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**(2024) 10 UK CK 0102**

**Uttarakhand High Court**

**Case No:** Writ Petition (M/S) No. 2716, 2722 Of 2024

Sameer Tyagi

APPELLANT

Vs

Bharat Singh And Others

RESPONDENT

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**Date of Decision:** Oct. 21, 2024

**Acts Referred:**

- Uttar Pradesh Land Revenue Act, 1900 - Section 34
- Constitution Of India, 1950 - Article 227

**Hon'ble Judges:** Pankaj Purohit, J

**Bench:** Single Bench

**Advocate:** Rachit Tiwari, Piyush Garg

**Final Decision:** Dismissed

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### **Judgement**

Pankaj Purohit, J

1. Since common questions of law and facts are involved in these writ petitions, therefore these are being heard and decided by this common

judgment, however for the sake of brevity, facts of WPMS No.2716 of 2024 alone are being considered and discussed.

2. This writ petition preferred under Article 227 of the Constitution of India is directed against the judgment and order dated 26.07.2024 (annexure-8 to the writ petition), passed by the Board of Revenue, Uttarakhand in Revision No.25 of 2018-19, Bharat Singh Vs. Sameer Tyagi and others.

3. Petitioner purchased part of land Khasra No.308 admeasuring 935 square feet (i.e. 87.00 square meters) from proforma respondent nos.2 and 3

through registered sale- deed dated 28.12.1999. In consolidation proceedings the aforesaid Khasra was renumbered. Thereafter, petitioner filed an

application for mutation of his name in revenue record and the Tehsildar, Roorkee passed the order to mutate the name of petitioner and he further

passed the order to mutate the name of proforma respondent nos.2 and 3 in revenue record. On 05.12.2002, The Tehsildar Roorkee recalled its earlier

order dated 18.06.2002 and restored the case to its original number and transferred to the Court of learned Nayab Tehsildar and the learned Nayab

Tehsildar consolidated the cases. Learned Nayab Tehsildar vide its order dated 13.10.2004 rejected the objections filed by contesting respondent

(Bharat Singh) and directed to mutate the name of proforma respondent nos.2 & 3 as Bhumidhar over Khata No.127, Khasra No.493ka measuring

0.017 hectare on the basis of the sale deed dated 14.07.1999. Contesting respondent filed two separate appeals against the order dated 13.10.2004

before the Sub-Divisional Magistrate, Roorkee and the said court allowed the appeals vide order dated 23.04.2013 and set-aside order dated

13.10.2004 and remanded the matters to the court below to re-hear and decide the matter. Feeling aggrieved from order dated 23.04.2013, petitioner

herein preferred a revision and the learned Commissioner, Garhwal Division, Camp Dehradun vide order dated 26.10.2018 allowed the revision.

Against the order dated 26.10.2018, contesting respondent no.1 preferred a revision and the learned Board of Revenue, Dehradun, Uttarakhand vide

its order dated 26.07.2024 partly allowed the revision and remanded the matter back to the learned Tehsildar Roorkee to proceed further in mutation

case. Hence, this petition.

4. It needs to be mentioned that this petition actually challenges the mutation proceedings.

5. I have considered the submission advanced by the learned counsel for the parties and have perused the papers available on record. Before

proceeding on merit, Court is required to consider whether this Court should exercise writ jurisdiction or supervisory jurisdiction. No doubt, such

jurisdiction can be exercised only when there seems to be apparent jurisdictional or illegal error in the impugned order taking away substantive right of

the party. It has to be kept in mind that order passed in mutation proceedings is not the final order as it pertains to the mutation proceedings and the

party can get its title declared from the competent Court.

6. The Allahabad High Court, in the case of “Smt. Rani Devi Vs. Board of Revenue” reported in 1999 (90) RD, page 633, has held that the writ petition arising out of mutation proceedings is not maintainable. In the case of “Ram Bharose Lal Vs. State of U.P.”, reported in 1991 RD, page 72, the Allahabad High Court has held that the mutation proceedings under Section 34 of the U.P. Land Revenue Act, 1900, do not decide rights or title of the parties, proceedings are just fiscal in nature, High Court need not to interfere under Article 227. The remedy can be availed in appropriate Court. In the case of “Kunj Bihari Vs. Board of Revenue” reported in 2001 (92) RD, page 2015:UHC:7262 11 166, the Allahabad High Court, considering the Division Bench judgment of same Court and relying upon some more judgments, has held that the writ petition out of mutation proceedings is not maintainable. Further, in the case of “Bindeshwari Vs. Board of Revenue U.P. at. Lucknow. & others” reported in 2002 (93) RD 134, the Allahabad High Court held that the mutation proceeding does not adjudicate the rights of the parties and writ petition is not maintainable.
7. Having considered the submissions of learned counsel for the parties and from perusal of the records, this Court is of the view that remedy available before the petitioner is somewhere else and writ petition is not maintainable. It is always open for the petitioner to avail appropriate remedy available to him.
8. In such view of the matter, the Court dismisses the petitions at the threshold subject to the aforesaid liberty.
9. Pending application, if any, stands disposed of.