
(2011) 04 AHC CK 0449
In the Allahabad High Court
Case No : Writ-B No. 14070 of 2011

Neeresh Sharma	Vs	APPELLANT
Board of Revenue U.P. and Others		RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12
Uttar Pradesh Land Revenue Act, 1901 — Section 34, 40(3)

Citation : (2011) 4 AWC 3889 : (2011) 113 RD 82

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Heard learned Counsel for the parties.

2. Counsel for the Petitioner submits that when the Petitioner came to know that on the basis of sale-deed executed by Sadhana Sahakari Samiti, the Respondent Nos. 5 and 6 got their names mutated in the revenue record through an ex-parte order dated 9.12.1996, they moved an application for recall of the ex-parte order dated 9.12.1996 as well as order dated 8.11.2000. The said application was allowed vide order dated 30.1.2006. Respondent Nos. 5 and 6 preferred a Appeal before the Sub-Divisional Magistrate, which was dismissed vide order dated 30.5.2006. Thereafter aforesaid Respondents filed a revision, which was also allowed vide order dated 26.11.2010. Feeling aggrieved by the said order, the Petitioner filed a revision before the Board of Revenue but the same was dismissed.

3. Counsel for the contesting Respondents raised a preliminary objection that the present writ petition is not maintainable since it relates to mutation proceedings.

4. Under these circumstances, the primary question to be decided is as to whether the writ petition arising out of mutation proceedings u/s 34 of Land Revenue Act is maintainable or not.

5. It is settled law that the writ petition arising out of the proceedings u/s 34 of the Land Revenue Act, 1901 is not maintainable as the proceedings are summary in nature. Both the Court below have passed order against the Petitioner. Counsel for the Petitioner contends that his case falls in the exception carved out by this Court in number of judgments in which it has been held that the writ petition can be entertained subject to the availability of the remedy to the party aggrieved as the property in dispute was auctioned during the pendency of the original suit. He further submits there is no absolute bar to interfere with the mutation order in appropriate cases.

6. The question whether the writ petition in such matter is maintainable or not has been examined in various cases. In *Puran Singh Vs. Board of Revenue and Others*, while formulating the categories, observed as under in paragraph 5 of the report:

After hearing the arguments, the Court has examined the matter. Needless to say that decision given in the case of *Lal Bachan (supra)* relied upon by the Counsel for the Petitioner has also laid down that ordinarily orders passed by mutation Courts are not to be interfered as they are in summary proceedings, subject to regular suit. Exceptions have been carved out in various decisions of this Court including the decision in the case of *Lal Bachan (supra)* and even the decisions as has been given in the case of *Ram Kumar (supra)*, on which the reliance has been placed by the learned Counsel for the Respondent which can be categorized as thus:

(i) if the order is without jurisdiction;

(ii) if the rights and title of the parties have already been decided by any competent Court and that had been varied by mutation Courts;

(iii) if the mutation had been directed not on the basis of possession or simply on the basis of some title deed but after entering into debate of entitlement to succeed the property touching into merits of rival claims.

7. In *Jailpal v. Board of Revenue* 1957 AIR All. 205 the learned Single Judge of this Court while dismissing the writ petition observed that 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 U.P. Zamin-dari Abolition and Land Reforms Act.

8. As averred above, mutation proceedings do not decide the right or title of the

parties rather these proceedings are just fiscal in nature. They have just got legal effect of entering name of vendee in place of the vendor or the name of lessee in place of lessor. These mutation proceedings are to enable the State to receive revenue from vendee. [See: Ram Bharose Lal v. State of U.P. and Ors. 1991 RD 72 and Smt. Queeni Banerji and Anr. v. Board of Revenue. 1997 (88) RD 414].

In the case of Sri Lal Bachan Vs. Board of Revenue, Uttar Pradesh and Others, this Court held in paragraph 22 as under:

22. The cases in which writ petition can also be entertained arising out of the mutation proceedings may be cases in which an authority not having jurisdiction has passed an order or interfered with an order passed in the proceedings. The writ petition challenging an order passed without jurisdiction can be entertained by the Court despite availability of an alternative remedy. However, in that case also, the Court will interfere only when it appears that substantial injustice has been suffered by a party. In view of the above discussion, it is held that the writ petition arising out of the mutation proceedings u/s 34 U. P. Land Revenue Act cannot be entertained by this Court subject to only exception as laid down by the Division Bench in Jaipal's case (supra). The writ petition may also be entertained where authority passing the order had no jurisdiction.

9. In Sridhar Tripathi v. Board of Revenue 1996 RD 100 on which reliance has been placed by the Counsel for the Petitioner, is of no avail to him as in that case this Court held that the writ petition is maintainable for the reason it was not a pure and simple case of mutating the name of the Respondent No. 3 on the basis of the sale-deed, but the opposite party No. 3 claimed to get his name mutated on the basis of mutation order in 1968 made by the Consolidation Authorities in proceedings u/s 12 of U.P.C.H. Act. Under these circumstances, the learned Single Judge observed that these facts makes a sea of difference and cannot be said to be a simple case of mutation.

10. However, it may be added that in the cases where the order of mutation has been obtained by fraud or misrepresentation of fact or by fabricating the documents, the writ petition cannot be dismissed on the ground of it being not maintainable. The Court cannot shut its eyes and be a party in perpetuating injustice.

11. In view of the aforesaid discussions, the present writ petition cannot be entertained. It may be noted that Chandra Kishore had taken loan from Sadhan Sahkari Samiti. As he committed default in repayment of loan, the land was put to auction. The Respondent Nos. 5 and 6 purchased the said property in the auction proceedings and after execution of sale-deed, their names were mutated in the revenue records. Therefore, it cannot be said that order of mutation dated 9.12.1996 was obtained by fraud.

12. Accordingly, the writ petition is dismissed. However, it is clarified that the observations made here-in-above will not come in the way of the Court deciding the declaratory suit and Court concerned will be free to form his own

independent opinion.