

is contrary to the assertion of the State that the second notification was issued because of the land of Gurudwara falling in the area notified earlier,—*vide* Annexure P-2, which needed to be excluded for the religious sentiments of local people. Besides, the State has also taken a plea that because of typographical error, there was a mistake in the notification issued under Section 6 of the Act (annexure P-8), where in certain items like junctions and roadside amenities, which were included in the notifications (annexures P-2 and P-6), under Section 4 read with Section 17 (1) of the Act, were left. We fail to understand as to how the State is in a position to justify the application of mind when such a plea has been taken in its reply.

(22) In view of all the aforesaid, we are unable to agree with the aforesaid contentions of the State and thus, we quash the notifications dated 30th January, 2008 (annexure P-2), 22nd May, 2008 (annexure P-6), and 6th June, 2008 (annexure P-8), and allow these four writ petitions without any order as to costs.

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**R.N.R.**

***Before Ranjit Singh, J.***

**RESHAM SINGH,—*Petitioner***

***versus***

**THE FINANCIAL COMMISSIONER & SECRETARY TO  
GOVT. HARYANA, CHANDIGARH & OTHERS,—*Respondents***

C.W.P. No. 6998 of 2008

31st March, 2009

***Constitution of India, 1950-Art. 226—Maintainability—Sanction of mutation in favour of petitioner on basis of sale deed—Challenge thereto—Whether petition on question of sanctioning mutation is maintainable—Held, yes-Respondents failing to establish right or sale deed in their favour—Sufficient material on record indicating possession of petitioner and title of land decided in favour of seller from whom petitioners purchased land—Mere pendency of suit is no reason to interfere in order of mutation—***

***Mutation can be corrected on basis of different finding if any returned in civil suit—Orders of Commissioner and Financial Commissioner set aside.***

*Held*, that this Court may decline to entertain a writ petition on the ground of delay or laches or on the ground that the petitioner may have his alternative remedy of filing a civil suit but it is not possible to hold that the orders passed by the revenue authorities while exercising functions laid down by Statute would not be amenable to writ jurisdiction of this Court. If other conditions to issue writ of mandamus are satisfied, then this writ can be entertained. The plea as advanced about maintainability of writ petition, thus, cannot be accepted and is accordingly rejected.

(Para 9)

*Further held*, that the mutation was sanctioned in favour of the petitioner after sale in their favour by legal heirs of Smt. Jinda. Merely that civil suit is pending and only stay application has been declined would not be a ground to remand the case of mutation. The other civil suit decided has resulted in rights in favour of the petitioner which cannot be ignored. The respondents have consistently failed to establish the right or sale deed in their favour. Those orders are required to be respected by the Revenue Courts. There is sufficient material on record indicating that possession is of the petitioner and title of this has also been decided in favour of Smt. Jinda from whom the petitioners have purchased this land. Mere pendency of suit, thus, would not be reason to interfere in the order of mutation. If any different finding is returned in the civil suit, the mutation can always be corrected on that basis

(Para 11)

B.S. Bedi, Advocate, *for the petitioner.*

Yashwinder Singh, AAG, Haryana, *for the State.*

Ashish Aggarwal, Advocate, *for respondent Nos. 3 to 5.*

***RANJIT SINGH, J.***

(1) The dispute between the parties relates to the mutation done in favour of the respondents. The petitioner has purchased 40 kanals

9 marlas of land through four different sale deeds in the year 1996 from different owners. The sale deed was to the extent of 1/4th share in each sale transaction. One mutation No. 5556 was sanctioned by Assistant Collector IInd Grade on 17th September, 1997. Mutation regarding remaining three sale deeds was sanctioned on 17th March, 1998. Respondent Nos. 3 to 5 filed three different appeals on 2nd July, 1999, against the three mutation done on 17th March, 1998. This appeal was filed after a lapse of 1 year and 3 months. Respondent Nos. 3 to 5 claimed that they had purchased share in the land to the extent of 3/4th *vide* three separate sale deeds dated 8th July, 1994 through the attorney of the owner. Collector dismissed the appeal.

(2) In the meanwhile, one Smt. Jinda filed a civil suit for possession of the whole land, claiming herself to be the sole owner being sister of Anokh Singh, who was the owner of the land. Smt. Piar Kaur, Amar Kaur and Kartar Kaur also filed separate suits against Smt. Jinda, claiming title to the suit property. One Kapoor Singh and his brother Jagir Singh sons of Piar Kaur were impleaded as defendants. Both the suits were consolidated and disposed of on 19th January, 1980, holding that Smt. Jinda alone would succeed to the estate of Anokh Singh. Appeal filed by Piar Singh and Kapoor Singh was dismissed and so to the Regular Second Appeal filed before this Court. Even the Special Leave Petition was dismissed by the Hon'ble Supreme Court.

(3) During this time, Smt. Jinda died. Her legal representatives filed an execution application. Kapoor Singh filed an objection petition which was dismissed on 22nd November, 1993. He also filed a suit for permanent injunction against the decree holders, praying that they be restrained from dispossessing said Kapoor Singh from the suit property. The injunction as prayed for was declined and appeal against the same was also dismissed. Respondent Nos. 3 to 5 are the grand sons of said Kapoor Singh. Now they have filed objections in the execution petition, pleading Kapoor Singh as one of the parties. They have based their claim on the sale deeds, which have been executed at Delhi. The property is situated at Karnal. Respondent Nos. 3 to 5, thus, filed a separate suit for injunction, which is dismissed. They have now filed response in the execution application, saying that they have

become owner in possession,—*vide* the alleged sale deeds executed by Kapoor Singh who had delivered them possession. The Executing Court, after noticing this long drawn history, has dismissed the objections filed by respondent Nos. 3 to 5. Even Additional District Judge did not find any substance in the contention raised before him. Respondent Nos. 3 to 5 then filed a revision petition against the order passed by Additional District Judge in the execution proceedings. The said revision was also dismissed by this Court on 23rd March, 1995. The petitioner claims that on the basis of this execution, as ordered, the possession was delivered to the L.Rs of Jinda. The mutation was accordingly sanctioned. Collector dismissed the appeal on 13th November, 2000. The Commissioner, however, has remanded the case back to Collector for a fresh decision on 21st April, 2004. The petitioner would make a grievance against this order on the ground that this order is based on mere conjectures and assumptions. Being aggrieved against the same, the petitioner had filed three revision petitions before the Financial Commissioner but the same were dismissed on 7th March, 2008. These orders have now been impugned by the petitioner through the present writ petition.

(4) Notice of motion was issued and operation of the impugned order Annexures P-3 and P-4 was stayed. Reply on behalf of respondent Nos. 3 to 5 is now filed.

(5) Respondents would urge that no legal right of the petitioner is infringed as the dispute is only concerning sanction of mutation. They would claim that sale deeds in favour of respondent Nos. 3 to 5 were prior in time i.e. 8th April, 1994 whereas one in favour of the petitioner is dated 19th June, 1996. It is in this background stated that the mutation was sanctioned in favour of the petitioner on the basis of this subsequent sale deed by Assistant Collector 1st Grade, which is illegal. It is averred in the reply that the Commissioner has only remanded the matter to Assistant Collector for fresh decision and the petitioner can raise his grievance before him. It is also pointed out that the matter in regard to the subsequent sale deed in favour of the petitioner is subjudice in a civil suit pending between the parties in a Civil Court at Karnal. It is pleaded that mere sanction of mutation confers no title on a particular party and writ petition is not maintainable.

(6) I have heard the learned counsel for the parties.

(7) The whole issue relates to the sanction of mutation. Collector had sanctioned the mutation in favour of the petitioner by noting the details of the long drawn battle between the parties. The Commissioner interfered in this order by observing that only stay application filed in the suit by respondent Nos. 3 to 5 challenging the sale deed in favour of the petitioner was dismissed and the suit was pending. Commissioner had accordingly remanded the case back to the Assistant Collector for deciding the same afresh.

(8) Learned counsel for the respondents would say that the case has only been remanded and as such, would not call for interference by this Court while exercising writ jurisdiction. In addition, he would also plead that the writ petition against the order sanctioning mutation in fact would not be maintainable. In support of his submission, he has drawn my attention to the case of **Lehna Singh versus State of Haryana (1)**. In this case, the Court has observed that question whether land belonged to Gram Panchayat by way of proper notification and used for common purposes and whether the mutation was legally sanctioned in the name of Panchayat are disputed questions of fact, which can be decided by the appropriate authorities under the Punjab Land Revenue Act or by the Civil Court. Thus, observing that alternative remedy is available to the petitioner, the writ petition is not maintainable. It appears that in the case of **Lehna Singh (supra)**, the writ petition was directly filed before this Court without first approaching the authorities under the Punjab Land Revenue Act. This can be so made out from the judgment wherein the stand of the respondent-Municipal Committee in this case is noted. In Para 3 of the judgment, part of the stand of the respondent as noticed, is that “it has further been averred that mutation and the jamabandi can be challenged only in the revenue courts.” The observation in regard to the maintainability of a writ petition, thus, obviously has been made in this context. This can even be made out from the final direction issued by the Court, which reads “if the petitioners are aggrieved of the decision of the revenue authorities in sanctioning the mutation or incorporating the entries in the jamabandies,

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(1) 1995 (3) PLR 504

the alternative remedy available to them is to institute a suit in the Civil Court.” This judgment, as such, in my view, does not lay down any binding precedent that the writ petition to challenge the mutation entries would not be maintainable. Reference is then made to the case of **Ranjit Singh versus The Financial Commissioner Revenue, Punjab and others (2)**. This case again appears to have been decided on the basis of facts contained therein. The petitioner in this case wanted mutation to be sanctioned in his favour on the basis of registered sale deed dated 19th November, 1941 and on the basis of a decree of Subordinate Judge of the year 1943. This approach was made with a delay of 20 years in moving the revenue authorities. This delay could not be explained satisfactorily. In the background, it was observed that the counsel for the petitioner was unable to show that the order passed by the Financial Commissioner was without jurisdiction or that there was any statutory obligation on the revenue authorities to sanction the mutation on the basis of these documents after a delay of more than 20 years. It is then observed apparently in passing that :—

“Apart from that no writ petition is maintainable on the question of sanctioning the mutation. These matters can be better decided in a regular civil suit and after that the mutation order can be got corrected.”

(9) It can, thus, be observed that a person can approach the revenue authorities for entering mutation in their favour. Though such mutation may not confer any right or title but this is a duty cast upon the revenue authorities to correct the entries in the revenue record. While doing so, they performed some functions laid down by a Statute. Mandamus can issue to compel public officials or bodies to perform their public duties whether imposed by Statute or common law. The prayer for issuing a mandamus in such like case may be refused on the ground that there is alternative efficacious remedy available. Though some passing reference is made in the case of Ranjit Singh (supra) that no writ petition is maintainable on the question of sanctioning mutation but it is qualified by the observations that these matters can be decided in a regular suit and after that the mutation order can be got corrected. From this, it is not possible to concluded that this Court had expressed

the view that the writ petition to challenge the mutation entries is not maintainable. This Court may decline to entertain a writ petition on the ground of delay or laches or on the ground that the petitioner may have his alternative remedy of filing a civil suit but it is not possible to hold that the orders passed by the revenue authorities while exercising functions laid down by Statute would not be amenable to writ jurisdiction of this Court. If other conditions to issue writ of mandamus are satisfied, then this writ can be entertained. The plea as advanced about maintainability of writ petition, thus, cannot be accepted and is accordingly rejected.

(10) The mutation having been sanctioned in favour of the petitioner was challenged in an appeal before the Collector, who found that the case of mutation is of a summary nature and decision was to be made on the basis of evidence available on record. He accordingly did not order any change in regard to mutation in the revenue record done in favour of the petitioner and rejected the appeal. The Commissioner has remanded the case back by observing that order of the Collector passed the order under the impression that the suit filed regarding sale deeds registered in the year 1994 was dismissed whereas only application for stay had been dismissed. Main suit was still pending. The case was accordingly remanded for deciding it afresh. This order was ultimately upheld by the Financial Commissioner.

(11) Learned counsel for the petitioner would contend that sale in favour of the respondents was by Mukhtiar Singh who was the general attorney of Piara Singh. It is not in dispute that Smt. Jinda has an order in her favour, which has been upheld upto Hon'ble Supreme Court. It is also urged that the sale deed in favour of the respondents done by attorney Mukhtiar Singh was bogus and even FIR has been registered against Kappor Singh at Police Station, Karnal. The possession had also been delivered in favour of Smt. Jinda. The mutation was sanctioned in favour of the petitioner after sale in their favour by legal heirs of Smt. Jinda. Merely that civil suit is pending and only stay application has been declined would not be a ground to remand the case of mutation. The other civil suit decided has resulted in rights in favour of the petitioner which cannot be ignored. The respondents have consistently failed to establish the right or sale deed in their favour. Those orders

are required to be respected by the Revenue Courts. There is sufficient material on record indicating that possession is of the petitioner and title of this has been decided in favour of Smt. Jinda from whom the petitioners have purchased this land. Mere pendency of suit, thus, would not be reason to interfere in the order of mutation. If any different finding is returned in the civil suit, the mutation can always be corrected on that basis.

(12) The orders passed by the Commissioner and the Financial Commissioner, thus, cannot be sustained. The same are set-aside. Needless to mention that these mutation entries would be open to be changed on the basis of any decision that may be rendered by the civil Court in the pending suit.

(13) The writ petition is disposed of in the above terms.

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**R.N.R.**

***Before M.M. Kumar & Augustine George Masih, JJ.***

**M/S NATIONAL AGRICULTURAL COOPERATIVE  
MARKETING FEDERATION OF INDIA LTD,—Petitioner**

***versus***

**STATE OF HARYANA & OTHERS,—Respondents**

C.W.P. No. 21144 of 2008

2nd April, 2009

***Constitution of India, 1950-Art. 226—Haryana General Sales Tax Act, 1973—S.44—Assessing Authority creating additional demand of tax—1st Appellate Authority accepting appeal & remanding matter to Assessing Authority—Society applying for refund of amount deposited—Commissioner granting approval to withhold refund—Order of Commissioner totally laconic as it failing to record any reason as to how recovery is likely to be affected—Not even a whisper of material forming basis of satisfaction by the Commissioner—Impugned order wholly unsustainable in the eyes of law—Petition allowed. Society held entitled to refund along with interest.***