



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

File No.
20/Revision
2008-09

Date of Institution
26.02-2009

Date of Decision.
01-09-2017

1. Kunj Lal (son) 2. Subash Chander (son) 3. Gandharab Singh (son)
4. Omkar Chand (son) 5. Kamaljit (son) 6. Ashok Kumar (son)
7. Smt. Suba Devi (daughter) 8. Smt. Kamal Devi (daughter)
9. Smt. Shimla Devi (daughter)

of Late Sh. Bishan Dass (Caste Mahasha) S/o Dittu Ram.

All residents of Sehar Timber, Tehsil and District Kathua.

(Petitioners)

VERSUS

1. Maru Ram(son)
2. Smt. Madi Devi (daughter)
- of Sh. Dalipu, Both resident of Sehar Timber, Tehsil and District Kathua.
3. Deputy Commissioner (Collector) Kathua.

(Respondents)

In the matter of: Revision petition against the order dated 10.02.2009 passed by the Deputy Commissioner, District Collector Kathua and order dated 21.09.2004 passed by the Tehsildar Kathua on Mutation No. 295 in respect of land measuring 27 Kanal 03 Marla comprising Khasra Nos. 179 and 180 situated in Village Sehar Timber Tehsil and District.

MS

ORDER

1. The present petition has been filed by the petitioners against the order dated 10.02.2009 passed by the Deputy Commissioner, District Collector, Kathua and order dated 21.09.2004 passed by the Tehsildar Kathua on Mutation No. 295 in respect of land measuring 27 Kanal 03 Marla comprising Khasra Nos. 179 and 180 situated in Village Sehar Timber, Tehsil and District Kathua.
2. The facts of the case are that:
 - a) Bishan Dass S/o Dittu along with his brother, sister and mother were recorded as owners in half share and Dalipu S/o Niku in half share in Khewat No. 19. The land has been recorded in the cultivation of Rattnu and ors.
 - b) A mutation No. 225 of "Sehat Indraj" dated 05.09.1986 was attested in favour of Bishan Dass S/o Dittu for land measuring 27K & 3M comprising Khasras No. 179 & 180.
 - c) The mutation was challenged before Additional Deputy Commissioner, Kathua by the other side on 10.10.1996, who vide his order dated 29.05.2002, set aside the mutation and remanded the case for de-novo enquiry and for passing of fresh orders. In compliance to remand order, the Tehsildar concerned, after conducting an enquiry, attested mutation No. 295 on 21.09.2004.
 - d) The mutation no. 295 dated 21.09.2004 was challenged by the father of petitioners before Additional Deputy Commissioner, Kathua on 24.05.2005, who vide his order dated 18.03.2006 upheld the impugned mutation.
 - e) The order of Additional Deputy Commissioner was challenged before J&K Special Tribunal on 19.04.2006 by Sh. Bishan Dass. The same was decided on 27.10.2006, whereby petition was returned to petitioner for

presentation before the appropriate forum if he so chooses, since the said Court was not the appropriate forum for adjudication of the case.

- f) Feeling aggrieved of the order of Special Tribunal, petitioner approached Hon'ble High Court, whereby the petition was dismissed and petitioner again advised to approach the appropriate forum.
- g) Thereafter, petitioners herein challenged the mutation No. 295 dated 21.09.2004 before Deputy Commissioner, Kathua on 30.04.2008 which was decided on 10.02.2009 and appeal was dismissed with a cost of Rs 5000/- .

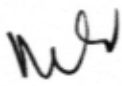
3. The present petition has been filed against the order of Deputy Commissioner Kathua dated 10.02.2009. The grounds taken by the petitioner are:

- a. That the orders impugned dated 10.09.2009 and 21.09.2004 passed by the Deputy Commissioner, Kathua and Tehsildar Kathua respectively are against law and facts of the case.
- b. That the impugned orders have been passed in haste, mechanically and without going into the legalities of the facts and law, and against the Principles of Natural Justice, equity and good conscience.
- c. That the Tehsildar has passed order on the said mutation sitting at Headquarter and not in the village Sehar Timber, whereas it has clearly been laid down in Standing Order 23-A Para 51 that Mutation work should be done on the spot, either at the village concerned or at a village in the same Patwar Circle, or at any other place near the village concerned. But in this case the Tehsildar attested the mutation neither in same Patwar Circle nor near the village, and therefore, has violated the Provisions of Standing Order 23-A.

- d. That the father of the respondents had abandoned the land and also left the village Sehar Timber for all purposes and have permanently settle in village Bhaiya, Tehsil Hiranagar and the land is in physical cultivating possession of the petitioners; previously through their father and after the death of their father they are in possession. Thus they are Gair Hazir and Gair Qabiz. But the attesting officer failed to consider this aspect of the case and as such has ignored the instructions contained in the Standing Order 23-A.
- e. That the mutation has been attested at the back of the petitioners herein. They were never summoned. The report of the orderly is false and wrong on the so called summon because no summon was ever produced before the petitioners as such question of refusing the notice does not arise.
- f. That when Late Sh. Dalipu (father of respondents) has never challenged the Mutation No. 225, then his legal heirs respondents herein, have no right to challenge the said mutation on 10.10.1996 i.e. to say after more than ten years before the Additional Deputy Commissioner Kathua with powers of Commissioner Agrarian Reforms.
4. The case came up for hearing. Petitioner No. 2 is present in person. Counsel for respondent is present. Petitioner reiterated the grounds taken in the memo of petition. Whereas counsel for respondent pleaded that the impugned Mutation No. 225 has been set aside by the Additional Deputy Commissioner, Kathua, and in remand order mutation No. 295 was attested by Tehsildar as per the order of the Additional Deputy Commissioner, Kathua. He prayed for dismissal of the petition.
5. I have heard the parties. Record has been perused, which shows that predecessors of both the parties were recorded as owners in Khewat No.

19, whereas the land was under the cultivating possession of Rattnu and ors.

6. However, when Bishan Dass, father of the petitioner, was recorded in ownership column along with his brother, sisters and mother in half share, the attestation of "sehat kasht" mutation in favour of one the co-sharers cannot take place when land is under the cultivation of other persons.
7. Further, after the remand order of Additional Deputy Commissioner, Kathua dated 29.05.2002, the fresh mutation was attested by Tehsildar wherein it has been recorded that father of petitioner, despite having been summoned, did not choose to be present at the time of attestation. So, thereafter, the claim now being laid by the petitioners appears to be only an afterthought, and cannot be considered.
8. In the second round of litigation also, Additional Deputy Commissioner Kathua has upheld the order of Tehsildar on mutation No. 295 having been passed on merits.
9. Though the petitioners herein approached, J&K Special Tribunal and Hon'ble High Court, they had been advised to approach the competent forum. Further, the appeal of petitioner herein filed before Deputy Commissioner, Kathua was also dismissed on the ground that the matter has already been decided by Additional Deputy Commissioner, Kathua.
10. From the perusal of mutation impugned, it has been found that the order has been passed in favour of both the parties in equal share, which does not infringe the rights of petitioner.
11. Further, the contention of the petitioners that when father of the respondents Late Sh. Dalipu never challenged the Mutation No. 225, then his legal heirs (respondents herein), have no right to challenge the said mutation on 10.10.1996 i.e. to say after more than ten years before the Additional Deputy Commissioner Kathua, is wrong. The aggrieved party, if



any, has the right to challenge any wrong having been done in this regard, subject to other provisions of law.

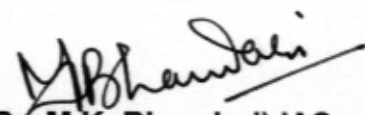
12. Moreover, the argument of the petitioners that the Tehsildar has passed order on the said mutation at Headquarter and not in the village Sehar Timber and has thus violated Standing Order 23-A does not have any legal force because the mutation was never attested without the knowledge the father of the petitioner, who had been duly summoned in this regard, but he choose to abstain from the proceedings when mutation was being attested. Further, the mutation has been attested purely in terms of the remand order of Additional Deputy Commissioner, Kathua, which had been passed after hearing the petitioner's father.

13. In view of the above, the petition in hand, having no merit is dismissed. However, order of the Deputy Commissioner, Kathua only to the extent of imposing costs of Rs. 5000/- upon petitioner, is set aside, being unduly harsh.

14. A copy of this order along with record file be sent to Deputy Commissioner, Kathua for information and further necessary action.

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

Announced
01-9-2017


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