



IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

Present: (Dr. M.K. Bhandari) IAS

File No.
15/Appeal
2014-15

Date of Institution
08-10-2015

Date of Decision.
13-10-2017

The J&K Co-Operative
Housing Corporation Ltd., Jammu
Through Bharat Bhushan, Managing Director,
of the Corporation, Jammu.
(Appellant)

Versus

Ranjeet Singh
S/o Baldev Singh
R/o Bhalwal, Tehsil Bhalwal & District Jammu
(Respondent)

In the matter of:

Appeal against Mutation No.67/J of Bhalwal,
illegally attested in the name of Respondents
entering 16 Kanals and 6 Marlas of land underlying
Khasra No. 2069 of the village in his name in
Ownership rights under Section-121 of the Land
Revenue Act.

ORDER

The present appeal has been filed against the order passed on mutation No. 67/J comprising Kh. No. 2049 for the land measuring 16K – 6 M of Bhalwal in favour of respondent U/s 121 of LR Act.

The facts of the case are:

1. That J&K Cooperative Housing Federation Ltd. Jammu through its Manager (P) Sh. Bharat Bushan purchased land measuring 174 K 15 M comprising different Kh. Nos. 1637, 1635, 2049, 1901, 1842, 1907 of Village Bhalwal from Capt. Murti Gupta S/o Lat Sh. A.K. Gupta, MD Nidheesh Builders, Jammu, Pvt. Ltd. Gandhi Nagar Attorney holder of Farooq Ahmed and a sale deed was executed between the parties on 17.10.1996 before Munisff Sub Registrar,

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Jammu. The possession as claimed by appellant had been handed over to Corporation. On the basis of sale deed a mutation No. 3276 had been attested on 07.06.2004 in this regard in favour of J&K Cooperative Housing Federation.

2. During the settlement operation a mutation No. 67/J came to be attested for 16K 6M of land out of Kh. No. 2049 on 08.10.2009 in favour of respondent herein allegedly out of land belonging to the appellants.
3. This mutation impugned is the dispute between the parties and has been challenged on the grounds that:
 - i. The mutation had been attested all the back of appellant and ownership rights have been granted to respondent by extinguishing the rights of Corporation.
 - ii. That Section 121 of the Land Revenue Act is completely of Civil Nature. It clearly provides that if a question of title arises between the parties in the course of preparation of the new Record of Rights in the Settlement, it shall be decided summarily by the Collector i.e. the Settlement Officer only as has been clearly laid down under Section- 121 of the Land Revenue Act. Svt. 1996.
 - iii. That Section-121 comes into operation only when question of title in respect of a piece of land arises between the parties during the Settlement Operation. Thus, as and when question of title arises, a Revenue Officer is legally required to hear the parties, consider their view points and return a clear finding in showing as to who is the person in whose favour balance of convenience lies. But in the present case Corporation does not seems to have been provided any opportunity of hearing. Rather a legal right of hearing available to the Corporation has been completely denied by the Mutation Officer. Even specific

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instructions issued for dealing with such cases have also been thrown to winds.

- iv. That Corporation claims that this part of the land has also remained in their self occupation and question of entering this land in the name of Respondent is not only illegal but mischievous also. Further, benefit of this Section has been extended to the Respondent wrongly and without any cause. The Mutation is, therefore, patently based on fraud and deserves to be aside.
 - v. That the ownership rights under Section-121 of the Act were granted by Mutating Officer to the respondent simply to give him undue advantage. And the Respondent soon after gaining this benefit sold 16 kanals 6 marlas of land bearing Kh. No. 2049 min to one Akash Deep Singh. Since, the basic Mutation No. 67/J is patently illegal, wrong and bad ab-initio, the Mutation of the sale deeds are equally defective and wrong ab-initio and deserve to be set aside, in the interest of justice.
4. During, proceedings before this court the normal mode of service was executed, registered cover was sent for the service of respondent but despite that, the respondent did not appear. Alternate mode of service was also resorted to by publishing in English Daily Newspaper "State Times" on 30.01.2016. But this notice too, did not yield the response.
 5. There was, therefore, no other alternative than to set the case ex-parte for non appearance of the respondent, and consequently the case was fixed for arguments on merits.
 6. During arguments, the counsel for appellant reiterated grounds taken in appeal and further pleaded that mutation has been attested by Tehsildar Settlement at the back of the appellant and without providing opportunity of being heard which is against the principle of natural justice.

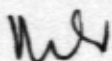
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7. That the competent authority to attest mutation u/s 121 of LR Act is the Collector, whereas in the present case, it has been attested by Tehsildar settlement. So order passed is without jurisdiction.
8. He further claimed that Section – 121 of the LR Act comes into operation only when the question of title arises between the parties during the Settlement Operation. Thus, as and when question of title arises, Revenue Officer is legally required to hear the parties, consider their view points and return a clear finding showing as to who is the person in whose favour balance of convenience lies. But in the present case Corporation have not been provided with any opportunity of being heard. Rather, the legal right of being heard available to the Corporation has been completely denied by the Mutating Officer and even specific instructions issued for dealing with such cases have been totally ignored. Moreover, in the present case, no question of title even arose between the parties, since the Respondent is neither the owner of this land nor has he purchased it as mandated in terms of Section – 138 of the transfer of Property Act Svt.1977. Furthermore, the standing instructions pertaining to attestation of Mutation under Section 121 of the Land Revenue Act contained in Circular No. FC/LS Allotment 536/97 dated 08-06-1998, Financial Commissioner have also not been followed.
9. Further, the respondent Ranjit Singh has neither purchased the land in question through any Registered Sale Deed, nor is there any other factor so enumerated in the guidelines/ Circulars, covering cases under Section-121 of the Land Revenue Act Svt. 1996.
10. Moreover, as % at village Asarwan, Tehsil Bhalwal, Jammu his name as an Owner cannot be entered in the Revenue Records and till then title (Ownership) of the subject land cannot be reflected in his name in the revenue Records. Judgments viz. AIR 1973 JK 11(FB) "Gulam Hussain V/S Gulam Qadir" 03-04-1978 cont Civil Rev. Pet. 8/1972: 1976. KLJ-91 AIR 1978 J&K 88. 1978 JKLR158 have been contended to be applicable in the instant case.

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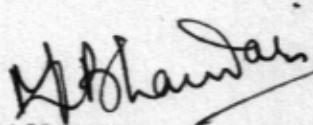
11. The counsel for appellant is heard. Copy of "Parat Patwar" of Mutation impugned has been perused, which reveals that the appellant herein has purchased the land in question from Mohd Farooq & is recorded in column 4. Further, the respondent herein, by virtue of this mutation, has been conferred right over 16K 6 M of land U/S 121 of LR Act. It has been observed that provisions of Sec- 121 of LR Act have not been followed while attesting of Mutation impugned.
12. It is clear that Section 121 of the Land Revenue Act is put in motion only when in the course of preparation of Record of Rights or of revision of the Record of Rights in an estate under settlement, any question of title arises and cases where it could be made applicable are specified in instruction/Rule 31 of the Hidayat Bandobast 1992. Circular No. 6/FC-Sett/Gen/01 dated 28-03-2001 FC Jammu also lays emphasis on the formalities to be observed while taking action under the said Section. But it appears that the present case does not fall in the ambit of instruction/Rule 31 of the Hidayat Bandobast 1992 and Circular No. 6/FC-Sett/Gen/01 dated 28-03-2001 FC, Jammu.
13. It has been observed that the order has been passed at the back of the appellants and it is a settled principle that any kind of mutation attested in favour of one party, in the absence of the other party without affording the interested party right of being heard and any mutation not attested on spot is not legally maintainable.
14. In view of the foregoing observations, the appeal under consideration against Mutation No.67/J dated 18-10-2009 in respect of land falling under Kh.No.2049 (16K-06M) of Village Asarwan, Bhalwal is accordingly accepted and Impugned Mutation is set aside.

A copy of this order be sent to Regional Director Survey and Land Record (J) and to Tehsildar, Bhalwal for information and further necessary action.



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

Announced
13-10-2017


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