



IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU
Present: (Dr. M.K. Bhandari) IAS

File No. 62/Appeal
2012-13

Date of Institution
06-3-2013

Date of Decision:
10-01-2018

Mukhtiar Chand S/o Gian Chand R/o Sukhdev Pora Tehsil Hiranagar District Kathua.
(Appellant)

Versus

1. Tula Ram S/o Beli Ram R/o Chak Marian Tehsil Hiranagar District Kathua.
(Respondent)
2. Settlement Officer Jammu
(Proforma Respondent)

In the matter of: Appeal against the order passed on mutation No.204 dated 10-09-2012 where by the mutation entered U/S 121 Land Revenue Act in respect of Land measuring 01-Kanal falling under Khasra No. 158 situated at Village Sukhdev Pora Tehsil Hiranagar District Kathua was dismissed by proforma Respondent, prayer for setting aside the same.

ORDER

1. Facts of the case are that:
 - i. Appellant herein purchased 1Kanal of land comprising Kh. No. 158 in Village Sukhdevpur from respondent in 1998. The area being under settlement operation, the appellant herein filed an application before Settlement Officer, Jammu for attestation of mutation under Sec 121 of LR Act, who after obtaining report from Tehsildar concerned issued direction for entering the mutation.
 - ii. Later, the Settlement Officer, Jammu after hearing the parties in the camp, rejected the attestation of mutation so entered in this regard.

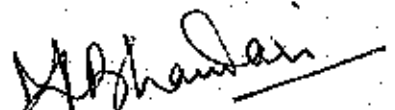
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2. Feeling aggrieved of the order of Settlement Officer, the appellant has filed the present appeal on the following grounds:
- i. That the appellant had purchased land measuring of 01 Kanai falling under Khasra No.158 situated in Village Sukhdeyapur, District Kathua from respondent No.1 in the year 1998 and after its purchase, the appellant constructed his residential house thereon and that the appellant is residing in the said house along with his family members.
 - ii. That the Ld. Settlement Officer Jammu, while passing the order on the mutation in question has not considered the facts that when any question of title arises, it will be decided summarily by the Collector. The question of title has arisen in the present case in the course of revision of Record of Rights, and it is obligatory upon the Collector to decide the question of title summarily. The respondent has raised the question of title of the appellant —qua the land in question as the Collector has the jurisdiction to confer the right upon the appellant after due enquiry in a summary manner. But the Ld. Settlement Officer (Collector) has not exercised the jurisdiction vested in him, and has committed grave illegality, rendering the order impugned perverse, illegal and not sustainable in the eyes of law, and therefore, the order impugned is liable to be set aside.
 - iii. That the order impugned on the mutation in question appears to have been passed in a mechanical & casual manner and the Collector has not applied the mind according to the facts and circumstances of the case, and without adhering to the procedure, has passed the order impugned, and therefore, the same is liable to be set aside.
 - iv. That Ld. Collector while passing the order impugned has not held the enquiry in a summary manner and no opportunity of being heard has been afforded to the appellant, and order appears to be have been passed under the due influence of the respondent No.01, and therefore, on this count also the order impugned is perverse, illegal, unwarranted and liable to be set aside.

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- v. That there is no impediment for the Collector to pass the order under section 121 Land Revenue Act for conferment of the title upon the appellant, but the Collector has not considered this vital aspect of the matter and has passed the order impugned in a hot haste, thereby giving go-bye to all the provisions of law. Thus, the order impugned is required to be set aside.
3. During pendency of petition, counsel for appellant pleaded for initiation of ex-parte proceedings against the respondent as he had not been appearing for a number of hearings. On perusal of order sheet it was found that respondent, after appearing on two dates of hearing (the last date on which the respondent appeared being 21-06-2013), has remained absent till date and as such the respondent has been set ex-parte, and the matter was fixed for arguments on merits.
4. The case came up for hearing. Appellant is present in person. He submitted that on the basis of memo of appeal & his written arguments, the appeal may be decided.
5. I have gone through the contents of appeal and written arguments filed by the counsel for appellant. Perusal of case file shows that the issue pertains to land measuring 1Kanal comprising Kh. No. 158 in Village Sukhdevpur, Hiranagar for which appellant had applied for attestation of mutation U/S 121 of LR Act, before the Settlement Officer, Jammu, the area being under settlement operations. After obtaining report from Tehsildar concerned, the Settlement Officer issued directions to enter the mutation, but vide order dated 10-09-2012, he rejected the mutation on the ground that sale/ purchase between both the parties has taken place & that the case does not fall in the ambit of Sec 121 of LR Act.
6. The perusal of mutation reveals that Settlement Officer in a camp held at Sukhdevpur on 10-09-2012, in the presence of parties & other witnesses including Chowkidar and Lambardar concerned, held the mutation to be in contravention of provisions of Sec. 121 of LR Act. & rejected the mutation entered so far.

7. However, the Settlement Officer, as part of the settlement proceedings was duty bound to ascertain the extant possession of the land, and whether the parties in question were duly in possession of the land. He has simply relied on the fact that sale/ purchase of the land in question has taken place and the case does not fall in the ambit of Section 121 of Land Revenue Act, which is an erroneous disposal of the matter under settlement proceedings. No summary enquiry has been conducted nor possession of the land determined before pronouncing the order, which therefore suffers from illegality.
8. In view of the above discussion, the present appeal having merit is allowed and the order impugned passed by Settlement Officer, Jammu dated 10-09-2012 is set aside. A copy of this order be sent to Regional Director, Survey and Land Records, Jammu for information.
9. Stay issued, if any, shall stand vacated. The case file be consigned to records after due completion.


(Dr. M.K. Bhandari) IAS
Divisional Commissioner,
Jammu

Announced

10-01-2018