(2021) 09 UK CK 0295

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2542 Of 2016

Superintendent The Leprosy Mission Trust India APPELLANT

Vs

State Of Uttarakhand & Others RESPONDENT

Date of Decision : 29-09-2021

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 33, 33(2)(b), 35, 39, 39(2), 40, 40A, 41, 54

Citation : (2021) 09 UK CK 0295

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : B.D. Pande, R.C. Arya, Yogesh Chandra Tiwari

Final Decision : Dismissed

Judgement

Manoj Kumar Tiwari, J

1. In this writ petition, petitioner has challenged the order dated 28.04.2016 passed by Assistant Collector, Ist Class, Pithoragarh and also the order dated 28.05.2016 passed by Commissioner, Kumaon Division, Nainital.

2. The proceedings emanate from mutation application filed by petitioner under Section 33/39 of U.P. Land Revenue Act, 1901. In his application, petitioner had contended that his name deserves to be recorded as 'Bhumidhar with transferable right' in Category-1 Ka, in place of the State, whose name has been wrongly recorded in Category-1 in revenue records. The application filed by the petitioner was rejected by Assistant Collector, Ist Class, Pithoragah vide order dated 28.04.2016. Against the order dated 28.04.2016, petitioner filed Revision, which was dismissed by learned Commissioner, Kumaon Division vide judgment dated 28.05.2016. Thus, feeling aggrieved, petitioner has approached this Court.

3. Heard learned counsel for the parties and perused the record. Undisputedly, the land in question has been recorded as Category-1 for last more than 50 years. Petitioner had contended before the Assistant Collector, Ist Class that he

had purchased part of land from private individuals and part thereof was acquired by him by extending his cultivation under Nayabad & Waste Land Rules; but, in the revenue records, the land in question is recorded as State land under Category-1, therefore, the same needs to be corrected. Learned Assistant Collector has rejected petitioner's application by holding that long standing entry cannot be corrected in summary proceedings under Section 33/39 of U.P. Land Revenue Act. Learned Revisional Court has upheld the order passed by learned Assistant Collector, Ist Class.

4. This Court concurs with the reasoning given by learned Courts below, therefore, in the humble opinion of this Court, no interference with the impugned judgments would be called for.

5. Proviso to Section 33 (2) (b) of U.P. Land Revenue Act provides that the power to record or change under clause (b) shall not be construed to include the power to decide a dispute involving any question of title. Similar stipulation is made in proviso to Section 39 (2) of the said Act. Even otherwise also, Section 40-A of the said Act also makes similar stipulation, which is reproduced below:

"40-A. Saving as to title suits. - No order passed under Section 33, Section 35, Section 39, Section 40, Section 41 or Section 54 shall bar any suit in a competent Court for relief on the basis of a right in a holding."

6. It is settled position in law that mutation of names in revenue records is done only for fiscal purpose, namely, for collection of land revenue and it does not confer any right, title or interest over the land in question. It is also well settled that long standing entries in revenue records cannot be changed or altered in summary mutation proceedings under Section 33/39 of U.P. Land Revenue Act.

7. Hon'ble Supreme Court in the case of Jitendra Singh Vs. The State of Madhya Pradesh & others, reported in 2021 SCC Online SC 802, has considered & discussed the scope of mutation proceedings. The relevant extract of the said judgment is reproduced below:

"6. It is not in dispute that the dispute is with respect to mutation entry in the revenue records. The petitioner herein submitted an application to mutate his name on the basis of the alleged will dated 20.05.1998 executed by Smt. Ananti Bai. Even, according to the petitioner also, Smt. Ananti Bai died on 27.08.2011. From the record, it emerges that the application before the Nayab Tehsildar was made on 9.8.2011, i.e., before the death of Smt. Ananti Bai. It cannot be disputed that the right on the basis of the will can be claimed only after the death of the executant of the will. Even the will itself has been disputed. Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.

7. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

8. In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqruddin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70."

8. In the absence of any infirmity or perversity in the impugned judgments, this Court has no other option but to dismiss this writ petition.

9. Accordingly, the writ petition is dismissed. However, dismissal of writ petition shall not preclude the petitioner from approaching the Competent Court by filing a suit for declaration. If such suit is filed, the Court concerned shall decide the same on merits, untrammeled by any observation made by learned Courts below in the impugned judgments.

10. Let a certified copy of this order be issued within 24 hours.

