

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.W.P. No.20876 of 2017

Date of Decision:18.09.2017

Hatti Ram through LRs

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Jangvir Singh Hooda, Advocate
for the petitioner.

Rakesh Kumar Jain, J. (Oral)

This petition is filed by the legal heirs of Hatti Ram to challenge the order of the Financial Commissioner dated 18.05.2017 by which revision petition filed by Maha Singh- respondent No.4 has been allowed.

The facts given to me in Court are that the property in dispute is 8 kanals, falling in Killa No.8//6/2/1, situated in Village Samaspur Tehsil and District Gurgaon. Respondent No.4 filed a civil suit for declaration claiming himself to be the owner in possession of a particular share of the land in question. The said suit was filed against his father Hatti Ram and was decreed on 10.01.1996. Maha Singh- respondent No.4 filed an application to the Tehsildar Halqa Patwari for making an entry in the register of mutations of his acquiring the right in the land in question. After making necessary entry, the Halqa Patwali placed the case before the Assistant Collector 2nd Grade for the purpose of sanction. The mutation was sanctioned on 11.05.1999.

The decree passed in civil suit on 10.01.1996 was challenged by Hatti Ram by filing another suit bearing No.390 of 2007. During the pendency of the suit, the Assistant Collector Ist Grade passed an order of

review (Nazarsani) of the earlier mutation sanctioned on 11.05.1999. Aggrieved against that order application was filed which was dismissed by the Collector. During the pendency of the revision, the suit filed by Hatti Singh was dismissed. However, his first appeal was pending. The Commissioner had found that other co-sharers, had also filed suits for declaration which were pending at that time and thus the revision was allowed.

Aggrieved against the said order, respondent No.5 filed a revision under Section 16(1) of the Punjab Land Revenue Act, 1887 (for short, 'the Act') before the Financial Commissioner. The said revision petition has been allowed on the ground that the decree dated 10.01.1996 has crystalised the rights in favour of respondent No.4 and pendency of the appeal was inconsequential.

Counsel for the petitioners, during the course of hearing, has also informed the Court that the first appeal filed by Hatti Ram was also dismissed and now the Regular Second Appeal has been filed in this Court in which even notice has not been issued. It is submitted that the mutation should not have been sanctioned in favour of respondent No.5 when the litigation is pending in respect of the share may be by way of a regular second appeal.

I have heard learned counsel for the petitioners and perused the available record. As per Section 34(1) of the Act, any person who acquires any right in an estate by inheritance, purchase, mortgage or otherwise as land owners, assignee of land revenue or a tenant having a right of occupancy, has to report his acquisition of right to the Patwari of the estate.

As per Section 34(3), the Patwari is to enter the said acquired right in his register of mutation, which he has reason to believe to have taken place. As per Section 34(4), the Revenue Officer, from time to time, is required to inquire about the correctness of all entries in the register of mutations and into all such acquisitions coming to his knowledge and then pass an order accordingly. In case, any objection to the acquisition of right is raised, then the mutation is called contentious and then the jurisdiction lies with the Assistant Collector Ist Grade to decide the contentious mutation by passing a speaking order as required under Section 36 of the Act. In the present case, respondent No.4 had acquired the right in the property in question by virtue of a Civil Court decree. It is altogether a different aspect that the said decree was challenged unsuccessfully twice before the trial Court and the Appellate Court by the father of the petitioners, who had suffered the decree on 10.01.1996 and has not been able to get an order of the Court holding the decree dated 10.01.1996 to be illegal. Therefore, the right of respondent No.4, because of the decree dated 10.01.1996, cannot be denied only on the ground of pendency of a litigation in respect of that right. It is well settled that mutation is sanctioned only for the fiscal purposes and in this case, it has rightly been sanctioned on the basis of the decree passed in favour of respondent No.4 on 10.01.1996. The said judgment and decree is still in subsistence. Therefore, I do not find any merit in the present petition.

Dismissed.

September 18, 2017
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No