(2010) 07 AHC CK 0282

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25961 of 2008

Anisa Khan	APPELLANT
Vs	
State of U.P.Through Commissioner, Agra Division, Agra and others	RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0282

Hon'ble Judges : Sanjay Misra, J

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—Heard learned Counsel for the petitioner and Sri Ramesh Sinha for the private respondent as also learned Standing Counsel for the Staterespondents.

2. The petitioner is aggrieved by the order dated 14.5.2007 (Annexure No. 5 to the writ petition) passed by the Commissioner, Agra Division, Agra, whereby the revision filed by the petitioner against an order of mutation has been rejected.

3. Sri Ramesh Sinha, learned Counsel, for the respondent has referred to the decisions in the case of Summer Lal v. Board of Revenue, 1996 (87) RD 569. Sahed Jan @ Bonde v. Board of Revenue, 2004 (96) RD 656 and Gagdish Narain v. Board of Revenue, 2007 (102) RD 20 to state that the mutation proceedings are summary in nature and could not decide title of any party and, therefore, the writ petition should not normally be entertained.

4. He has referred to a Division Bench judgment of this Court in the case of Jaipal v. Board of Revenue, AIR 1957 All. 205 for the same purpose. The Division Bench as long back as 1957 had held as under :

(2) The facts are these. On the 3rd of January, 1955 the second respondent made an application under section 34 of the United Provinces Land Revenue Act to the Tahsildar of Koil, in the district of Aligarh that her name be entered in the annual register maintained under that Act as being in possession of a particular

holding as the successor of one Smt. Dewalia deceased. The application was opposed by the petitioner who claimed to be the true owner, but an order was made by the Tahsildar directed that mutation of names be effected as asked for by the second respondent. That order was however set aside by the Commissioner on appeal by the petitioner. The second respondent then filed an application in revision before the Board of revenue; and the Board by the order which is now being challenged allowed the application, set aside the order of the Additional Commissioner and restored that of the Tahsildar.

(3) The contention of learned Counsel for the petitioner is that the Board of Revenue in passing this order exceeded its jurisdiction, it has however been the consistent practice of this Court not to interfere with orders made by the Board of Revenue in cases in which the only question at issue is whether the name of the petitioner should be entered in the record of rights. That record is primarily maintained for revenue purposes and an entry therein has reference only to possession. Such an entry does not ordinarily confer upon the person in whose favour it is made any title to the property in question, and his right to establish his title thereto is expressly reserved by section 40(3) of the Act. The only exception to this general rule is in those cases in which the entry itself confers a title on the petitioner by virtue of the provisions of the U.P. Zamindari Abolition and Land Reforms Act. This petition does not fall in that class and we think therefore this Court should not entertain it. It is accordingly dismissed with costs.

5. In the present case the petitioner is aggrieved by the order passed by the Commissioner rejecting his revision against on order of mutation dated 17.6.2004 passed by the Naib Tehsildar, Sahawat as also the order whereby his appeal was rejected by the SubDivisional Magistrate, Kashganj on 25.1.2005. All the three authorities have decided the mutation proceedings and as such being summary innature cannot be the subject matter of interference in this writ petition since the said impugned orders do not confer any title on the respondents and are only made for the purpose of either realization of land revenue or to refer to possession at that time.

6. Consequently, this writ petition cannot be maintained and it is, accordingly, dismissed.

7. No order is passed as to costs.