

**(2011) 03 P&H CK 0683**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CWP No. 1414 of 2010

Netar Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

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**Date of Decision:** March 18, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227

**Hon'ble Judges:** Ajai Lamba, J

**Bench:** Single Bench

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### **Judgement**

Ajai Lamba, J.

This petition has been filed under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari quashing orders Annexure P-2 dated 25.04.2007, Annexure P-3 dated 1.10.2007 and Annexure P-5 dated 04.08.2009.

2. Vide order Annexure P-2, Assistant Collector Ist Grade, Chamkaur Sahib has adjourned a mutation proceeding sine die on the ground that an order of stay has been passed by Civil Court till 30.05.2007.

3. Order of stay passed by Civil Court has been placed on record as Annexure P-1 and is dated 08.09.2007. AS per the said Civil Court order, defendant No. 4 i.e. Netar Singh s/o Gurdev Singh (petitioner in the present case) has been restrained from further alienating the suit property during pendency of the suit.

4. Order passed by the Assistant Collector Ist Grade has been upheld by Collector in order Annexure P-3.

5. The Commissioner in revisional jurisdiction, at the instance of the petitioner accepted the revision, set aside the order passed by Collector and Assistant Collector Ist Grade and directed Assistant Collector Ist Grade to sanction mutation as per Civil Court order dated 08.09.2007 vide order Annexure P-4 dated 13.03.2008.

6. Surmukh Singh-the private respondent filed a revision that has been allowed upholding the order passed by Assistant Collector Ist Grade, vide which mutation proceedings were adjourned sine die.

7. Learned counsel for the petitioner contends that mutation proceedings are summary in nature and do not confer any right. Mutation cannot be held in abeyance. In this regard, reference has been made to 1993(3) R.R.R. 174:1993 (2) PLR 246 Gurcharan Singh v. Financial Commissioner (Revenue), Punjab, decision of this Court rendered in 2010(5) R.C.R.(Civil) 833 : CWP No. 9692 of 2008 dated 08.03.2010 entitled Supreme Singh v. Financial Commissioner, (Revenue), Punjab and others and decision of LPA Bench in LPA No. 440 of 2009 dated 09.12.2009 Palwinder Singh and others v. The Financial Commissioner and others.

8. Learned counsel for the private respondent contends that rights of the said respondent are likely to be affected if the mutation is sanctioned as per the Sale Deed.

9. Netar Singh purchased certain land from Mewa Singh, Ajit Singh and Gurmukh Singh sons of Ajaib Singh vide registered Sale Deed dated 08.01.2007 in regard to which he seeks sanction of mutation. The respondent-objector contested the mutation on the ground that a civil suit is pending adjudication.

10. In Gurcharan Singh's case (supra), the following has been held in para No. 7 :-

7. After hearing the learned counsel for the parties, we hold that, in mutation proceedings, a Revenue Officer should not go into the intricate questions and he should give effect to a registered sale-deed, irrespective of the fact whether the land owned by the vendor is surplus or not. Proceedings in mutation cases are always of summary nature and confer no prima facie rights and so, the parties are always left to go to an appropriate civil court in matters of serious disputes regarding the title etc. In our opinion, the Assistant Collector Ist Grade did the right thing in sanctioning the mutations in favour of the petitioners on the basis of the registered sale-deeds which have not been countermanded by any proper authority from the Court.

11. In Supreme Singh's case (supra), the following has been held :-

Section 36 empowers a revenue officer to summarily determine any dispute that may arise during the recording of a mutation Sub-Section (3) of Section 36 of the Act states that the order of a revenue officer under sub- section (2) determining the person best entitled to the property and the consequent entry in the revenue record shall be subject to any decree or order, which may be subsequently passed by any court of competent jurisdiction.

A revenue officer, therefore, makes a summary enquiry for the purpose of updating the revenue record. A sale deed, once registered, has to be reflected in the revenue record, as a revenue officer cannot sit in judgment over complex and intricate rights

of parties. Where a civil suit is pending adjudication, a note may be appended in the remarks column setting out the particulars of civil suit and any stay order that may be in existence. The provisions in Chapter 7.17 of the Punjab Land record Manual, cannot override the provision of the Act, so as to prohibit a mutation of ownership.

12. In Palwinder Singh's case (supra), the following has been held :-

It is a rule of judicial discretion that in the matter arising out of sanction of mutation, this court does not interfere in such orders in exercise of the power of judicial review. The reason is that such orders does not create or extinguish any rights of the parties. Mutation is primarily entered for the purposes of collecting land revenue from the persons in whose favour the mutation is entered. The rights of the parties in respect of title over the property are to be adjudicated upon by the Civil Court alone. Therefore, in mutation matters, this Court does not interfere in the order passed as such disputed questions of title are left for adjudication by the Civil Court alone. It is one thing to say that the writ Court will not have the jurisdiction to entertain the writ petition regarding the orders in mutation proceedings and other to say that it will not interfere with the order passed. Though this Court has the jurisdiction to entertain the writ petition against the orders passed in mutation proceedings in exercise of the powers of judicial review, but in view of the fact that such orders does not conclusively decided any of the lis between the parties, this Court normally does not interfere in the mutation proceedings. Therefore, we do not find any merit in the first argument raised by the learned counsel for the appellants that this Court should not have entertain the writ petition filed by respondent No. 3.

The argument that the respondents can alienate the property and defeat the rights of the present appellants is misconceived. In mutation proceedings, the question of alienation is not relevant. Since, title suit is pending on behalf of the appellants, it is open to the appellants to seek an appropriate order from the Court, which is seized of the title dispute. Even otherwise, any alienation effected by the respondents, shall be subject to the doctrine of lis pendens and will not effect any of the rights of the appellants. Therefore, mere threat of alienation is not sufficient to find any illegality in the order passed by the learned Single Judge of this Court.

13. In view of the legal position that mutation proceedings are summary in nature and mutation only reflects the factual position as in registered document, the same cannot be held in abeyance. The case could not have been adjourned sine die to await decision of the Civil Court, by the Assistant Collector Ist Grade and thereafter by Collector and Financial Commissioner.

14. In such circumstances, orders Annexures P-2, P-3 and P-5 are hereby quashed. The case is remanded back to the Assistant Collector Ist Grade.

15. Since civil court is seized of the matter and the matter of title inter se the parties is pending adjudication, the Revenue Officer may append a note in the remarks

column stating out the particulars of civil suit and stay order that might be in existence.

16. The petitioner and respondents are directed to appear before the Assistant Collector Ist Grade, who shall readjudicate and pass appropriate orders as required by law.