

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 1430/2020

Harpreet Singh and others

.... Petitioner/Appellant(s)

Through:- Mr. H.R. Qureshi, Advocate

V/s

UT of J&K and others

.....Respondent(s)

Through:- Mrs. Monika Kohli, Sr. AAG

CORAM : HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER
07.06.2024

01. Heard Mr. H. R. Qureshi, learned counsel for the petitioners as well as Mrs. Monika Kohli, learned Sr. AAG and perused the record.
02. The petitioners through the medium of the instant petition have challenged the Order No. DCP/SQ/202-5 dated 14.07.2020 passed by respondent No. 2-Deputy Commissioner, Poonch, whereby he has cancelled the Mutation No. 209 dated 15.11.1989 of Village Banwant, Tehsil Haveli, District Poonch and that the same is void ab initio. The petitioners are seeking quashing of the impugned order primarily on the grounds that the same was passed by respondent No. 2 without having jurisdiction and without affording any opportunity of being heard. The mutation in question was attested in favor of the petitioners on 12.01.1990. The respondent No. 2 has held that the mutation has been attested against the provisions of Order No. S-432 of 1966.
03. The petitioners case is that they are the owner and in possession of the land falling under khasra No. 485/1 measuring 30 Kanals situated

at Village Banwant, Tehsil Haveli, District Poonch as per the revenue record, whereby, the aforesaid land was attested vide Mutation No. 209/1 on 28.10.2002 in favour of the petitioners due to death of Sardar Inder Singh, father of petitioner Nos. 1 and 2 and husband of petitioner No. 3. The Khasra Girdawari was issued prior to Kharif 2018 indicating the names of the petitioners therein as owners and in possession and cultivation of the land in question after the death of Sardar Inder Singh, and attestation of mutation of inheritance was made on 28.10.2002. It is stated that due to the continuous cultivating possession and occupation of the Sardar Inder Singh over the land in question was conferred with ownership propriety rights vide Mutation No. 209 dated 15.11.1989 in terms of Govt. Order No. 254/C of 1965 being a displaced person from the Pak Occupied Kashmir.

04. Respondent No. 2 is stated to have passed the order impugned, cancelling mutation at the back of the petitioners and without giving them an opportunity of being heard, as such, the order impugned is stated to have been passed in violation of the principles of natural justice.
05. Objections have been filed by the respondents, wherein it is stated that no legal fundamental or statutory right of the petitioners have been infringed by the respondents. It is further stated that respondent No. 2 on the basis of substantial evidence and revenue records of late Inder Singh in Khasra No. 485/1 has issued speaking order and declared mutation No. 209 dated 15.11.1989 for an area measuring 30 kanals as illegal and void ab-initio. The Mutation No. 209 has

been attested against provisions of Land Revenue Act and Govt. Order No. 254/C of 1965 and standing order No. 23-A. It is further stated that Khasra No. 485/1 is recorded as State land under the possession of State with type Ghair Mumkin Jaar in record of Rights 1961-62 (misi-e-Haqiyat) which is having highest substantial evidential value in court of law. The further stand taken by the respondents in the objections is that the land in question is recorded as State land under the possession of State with type “Ghair Mumkin Jaar” and is not cultivable.

06. The similar matter has been considered by this Court in case titled **“Talib Hussain Vs. UT of J&K and others”**, bearing WP(C) No. **737/2023** decided on 11.03.2024. Operative part of the order reads as under: -

7. This Court has also taken a similar view in WP(C) 2571/2021. In the said writ petition also, Deputy Commissioner, Poonch, declared mutation No. 301 dated 27.11.1988 under Government Order No. LB-6/C of 1958 and mutation No. 344 dated 11.06.1989 under Government order No. S-432 of 1966 as void ab initio. In the said case also, the mutations, which were cancelled, were attested by Tehsildar Haveli, Poonch; as a result whereof, the ownership rights qua the land were conferred upon writ petitioners. This Court while dealing with the issues regarding the powers of the Deputy Commissioner to pass such order and impact of denial of being heard to writ petitioners before such order, was considered. While dealing with the issues, it was held that the order was in violation of principles of natural justice and also that Deputy Commissioner was not competent to review/recall the orders passed by the Revenue Officers subordinate to him and while saying so, relied upon the provisions as contained in Section 13 and 15 of the Land Revenue Act, which for the facility of reference, are extracted hereunder: -

“13. Review by Revenue Officers: -

(1) A Revenue Officer may, either of his own motion or on the application of any party interested, review and on so reviewing modify, reverse or confirm, any order passed by himself or any of his predecessors in office:

Provided as follows:

(a) when a Divisional Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a Revenue Officer of a class below that of Collector proposes to review any order, whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue Officer to whose control he is immediately subject;

(b) an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order, or

unless the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within that period;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order; and,

(d) an order against which an appeal has been preferred shall not be reviewed.

(2) For purposes of this section the Collector shall be deemed to be successor in office of any Revenue Officer of a lower class who has left the district or has ceased to exercise powers as a Revenue Officer, and to whom there is no successor in office.

(3) An appeal shall not lie from an order refusing review or confirming on review a previous order”.

15. Power to revise orders:-

(1) The Financial Commissioner may at any time call for the record of any case pending before or disposed of by any Revenue Officer under his control;

(2) The Divisional Commissioner may call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him;

(3) If in any case in which, the 4 [Divisional Commissioner] has called for a record he is of opinion that the proceedings taken or order made should be modified or revised he shall report case with his opinion thereon for the orders of the Financial Commissioner.

(4) The Financial Commissioner may, in any case called for by him under sub-section (1) or reported to him under subsection (3), pass such order as he thinks fit:

Provided that, he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate officer affecting any question of right between private persons without giving those persons an opportunity of being heard.”

8. The Court in the aforesaid cases came to the conclusion that the order cancelling mutation was bad in the eye of law and, accordingly, set aside the same.

9. Having regard to the fact that the mutation, which has been cancelled and held void ab initio was attested by Tehsildar, Haveli, Poonch, vide mutation No.788 dated 13.01.2020. Respondent No.2, has on his own motion, reviewed the order of mutation and passed the impugned order, cancelling the mutation so attested without giving an opportunity of being heard to the petitioners.

10. The facts of the present case are quite similar to the facts of the cases referred to above and as already held in the aforesaid judgments that exercise of power by the Deputy Commissioner was bad and that the order impugned being violative of the principles of natural justice was required to be set aside.

07. Mrs. Monika Kohli, learned Sr. AAG, submits that so far as the question of denial of opportunity of being heard to the petitioner is concerned, the same amounts to be in violation of principal of natural justice, as such, fresh order will be passed in respect of mutation in question after affording an opportunity of being heard by the petitioner.

08. In view of the above, this petition is allowed and the impugned Order No. DCP/SQ/202-5 dated 14.07.2020 passed by respondent No. 2- Deputy Commissioner, Poonch, being bad and the order impugned being violative of the principles of natural justice is set aside.
09. The instant petition is, accordingly **disposed of**, in the aforesaid terms.

(VINOD CHATTERJI KOUL)
JUDGE

Jammu
07.06.2024
Vishal

