

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

File No.

57/Revision
2011-12

Date of Institution

14-11-2011

Date of Decision.

29.4.2017

Kirpu (now deceased) S/o Sh. Kandu through Legal Heirs

1. Gian Chand (Son)
2. Soma Devi (Daughter)

R/o Village Kundrorian Tehsil & Distt. Reasi

(PETITIONER)

Versus

Sh. Madan Lal

S/o Sh. Labu Caste Hajjam

R/o Village Kundrorian Tehsil and District Reasi.

(RESPONDENT)

In the matter of:- Revision petition against the order dated 04-12-2010 BK being mutation No. 363 passed by Tehsildar Reasi under section 4 of Act 17 of 2007 and has conferred ownership right upon the parties in equal share with respect to land under Khasra No. 145 of village Kundrorian Teh.and Distt. Reasi, prayer for setting aside the same.

ORDER

The order impugned dated 04-12-2010 BK passed by Tehsildar, Reasi has been challenged on the following grounds:-

1. That the order impugned is against law and fact and is liable to be set aside.
2. That the order impugned has been passed at the back of the petitioner, and has been condemned unheard against the principle of natural justice hence is liable to be set aside.
3. That the presence of the petitioner has been wrongly shown in the impugned order by impersonation as the petitioner is an old man of 95 years of age and is bed ridden and never put his thumb impression on the impugned order as is shown in the order impugned. A big fraud has been committed by the Respondent only to grave the land of the petitioner by adopting illegal means.
4. That the Naib Tehsildar also visited on spot and recorded in the report after verification and inquiry from the Village body, to the extent that it is only the petitioner who is in

cultivating possession of the land under the impugned mutation, hence the order is liable to be set aside.

5. That the order impugned is against the provision of law and the impugned mutation under section 4 of Act 17 of 2007 cannot be attested after coming in force the Agrarian Reforms Act i.e. to say the benefit under section 4 & 8 of Agrarian Reforms Act and also under section 4 of Act 17 of 2007 cannot be extended in favour of Respondent simultaneously hence the order is liable to be set-aside.
6. That the order impugned is contrary to public policy and against legal and social ethic.
7. That the order impugned is the outcome of fraud played by the Respondent and is liable to be set aside in order to achieve the end of justice and provide substantial justice.
8. Counsel for respondent filed objections on the maintainability of petition on the point of limitation in filing revision petition and after hearing both the parties the application for condonation of delay accepted & delay condoned and the matter fixed for final arguments.
9. During pendency of petition, the petitioner died & his legal heirs as per the application filed by his attorney holder has been brought on record.
10. Both the parties along with counsel present. Counsel for petitioner reiterated the grounds taken in the memo petition. He has also filed written arguments where in submitted that:-
 - a) That the respondent Madan Lal was never in possession of land in question in Kharief 2007. Therefore, he is not entitled to have the ownership right under the big landed Estate Abolition Act Svt, 2007 (1950 A.D)
 - b) That the respondent was just a five year of age on 04-12-2010 Samvat, that is date on which mutation pertaining to ownership right was confer on him which is against the mandate of law of big landed Estates Abolition Act and contrary to the provision of the said Act. As per the Big Landed Abolition Act to get the ownership right, a person must be a tiller and is in ownership right, a person must be a tiller and is in cultivation possession of the land at the time of passing of the said act, the section 2(b) Big Landed Abolition Act defines a tiller as under. "Tiller" means a person who tills land with his own hands, and with reference to the land held by a proprietor has, on the date of the commencement of this act etc.
 - c) That the order impugned is in contravention of the Big Landed Estate abolition Act, as the mutation of the conferring of ownership right was attested in favour of the infant child, who is unable to tills the land. The mutation under challenge against law and is liable to be set aside on this ground alone.

- d) That the petitioner has applied for getting date of birth record to prove this fact and wants sometime to produce the date of birth of respondent.
11. whereas counsel for respondent pleaded that petitioner was very much present at the time of attestation of mutation & as such he cannot file a case against that mutation. Even respondent also received compensation for the land measuring for the land measuring 6 Kanal 12 Marla in Khasra No. 145 & 1 Kanal 10 Marla out of the land in dispute being required for bus stand. & further pleaded that the land in dispute parties to Kh. No. 145 for the land measuring 13 Kanals 9 Marlas which is in possession of petitioner whereas land in Khasra No. 144 is in the possession of respondent.
12. After hearing both the parties and perusal of record it has been found from the copy of Khasra Girdawari of 1972 shows Madan Lal respondent herein in possession over land measuring 15 Kanal 9 Marlas comprising Kh. No. 195 whereas in Malak column, Madan Lal S/o Labu, Kirpu (now deceased) S/o Kundau has been shown in equal share.
- Whereas in copy Khasra of Girdawari of 1976 Kharief Madan Lal and Kirpu have been recorded in Malak column in equal share but Madan Lal has been shown in possession for 13 Marla and Kirpu in possession for 13 Kanal 16 Marla.
 - The mutation under challenged appears to be attested as per the spot position and recorded status of the respondent.
 - It may be noted that the presence of the petitioner (Kirpu now deceased) has been shown in the mutation impugned and he has put thumb impression at the time of attestation of mutation. So the order passed cannot be said to be ex-parte and at the back of the petitioner.
 - For the foregoing reasons, the petition being devoid of merits is dismissed and the order passed on mutation 383 is upheld.

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

Announced
29.4.17



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