

Court No. - 49

Case :- WRIT - B No. - 2764 of 2023

Petitioner :- Kashi Prasad Kushwaha

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Ulajhan Singh Bind, Kamlesh Kumar Mishra

Counsel for Respondent :- C.S.C, Rajshree Malviya, Ruchita Jain

Hon'ble Syed Qamar Hasan Rizvi, J.

1. Heard Sri Ulajhan Singh Bind, learned counsel for the petitioner, Sri Anshul Nigam, learned standing counsel for the State respondent nos. 1 to 3 and Mrs. Rajshree Malviya, learned counsel appearing on behalf of the respondent nos. 4 to 8.

2. By means of the present writ petition, the petitioner has assailed the order dated 18.5.2023 passed by the learned Board of Revenue (respondent no. 2) in Case No. REV/414/2012-13/Jalaun, Computerized Case No. R201207260049332 (Kashi Prasad Kushwaha Vs. Ram Lakhan) filed under Section 219 of the U.P. Revenue Act, 1901 and also the order dated 8.11.2012 passed by the Commissioner, Jhansi Division, Jhansi (respondent no. 3) in Revision No. 76/2009-10 (Ram Lakhan Vs. Kashi Prasad Kushwaha).

3. The contention of the learned counsel for the petitioner is that he has purchased a plot of land bearing Gata No. 463 ad-measuring area 1.842 hectare situated at village Bhabhua, Pargana & Tehsil Kalpi, District Jalaun from one Ram Lakhan, son of Ram Charan through a registered sale deed dated 28.3.1998. On the basis of the sale deed, the petitioner applied for mutation before the Tehsildar Orai, District Jalaun. The aforesaid mutation application was allowed on 16.2.2010 in favour of the petitioner. Feeling aggrieved by the order of the Tehsildar concerned, one Ram Lakhan preferred an appeal before the Sub Divisional Officer, Orai, District Jalaun bearing Appeal No. 04/2009-10 (Ram Lakhan Vs. Kashi Prasad). The aforesaid appeal was also dismissed on 09.04.2010. Thereafter, Ram Lakhan preferred a revision bearing Revision No. 76/2009-10 (Ram Lakhan Vs. Kashi Prasad Kushwaha) before the Commissioner, Jhansi Division, Jhansi challenging the orders dated 16.2.2010 and 09.04.2010 under Section 219 of U.P. Land Revenue Act, 1901, which was allowed vide a detailed order dated 08.11.2012.

4. The petitioner being aggrieved by the order dated 08.11.2012 passed by the Commissioner, Jhansi Division, Jhansi preferred a revision bearing Case No. REV/414/2012-13/Jalaun, Computerized Case No. R201207260049332 (Kashi Prasad Kushwaha Vs. Ram Lakhan) under Section 219 of U.P. Land Revenue Act, 1901. The learned Board of Revenue has rejected the revision filed by the petitioner and also affirmed the order passed by the Commissioner, Jhansi Division, Jhansi. The aforesaid order arising out of a mutation proceeding challenging by the petitioner in the instant writ petition.

5. Learned Standing Counsel for the State has raised a preliminary objection regarding entertainability of the present writ petition by contending that the proceedings of mutation are of summary in nature and the writ petition arising out of the same is not entertainable under Article 226 of the Constitution of India.

6. Admittedly, the orders under challenge in the instant writ petition have arisen out of the mutation proceedings, which are summary in nature. While dismissing the said revision, learned Board of Revenue has recorded a finding that the mutation proceedings are summary in nature and the physical possession of the property has never been transferred to the petitioner, this fact has not been taken into consideration by the trial court and also by the appellate court as such the same are not sustainable.

7. In the case of ***Madhav Pandey and others versus Board of Revenue and others, reported in 2002(2) AWC 1311***; this Court has held that the mutation proceeding is summary in nature and writ petition against the summary proceedings is not entertainable under Article 226 of the Constitution of India. In paragraph No. 26 of the said judgement, it has been categorically held as under:-

"26. The last submission of the counsel for the Petitioner is that the revenue court cannot interfere with the finding of fact and the revisional court i.e., the Board of Revenue has wrongly exercised the jurisdiction, hence this court may set aside the order of the board of revenue. As noticed above, there is difference between lack of jurisdiction and erroneous exercise of jurisdiction in a case. The present proceedings arising out of the mutation proceedings which is summary proceeding and the writ petitions against the summary proceedings are not entertained under Article 226 of Constitution of India. There is no need to consider the question as to whether the revisional court has committed any error in exercise of jurisdiction. Assuming for argument sake that there is some error in exercise of jurisdiction by the Board of Revenue, the said error will not make the order without jurisdiction. As held above, the writ petition arising out of the summary proceedings, can be entertained only when there is lack of jurisdiction. It being not a case of lack of jurisdiction, no interference is called for in the impugned order on the basis of the above submission of the counsel for the petitioners."

8. In the case of ***Jitendra Singh versus The State of Madhya Pradesh and Ors. reported in 2021 (6) Supreme 185***, the Hon'ble Supreme Court of India has been pleased to hold as under;

"5. 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."

9. Taking into consideration the aforementioned legal position, this Court is of the view that it is well settled that the revenue records do not confer title and even if the entries in the revenue record of rights carry value that by itself would not confer any title upon the person claiming on the basis of the same. The

mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit. Mutation in revenue records do not create or extinguish title of the person. Such entries are relevant only for the purpose of collecting land revenue. In view thereof, this Court has consistently held that such writ petitions are not to be entertained in exercise of discretionary power conferred under Article 226 of the Constitution of India.

10. Normally, the High Court in exercise of its plenary power does not entertain writ petition under Article 226 of the Constitution of India, against the orders passed by the Revenue Courts in mutation proceedings, except under the conditions as formulated by this Court in cases as mentioned above.

11. The orders for mutation are passed on the basis of the possession of the parties and since no substantive rights of the parties are decided in mutation proceedings, ordinarily the Writ Courts decline to entertain the writ petition as not entertainable in respect of orders passed in mutation proceedings, unless found to be totally without jurisdiction or contrary to the title already decided by the competent court.

12. In view of the above, as no substantive rights of the parties have been decided or are likely to be decided in the mutation proceedings, no case for exercise of extra-ordinary writ jurisdiction under Article 226 of the Constitution of India is made out. Needless to say, it is always open to the petitioner to get his rights/title in respect of the land in question be crystallized by competent Civil Court.

13. Accordingly, without interfering with the merits of the impugned orders passed by the Revenue Courts, this writ petition is disposed of with liberty to the parties to get their rights/title in respect of the land in question, if necessary, adjudicated or declared by the competent court of jurisdiction. The order passed in the mutation proceedings would abide by the decision of the competent court, if any, and the said court would not, in any manner, be influenced by any finding or observation made in the mutation orders or during mutation proceedings.

Order Date :- 13.10.2023

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