

**IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU**  
**Present Dr. Pawan Kotwal, IAS.**

File No.  
*49/Revision*  
*2005-06*

Date of Institution  
*03-9-2005*

Date of Decision.  
*11-03-2017*

Deputy Custodian  
Evacuee Property,  
Tehsil & Distt. Rajouri through Custodian EP Jammu

(Petitioner)

***Versus***

1. Saddar-ud-din
2. Abdul Aziz
3. Mohd. Nazir (Adv. Haji Abdul Majid)
4. Mohd. Yaqoob Sons of Said Mohd.(Non-Evacuee).
5. Mir Mohd (Evacuee)
6. Faiz Mohd. Sons of Bhadur Ali Cast Bhatti Village Deri Relyote  
Tehsil & District Rajouri.

(Respondents)

7. Mohd Afzal,
8. Mohd Ayub,
9. Abdul Razak,
10. Abdul Rehman,
11. Mohd Ashraf,
12. Mohd
13. Iqbal &

14. Mohd Yousaf Ss/o Late Nazam Din, Caste Bhatti, R/o Village Deri Relyote  
Tehsil & District Rajouri.

(Proforma Respondents)

In the Matter of:-

Revision Petition against the order of Deputy Commissioner, Collector Rajouri dated 28-03-2005 whereby appeals against expert order dated: 14-02-1969 on mutations No.38 & 66 of Village Deri Relyote Tehsil Rajouri have been up held on the mere ground that the petitioner could not produce any documentary record of being Bhadur Ali Evacuee of 1965 & Dewan Ali Evacuee of 1947.

Prayer for setting aside orders on mutation No. 38 & 66 of Village Deri Relyote along with order of Deputy Commissioner Collector Rajouri.

**ORDER**

1. The petitioner has filed the present petition on the following grounds :-

- a. That the petitioner is a duly appointed Deputy Custodian Evacuee Property Distt. Rajouri and is custodian within the meaning of Section -2 of the EP Act 2006. The petitioner exercise the Powers under EP Act and the Rules made there under and is competent to file the present revision petition.
- b. That the landed properties owned by the Evacuees who have migrated to Pakistant / POK in Holocaust of 1947 have vested in the Custodian Under Section-5 of the EP Act. Evacuees' and Evacuee Property has been defined in Section-2 of the EP Act, 2006. Such Evacuee property has vested in the Custodian and is deemed to be declared as Evacuee Property within the meaning of Section-5 of the EP Act.
- c. That the petitioner for the first time came to know on 17-06-2003 about attest station of disputed mutations No.38 & 66 of Village Deri Relyote which have been attested by the then Naib-Tehsildar with one stroke of pen at the same time / date i.e on 14-02-1969 in the name of respondents thereby depriving all other Evacuees and Co-Sharer Evacuees as per the entries in the Jamabandi and other revenue records.
- d. That the Learned Deputy Commissioner Rajouri without perusal of the Jamabandi, Khasra Girdawri, Shajra Nasab for the year 1969-70 and particularly Khasra Girdawari for the year

- Khariief 1971 and without summoning the concerned Patwari with Revenue Records has set aside the appeal of the petitioner.
- e. That mutation No.38 has been attested without notice and at the back of the Deputy Custodian to who property has vested since 1947. The order on mutation No.38 is without and enquiry and it is Four Lines Order and even the respondents in whose favour the mutation has been attested where not present before the Naib-Tehsildar and their statements have not been recorded. No respectable persons and other elderly persons have been summoned by the Naib-Tehsildar at the time of attestation of mutation No.38. Thus the mutation order is illegal and not sustainable.
  - f. That while looking at the order passed on mutation No.66 which covers land measuring more than 224 Kanals there was no family settlement between the Evacuees and no such mutation could have been attested. Further more the order on mutation No.66 is also Six Lines order and the respondents in whose favour mutation has been attested, have not recorded their statements. Thus the order on mutation No.66 of Village Deri Relyote is illegal and not sustainable at all.
  - g. That as per Shajra Nasab for the year 1969-70 of Village Deri Relyte Bhadur Ali is clearly recorded Evacuee of 1965 and Mir Mohd. Respondent is recorded as Evacuee of 1965.
2. During pendency of petition applicants Mohd Afzal & Ors. filed application for impleadment as respondents. Counsel for respondent filed objections to the application. However after hearing the parties applicants were arrayed as porfoma respondents.
3. Respondents 1 to 4 & 6 filed written arguments.
- a. That the share of landed property out landed property out of Khewat No.17, 19 & 25 situated in Village Dehri Relyote has since been devolved in the name of Said Mohd, Mir Mohd. & Faiz Mohd sons of Bahadur Ali vide inheritance Mutation No. 38 and 14-02-1969 duly attested by the then Naib-Tehsildar at Camp Village Dehri Relyote in presence of villagers. None of the villager has raised any objection while attesting the said mutation No.38.
  - b. That on 02-04-1974 one Dost Mohd. S/o Faqir Challenged the mutation No. 38 date 14-02-1969 before the Deputy Commissioner (Collector) Rajouri in the case titled "Dost Mohd. S/o Faqir V/S Said Mohd, Faiz Mohd, Sons of Bahadur Ali". Faiz Mohd, Sons of Bahadur Ali and the then Ld. Dy. Commissioner (Collector) Rajouri vide his order dated 23-10-1974 has dismissed the petition preferred by Dost Mohd. and upheld order of Naib Tehsildar dated 14-02-1969 on Mutation No.38. The said order of the Dy. Commissioner (Collector) Rajouri has since attained finality as not challenged by Dost Mohd. or any other person in the competent court.
  - c. That the petitioner has failed to establish before the court below that Bahadur Ali the grandfather of respondents No.1 to 4 and father of respondents No.5 & 6 has ever migrated to POK during the year 1965. The false ground of having migrated Bahadur Ali to POK in the year 1965 is baseless, presumption without any fact and just instigated by some persons of the village who have enmity with the answering respondents. Had there been this enmity with the answering respondents. Had there been this Fact of migration of Bahadur Ali in the year 1965, then why the petitioners have remained mum for the last long period of 38 years. Thus the revision petition preferred by the petitioner is malafied and just on the instigation of some mischievous persons of the village.
  - d. It is pertinent to submit that in the village Dehri Relyote there are persons who are having personal enmity with the answering respondents and that is why they approached the petitioner for filing the baseless appeal before the Dy. Commissioner Rajouri who has upheld the order on Mutation No. 38 dated 14-02-1969 in respect of Khewat No.17, 19 & 25 of Village Dehri Relyote.
  - e. That the Patwari concerned in connivance with some mischievous persons of the village who have enmity with the respondents have forged the revenue record as well as Shajra Nasab by having entered with the name of Bahadur Ali grandfather of respondents No. 1 to 4 as evacuee of 1965. Under the Evacuees (Administration of Property) Act 2006, the patwari is not competent to decide that whether any property is evacuee or not or that any person has migrated to POK or not. G.
  - f. That unless any property is notified by the Custodian as evacuee property under Section 6 (1) after having adopted procedure as laid down in rule 6 of the rules framed under the Evacuees' (Administration of Property) Act, 2006, Custodian has no jurisdiction on such property. The landed property belonging to grandfather of respondents No.1 to 4, Bahadur Ali has never been notified as evacuee property by the Custodian Evacuee Property, Jammu or the Tehsildar Assistant Custodian Rajouri. Under rule 6 of the rules framed under the Evacuees' (Administration of Property) Act, 2006, the Custodian is legally bound to conduct survey of any

property to verify as to whether any particular property is evacuee property or not in his jurisdiction and only after satisfying himself after proper conducting enquiry in the village, he can notify the property as evacuee property. Thus because of the fact that the grandfather of the respondents No.1 to 4 has not migrated to POK during the year 1965 and that is why the landed property belonging the grandfather of the answering respondents has not been notified as evacuee property under Section 6(1) of the Evacuee Property Act, 2006. Section 5 of the Evacuees' (Administration of Property) Act, 2006 provides vesting of evacuee property in the Custodian that too subject to the provisions of the EP Act that means that after the property is notified as evacuee property under Section 6(1) of the Evacuees' (Administration of Property) Act, 2006, and only then the notified property as evacuee property vest in the Custodian under Section 5. The Learned property vest in the Custodian under Section 5 of the Evacuee Property Act. That without issuing notification of any evacuee property under Section 6(1) the property vests in the Custodian.

- g. That there is landmark judgment. Therefore, this argument of the learned counsel for the respondent is devoid of force." So neither the Divisional Commissioner nor the Financial Commissioner were justified in entertaining the revision petition filed by the Custodian as the property had not vested in him. In view of the state of law as noticed above, the order of the Financial Commissioner is liable to be quashed. It is quashed accordingly.
- h. That the petitioner had preferred the time barred appeal before the Dy. Commissioner (Collector) Rajouri without having jurisdiction as the property in dispute is not evacuee property, not notified as evacuee property. The petitioner has failed to establish that grandfather of the answering respondents has migrated to POK before the Dy. Commissioner Rajouri.
- i. That there is landmark Judgment passed by the Hon'ble High Court of J&K in OWP No.61/67 in the case titled "Gopal Singh, Mehar Singh, Tirath Singh V/S Financial Commissioner & Custodian EP Jammu" reported in the KLJ (608) has held with the reference to the Judgment of Apex Court and Hon'ble High Court that the vesting of the evacuee property in the Custodian under Sub Section (2) of Section 6 of Evacuee Property Act takes place only when it is notified by publication play.
- j. That the petitioner Dy. Custodian / Custodian has no locus standi to challenge the Mutation No.38 dated 14-02-1969 timely upheld by the Dy. Commissioner (Collector) Rajouri vide order dated 23-10-1974 and vide order impugned dated 28-03-2005 and that the petitioner cannot deem on his assumption and presumption, the land in dispute as evacuee property in absence of notification issued under Section 6(1) of the Evacuee Property Act. Therefore, the revision preferred by the petitioner is fake, baseless, without locus standi, without jurisdiction and thus requires to be quashed away in the interest of justice, equity and fairplay.
- k. That the concerned Patwaris have issued Shajra Nasabs dated 21-04-2001, 08-03-2011 and 12-05-2015 wherein Late Bahadur Ali grandfather of the answering respondents has not been shown as evacuee.
- l. That the order of the court of District Judge Poonch Camp Rajouri dated 10-03-1977 in the case titled Said Mohd. V/S Dost Mohd. enclosed by the petitioner in support of written arguments is irrelevant in the case in dispute as the Civil Court has no jurisdiction to adjudicate in the matters of evacuee property under Section 31 of the Evacuees' (Administration of Property) Act, 2006. Section 31 of the Evacuees' (Administration of Property) Act, 2006 is reproduced as under:-
- Section 31. Jurisdiction of Civil Courts barred in certain matters. - (1) Save as otherwise expressly provided in this Act no Civil Court shall have jurisdiction -

(i). To entertain, or adjudicate upon any question whether any property is or is not evacuee property or whether an evacuee has or has not any right or interest in any evacuee property; or

(ii) .....

(ii) .....

- m. That the revision petition preferred by the petitioner is without locus standi, without having dominion on the land in dispute and without jurisdiction in view of the judgment of the Hon'ble High Courts and Apex Court referred to above and in view of the submissions made herein above, the revision petition preferred by the petitioner requires to be dismissed straight away in the interest of justice, equity and fairplay.
- n. That under order dated 23-10-1974 and order impugned dated 28-03-2005 passed by the Dy. Commissioner (Collector) Rajouri, the order on Mutation No. 38 dated 14-02-1969 has been upheld and that there is no need to interfere in the orders impugned and in the light of above submissions made, the revision petition preferred by the petitioner is liable to be dismissed straight away and order impugned upheld.

4. Proforma Respondents also filed written arguments wherein it is submitted that:-

- a. That one Bahadur Ali S/o Sultan Ali & Dewan Ali S/o Jimmu and many others were co-sharers in land comprised under Khewat Noz. 15, 16 and 19 situated at Village Dehri, Ralyate, Tehsil & District Rajouri. It is worthwhile to mention here that father of the interveners namely Nizam Din S/o Shamas Din R/o Dehri Ralyote, Tehsil & District Rajouri was also one of the co-shares in Khewat No.17 of Village Dehri Ralyote, Tehsil & District Rajouri.
- b. That admittedly Bahadur Ali S/o Sultan Ali & Diwan Ali S/o Jimmu had migrated to Pakistan due to disturbances prevailing in 1965 & 1947 respectively and as such the land comprised under Khewat No.15, 16 & 19 to the extent of their share has vested in the Custodian in terms of Sec.5 of Evacuee Property Act and recorded as such as evacuee property in the Revenue Record. Proof to this effect is evident from the following record viz.
  - i. That copy of Shajra Nasab (Pedigree table attached to Jamabandi of Village Dehri Ralyote which categorically reveals that Bahadur Ali alongwith Mir Mohammad S/o Bahadur Ali alongwith Mir Mohammad S/o Bahadur Ali are recorded evacuees.
  - ii. Copy of Khasra Girdawari pertaining to the Kharief 1967 pertaining to land comprised under Khasra No.981 for land measuring 35 Kanals 8 Marlas.
  - iii. Copy of Khasra Girdawari pertaining to year Kharief 1971 & Rabi 1972 of Village Dehri Ralyote, Tehsil & District Rajouri, Both the copies of Khasra Girdawri categorically reveal that Bahadur Ali is evacuee.
  - iv. Report of Patwari on the application of Mohd, Ayub one of the interveners before Tehsildar Rajouri in which the patwari has conducted inquiry on spot and found after recording the statement of chowkidar and other respectable citizens of the village and found that Bahadur Ali S/o Sultan Ali Caste Bhatti has migrated to Pakistan in 1965 and his share in and has become evacuee. His grandson Mohd Nazir S/o Said Mohd has also admitted and given in writing and signed the statement given by him admitting that his grandfather Bahadur Ali has become evacuee in year 1965. Said Mohd Nazir is attorney holder of Saddar Din & others in this Revision petition. The report of the patwari is counter signed by Tehsildar.
  - v. Report of Patwari on the application of Mohd Yaqoob S/o Said Mohd. Grandson of Bahadur Ali has also admitted in writing that his grandfather namely Bahadur Ali has migrated to Pakistan in 1965.
- c. That U/S 9 of the EP Act it is the Custodian Evacuee property who has to manage, Control supervise and take custody of evacuee properties in the State of Jammu & Kashmir, Virtually the custodian in the interest of evacuees. If the land is shown as evacuee then how the mutation of inheritance attested in favour of the so called heirs of the evacuees without taking report to Section 8 of Administration of Evacuee Property Act. This is the most vital aspect to be seen by the authorities which has been done as submitted above.

5. The case came up for hearing. Counsel for both the parties present. Counsel for petitioner reiterated the grounds taken in the memo of petition and pleaded to set aside the order passed on mutation no. 38. On the other hand the counsel for respondents 1 to 4 and 6 pleaded that the mutation no. 38 has been attested as per law and petitioner has failed to prove that the landed property in dispute is an evacuee property and prayed to set aside the petition.

I have heard the parties. The written arguments filed by them are gone through. The record placed on file is examined and has been found that late Bahadur Ali was a Share-Holder in land held by him in owner ship rights in Khewat Nos. 17, 19 and 25 of the Jamabandi of village Dehri Ralyat Tehsil Rajouri. He was shown to have died long back and mutation of his inheritance i.e. mutation No. 38 of the village was attested by the Naib Tehsildar on 14-02-1969 in favour of Said Mohd, Mir Mohd and Fez Mohd his sons in equal shares.

6. The contention of the Custodian EP Department was that both these deceased persons had migrated to POK in the year 1965 and the land so, held by them had become evacuee property. But the Deputy Commissioner, after hearing the parties and considering other relevant facts including written arguments filed by the appellant made a clear observation that the appellant (EP Deptt.) had not been able to produce any written proof to establish that Bahadur Ali had become an evacuee. Accordingly

the appeal filed by the Deputy Custodian EP Deptt. against mutation No. 38 was dismissed on 28-03-2005 and order passed on the mutation was allowed to prevail.


7. As regard mutation No.66 (inheritance of Dewan Ali) of the same village it was observed by the Deputy Commissioner Concerned and the same order that the mutation to the extent of the inheritance of Dewan Ali has already been set aside on the appeal filed by Nazar Bibi (Claiming herself to be the daughter of the deceased) and case remanded to the Tehsildar Concerned for fresh orders after denovo enquiry in presence of all concerned, as such appeal against mutation No.66 is wholly misconceived.
8. It has been observed that proforma respondents are relying on the copies of Shajra Nasab, Khasra Girdawri & the report of Patwari given on the application filed by one Mohd. Yakoob whereby Bahadur Ali has been shown as evacuee but on the other hand, the plea of counsel for respondents 1 to 4 & 6 that the petitioner cannot deem on his assumption and presumption, the land in dispute as evacuee property in absence of notification issued under Section 6(1) of the Evacuee Property Act. has legal ground and cannot be ignored. So on this ground also the plea of proforma respondents cannot be considered.
9. Moreover, the ground taken by respondents that unless any property is notified by the Custodian as evacuee property under Section 6 (1) after having adopted procedure as laid down in rule 6 of the rules framed under the Evacuees' (Administration of Property) Act, 2006, the Custodian has no jurisdiction on such property. On this behalf neither the petitioner nor the proforma respondents have succeeded in satisfying this court that Bahadur Ali has migrated to POK & the land in dispute has become Evacuee.
10. Further the judgment cited by the counsel for the respondents passed by the Hon'ble High Court of J&K in OWP No.61/97 in the case titled "Gopal Singh, Mehar Singh, Tirath Singh V/S Financial Commissioner & Custodian EP Jammu" reported in the KLJ (608) is very much relevant & applicable in the present case.

In view of what has been discussed above this court has come to the conclusion that the present revision petition has not merit. Hence the petition in hand is dismissed.

A copy of this order along with record file be sent to Deputy Commissioner Rajouri for information and further necessary action.

Stay issued if any, shall stand vacated. The case file be consigned to records after due completion.

**Announced**  
11-03-2017

  
**(Dr. Pawan Kotwal) IAS**  
**Divisional Commissioner,**  
**Jammu**