

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

05/ Appeal
17-04-2013
1. Ashok Kumar

2. Badri Nath

3. Om Parkash

4. Sonu Ram

All sons of late Mela Ram R/o Village Gohlad, Tehsil Mendhar

(Appellants)

Versus

1. Kamlesh Kumari D/o Mela Ram W/o Ved Parkash R/o Village Gohlad
2. Bimla Devi D/o Mala Ram W/o Jagdish Lal R/o Village Ari
3. Krishana Devi D/o Mela Ram W/o Roop Lal R/o Village Gohlad
4. Goga Devi D/o Mela Ram W/o Mohan Lal R/o Ari A/P Gang
5. Sushma Devi D/o Mela Ram W/o Chatan Sharma R/o Muthi J
6. Situ Kumari D/o Mela Ram W/o Prem Pal R/o Purkhoo Jamm
7. Parkash Devi D/o Mela Ram W/o Ahoke Kumar R/o Gohlad.

8. Balwan Sharma

9. Kuldeep Kumar both sons of Mela Ram R/o Village Gohlad, Tehsil Mendhar Distt. Poonch. (Pr

(Respondent)

Tehsil Mendhar Distt.
Informa Respondent)

In the Matter of:-

An appeal against the order dated 28-03-2013 passed by Additional Deputy Commissioner, Poonch with powers of collector by virtue of notification No. 328 dated 27-06-1986 passed by Naib Tehsildar Mendhar under section 3-A of Agrarian Reforms Act: Prayer for setting aside the same.

Appearing Counsel Advocate K.S. Puri for Appellant
Advocate Dara Singh for Respondent

ORDER

1. The appellants have filed the present appeal on the following grounds:-
1. That order dated 28-03-2013 (hereinafter referred to as the impugned order) passed by Additional Deputy Commissioner Poonch is against facts, law and all cannons of natural justice as such the same is liable to be set aside.



2. That mutation No.328 was attested with regard to land comprised under Khewat No.11, Khata No.46, Khata No.807 and Khata No.808 in favour of the appellants and the proforma respondents under section 3-A Agrarian Reforms Act by Naib Tehsildar vide order dated 27-06-1986.
 3. That the Additional Deputy Commissioner Poonch decided the said appeal by order impugned whereby he set aside mutation No.328 and remanded the case to Tehsildar Mendhar for fresh enquiry.
 4. That the appellants and the proforma respondents raised preliminary objections with regard to the locus standi of the respondent No.1 to file the appeal, the appeal being time barred and the officer below having no jurisdiction to decide the appeal, but the officer below without returning any finding on the preliminary objections decided the appeal vide impugned order which is a non speaking order and deserves to be set aside.
2. Appellants filed written arguments wherein they have submitted:-
- a) That mutation No. 328 was attested with regard to land comprised under Khewat No.11, Khata No.46, Khata No.807 and Khata No.808 in favour of the appellants and the Performa respondents under section 3-A of Agrarian Reforms Act by Naib Tehsildar vide order dated 27-06-1986, being the sons of Mela Ram, occupancy tenants under section 67 of J&K Tenancy Act. Section 67 is reproduced as under:-
 - b) Section 67 Succession to Right of occupancy
 - I) When a tenant having a right of occupancy in any land dies, the right shall devolve.
 - II) On his male lineal descendants, if any, in the male line of descent;
 - III) EXPLANATION Male lineal descendents, include a son formally adopted according Hindu Law, and in accordance with any acts in force in the sate regarding such adoptions.
 - IV) A perusal of the above section reveals that the mutilation of occupancy tenants has to be attested in favour of sons of the occupancy tenants and not in favour of anybody els, therefore, no defect can be founded in the attesteaion of mutation No.328(Supra) which has been affected strictly in accordance with law.
 - c) That the officer below was under legal obligation to decide the question of jurisdiction, locus standi of respondent No.1 to file the appeal and question of limitation before deciding the appeal. The officer below has not followed the mandate of law and passed the impugned order which is illegal and in violation of order 41 (3)A of CPC and judgment of Hon'ble High Court in case titled Mohan Singh & Ors. V/S J&K Special Tribunal & Ors. Reported as 2009 (4) JKJ[HC]


- d) That there was no need to remand the case when the material before the officer below was sufficient to dismiss the appeal as the appellant before court below namely Kamlesh Kumari, the respondent No.1 herein had no locus standi to file the appeal as in-terms of section 67 of Tendency Act she was not to get anything in the inheritance of her father who was an occupancy tenant, therefore, she had no locus standi to file the appeal
- e) That the officer below did not pass a speaking order while setting aside the mutation No.928. The order impugned dated lacks Judicial application of mind of the officer below which has been passed without any reasoning.
3. The case came up for hearing. Counsel for both the parties present. Counsel for appellants reiterated the grounds taken in the memo of appeal and further pleaded that parties are survivors of deceased Mela Ram displaced person of 1947 who was allotted Evacuee land at village Gohlad Tehsil Mendhar.
 4. That vide mutation No.161 rights of occupancy tenant in term of section 3-A were conferred on him. After his death mutation No.328 dated 27-06-1986 with regard to inheritance was attested.
 5. He further argued that respondent No. 1 Challenged the mutation before Deputy Commissioner Poonch on 28-09-2006 and Court below without condoning delay set aside the mutation and that as per section 67 of tenancy act rights of occupancy tenant devolve only on male lineal descendants. He further prayed to allow the appeal & set aside. The order of the court below.
 6. Whereas counsel for respondent No.1 contended that deceased Mela Ram in his life time has given a plot of land measuring 2K over which she has raised construction. He further pleaded that during attestation of mutation of inheritance neither her mother (Widow) nor respondents were summoned.
 7. That Hon'ble Court of Munsiff Poonch has passed order on 23-10-2013 wherein appellants herein are restrained permanently from dispossessing respondent herein from suit house without adopting due course of law and a decree has been passed.
 8. He further pleaded that order passed at the back of effected party is a nonest order & cited authority of Judgment passed by Hon'ble High Court of J&K in case titled Suraj Parkash & Ors. V/S J&K Special Tribunal
 9. Lastly he contended that Additional Deputy Commissioner (ADC) has remanded the case to Tehsildar for denovo enquiry & passing fresh order as such no appeal or revision lies against a remand order.
 10. I have heard the arguments of both the parties. Written arguments of appellants also perused & record placed on file examined from which it has been observed that Mela Ram deceased father of both the parties was a Displaced Person (DP) of 1947 and was allotted, evacuee land in different Kh. Nos. at village Gohlad, Tehsil Mendhar Poonch measuring 32 K 3M.
 11. It may be noted that the land was allotted under Cabinet Order 578-C of 1954. Occupancy rights were conferred on him by way of mutation No.161 attested U/S 3A of Agr Reforms Act.

12. After the death of Mela Ram mutation No.328 inheritance was attested on 27-06-1986 in favour of sons only and Kamlesh Rani respondent herein filed an appeal before Additional Deputy Commissioner Poonch on 28-09-2006 & the same was decided on 28-03-2013 & the case was remanded to Tehsildar Mendhar for fresh enquiry.
13. The dispute between the parties is with respect to land measuring 2 Kanal comprising Kh. No. 69 Min which the respondent No.1 is claiming that her father gifted this land orally as she did not left the family & remained with father.
14. The plea of respondent No.1 that she was in possession of the land in dispute and while attestation of mutation neither she nor her mother was summoned has substance and cannot be ignored.
15. The ground taken by petitioners that occupancy rights were to be devolved under Sec. 67 of Tenancy Act is not well founded since the land was allotted under Cabinet Order 578-C of 1954 and is to be governed by the same.
16. The main legal point in the matter is that Mela Ram father of parties was competent to transfer the land of his share & he has given land measuring 2 Kanal to her daughter Kamlesh in his life time & she is in possession of the same and has also constructed a house there in.
17. It may be noted that in an order dated 23-10-2013 in a suit titled "Kamlesh Devi V/S Kuldeep Kumar & Ors." in the court of Munsif Mendhar it is held that defendants have admitted respondent in possession of house which strengthens the grounds taken by respondent No.1 that mutation of inheritance has been attested at her back which is against the principle of natural justice.
18. Moreover, the court below has remanded the matter to Tehsildar concerned and has not decided the rights of the parties. It is a settled principle that no appeal / Revision lies against a remand order and as such the present revision petition thus deserves to be dismissed on this ground as well.

In view of the above facts and circumstances this court has come to the conclusion that present revision petition has no legal ground to sustain and is thus dismissed.

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

Announced
03-03-2017.


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