

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

File No.
Revision-50

Date of Institution
20-2-2016

Date of Decision.
07-01-2017

Naseem Hussain Shah S/o Taffail Hussain Shah, R/o Potha Tehsil Surankote.
(Petitioner)

V/S

1. Khalid Hussain Shah S/o Akbar Shah, R/o Pith Tehsil Surankot.
2. Assistant commissioner (R) Poonch.

(Respondent)

In the Matter of:

Revision against order dated 19-12-2015 passed by the Assistant commissioner (R), Poonch whereby he has set aside Mutation No. 820 dated 17-07-2014 attested by him in respect of 01 Kanal and 10 Marlas of land covered under Kh. No. 795 Min situated in Village Potha, Tehsil Surankot, without jurisdiction and without any notice to the petitioner.

And In the Matter of:

Application for staying the operation of order impugned dated 19-12-2015 passed by the Assistant Commissioner (R), Poonch. Till final disposal of the revision petition.

Appearing Counsels:

Advocate H A Majid for Petitioner

Advocate Subra Hamdani for private respondent

ORDER

1. The present revision petition has been filed against order dated 19-12-2015 passed by the Assistant commissioner (R), Poonch whereby he has set aside Mutation No. 820 dated 17-07-2014 attested by him in respect of 01 Kanal and 10 Marlas of land covered under Kh. No. 795 Min situated in Village Potha, Tehsil Surankot, without jurisdiction and without any notice to the petitioner.
2. The case came up for hearing. Both the parties along with counsel present. Counsel for appellant reiterated the grounds taken in the memo of appeal and further pleaded that Assistant Commissioner (R) was not competent to entertain the appeal since the order under challenge had been passed by the same officer & prayed to set aside the order. The petitioner has not been heard.
3. Counsel for respondent contended that the order has been passed under law and prayed to upheld it.

H A Majid

4. I have heard the counsel of both the parties & order impugned perused which shows that the mutation impugned has been set aside & the case is remanded to Tehsildar Surankote for enquiry & disposal on merit. Admittedly, the mutation No.820 had been attested by Assistant Commissioner(R) on 17-07-2014 and rights under LB-6 & S-432 had been conferred in favour of petitioner over state land.
5. The legal procedure was to reject the appeal & to inform the appellant to file it at appropriate forum but instead he passed order on 19-12-2015 and set aside his own order and has thus exceeded his jurisdiction and the order out rightly deserves to be set aside.
6. The legal remedy before Assistant Commissioner(R) was to proceed under Sec. 13(1)(a) of LR Act which he could not & pass order which is violation of the above mention Sec. & the order thus passed deserves to be set aside.
7. It is to be mentioned that during arguments both the parties agreed to send the matter to Deputy Commissioner Poonch for enquiry & passing of fresh order.
8. Admittedly the land involved is state land comprising Kh. No.795 min measuring 1K-10M of village Potha Tehsil Surankote. Nobody can be allowed to occupy it unauthorisedly. But it is pertinent to mention that the order passed is without jurisdiction and thus not sustainable.
9. Hence in view of the above the petition is disposed of and the order under challenge is modified to the extent that Deputy Commissioner, Poonch shall visit the spot and enquire in presence of all the interested parties and thereafter shall pass order and take action under law.
10. This process be completed within a period of one month from the date of receipt of this order.

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



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

Announced
7-01-2017