at Rambagh Bala, Mousa Narsinghar, Srinagar, as being an Assami and in lawful possession thereof is, thus unequivocally, established. It is, however, true that in the said document the land in question is shown to have been Khalsa, i.e., State land. However, the matter does not end there.

15. Subsequently, the late Maharaja, i.e., the Ruler of the State, issued Command Order dated 08.07.1933, granting proprietary rights to Assamis in Kashmir. This order is contained at pp 168 & 169 of JK Laws Vol 1, 2nd Edition 2013 by Justice Hakim Imtiyaz and has been reproduced by the petitioners in para 7 of the writ petition, besides annexing a photocopy thereof as annexure D at page 30 of the writ petition. This order reads as under:

"His Highness the Maharaja Bahadur has been in receipt of reports submitted by his Ministers about the excellent relations prevailing amongst the members of various communities in the Mirpur district. These relations have been maintained even after acts of incendiarism committed by mischief makers to the religious places belonging to the different communities. His Highness the Maharaja Bahadur has been pleased in the administration of the State and by the perfect law-abiding attitude of the leaders of various communities in dealing with the dangerous situation whenever it arose. His Highness solicitude for agriculturists and agricultural labourers is well known. This has been remonstrated by history of legislation in the State in dealing with problems of rural indebtedness and the economic prosperity of the agriculturists. Orders have already been passed on the lines of the recommendations of the Glancy Commission conferring

proprietary rights on the occupancy tenants of Mirpur district on payment of a reasonable nazrana in place of the present malikana. His Highness the Maharaja Bahadur has, in view of the above mentioned attitude of deep loyalty and mutual good will exhibited by members of all communities in Mirpur District orders that proprietary rights will now be conferred on occupancy tenants of the district without payment of any nazrana in place of the present malikana which will cease to be levied.

Orders on similar lines are passed conferring proprietary rights on occupancy tenants including malguzars and assamis holding directly under the State in the rest of the Province of Jammu.

His Highness the Maharaja Bahadur has been further pleased to order that the concession made to the agriculturists of Mirpur district on account of their good behaviour shall be extended to the assamis of Kashmir Province and proprietary rights will be conferred on the assamis without recovery of any nazrana.

The Zamindars of the Frontier districts of Gilgat and Ladakh have within the period of local disturbances in the Province of Jammu and Kashmir shown exemplary loyalty and devotion to the State and proprietary rights are conferred on the assamis of both the districts without recovery of any nazrana.

This will take effect from 1st Katik, 1990.

Until the passing of a Land Alienation Act for the Province of Kashmir and Frontier Districts, the existing prohibition against sale and mortgage will, in the interest of the new proprietors themselves, continue to operate."

A bare perusal of the aforesaid Command order, which then in common parlance was also referred to as Ailan, reveals that the Maharaja / Ruler of the State conferred proprietary rights in the lands on Assamis of Kashmir Province without recovery of any nazrana and that such conferment of proprietary right had to take effect from 1st Katik, 1990, [stated to be corresponding to mid of October, 1933 AD]. This Command order or Ailan did not pertain to Assamis of Kashmir Province only, but also conferred similar rights on occupancy tenants of the district Mirpur; occupancy tenants including malguzars and assamis of Jammu Province; and the assamis of the Frontier Districts of Gilgat and Ladakh. The fact of issuance of this Command order dated 08.07.1933 by the Ruler of the State is not disputed, nor its contents are denied, disputed or doubted.

16. Above being the historical factual position so established, coupled with the fact that status of the ancestor of the petitioners, namely, Abdul Aziz Khan, as Assami, vis-a-vis 16 Marlas of land comprised in Khasra no. 1594 situated at Rambagh Bala, Mousa Narsinghar, Srinagar, having been established, as mentioned hereinabove, by virtue of the aforesaid Command Order the above named ancestor of the petitioners was thus conferred proprietary rights in the said land. The conferment of this right of proprietorship of the land in question on the petitioners? said ancestor thus flowed from the fact of he having been

initially conferred the status of an Assami and then by the Command order of the Ruler, conferring proprietary rights on the Assamis of Kashmir Province without recovery of any nazrana.

It is nobody's case that this Command order of the late Maharaja was revoked or modified, at any time, thereafter.

17. It may be mentioned here that reference of the aforesaid Command order / Ailan of 1933 and conferment of ownership rights on Assamis by the Ruler of the State has been made in various judgments of the Board of Judicial Advisors while dealing with issues arising out of conferment of such ownership rights in the landed properties. The issues are not relatable to the case at hand, but what is borne out by these judgments is that, in fact, there were land holders given the status of Assamis and that by the 1933 Command order, or Ailan, ownership rights were conferred by the Ruler on such Assamis. Two of these judgments of the Board of Judicial Advisors passed in appeals filed against the judgments passed by the Division Bench of this Court are referred to hereunder.

18. In *Pt. Janki Nath v Sati Mali*, Civil Appeal no.24/1947, decided on 10.07.1947, reported as 2010 (9) JKJ 10[HC], which is a judgment of the Full Bench of the Board of Judicial Advisors, the question involved was whether an adopted son of a Hindu would acquire, on adoption, an interest in the property held by his adoptive father in assami rights. The appeal before the Board of Judicial Advisors arose from the judgement of a Division Bench of this Court. The judgment, referring to the Ailan of 1990, mentions that proprietary rights were conferred on the assamis without recovery of any nazrana. Para 4 of the judgment is extracted hereunder:

"4. Having carefully considered the arguments addressed by counsel on both sides, the Board think that the case cannot be satisfactorily decided without a definite finding on the question whether the property in dispute was ancestral property in the hands of Vishnu Pandit before the Ailan of 1990. In their view the contention urged on behalf of the appellant would have considerable force if the property in dispute, though held only in assamis rights, devolved upon Vishnu Pandit from his father. In that view any son born to him would acquire by birth and an adopted son would acquire on adoption, an interest in his ancestral property. The respondent's learned counsel contended that the lands held in assami rights are not such property as would entitle a newly born son or a newly adopted son to acquire an interest even though the lands may be ancestral. Reference was made to the terms of Ailan of 1990, the Revenue Circular Vol. 1, Jammu and Kashmir Laws, page 215 and Land Revenue Regulation of 1980, Section 130. The Board have carefully perused these authorities and think that they do not support the contention of the respondent's learned counsel. The Ailan of 1990 declares that 'proprietary rights will be conferred on the assamis without recovery of any nazrana'. An attempt was made to limit the operation of this part of the Ailan to the recorded assami only, the object being to establish that the plaintiff, who was not recorded at the time of the Ailan could not derive

any benefit thereunder. There is nothing in the words of the Ailan to justify such a view...."

19. Balwant Singh v Onkar Singh, Civil Appeal no.13/1949, 2010 (9) JKJ 73 [HC], is also a judgment of the Full Bench of the Board of Judicial Advisers. This appeal before the Board of Judicial Advisors had arisen from the judgment of this Court. The question involved was: if the property in the hands of the ancestor as Assami was heritable, whether after promulgation of Ailan of 1990, it became self-acquired property and was liable to be disposed of by will? The question arose in context of Hindu Law. Paras 5, 6, 7 and 8 of the judgment are quoted hereunder:

"5. The land, which was disposed of by the will by Rajasingh been an ancestral land of the family, It came down to Rajasingh from his father Madan Singh and as both of his sons Rangil Singh and Chattarsingh were born long before the promulgation of the Ailan of 1990 and the will of 1993, they became entitled, on their birth to an interest in the said property. It is therefore, obvious that if Hindu Law governs the case, the property in the hands of Rajasingh would be ancestral property held by him in coparcenary with his two sons Rangil Singh and Chattarsingh which he would have no power to dispose of by will and any will made by him qua that property would be wholly inoperative.

6. The respondent seeks to avoid this result on two grounds. He contends that by Ailan of 1990, proprietary rights were conferred for the first time on Assamis in this valley and as the recorded Assami at the time of the promulgation of the Ailan was Rajasingh, he became the sole proprietor and the property in his possession, therefore, became his self-acquired property. He further contends that prior to the promulgation of the Ailan, the succession to the property in suit was not governed by Hindu Law but by statute and the property devolved upon Rajasingh on the death of his father Madan Singh not under Hindu Law but by some statutory succession which his sons on their birth acquired no interest.

7. The material provision of the Ailan of 1990 is in these words:

'His Highness the Maharaja Bahadur has been further pleased to order that the concession made to the agriculturists of Mirpur district on account of their good behaviour shall be extended to the Assamis of the Kashmir Province and proprietary right will be conferred on the Assamis without recovery of any Nazrana.'

8. By this Ailan proprietary rights were no doubt conferred for the first time upon the Assamis. And one effect of the conferment of the proprietary rights was that it enlarged the quantum of interest which the Assamis previously held on their land... The Ailan would undoubtedly confer proprietary rights on these holders but it could not in any way take away the vested rights of coparceners interests in the property nor could it enlarge powers of alienation which were possessed by the holders under their personal law. This was also so held in P. Janki Nath v. Mst. Sati Mali previously decided by the Board."

20. It is thus, undoubtedly and irrefutably, established that by the said 1933 Order, proprietary rights were conferred on Assamis by the Ruler of the State, which included the petitioners' ancestor named hereinabove with respect to the land in question.

21. It may be observed here that since this conferment of proprietorship / ownership in land was by the Ruler of the State having not only the sovereign power but being also the owner of the State, the right so conferred on the assamis was not and, in fact, is not dependent on, or subservient to, any mutation or entry made by the revenue authorities of the State in the revenue records. Not only that, the right so conferred on an Assami would not extinguish, nor could it be extinguished, diminished or tampered with, in any manner, by any entry in the revenue records contrary to the above said Ailan/Command order of the Ruler, or by any other process, except acquisition thereof by the State in accordance with law. It may be recapitulated here that out of the aforesaid 16 Marlas of land comprised in Khasra no. 1594, the petitioners claim to be in occupation and possession of 11 Marlas of the land having inherited the same from their father. It is not the case of the respondents that the land in question was acquired by the State/Government at any stage after 1st Katik, 1990 (October, 1933) till date or that the petitioners or their ancestors were paid any compensation for the same.

22. Now coming to the revenue extracts appended by respondents 1 to 4 as annexures with their reply, firstly it is note worthy that these revenue documents have been supplied to them by none other than the concerned revenue authorities who also happen to be respondents herein. The revenue extract O1 is the extract from what in Revenue parlance is known as Missal Haqiat, i.e., the record-of-rights, also known as the 'Standing Record'. It is to be borne in mind that the Standing Record is distinguishable from Missal Salana or Chaharsala, which is an amended edition of the Record of Rights, prepared on yearly basis or at such intervals as the Revenue Minister may prescribe and in which all changes, which have occurred since the Standing Record was framed, are incorporated. This revenue extract O1 pertains to the year 1977 Bk corresponding to 1920 AD, that is much prior to the year 1933 when the Ruler of the State conferred proprietary rights in the land to the ancestor of the petitioners. It describes the land in question viz. land measuring 1 Kanal 12 Marlas comprised in Khasra no.1594, Khewat no.40 and Khata no.113, as Khalsa and in column no.4 bearing the caption "name of owner with description" the name of the ancestor of the petitioners to the extent of half and his co-sharers to the extent of other half is mentioned. The land in the column bearing the heading "name of the cultivator with description" is shown to be under self-cultivation of these persons. This entry corresponds to the one recorded in the Parcha Kitab that had been issued to the ancestor of the petitioners, referred to earlier, and is not contrary to what is mentioned therein. Thus this revenue extract fully corroborates the case of the petitioners. Further, in this revenue extract, in the column 'reference to mutation' it mentions mutation no.154 and

in the remarks column it is shown to be inheritance. This is the position emerging from this revenue extract of 1920 AD of the Standing Record vis-a-vis land measuring 1 Kanal 12 Marlas comprised in Khasra no.1594, Khewat no.40 and Khata no.113.

23. It may be mentioned here that the very same revenue extract of the Standing Record, i.e., annexure O1 to the reply, separately also mentions land measuring 1 Kanal comprised in Khasra no.1595, Khewat no.46 and Khata no.199. In the column under the heading "name of the owner with description" it is shown as Khalsa, and in the column under the heading "name of the cultivator with description" the ancestors of the petitioners are shown to be in illegal occupation of the same. So the petitioners' ancestor and his co-sharers have been shown in possession of this patch of land in Khasra no.1595 as illegal occupants, which is not the case vis-a-vis the land comprised in Khasra no.1594, Khewat no.40 and Khata no.113.

24. At the hearing of this case, the Patwari of Estate Narsinghar, namely, Fayaz Ahmad, produced the original record of Missal Haqiat of the year 1977 BK, i.e., 1920 AD. The Court has gone through the contents of the relevant entry made in this Register at page 35 thereof vis-a-vis land measuring 1 Kanal and 12 Marlas comprised in Khasra no.1594. The original record of this Missal Haqiat wholly corroborates what is contained in annexure O1 appended by respondents 1 to 4 with their reply as well as the entries made in the Parcha Kitab. Not only that, the entry regarding the land measuring 1 Kanal comprised in Khasra no.1595 is also found at page 52 thereof.

25. Then annexure O2 appended with the reply filed by the respondents 1 to 4 is the revenue extract of Jamabandi pertaining to the year 1992-93 BK, corresponding to the year 1935-36 AD, issued in their favour by the Revenue authorities. Obviously, this revenue extract pertains to a year post conferment of proprietary rights on the ancestor of the petitioners in the year 1933 vis-a-vis the land with respect to which they had been given the right of Assami. Therein, so far as the land measuring 1 Kanal, 12 Marlas, comprised in Khasra no.1594, is concerned, under the heading "name of the owner with description" the name of the ancestor of the petitioners to the extent of half and the names of his co-sharers to the extent of other half are mentioned as owners thereof and the word Khalsa is no more mentioned therein, obviously so because the petitioners' ancestor had been conferred proprietary rights therein by virtue of the Command order dated 08.07.1933 and it no more could be said to be Khalsa land. So, axiomatically, this revenue extract evidences the entry of change in the ownership of the land in favour of the ancestor of the petitioners and his co-sharers vis-a-vis the land measuring 1 Kanal and 12 Marlas comprised in Khasra no.1594. The original record of this revenue extract pertaining to the year 1992-93 BK, corresponding to the year 1935-36 AD has not been produced before the Court. Nonetheless, it fully supports the case of the petitioners.

26. An issue was sought to be raised on behalf of the respondents that in the

aforesaid revenue extract O2, Khewat no. and Khata no. mentioned are different than what is mentioned in Parcha Kitab and the revenue extract O1. It is reiterated that in the Parcha Kitab, the revenue extract annexure O1 and the original record of the year 1977 BK produced by the Patwari the land comprised in Khasra no.1594 is shown to be Khalsa land and in Khewat no.40 and Khata no.113 and in the revenue extract annexure O2 it is shown to be in Khewat no.242 and Khata no.405. The fact that after the proclamation of the Ruler made in 1933 a change in the ownership had taken place, which was carried in the revenue records of the year 1992-93 BK, corresponding to the year 1935-36 AD, this change had necessitated the change in Khewat and the Khata nos. Such a change in the Khewat no. and the Khata no. by itself evidences the factum of change in the ownership of the land in question between the years 1920 AD and 1935 AD, pursuant to the Command order of the Ruler of the State. It is to be borne in mind that Khewat no. is the number of a landlord's holding and landholders' holdings are arranged in the order in which the names of landholders are given in the village genealogical tree (Shajra Nasab). Similarly, Khata number is the number of the holding of the person responsible for the cultivation. So Khewat nos. and Khata nos. are subject to change with the lawful change in either the ownership of land or cultivation/possession shown in the Standing Record, at the time of preparation of fresh Jamabandi, be it Missal Salana or Chaharsala. In that view of the matter, the argument or point raised on behalf of the respondents in this regard is misconceived and wholly untenable.

27. It may also be mentioned here that insofar as land measuring 1 Kanal in survey no.1595 is concerned, whereas in the revenue extract O1 it is shown to be in the cultivation of Aziz son of Quda (grandfather of the petitioners) to the extent of half and his co-sharers to the extent of another half, in the aforesaid revenue extract O2 of the Jamabandi for the year 1935-36 AD, it is shown to be in the cultivation of Sona, Noor, Ahad, Ramzan and Mohammad sons of Aziz, and in the column under the heading "name of the owner with description", it continues to be shown as Khalsa. This part of the land though is shown to have been in possession of the petitioners' ancestor in the Standard Records of 1920 AD, as mentioned in para 24 above, but it has always remained as Khalsa.

28. It is, thus, seen that the above extracts of the revenue records, namely, the record of rights, produced by the respondents themselves, clearly support and corroborate the case of the petitioners. It is also established that the land in question had been in the possession and cultivation of the petitioners and their ancestors prior to the year 1977 BK corresponding to 1920 AD and continues to be with them for more than a century now. It is not that they have encroached upon it or any part thereof, or occupied it, or any part thereof, at any time in the recent past, as has been averred in the reply filed on behalf of respondents 5 to 8 which averment is wholly contrary to, and belied by their own records.

29. During the course of hearing of the case, the Patwari concerned, who was available in the Court with records, stated before the Court that as per the

Mutation Register, the mutation no.154 mentioned in the revenue extract O1, which also is reflected in the original record of Missal Haqiat / Standing Record (record of rights) does not reflect the name of the ancestors of the petitioners, but it mentions the name of one Vaid Viyas Ji son of Smt. Jia Wati. He also stated that revenue extract O3, which is copy of Khasra Girdawari pertaining to the year 2014 depicts both the pieces of land comprised in Khasra nos. 1594 and 1595 as Khalsa land. So far as the inconsistency in the mutation no. is concerned, I have perused the record so produced by the Patwari. The mutation register containing mutation no.154 concerning the aforesaid person is a part of the bound record of the Jamabandi for the year 1964-65 AD wherein the relevant entry exists at page 25. Obviously, this mutation 154 is not the one contained in the Standard record of 1920 AD. Apparently, this is not the relevant mutation register, which had come into existence while preparing the Standard Record way back in 1920 AD. Be that as it may, the question is who has made these entries in the relevant records? Obviously, the entry could not have been made in the records by the petitioners or, for that matter, their ancestors. It is, rather, for the respondents of the Revenue Department to explain this inconsistency in their record. How could such entries be made in the revenue records contrary to the irrefutable historical facts mentioned hereinabove and contrary to the Command order issued by the Ruler of the State on 08.07.1933, as well as contrary to the entries made in the Jamabandi pertaining to the year 1935-36 AD. It is to be borne in mind that entries made in the record of rights are rebuttable and, in any case, mutation does not confer or extinguish title. In this regard, it would be fruitful to refer to the judgment of the Division Bench of this Court in *Kewal Krishan v State of J&K*, 2004(II) SLJ 617.

30. In that case the claim of the writ petitioner / appellant to ownership of State land measuring 6 Kanals and 6 Marlas situated in village Murlan Tehsil R. S. Pura, Jammu, was founded on Government order no.LB-6 of 1958 which conferred a right upon an occupant of State land at the relevant time to be recorded as ?tenant-at- will? subject to his satisfying the conditions prescribed in the Government order. As a necessary consequence of such status conferred upon such occupant he had to pay the arrears of revenue and rent, therefore, mutations were being attested under the provisions of Land Revenue Act. Then the Government issued order no.432 of 1966 dated 3.6.1966 providing for conferment of proprietary rights on the cultivators of the State lands who were permanent residents of the State and stood declared as ?tenants-at-will? in terms of Govt. Order No.LB-6. Subsequently, the Government imposed ban on attestation of mutations by its order dated 29.9.1973 which order was rescinded by order no.163 of 1986 dated 8.7.1986. However, thereafter, the Government again imposed such ban by order no.1158 of 1989 dated 22.6.1989. The question before the Division Bench arose whether the right conferrable under Government order LB-6 was dependent on attestation of a mutation in this regard and could such ban as envisaged by Government order no.1158 of 1989 dated 22.6.1989 be imposed. The Court in paras 8, 9 and 10 observed and held

as under:

"8. The question arising for our consideration is whether the right conferrable under Government order LB/6 is dependent on attestation of a mutation in this regard and for that matter can the non-attestation of a mutation of tenant-at-will be regarded as an impediment for conferment of proprietary rights of Government order no.432 on an occupant of State land who is otherwise entitled to be recorded as tenant-at-will under Govt. Order No.LB-6.

9. In our considered opinion right to be recorded as ?tenant-at-will? is a substantive and independent right which emanates from Govt. Order No.LB-6 and is dependent only upon the satisfaction of the conditions set out in the order itself. LB-6 does not extinguish the ownership of the State over the land in occupation of person who becomes ?tenant-at-will? after satisfying the requisite conditions. Mutation or no mutation would be of no consequence so far as this right accrued under LB/6 is concerned.

10. The occupant of a State land after being recorded as tenant-at-will has become entitled to the ownership rights over such land under Govt. order S-432. Both of the Government orders i.e. LB/6 and S-432 have not been rescinded, still a cloud is being cast on so conferred rights by the Govt. order No. 158 of 1989 dated 22.6.1989 which reads as follows:-

'Government order No. 158 of 1989.

Dated 22.6.1989.

It is hereby ordered that no mutation under Government order No. LB-6/C of 1958 dated 5.6.1958 and S-432 of 1966 dated 3-6-1966 in respect of the land to which these were applicable shall be attested henceforth.

By order of the Government of Jammu & Kashmir.'

11. Could such a ban as envisaged by the Government order be legally imposed by the Government? In our considered opinion the ban order is bad in law being an arbitrary exercise of the power. The mutations to be attested pursuant to Government orders LB/6 and S-432 are in the nature of recognition of vested rights in favour of the person entitled to be recorded as tenant-at-will and owner under the said Government orders. Though the rights emanating from the said Government orders are not dependent upon the attestation of mutations yet the ban order arbitrarily without any lawful reason causes unreasonable and irrational restriction upon the recognition of already vested rights. So long as these Government orders which confer substantive rights upon the occupants of State lands are in force, no restriction can be imposed upon the recognition of such rights by imposing a ban upon the attestation of mutations. No reason for necessitating such ban on the attestation of mutation has been brought to our notice by the learned Deputy Advocate General nor any is discernable from the language of the Government order. We, therefore, quash the same for the reason of its being arbitrary. Consequently we set aside the order dated 21.8.1993

passed by learned Director Land Records (Settlement Officer) in appeal No. 46/DLR/AP/92-93 with a direction to him for passing fresh order in accordance with law after hearing the parties. The judgment passed by the learned Single Judge is also set aside and writ petition is allowed."

(underlining supplied)

31. As mentioned earlier, in the instant case as well, the petitioners do not claim their right based on the entries made in the revenue records. Mutation or no mutation, they claim their right to ownership of the land falling in survey no.1594 based on the historical facts narrated above. This Court is of the considered view that the petitioners' substantive right flows from the fact of their ancestors having been issued Parcha Kitab, conferring upon them the status as Assami vis-a-vis the land measuring 1 Kanal 12 Marlas comprised in Khasra no. 1594, coupled with what was said in the Council Resolution no.17 dated 22.06.1895 AD and the Command Order dated 08.07.1933, issued by the late Maharaja, the Ruler of the State, granting proprietary rights to Assamis in Kashmir. In that view of the matter, any entry in the revenue records contrary to the above historical facts and the Command Order issued by the Ruler of the State is inconsequential as against the substantive right so conferred on the ancestor of the petitioners.

32. In light of all what has been said and discussed above, it is held that ownership rights stand conferred on the petitioners' ancestor vis-a-vis half of the land measuring 1 Kanal and 12 marlas comprised in Khasra no.1594 situated in Estate Narsinghar, Tehsil Shehr Khas at Rambagh Bala, Srinagar, out of which the petitioners have inherited and are in possession of 11 Marlas and, therefore, they have a fundamental right guaranteed to them under Article 19(1)(f) of the Constitution of India, which continues to hold the field in the State of J&K, as well as the legal right, to possess, hold and enjoy the same in whatever manner they choose, and that the respondents, or any one of them, cannot divest the petitioners of their such right in the land in question in any manner, whatsoever, principally or vicariously, unless it is acquired by the State in accordance with law and the petitioners are paid due compensation for the same. Consequently, the petitioners are held entitled to get the land in question entered in the revenue records and mutated in their name and the respondents 5 to 8, especially the Patwari concerned, are liable to do the same in accordance with the law on the subject. It is so ordered and the respondents are directed accordingly.

33. So far as the land comprised in Khasra no.1595 is concerned, admittedly, its ownership has not been conferred on the ancestors of the petitioners pursuant to the Command order of 1933, nor had they been conferred the status of Assami vis-a-vis the said land, though it has been continuously in the possession of the petitioners through their ancestors, for more than a century now. This Court, therefore, leaves the petitioners free to seek appropriate legal remedy available to them under law, if they so choose.

34. The writ petition is, accordingly, allowed to the extent and in the manner mentioned hereinabove. This also disposes of the connected CMPs/IAs.

35. In view of the above decision in the main petition, the Court is of the view that it would be unnecessary to keep Contempt petition no.31/2015, pending on board. It is, therefore, disposed of.

34. No order as to costs.

35. The original records of Missal Haqiat of the year 1977 BK, corresponding to 1920 AD, and of the Jamabandi of the year 1964-65 AD produced by the Patwari are returned to Mr. Shah, learned Sr. AAG, in the open Court.