

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Reference No.5405/2000/LR/Jalore :

State of Rajasthan.

... Petitioner.

Versus

1. Balwant Singh S/o Shri Jooth Singh (Deceased), represented by :-
 - 1/1. Chandan Singh
 - 1/2. Chauth Kanwar
 - 1/3. Ratan Singh (Deceased), represented by :
 - 1/3/1. Nepal Singh
 - 1/3/2. Bhagwat Singh
 - 1/3/3. Jangal Kanwar
2. Sav Singh S/o Shri Jooth Singh (Deceased), represented by :-
 - 2/1. Ummed Singh
3. Bhoor Singh S/o Shri Jooth Singh
4. Balwant Singh S/o Shri Laxman Singh
5. Tej Singh S/o Shri Shiv Singh Rajput
6. Hadmat Singh S/o Shri Gal Singh
7. Varad Singh S/o Shri Son Singh
8. Naib Tehsildar, Bagora.

... Non-petitioners.

* * *

S.B.

Shri Satish Chand Kaushik, Member

Present :

Shri Sunil Garg : Dy.Govt.Advocate for the State.

Shri Yagya Dutt Sharma : counsel for non-petitioner no.3.

* * *

Dated : 25 May, 2016

J U D G M E N T

In this matter, Sarpanch Gram Panchayat, Modra, Sub Tehsil Bagora, District Jalore has moved a reference to the Additional Collector, Jalore under section 82 of the Rajasthan Land Revenue Act, 1956 (in short to be referred as 'the Act') stating that khasra no.328, 329 measuring 0.04 hectare was the land of non-petitioners no.1 to 5 who have sold out the land in question and the land was purchased by non-petitioners no.6 and 7.

After transfer of the land, learned Naib Tehsildar, Bagora has passed the order of mutation i.e. mutation of agricultural land no.190 and that mutation is illegal and void ab initio. As per the order of the State Government, in case of transfer of land, the mutation has to be entered into by the Gram Panchayat and as such if any application for mutation was moved before learned Naib Tehsildar, then it is to be sent to the Gram Panchayat for necessary action. The mutation made by the Naib Tehsildar is against the law. This mutation was known to the Gram Panchayat on 01.8.1996 and a letter was issued to the District Collector, Jalore and then on 7.10.1996, District Collector, Jalore instructed the Gram Panchayat, Modra to file a reference for cancellation of the mutation made by Naib Tehsildar, Bagora and as such application of reference under section 82 of 'the Act' was moved before the court of Additional Collector, Jalore. Notices were issued to all the concerned and after hearing both the parties, it was held that so far the mutation was entered by Naib Tehsildar, Bagora on 26.7.1996 while the land was purchased by the registered sale deed and in such a case, the entry of mutation has to be done by the Gram Panchayat under section 135 of 'the Act' read with Rule 121 Sub Rule 10 of the Land Record Rules of 1957. The provision is that within 45 days of the application, if Gram Panchayat is not disposing the application, then in such matter, the S.D.O. will order to the Tehsildar for mutation. But no order to that effect has been produced on record and as such, it is clear that the learned Naib Tehsildar made encroachment in the jurisdiction of Gram Panchayat and entered the mutation in wrong manner which is against rules and regulations. As such, the court has held that because Naib Tehsildar has made the order of mutation beyond its jurisdiction which is illegal and void and against the rules and regulations, so it is void and thereby ordered that the application to be sent to the Revenue Board, Rajasthan, Ajmer for the cancellation of mutation no.190 under section 82 of 'the Act' and as such the reference was made to this Board.

2. I have heard the learned Dy.Govt.Advocate for the State and Shri Yagya Dutt Sharma, counsel for non-petitioner no.3.

3. The learned Dy.Govt.Advocate argued that so far the Naib Tehsildar was having no right to enter the mutation in the law and as such

his act was void ab initio and the entry made by him is liable to be quashed and as such this reference has been moved before this Board.

4. On the other hand, the learned counsel for the non-petitioner argued that it is admitted position that the land was of non-petitioners no.1 to 5 who are private persons. They sold their agricultural land to non-petitioners no.6 and 7, who are also the private persons. After purchase of the land, an application was made to Naib Tehsildar, Bagora for mutation. If he was having no jurisdiction to make the mutation, then it was his duty to refer the matter to the Gram Panchayat or any other authority having jurisdiction to enter the same. There is no fault of the non-petitioners herein. The learned counsel argued that State Govt. is not the aggrieved party and no other person is aggrieved as well, then this reference is not maintainable. He also argued that admittedly the mutation was moved on 26.7.1996 while the reference was made to Additional Collector on 09.12.1997 and as such it was time barred. So far legal position is concerned, if a mutation has been made, then reference cannot be made by the State Govt. in matter of the private persons. The Board can entertain reference only in such matters in which public policy or interest of State is adversely affected. If any entry is being made against the interest of the State, then only reference has to be entertained. Hon'ble Board of Revenue in the matter of State Govt. Vs. Narain Singh RBJ (19) 2012 page 226 held that reference made by the private person is not maintainable. The learned counsel argued that in reference for cancellation of mutation in dispute between private parties when the interest of Government or question of public policy are not involved, the Board would not interfere even if the attestation of mutation is apparently irregular. The learned counsel argued that in this case also, there is only irregularity, if any, and not the illegality. In the matter of State of Rajasthan Vs. Murari Lal RRD 1987 page 532, it was held that the District Collector made a reference when the dispute was between the private persons and the interest of State was not involved in it and in such a case, reference not to be admitted. In that matter, the notices to all concerned were not given and as such the court has held that the private person must be aware to their rights and if there is any wrong mutation, they have to file the appeal for the cancellation of the same. The

reference made by the District Collector is not maintainable. As such, this reference is liable to be dismissed with cost.

5. After hearing the arguments of both the parties and going through the record of the matter, I am of the opinion that there is no illegality in the mutation made by the Naib Tehsildar on account of registered deed in favour of non-petitioners no.6 and 7. The law regarding the mutation is explained in sections 133 to 135 of the Rajasthan Land Revenue Act. Sections 133 and 135 are as under :-

"133. Report of succession and transfer of possession -

(1) Every person obtaining possession by succession, transfer, or otherwise of any property or other right or interest in any land or the profits thereof, which is required by this Act, or any rules made thereunder to be recorded in the annual registers, shall bring the fact to the notice of the village Patwari and report it to the Tehsildar of the Tehsil in which such land is situated either direct or through the village Patwari or Land Records Inspector within three months from the date on which he obtains such possession.

(2) If such person is a minor or otherwise disqualified, the guardian or other person who has charge of such person's property shall make such report."

"135. Procedure on report -

(1) The Tehsildar on receiving such reporter upon the facts coming otherwise to his knowledge, shall make such inquiry as appears necessary and in undisputed cases, if the succession or transfer or other acquisition appears to have taken place, shall record the same in the annual registers.

(2) If the succession or transfer or other acquisition is disputed, the Tehsildar shall, if competent under this Act or any other law for the time being in force, decide such dispute according to law and if not so competent, refer the dispute to any other officer so competent for decision."

6. So far the objection of the Gram Panchayat is concerned, the Gram Panchayat has been given power for mutation vide Notification No. F.8(185)Rev/B/57 dated 11.9.1957. In exercise of the powers conferred under clause (b) of Section 260 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956) the State Government is hereby pleased to direct that the power of deciding undisputed cases conferred on the Tehsildar by sub-section (2) of that section shall be exercised in place of the Tehsildar and the Land Records Officer (whose powers under that sub-

section have been conferred on the Tehsildar by this Department Notification No. F.1(236)Rev/D/56 dated 27.10.1956) by the village Panchayat of the village in which the land is situated. An appeal against the order of the village Panchayat in such cases shall lie to the Collector in accordance with clause (a) of sub-section (1) of Section 75 of the Act. This notification was challenged before the Hon'ble High Court of Rajasthan in the matter of Shyama Vs. Budhram RRD 1987 (HC) page 106. The Hon'ble High Court of Rajasthan declared that notification as ultravirus. Then State Govt. made amendment to give the effect to the Notifications of 1957. But the Hon'ble High Court of Rajasthan in matter of Budh Dan Vs. Board of Revenue RLW 2004 (Raj.) 455 (HC), RRD 2005 page 97 held that the directions issued to Gram Panchayat to discharge the functions to Tehsildar is not in accordance with terms of section 260(1)(b) as amended. The Notification does not exclude the jurisdiction of Tehsildar. The purpose of mutation is just to update the land record. It is just an entry and does not confer any title over the land.

7. In view of the discussions made hereinabove and looking upon the legal pronouncements submitted, this reference is not maintainable. If any party is having any objection to the mutation, it can go into appeal; but reference cannot be made in case of private persons. Consequently, the present reference is dismissed accordingly.

Pronounced.

(SATISH CHAND KAUSHIK)
Member

* * *