

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 2313 of 2012

Sri Pawan Kumar S/O Sri Ramchandra.

... Petitioner.

Versus

Khushi Ram S/O Late Dharmanand @ Dakhwa Ram and others.

... Respondents.

Mr. V.K.Kaparwan Advocate, learned counsel for the petitioner.

WITH

Writ Petition (M/S) No. 2314 of 2012

Sri Pawan Kumar S/O Sri Ramchandra.

... Petitioner.

Versus

Khushi Ram S/O Late Dharmanand @ Dakhwa Ram and others.

... Respondents.

Mr. V.K.Kaparwan Advocate, learned counsel for the petitioner.

Date October 31, 2012.

Hon'ble B.S.Verma, J.(Oral)

Heard learned counsel for the petitioner and perused the record.

Since the controversy involved in both the writ petitions is similar, therefore, for the sake of convenience, they are being decided by this common order.

The petitioner in writ petition no. 2313 of 2012 has sought a writ in the nature of certiorari to quash the impugned order dated 14-2-2011 passed by the learned Assistant Collector First Class Kotdwar in Revenue Appeal no. 12/09-10 Khushi Ram Versus Pawan Kumar and others and the order dated 19-07-2012 passed by Additional Commissioner Garhwal Mandal, Pauri in Revision No. 09/2010-11(Pawan Kumar Vs. Khushi Ram and others) filed as Annexure No. 8 & 10 to the writ petition.

The petitioner in writ petition no. 2314 of 2012 has sought a writ in the nature of certiorari to quash the impugned order dated 14-2-2011 passed by the learned Assistant Collector First Class Kotdwar in Revenue Appeal No. 13/09-10 Khushi Ram Vs. Pawan Kumar and others and the order dated 19-7-2012 passed by Additional Commissioner Garhwal Mandal, Pauri in Revision No. 10/2010-11(Pawan Kumar Vs. Khushi Ram and others) filed as Annexure No. 7 and 9 to the writ petition.

Briefly stated the facts giving rise to the present writ petitions according to the petitioner, are that the petitioner purchased the land in question situated in village Bairagarh, district Pauri Garhwal by a registered sale deed 10-2-2010 from one Gabar Singh, as mentioned in paragraph nos. 3 and 4 of the writ petition and thereafter, an application for mutation was moved on 6-3-2010 before the Tehsildar concerned, which was registered as Mutation Case No. 47 of 2009-10.

The respondent no. 1 Khushi Ram filed objection against the mutation application on the ground that he had already purchased the said land and also filed mutation application, which was registered as Mutation Case No. 47 of 2009-10. The respondent no.1 also moved an application for mutation of his name, which was registered as Mutation Case No. 51 of 2009-10. The respondent nos. 2 to 4 had also filed objection against that mutation application, which was moved by Khushi Ram, the respondent no.1. The Tehsildar Yamkeshwar allowed the mutation application, moved by the petitioner on 24-4-2010 and rejected the application of the respondent no.1 Khushi Ram on 10-6-2010 on the ground that the mutation application was moved after 42 years of the sale deed of 1968.

Aggrieved by the order passed by Tehsildar Yamkeshwar, the respondent no.1 preferred two separate appeals before the Assistant Collector, 1st Class, Kotdwar (Garhwal), which

was registered as Revenue Appeal No. 012/2009-10, Khushi Ram Vs. Pawan Kumar and another and Revenue Appeal No. 013/2009-10.

The learned appellate Court after hearing both the parties by a detailed order dated 14-2-2011 allowed both the appeals, set aside the impugned orders dated 24-4-2010 and 10-6-2010 and remanded the matter to the Tehsildar Yamkeshwar with the direction to decide the mutation cases afresh on merits after hearing both the parties in the light of the observations made in the body of the judgment.

Aggrieved by the order dated 14-2-2011, the petitioner preferred revision before the Additional Commissioner, Garhwal Division Pauri Garhwal, which was registered as Revision No. 9/2010-11. The learned revisional court has observed that no opportunity of hearing was afforded to the objector Khusi Ram. It was also observed that since the land in question is the same in both the two matters, therefore, the trial Court ought to have consolidated the matter and ultimately by order dated 19-7-2012, the revision preferred by the petitioner has been dismissed, which gave rise to the present writ petitions.

I have perused the orders impugned in the present writ petitions.

The appellate Court in its judgment has observed that the mutation application was filed by the petitioner on the basis of registered sale deed and the application for mutation was moved on 25-2-2010/6-3-2010. Against the mutation application, objection was filed by the respondent no.1 on the ground that the land in question was purchased by his father as far back as 27-3-1968 and while deciding the mutation case, the Tehsildar had not considered the objection filed by the respondent no.1. It was also observed by the appellate Court that since the land in question is the same in both the mutation cases, therefore, both the matters should have

been heard and decided together by the Tehsildar concerned. It was also observed that it is not clear that whether the mutation case was decided on merits or the same has been dismissed for non-prosecution. It was further observed that the procedure prescribed under the Land Revenue Act has not been followed by the Tehsildar concerned. On these grounds, the impugned orders were set aside and the matter was remanded to the trial Court by judgment and order dated 14-2-2011. The revision preferred against the order passed by the appellate court has been dismissed on the similar grounds.

Having heard the submissions of the learned counsel for the petitioner and having gone through the impugned orders, I find no reason to interfere with the orders passed by the learned appellate court as well as the revisional Court. Moreover, no prejudice is being caused to the petitioner if the mutation cases are heard and decided on merits after hearing the objections brought on record and after affording reasonable opportunity of hearing to both the parties. Both the writ petitions being devoid of merit are liable to be dismissed outright at the threshold.

Both the writ petitions are dismissed in limine. The Tehsildar Yamkeshwar (Pauri Garhwal) is directed to decide the mutation cases on merits, after affording opportunity of hearing to both the parties and in the light of the observations made by the learned appellate Court and in accordance with law expeditiously, preferably within a period of six months from the date of production of a certified copy of this order. Unnecessary adjournments in the matter be avoided and both the parties shall co-operate with the Tehsildar concerned in speedy disposal of mutation cases.

(B.S.Verma, J.)