(2022) 01 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2634 Of 2021, Civil Miscellaneous No. 8285 Of 2021

Mushtaq Ahmed Khan APPELLANT

Vs

Union Territory Of J&K And Others RESPONDENT

Date of Decision : 31-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Jammu And Kashmir Land Revenue Act, 1996 — Section 15, 22, 26, 121

Citation : (2022) 01 J&K CK 0004

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Ahmad Javid, B.A.Dar

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. The petitioner is aggrieved and has challenged the order dated 11.10.2017 passed by the Financial Commissioner (Revenue), Kashmir in revision

petition titled Mushtaq Ahmed Khan v. Hajira and others [â??impugned orderâ??].

2. Briefly stated, the facts leading to the filing of the present petition, as projected by the petitioner in the petition, are that the petitioner purchased a

piece of land measuring 6 kanal 12 marlas covered under Survey Nos.2164, 2142, 2185, 2200, 2231 and 2232 situated at village Hyhama Tehsil and

district Kupwara [â??the subject landâ??] from respondent No.3 and the same was subsequently mutated in the name of the petitioner.

3. Respondent No.2, it is claimed, in the year 2002 filed an appeal before the Additional Deputy Commissioner, Kupwara challenging mutation

No.1891 dated 01.06.2001 on the ground that respondent No.2 being a khananasheen daughter was entitled to inherit the property of the father of the

parties. The appeal was disposed of by the Additional Deputy Commissioner vide its order dated 12.05.2012. The impugned mutation was set aside.

Feeling aggrieved, the petitioner filed a revision petition in terms of Section 15 of the Land Revenue Act before the Financial Commissioner

(Revenue), Kashmir. The Financial Commissioner, too, did not agree with the writ petitioner and eventually dismissed the revision petition vide order

impugned in this petition. It is this order of the Financial Commissioner which the petitioner has challenged in this petition, inter alia, on the ground that

the forums below have not appreciated that the petitioner was in possession of the subject land having purchased the same prior to 2000 from

respondent No.3 and therefore, he could not have been divested of his right, which had been duly mutated in his favour and that the impugned order

was passed by the Financial Commissioner without affording him any opportunity of being heard.

4. Having heard learned counsel for the petitioner and perused the material on record, I do not find it a fit case to exercise the writ jurisdiction vested

in this Court by Article 227 of the Constitution of India to interfere with the concurrent findings of fact recorded by the Collector (Additional Deputy

Commissioner) Kupwara and Financial Commissioner (Revenue), Kashmir.

5. The Financial Commissioner has rightly observed in the order impugned that the mutation impugned before the Collector which was later on set

aside was attested by the mutating officer on the ground that village Hyhama, where the subject land situates, had been taken up for settlement

operation and that during settlement operation the petitioner was found to be in possession and, accordingly, mutation under Section 121 of the Land

Revenue Act conferring upon him the ownership rights was attested. From the impugned mutation, it clearly transpires that the same was not attested

pursuant to any valid sale deed executed by respondent No.3 in favour of the petitioner and was attested by having resort to Section 121 of the Land

Revenue Act.

6. In the instant case, as is rightly held by both the forums below, estate of Late Gani Dar was attested by way of inheritance mutation on 01.06.2001,

therefore, at the time of attestation of the impugned mutation, respondent No.3-Mst. Saja had no right to dispose of the estate of Gani Dar. It is, thus, held by both the forums below that respondent No.2 being a khananasheen daughter of estate holder Gani Dar, alone was entitled to inherit the

property and, therefore, other daughters including respondent No.3-Mst.Saja was not competent in law to transfer any part of the estate of Late Gani

Dar. It is seen that it is because of this reason only, no sale deed was ever executed between the parties and mutation was attested by having resort

to Section 121 of the Land Revenue Act. Section 121 of the Land Revenue Act can be resorted to only if during the course of settlement operation a

dispute arises with regard to title, it can be decided summarily by the Collector of 1st Class, whose decision is subject to such orders, as may be

passed in appeal by the Divisional Commissioner and shall be binding till it is set aside by a decree of civil court. For facility of reference, Section 121

of the Land Revenue Act is reproduced here under:-

â??121. Procedure to be followed in Settlement proceedings when a question of title arises If, in the course of the record-of-rights or of revision of

the record-of-rights in any local area in pursuance of notification issued under section 22, any question of title arises it will be decided summarily by

the Collector of the first class whose decision, subject to such orders as may be passed in appeal by the Divisional Commissioner shall be binding on

the parties till it is set aside by a decree of the Civil Court.

When such a decree is made the record-of-rights shall be corrected, if necessary in accordance therewith, on an application to the Collector with hose

jurisdiction the property affected is situate.â??

7. From a bare reading of Section 121 of the Land Revenue Act, it is crystal clear that powers under Section 121 can only be exercised by the

Collector of first class. Tehsildar, as per Section 6 of the Land Revenue Act, is only an Assistant Collector first class and, therefore, not competent to

attest mutation under Section 121 of the Land Revenue Act.

8. That apart, mutation under Section 121 can only be attested where the land with regard to which any question of title has arisen is under settlement

operation. In the instant case, Tehsildar, as observed in the impugned order, has attested the mutation purportedly under Section 121 of the Land

Revenue Act and, therefore, not being a Collector was not competent to do so, moreso, when an area where the subject land was situated was not

under any settlement operation. Even the mutation under Section 26 could not have been attested by the Tehsildar, as under Section 26 of the Land

Revenue Act, the only dispute which arises with regard to an entry to be made in a record or in a register of mutation is to be corrected after holding

summary enquiry.

9. Be that as it may, the impugned mutation does not fall either under Section 26 or Section 121 of the Land Revenue Act and, therefore, impugned

mutation attested by the Tehsildar in favour of the petitioner was totally illegal, unauthorized and highly uncalled for. Respondent No.2, being a

khananasheen daughter of the estate holder, was rightly conferred the right of inheritance qua the land left behind by her father, namely, Gani Dar.

10. The plea of the petitioner that the impugned order cannot sustain as he was not provided an adequate opportunity of being heard is belied by the

record. Vide order impugned, the Financial Commissioner has decided the revision petition filed by the petitioner and has considered all the grounds

urged by him in support of his petition. Therefore, it does not lie in the mouth of the petitioner to say that the order impugned is in violation of the

principles of natural justice, therefore, cannot sustain.

11. For the foregoing reasons, I see no reason or justification to interfere with concurrent findings of fact recorded by the Collector and Financial

Commissioner (Revenue), Kashmir. Accordingly, the writ petition is dismissed in limine.