

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

Present: Dr. Pawan Kotwal, IAS

File No.

81/Revision
2013-14

Date of Institution

27-12-2014

Date of Decision.

07-01-2017

Ricky Jolly S/o Late Tilak Raj Jolly
R/o Mohalla Jallian, Poonch A/p Bestech Park View City – II, D-101 Shona Road,
Gurgaon – 122108, Haryana.

(Petitioner)

V/S

Nusrat Bano
W/o Sayed Maqbool Hussain Qazmi
R/o Mahalla Kama Khan, near Shiv Mandir Poonch

(Respondent)

In the Matter of : Revision against the mutation No. 2996 dated 14/07/2011 where by correction of entry of Girdwari has been made in favour of Nusrat Banoo by order of Tehsildar Haveli with effect from Rabi 2011 regarding Survey No.176(3 Marlas), 177(13 Kanal 14 Marlas) and 178 (4 Kanal 15 Marlas) total measuring 18 Kanal 12 marlas situated at Sher Khas, Poonch.

For setting aside the same and cancellation of the mutation attested in favour of Nusrat Bano being violative of Standing Order No. 23-A (Mutations) and also against principles of natural justice, without any notice to the owners recorded in possession and also in defiance to the order of status quo issued by District Judge Poonch in the civil suit pending between the parties.

Appearing Counsel: - Advocate Rameshwar Sharma for petitioner.
Advocate Varun Kotwal for respondents.

ORDER

The present petition has been filed on the following grounds:-

1. That the impugned mutation is liable to be set aside and cancelled on the following grounds amongst others:-

a. That the impugned mutation has been attested without notice to the recorded owners before passing the impugned orders. No opportunity of being heard has been afforded to the petitioner/ Owner. It is violative of principles of natural justice. It is also violative of Rule-36 of Standing Order No.23- A (mutations) which provides as under:-

Attendance of Parties – When satisfied that the entries and reports are in order, the Revenue Officer should see whether the parties (and their witness in case of dispute) and lambardar are present.

If the parties or any of them are not present, the revenue Officer should give them a further opportunity to attend, and may summon them specially on the occasion of his next visit, should he think proper.

Further Rule 37 provides for interrogatories Rule 38 also provides for use of powers by Revenue Officer to enforce attendance.

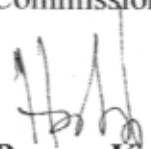
Non compliance of the mandatory provisions makes the order illegal.

The attestation of mutation at the back of the petitioner / owner is not only illegal but also at the instance of the respondent and smacks of extraneous considerations. This further evidences that the Tehsildar has not acted in accordance with law because he deliberately and with malafide intention recorded the entry of the mutation by overlooking the entry of status quo duly recorded in column of cultivation under the orders of District Judge Poonch. This order of the civil court has been issued in civil suit titled Mst. Nusrat Bano V/S Sh. Rikki Jolly & Ors. This suit was filed by Mst. Nusrat Bano herself and she obtained the order of status quo on the basis of alleged agreement to sell in which Nusrat Bano claimed right of specific performance of agreement to sell from the petitioner. The order of status quo was passed on 16-07-2005 by District Judge Poonch. It was made absolute on 17-04-2006. The impugned mutation is tainted with malafides and cannot be sustained.

- b. As a quasi judicial authority, the Tehsildar was required under law to hear the effected parties and take into consideration the nature of land which is an orchard and cannot be made subject of change of entry by recording cultivation in favour of respondent. It has caused miscarriage of justice. It is also against the notification, circulars and instructions issued under the land laws pertaining to the Sehat-Andraj of Girdwari.
2. The respondent in her written objections to the points raised in the revision petition has submitted that :-
- a) That the subject land measuring 18 Kanals & 12 Marlas bearing Khasra Nos. 176(3 Marlas), 177(13 Kanals & 14 Marlas) and 178(4 Kanals & 18 Marlas) of Sheher Khas (Poonch) was held by Surinder Nath and others including Tillak Raj S/o Mohan Lal in ownership rights.
 - b) Consequently Girdawari entries for this land were, on the application of the respondent and that too, after holding proper enquiry, corrected by the Tehsildar in her name from Rabi 2011 onwards under mutation No.2996.
 - c) That the other hand, as she had been in hostile possession of the land for more than 12 year, application was also moved by her under sanction 19 of the Agrarian Reforms Act for declaring her as owner of this land being in adverse possession thereof.
 - d) The matter was thoroughly examined by the Assistant Commissioner (Revenue) as Collector Agrarian Reforms and a detailed order was passed in the matter on 10-02-2015 declaring the respondent as owner of the land through adverse possession.
 - e) That formal mutation, on the basis of the aforesaid order i.e. mutation No.3588 was also attested in favour of the respondent on 06-06-2015. It may be submitted here that order passed by the Assistant commissioner (Revenue) as Collector Agrarian Reforms was never opposed by the petitioner or any other person and it has, before, become a final order.
3. The case came up for hearing. Counsel for both the parties present. Ld Counsel for petitioner reiterated the grounds taken in the memo of petition & further pleaded that in a suit filed by respondent before district Judge Poonch titled Nusrot Bano V/S Ricky Jolly & Ors." Status-quo order was passed on 16-07-2015 which was made absolute on 17-04-2006 till disposal of the suit. Whereas Tehsildar attested mutation of Sehat Kasht on 14-07-2011 overlooking the entry of status -quo recorded in the revenue record & is thus not sustainable. Moreover, the mutation impugned has been attested without any notice to the recorded owners & without affording any

- opportunity of being heard to the petitioner which in violation of principle of natural justice.
4. He further pleaded that the respondent moved an application before J&K special Tribunal in 2009 for possession. Which was dismissed on 03-11-2010 He further added that the part Sarkar of the mutation impugned is not traceable which raises question about its genuineness & pleaded to set aside the mutation
 5. Counsel for respondent pleaded that:-
 - a) The land in dispute remains in cultivating possession of respondent from 1970-74 continuously.
 - b) Petitioner sworn in an affidavit in 1986 that this land is in occupation of present occupant from 1970 -71 & Girdawari entries if not carried in her name, she could get the same in her name under due process.
 - c) Girdawari entries were corrected on the application of respondent after holding enquiry by Tehsildar in her name from Rabi 2011 onwards.
 - d) Asst. Commissioner (Revenue) Rajouri as collector vide order dated 10-02-2015 has declared respondent as owner of the land by way of adverse possession.
 6. I have heard the counsel of both the parties & record is examined from which it has come to fore that prior to Rabi 2011, the land in question stands recorded in name of father of petitioner & Ors. & suddenly the mutation impugned came to be attested on 14-07-2011 that too at the back of the owner of the land.
 7. It is to be mentioned that respondent has been taking different stands while claiming the right over the land in question. It has not been understood that if the land has been in continuous possession of respondent as alleged since 1970-71 onwards, then what restrained her from getting her name recorded in revenue record and becoming owner under Agr. Reforms Act.
 8. Further respondent is claiming rights on the basis of an affidavit executed by father of petitioner in 1986 & thereafter an agreement to sell executed on 13-04-1995. In this regard It is to be mentioned that even agreement to sell does not create any interest / Right until followed by proper '*Sale Deed*'. Hence this plea has no legal force & cannot be conceded.
 9. It is also pertinent to mention that respondent has taken plea of purchasing land through agreement to sell before Assistant Commissioner (Revenue) Rajouri while claiming 'adverse possession' over the land in dispute. But it has not been understood that how Assistant Commissioner (Revenue) Rajouri has taken cognizance of those documents which have no legal validity.
 10. It appears that the respondent has been waiting for the death of the father of the petitioner to get the mutation impugned attested. The counsel for petitioner has strongly pleaded that the 'Parat Sarkar' of the mutation impugned is not traceable.
 11. In view of the above reasons this court has come to the conclusion that the revision petition deserves to be allowed and the mutation impugned dated 14-07-2011 which is not based on facts & attested in violation of standing order 23-A be set aside. Accordingly the case under section 15(3) of LR Act is submitted to Ld. Financial Commissioner (R) J&K Jammu for confirmation.
- Both the parties are directed to appear before Ld. Financial Commissioner (R) J&K Jammu on 07-03-2017.

Announced
07-01-2017


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