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HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 51 of 2010

Judgment/order reserved on : 04-08-2016

Judgment/order delivered on : 12-08-2016

- Gauhar Ali, S/o Late Ibrahim Ali, Aged about 44 years, R/o Satti Bazar, Swami Vivekanand Ward, Raipur (C.G.)

---- Applicant

Versus

1. Municipal Corporation, Malviya Road, Raipur (C.G.)
2. Madarsa Ameriya Trust, Sadar Bazar, Raipur (C.G.)
3. C.G. State Wakf Board Through the Chief Executive Officer, C.G. State Wakf Board, Devendra Nagar, Raipur, Tahsil & District Raipur (C.G.)

---- Non-applicants

For Applicant	:	Shri Sumesh Bajaj, Advocate
For Non-applicant No.1	:	Shri Satish Gupta, Advocate
For Non-applicant No.2	:	Shri Rajeev Shrivastava, Advocate
For Non-applicant No.3	:	Shri Pratik Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal,

Order (C. A .V)

12/ 08/2016

1. Invoking Section 392 of the Municipal Corporation Act, 1956 (hereinafter referred to as the 'Act, 1956'), the applicant herein questioning the legality,validity and correctness of the order dated 17-02-2010 whereby learned 9th Additional District Judge F.T.C. Raipur has affirmed the order of learned Deputy Commissioner dated 24-01-2009

declining mutation in the records of Municipal Corporation, Raipur.

2. The following essential facts are required to be noticed to judge the correctness of the impugned order.

2.1. House No.57/381 situated at Swami Vivekanand Ward, Raipur is recorded in the records of Municipal Corporation, Raipur in the name of Ibrahim Ali, S/o Abde Ali died on 08-02-2003 and thereafter, the applicant herein filed an application before the Municipal Corporation for mutation of his name on 17-03-2008. Non-applicants No.2 & 3 filed their separate objection claiming the property to the trust/Wakf property and prayed that application for mutation be rejected. The competent officer of Municipal Corporation, Raipur by its order dated 24-01-2009 rejected the application holding that the question of title is involved, which cannot be decided by the Municipal Corporation and rejected the application. However granted liberty to the applicant to get the title declared by the jurisdictional Civil Court.

3. Feeling aggrieved against that order of Municipal Corporation, Raipur, the applicant preferred an appeal under Section 149 of the Act, 1956 before the 9th Additional District Judge, F.T.C., Raipur. The said Court, by the impugned order rejected the appeal and affirmed the order of the Municipal Corporation against which this revision petition has been preferred.

4. Mr. Sumesh Bajaj, learned counsel appearing for the applicant would submit that the applicant is in possession of the suit land after the death of his father and paid the tax also to the Municipal Corporation, Raipur and submit that his father had never transferred the suit house to any third person including Sabina Bi as the amount was already paid to Smt. Sakina Bai which is apparent from the fact that no suit for foreclosure was filed by Sakina Bai. He would further submit that even no document has been filed showing transfer of land in favour of non-applicants No.2 & 3 by said Sakina Bi and the Municipal Corporation is absolutely unjustified in rejecting the application for mutation in favour of the applicant.

5. Mr. Satish Gupta, learned counsel appearing for non-applicant/ Municipal Corporation would submit that he would support the impugned order passed by the Municipal Corporation.

6. Mr. Rajeev Shrivastava, learned counsel appearing for non-applicant No.2 would submit that the said property was gifted by Smt. Sakina Bi in favour of non-applicant No.2 orally which has also been recorded in the records of Trust as well as C.G. Wakf Board and the tax is regularly being paid by the Trust to the Municipal Corporation, therefore, learned Deputy Commissioner/appellate Court are absolutely justified in rejecting the application for mutation/appeal.

7. Mr. Pratik Sharma, learned counsel appearing for non-applicant No.3 would submit that Ibrahim Ali was residing in the suit property as a

tenant and as such the applicant has no title over the suit property and the entry made in the Wakf record is on the basis of revenue case and therefore, revision petition deserves to be rejected affirming the order of appellate Court.

8. I have heard learned counsel for the parties, considered rival submissions made therein and have also gone through the original records of the Municipal Corporation extensively.

9. It is not in dispute that name of late Ibrahim Ali, father of the present applicant is recorded in the records of the Municipal Corporation. It is also not in dispute that after the demise of Ibrahim Ali, the present applicant is in possession of the suit house and he made an application for mutation in his name in the municipal records in place of his father, in which the Municipal Corporation invited objection and pursuant thereto non-applicants No.2 & 3 have filed their separate objections claiming title over the suit house through Sakina Bi. Non-applicants No.2 & 3 have filed copy of a mortgage deed said to have been executed by Ibrahim Ali in favour of Sakina Bi on 20-08-1947. Likewise, non-applicant No.3 C.G. Wakf Board has also filed a copy of register showing the property to be Walf Board property. It is not clear from the record as to how non-applicants No.2 & 3 became the title holders of the suit house whereas, it is a case of the applicant herein that payment was made by his father to Smt. Sakina Bi and as such no such suit was filed for foreclosure ever against the applicant's father or

against the applicant, as such the applicant is continuing in possessio of the suit land/house since long and non-applicants No.2 & 3 have no taken any steps to get their names mutated in the Municipal records.

10. It is well settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from person in possession and it does not confer any title to the land whose name is recorded in the records. Some of the decisions rendered by the Supreme Court may be noticed herein usefully and profitably. In the matter of **State of U.P. V. Amar Singh etc.,**[1] their Lordships of the Supreme Court have held as under:

> "It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per Stamp Act and registered under Registration Act. The alienees being sons and daughters-in-law, the tenure-holder remained to be the owner and holder of the land."

11. Like-wise **Balwant Singh and another vs. Daulat Singh (dead) by L.Rs. and others**[2], the Supreme Court has struck the similar proposition, as under :

> "We have already noticed that mutation entries do not convey or extinguish any title and those entries are

1 AIR 1997 SC 1534
2 AIR 1997 SC 2719

relevant only for the purpose of collection of land revenue. That being the position. Mutation No.1311 cannot be construed as conveying title in favour of Balwant Singh and Kartar Singh or extinguishing the title of Durga Devi in the suit property. Consequently, the title to the suit property always vested with the widow notwithstanding the Mutation No.1311 viewed in this manner, the decision in the earlier proceedings namely, decree in Suit No.194/55 even assuming operates as res judicata, will not be of any avail to the contesting respondents, (plaintiffs) in the present suit-----"

12. Similarly, law laid down by the Supreme Court in the matter of **Calcutta Municipal Corporation and others vs. Shrey Mercantile Pvt. Ltd. and others**[3] as under:

"18.........As stated above, the purpose of mutation is to register the transfer in the records of the Corporation which in turn would help the Corporation to recover taxes from the existing tax payers. Therefore, no special benefit results to the transferee who is made statutorily liable to inform the Corporation of the change, if any, in the name of the person primarily liable to pay the tax.

19. In the case of Nand Kishwar Bux Roy v. Gopal Bux Rai & others reported in (AIR 1940 Privy Council 93). Mutation proceedings are merely in the nature of fiscal inquiries, instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of the property may be put into occupation of it with the greater confidence

3 AIR 2005 SC 1879

that the revenue for it will be paid.

20. Therefore, it is clear that mutation enquiry is instituted in the interest of the Corporation for tax purposes and not for the benefit of the tax payer."

13. Further, the law laid down by the Supreme Court in the matter of **R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple and another**[4] is in similar lines, as under :

"26.......An entry in the Municipal record is not evidence of title. The entry shows the person who was held liable to pay the rates and taxes to the Municipality. The entry may also depending on the scope of the provision contemplating such entry constitute evidence of the person recorded being in possession of the property. Such entries spread over a number of years go to show that the person entered into the records was paying the tax relating to the property and was being acknowledged by the local authority as the person liable to pay the taxes....."

14. Recently, the Supreme Court in the matter of **Union of India and others vs. Vasavi Cooperative Housing Society Limited and others**[5] has held as under:

"21. This Court in several judgments has held that the

4 IR 2003 SC 4548
5 (2014) 2 SCC 269

revenue records do not confer title. In *Corpn. of the City of Bangalore v. M. Papaiah*[6] this Court held that: “5.....It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law.”

In *Guru Amarjit Singh v. Rattan Chand*[7] this Court has held that (SCC p.352 para 2)

“2. …. that entries in the Jamabandi are not proof of title.”

In *State of H.P. vs. Keshav Ram*[8] this Court has held that :(SCC p. 259, para 5)

“5. …... an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs.”

“24. We are of the view that even if the entries in the record-of-rights carry evidentiary value, that itself would not confer any title on the plaintiff of the suit land in question....”

15. From the aforesaid judgments it is quite clear that the mutation does not confer any right title or interest over the suit property. Mutation only gives the right to the State or the Corporation as the case may be to collect tax. In the instant case admittedly, the applicant is in possession of the suit property after the death of father of the applicant and his father's name is duly recorded in the Municipal Corporation records. Non-applicants No.2 and 3 are claiming to be title holders on the basis of deed allegedly executed by applicant's father in the name of

6 (1989) 3 SCC 612
7 (1993) 4 SCC 349
8 (1996) 11 SCC 257

Smt. Sakina Bi but it has not been explained as to why they did not take any steps for getting their names recorded in the Municipal Corporation records for the last 50 years.

16. Keeping in view the law laid down by the Supreme Court regarding object of mutation and further taking in view that the applicant is in possession of the suit accommodation after the death of his father *prima facie* the applicant is entitled to get his name mutated in the municipal records for the purpose of taxation. However, mutation so made shall not confer any title to him.

17. In the result, order passed by the Municipal Corporation, Raipur as well as by learned District Judge being contrary to the facts and law available on record is hereby set aside and it is directed that name of the applicant be entered in the Corporation records, that will only be for the purpose of taxation and it will be subject to order of the Civil Court if any, ultimately passed by that Court at the instance of interested or aggrieved person in that behalf. Accordingly, the revision is allowed to the extent indicated herein above leaving the parties to bear their own costs.

Sd/-
(**Sanjay K. Agrawal)**
JUDGE

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