

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No.115/2010
CMP Nos. 952/2011, 143/2010 & 1962/2010

Date of Decision:08.06.2011

Buti Ram Vs Kirpal Singh & ors.

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Petitioner(s)	:Ms. Surinder Kour, Advocate.
For the Respondent(s)	:Mr. S.S.Lehar, Sr. Advocate with Mr. Meharban Singh, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Yes/No. |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No. |
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The facts giving rise to the filing of this Petition may be stated thus:-

Land measuring 2 kanals 18 marlas comprised in Khasra Nos.534 (2 kanals-8 marlas) and 535 (10 marlas), situated at village *Khepar* of Tehsil *R.S.Pura* was mortgaged with possession to Kirpal Singh-respondent. Mutation No.284 was attested on 25.07.1998 by the Tehsildar(Settlement), R.S.Pura, whereby a change was effected in the revenue records. Aggrieved by the Mutation, the petitioner-Buti Ram, the allottee of the land, filed an Appeal before the Sub Divisional Magistrate, R.S.Pura, who found that the learned Tehsildar had erred in attesting the Mutation, in that, he had not followed the

mandatory provisions of Standing Order No. 23-A before attesting the Mutation. It was further found that the principles of Natural Justice had been violated as Kirpal Singh was not heard by him before attestation of the Mutation. The Jammu and Kashmir Special Tribunal set aside the Sub Divisional Magistrate's order on Kirpal Singh's Revision holding that the order was passed by the learned Sub Divisional Magistrate hurriedly and without affording opportunity of hearing to the opposite party.

The petitioner-Buti Ram has approached this Court questioning the Special Tribunal's order, *inter alia*, urging that the Tribunal had no jurisdiction to exercise Revisional jurisdiction against orders passed under the Land Revenue Act and the respondent's Revision before the Tribunal was, therefore, incompetent.

I have heard learned counsel for the parties and perused the orders of the Sub Divisional Magistrate and the Jammu and Kashmir Special Tribunal.

At the hearing of the Petition, it was not disputed by the respondent-Kirpal Singh's learned counsel that the order passed under the Jammu and Kashmir Land Revenue Act was not revisable by the Special Tribunal, which exercises the powers of the Government, conceding that the power of revision against the orders passed under the Land Revenue Act

vested only in the Divisional Commissioner and the Financial Commissioner.

In view of the admitted position that the Tribunal had no jurisdiction to entertain the respondent's Revision against the order passed by the learned Sub-Divisional Magistrate, the order passed by the Special Tribunal cannot be sustained and needs to be annulled.

The records bear testimony to the fact that the Tehsildar (Settlement) had neither complied with the provisions of Standing Order No.23-A nor had he heard the petitioner while attesting the Mutation in favour of the respondent. The Tehsildar's order cannot, therefore, be sustained. Respondent's plea that the land had been sold to him by an Agreement to Sell by the petitioner has been negated by the learned Sub Divisional Magistrate and rightly so because the land, i.e., immovable property cannot be conveyed except by a registered Sale Deed. However, his second plea that the land was mortgaged to him by the petitioner with possession for a consideration of Rs.27,000/- and he was entitled to attestation of Mutation needs to be gone into afresh by the learned Tehsildar providing opportunity of hearing to the petitioner.

This Petition, therefore, succeeds and is, accordingly, allowed quashing the Special Tribunal's order dated 30.10.2009 passed in File No.STJ/330/2007 and Mutation No.284 dated

25.07.1998.

The case is remanded to Tehsildar (Settlement), R.S.Pura to hold proceedings afresh for passing appropriate orders as to whether or not attestation of Mutation in favour of Kirpal Singh-respondent was warranted, under law.

(J.P. SINGH)
JUDGE

JAMMU
08.06.2011
Vinod.