

Court No. - 19

Case :- WRIT - B No. - 295 of 2022

Petitioner :- Smt. Kalawati

Respondent :- The Board Of Revenue And 6 Others

Counsel for Petitioner :- Ramendra Asthana

Counsel for Respondent :- C.S.C.,Rishikesh Tripathi

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Ramendra Asthana, learned counsel for the petitioner, Sri Ajeet Kumar Singh, learned Additional Advocate General assisted by Sri J.P.N. Raj, learned Additional Chief Standing Counsel for the State respondents and Sri Rishikesh Tripathi, learned counsel for the respondent nos. 4 to 7.

2. The present petition has been filed seeking to raise a challenge to the order dated 05.10.2021 passed by the respondent no.1-Board of Revenue, U.P. at Lucknow dismissing the Revision No. REV/1789/2019/Banda (Computerized Case No. R20190711001789, Smt. Kalawati vs. Pramod Singh), the earlier order dated 16.08.2019 passed by the respondent no.2-Up-Ziladhikari, Banda in Appeal No. T2018017110104138 (Smt. Kalawati vs. Smt. Shiv Devi) and also the order dated 26.06.2018 passed by the respondent no.3- Naib Tehsildar Banda, in Case No. 00411/2018 (Computerized Case No. T201807110100411, Report Lekhpal vs. Gyan Singh) under Section 35 of Uttar Pradesh Revenue Code, 2006¹ rejecting the objection dated 13.02.2017 filed by the petitioner and allowing mutation application dated 02.01.2017 filed by Smt. Shiv Devi, predecessor-in-interest of the respondents nos. 4 to 7 in the present petition.

1 the Code 2006

3. An objection has been taken by the counsel appearing for the respondents by pointing out that the orders which are sought to be challenged have been passed in mutation proceedings and the aforesaid proceedings being summary in nature which do not decide the rights of the parties, the present writ petition seeking to challenge the same would not be entertainable.

4. Counsel for the petitioner though not disputing the aforesaid legal proposition that as per the consistent view taken by this Court, a writ petition arising out of mutation proceedings is not entertainable, seeks to contend that there are certain exceptions to the general rule and it cannot be held that in all situations a writ petition seeking to challenge orders in mutation proceedings would not be entertainable.

5. To support his contention, reliance is sought to be placed on decisions of this Court in **Lal Bachan vs Board of Revenue, U.P., Lucknow and others**² and **Smt. Hadisul Nisha vs. Additional Commissioner (Judicial), Faizabad and others**³.

6. Learned Additional Advocate General appearing for the State respondents and also the counsel who has put in appearance on behalf of the private respondent nos. 4 to 7 have contended that mutation proceedings being of a summary nature do not decide any question of title and the orders passed in such proceedings do not come in the way of a person getting his rights adjudicated in a regular suit and it is for the said reason that the consistent view taken by the courts is that such petitions are not to be entertained in exercise of powers under Article 226 of the Constitution of India. Reliance has been placed on the decisions of this Court in **Mahesh Kumar**

2 2002 (93) RD 6

3 2021 (152) RD 426

Juneja and another vs. Additional Commissioner Judicial, Moradabad Division and Others⁴, Awadhesh Singh vs. Additional Commissioner and others⁵ and also a decision of the Supreme Court in **Smt. Bhimabai Mahadeo Kambekar (D) Th. LR vs. Arthur Import and Export Company & Ors.⁶**

7. The question of the maintainability of a writ petition against orders passed in mutation proceedings has come up before this Court earlier and it has consistently been held that normally the High Court in exercise of its discretionary jurisdiction does not entertain writ petitions against such orders which arise out of summary proceedings.

8. In the case of **Jaipal Vs. Board of Revenue, U.P., Allahabad & Ors.⁷** notice was taken of the consistent practice of this Court not to interfere with the orders made by the Board of Revenue in cases in which the only question at issue was whether the name of the petitioner should be entered in the record of rights. The observations made in the judgment in this regard are as follows:-

"3. ...It has however been the consistent practice of this Court not to interfere with orders made by the Board of Revenue in cases in which the only question at issue is whether the name of the petitioner should be entered in the record of rights.

That record is primarily maintained for revenue purposes and an entry therein has reference only to possession. Such an entry does not ordinarily confer upon the person in whose favour it is made any title to the property in question..."

9. The question with regard to the maintainability of a writ petition arising out of mutation proceedings fell for consideration in the case of **Sri Lal Bachan Vs. Board of Revenue, U.P., Lucknow & Ors.²** and it was held that the High

4 2020 (146) RD 545

5 2017(9)ADJ 378

6 (2019) 3 SCC 191

7 AIR 1957 ALL 205

2 2002 (93) RD 6

Court does not entertain a writ petition under Article 226 of the Constitution of India for the reason that mutation proceedings are only summarily drawn on the basis of possession and the parties have a right to get the title adjudicated by regular suit.

The observations made in the judgment are extracted below:-

“11. This Court has consistently taken the view as is apparent from the decisions of this Court referred above that writ petition challenging the orders passed in mutation proceedings are not to be entertained. To my mind, apart from there being remedy of getting the title adjudicated in regular suit, there is one more reason for not entertaining such writ petition. The orders passed under Section 34 of the Act are only based on possession which do not determine the title of the parties. Even if this Court entertains the writ petition and decides the writ petition on merits, the orders passed in mutation proceedings will remain orders in summary proceedings and the orders passed in the proceedings will not finally determine the title of the parties.”

10. Reiterating a similar view in the case of **Bindeshwari Vs. Board of Revenue & Ors.**⁸, it was stated that mutation proceedings do not adjudicate the rights of parties and orders passed in the said proceedings are always subject to adjudication by the competent court and therefore a writ petition against an order in mutation proceedings would not be entertainable. It was observed as follows:-

“11. ...The present writ petition arising out of the summary proceeding of mutation under Section 34 of U.P. Land Revenue Act, cannot be entertained under Article 226 of the Constitution of India. The mutation proceedings do not adjudicate the rights of the parties and orders passed in the mutation are always subject to adjudication by the competent court.”

11. The settled legal position that orders of mutation are passed on the basis of possession and since no substantive rights of the parties are decided, ordinarily a writ petition would not be entertainable against such orders unless the same are found to be wholly without jurisdiction or have the effect of rendering findings which are contrary to title already decided

8 2002 (1) AWC 498

by a competent court, was reiterated in the case of **Vinod Kumar Rajbhar Vs. State of U.P. and others**⁹.

12. Taking note of the nature and scope of mutation proceedings which are summary in nature and also the fact that orders in such proceedings are passed on the basis of possession of the parties and no substantive rights are decided, this Court in **Buddh Pal Singh Vs. State of U.P. & Ors.**¹⁰, restated the principle that ordinarily a writ petition in respect of orders passed in mutation proceedings is not maintainable. It was observed as follows:-

"7. It is equally settled that the orders for mutation are passed on the basis of the possession of the parties and since no substantive rights of the parties are decided in mutation proceedings, ordinarily a writ petition is not maintainable in respect of orders passed in mutation proceedings unless found to be totally without jurisdiction or contrary to the title already decided by the competent court. The parties are always free to get their rights in respect of the disputed land adjudicated by competent court."

13. The proposition that mutation entries in revenue records do not create or extinguish title over land nor such entries have any presumptive value on title has been restated in a recent decision in the case of **Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company & Ors.**⁶ placing reliance upon earlier decisions in **Balwant Singh Vs. Daulat Singh**¹¹ and **Narasamma Vs. State of Karnataka**¹². The observations made in the judgment are as follows:-

"6. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See Sawarni v. Inder Kaur, Balwant Singh v. Daulat Singh and Narasamma v. State of Karnataka)."

9 2012 (1) ADJ 792

10 2012 (5) ADJ 266

6 (2019) 3 SCC 191

11 (1997) 7 SCC 137

12 (2009) 5 SCC 591

14. Reference may also be had to the judgment in **Faqrudin Vs. Tajuddin**¹³, wherein it was held that the revenue authorities cannot decide questions of title and that mutation takes place only for certain purposes. The observations made in this regard are as follows:-

"45. Revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. The statutory rules must be held to be operating in a limited sense... It is well-settled that an entry in the revenue records is not a document of title. Revenue authorities cannot decide a question of title."

15. A similar observation was made in **Narain Prasad Aggarwal Vs. State of Madhya Pradesh**¹⁴, wherein it was held as follows:-

"19. Record-of-right is not a document of title. Entries made therein in terms of Section 35 of the Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable..."

16. In **Union of India and others Vs. Vasavi Cooperative Housing Society Limited & Ors.**¹⁵, the principle that entries in revenue records do not confer any title was reiterated and referring to the previous decisions in **Corpn. of the City of Bangalore v. M. Papaiah**,¹⁶ **Guru Amarjit Singh v. Rattan Chand**¹⁷ and **H.P. v. Keshav Ram**¹⁸, it was stated thus :-

"21. This Court in several judgments has held that the revenue records do not confer title. In *Corpn. of the City of Bangalore v. M. Papaiah* this Court held that: (SCC p. 615, para 5)

"5. ...It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."

In *Guru Amarjit Singh v. Rattan Chand* this Court has held that: (SCC p. 352, para 2)

"2. ...that entries in the Jamabandi are not proof of title."

13 (2008) 8 SCC 12

14 (2007) 11 SCC 736

15 (2014) 2 SCC 269

16 (1989) 3 SCC 612

17 (1993) 4 SCC 349

18 (1996) 11 SCC 257

In *State of H.P. v. Keshav Ram* this Court held that: (SCC p. 259, para 5)

"5. ...an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs."

17. A similar view was taken in the case of **Sawarni (Smt.) Vs. Inder Kaur (Smt.) and others**¹⁹ and it was observed that the mutation of name in the revenue records does not have the effect of creating or extinguishing the title nor has any presumptive value on title and it only enables the person concerned to pay land revenue. It was stated thus :-

"7...Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question..."

18. The principle that an entry in revenue records is only for fiscal purpose and does not confer title on a person whose name appears in record-of-rights and title to the property can only be decided by a competent civil court was reiterated in the decision of **Suraj Bhan and others Vs. Financial Commissioner and others**²⁰ and it was stated as follows :-

"9...It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or *jamabandi* have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court..."

19. The legal position that entries in revenue records do not confer any title has been considered and discussed in a recent decisions of this Court in **Harish Chandra Vs. Union of India & Ors.**²¹ and **Mahesh Kumar Juneja and another Vs. Additional Commissioner Judicial Moradabad Division and others**⁴ and it was restated that ordinarily orders passed by

19 (1996) 6 SCC 223

20 (2007) 6 SCC 186

21 2019 (5) ADJ 212 (DB)

4 2020 (146) RD 545

mutation courts are not to be interfered in writ jurisdiction as they are summary proceedings, and as such subject to a regular suit.

20. The settled legal position that an entry in revenue records does not confer title on a person whose name appears in record-of-rights and that such entries are only for “fiscal purpose” and no ownership is conferred on the basis thereof and further that the question of title of a property can only be decided by a competent civil court has again been restated in a recent decision of the Supreme Court in **Jitendra Singh Vs. State of Madhya Pradesh and others**²² wherein after referring to the previous authorities on the point in **Suraj Bhan Vs. Financial Commissioner**²⁰, **Suman Verma Vs. Union of India**²¹, **Faqrudin Vs. Tajuddin**¹⁴, **Rajinder Singh Vs. State of J & K**²³, **Municipal Corporation, Aurangabad Vs. State of Maharashtra**²⁴, **T Ravi Vs. B. Chinna Narasimha**²⁵, **Bhimabai Mahadeo Kambekar Vs. Arthur Import & Export Co.**²⁶ **Prahlad Pradhar Vs. Sonu Kumhar**²⁷ and **Ajit Kaur Vs. Darshan Singh**²⁸, it was observed thus :-

"8. In the case of *Suraj Bhan v. Financial Commissioner*, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only “fiscal purpose”, i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of *Suman Verma v. Union of India*, (2004) 12 SCC 58; *Faqrudin v. Tajuddin*, (2008) 8 SCC 12; *Rajinder Singh v. State of J&K*, (2008) 9 SCC 368; *Municipal Corporation, Aurangabad v. State of Maharashtra*, (2015) 16 SCC 689; *T. Ravi v. B. Chinna Narasimha*, (2017) 7

22 2021 SCC OnLine SC 802

20 (2007) 6 SCC 186

21 (2004) 12 SCC 58

14 (2008) 8 SCC 12

23 (2008) 9 SCC 368

24 (2015) 16 SCC 689

25 (2017) 7 SCC 342

26 (2019) 3 SCC 191

27 (2019) 10 SCC 259

28 (2019) 13 SCC 70

SCC 342; *Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co.*, (2019) 3 SCC 191; *Prahlad Pradhan v. Sonu Kumhar*, (2019) 10 SCC 259; and *Ajit Kaur v. Darshan Singh*, (2019) 13 SCC 70."

21. The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit. It is for this reason that it has consistently been held that such petitions are not to be entertained in exercise of powers under Article 226 of the Constitution of India. The consistent legal position with regard to the nature of mutation proceedings, as has been held in the previous decisions, may be stated as follows :-

- (i) mutation proceedings are summary in nature wherein title of the parties over the land involved is not decided;
- (ii) mutation order or revenue entries are only for the fiscal purposes to enable the State to collect revenue from the person recorded;
- (iii) they neither extinguish nor create title;
- (iv) mutation in revenue records does not have any presumptive value on the title and no ownership is conferred on the basis of such entries;
- (v) the order of mutation does not in any way effect the title of the parties over the land in dispute; and
- (vi) such orders or entries are not documents of title and are subject to decision of the competent court.

22. A question would however arise as to whether any exception can be carved out to the aforesaid settled position with regard to non-interference in matters arising out of mutation proceedings in exercise of powers under writ jurisdiction, and if so what would the facts and circumstances under which a writ petition may be entertained in such matters.

23. The circumstances which may persuade a Court for exercising writ jurisdiction to entertain a petition arising out of

mutation proceedings were considered in a decision of this Court in **Radhey Shyam and others Vs. State of U.P. and others**²⁹, and it was observed as follows :-

"18. Although it is settled that mutation proceedings is fiscal in nature and the orders passed therein do not decide the right and title of the parties, therefore, the orders passed therein being summary in nature, writ petition would not be maintainable, but here in this case since there is jurisdictional error, therefore the writ petition would lie against such orders, where revisional court has failed to exercise the jurisdiction vested in it. It may also be noticed that although the orders deciding the mutation case do not decide the right and title of the parties. The judgements rendered therein are not binding upon the Courts deciding the title of the matter but it may be kept in mind that the person whose name is recorded in the revenue record can transfer the land through registered sale deed, gift deed etc. In case the sale deed is executed only because of recording of name without there being any valid title, the remedy, for the aggrieved person would be to file a suit but for cancellation of sale deed, not for declaration of right which would consume a very long time and in the meantime even the nature of the land may be changed. Further, the possession would be enjoyed by the persons in whose favour an order of mutation has been passed or the transferee without there being any valid title and the person having valid title will become a loser (*sic* loser) for the years together and in some cases if the land has gone in the hands of mafia or musclemen, the rightful owner may not be able to get the fruit of litigation during his life time. These contingencies and situations of the cases, although, may not have legal weight but the factual matrix and the reality of the same cannot be brushed aside while entertaining writ petitions against the orders passed in mutation cases."

24. Similar observations were made in the case of **Rudramani Shukla Vs. Subhash Kumar and others**³⁰, and it was stated thus :-

"17. Mutation proceedings are important proceedings as, entries based thereon in the record of rights (*Khatauni*) are presumed to be correct under section 35 of the Land Revenue Act 1901, as also Section 40 of the U.P. Revenue Code 2006, and practically all transaction are made after perusing such entries. No doubt in matters of sale the purchaser is required to make due inquiry with diligence as to the real owner and any dispute in respect thereof, but if the name is recorded in the revenue records, sale transaction etc. are easily made. True it is that revenue records are not documents of title by themselves and are for purposes of realisation of revenue, but in view of the presumption attached to them, especially in view of the contents of *Khatauni* as prescribed in Section 31 of the Revenue Code, 2006, their importance in practical terms hardly needs to be emphasised. It is easy to say that an aggrieved party may establish his title in regular proceedings

29 2013 (7) ADJ 71

30 2017 (3) ADJ 510

but the fact is that such proceedings go on for years together, therefore, judicious application of mind in mutation proceedings, even though they are summary proceedings, can at times prevent injustice and prolonged litigation. This is not to suggest that interference in such matters should be made in a routine manner."

25. An exception to the general rule against interference with orders made in mutation proceedings, in exercise of writ jurisdiction, finds reference in the Division Bench judgement of this Court in the case of **Jaipal Vs. Board of Revenue U.P. Allahabad and others**⁷, wherein it was stated as follows :-

"3...The only exception to this general rule is in those cases in which the entry itself confers a title on the petitioner by virtue of the provisions of the U.P. Zamindari Abolition and Land Reforms Act..."

26. In the case of **Lal Bachan Vs. Board of Revenue, U.P. Lucknow and others**², while taking the view that mutation proceedings are subject to adjudication of title by competent court, it was held that writ petition arising out of such proceedings cannot be held to be non-maintainable but such writ petition is not entertained due to reason that parties have right to get the title adjudicated by regular suit and the orders passed in mutation proceedings are summary in nature. In a situation where a challenge is raised to an order passed without jurisdiction, it was held that the writ petition can be entertained despite availability of alternative remedy. Referring to the earlier decision in the case of **Jaipal**, it was stated as follows :-

"18. In view of the above discussions, it is clear that although the writ petition arising out of the mutation proceedings cannot be held to be non-maintainable but this Court does not entertain the writ petition under Article 226 of the Constitution due to reason that parties have right to get the title adjudicated by regular suit and the orders passed in mutation proceedings are summary in nature."

27. Certain exceptions where the remedy of writ petition can be resorted to so as to raise a challenge to orders passed in mutation proceedings have been referred to in **Vijay Shankar**

7. AIR 1957 ALL 205
2 2002 (93) RD 6

Vs. Additional Commissioner (Administration) Lucknow Divison and others³¹, and Smt. Hadisul Nisha Vs. Additional Commissioner (Judicial), Faizabad³.

28. The reluctance of the Courts to interfere with orders arising out of mutation proceedings is primarily for the reason that the question at issue is with regard to correction of record of rights which is primarily maintained for revenue purposes and an entry therein has reference only to possession and does not ordinarily confer upon the person in whose favour it is made any title to the property in question.

29. The aforesaid inference that revenue entries made on the basis of orders of mutation do not ordinarily confer upon a person in whose favour they are made, any title to the property in question, stands fortified from the express provision contained under Section 39 of the Code which states in clear terms that the orders passed under the provisions relating to mutation of revenue records would not act as a bar against any person from establishing his rights to the land by means of a declaratory suit.

30. Section 39 of the Code, as referred to above, is being extracted below :-

"39. Certain orders of Revenue Officers not to debar a suit :- No order passed by a Revenue Inspector under Section 33, or by a Tehsildar under sub-section (1) of Section 35 or by a Sub-Divisional Officer under sub-section (3) of Section 38 or by a Commissioner under sub-section (2) of Section 35 or sub-section (4) of Section 38 shall debar any person from establishing his rights to the land by means of a suit under Section 144."

31. The aforementioned section clearly provides that no person shall be debarred from establishing his rights to the land by means of a declaratory suit under Section 144, irrespective of the fact that an order has been passed by; (i) a Revenue

31 2015 (3) ADJ 186 (LB)
3 2021 (152) RD 426

Inspector under Section 33 (mutation in case of succession), or (ii) a Tehsildar under sub-section (1) of Section 35 (mutation in case of transfer or succession), or (iii) a Sub-Divisional Officer under sub-section (3) of Section 38 (correction of error or omission), or (iv) a Commissioner under sub-section (4) of Section 38 (correction of error or omission).

32. Section 39 which expressly provides that the orders passed by revenue officers in cases of a mutation and correction of revenue entries would not debar filing of a declaratory suit, is a substantive provision, and corresponds to a similar provision contained under Section 40-A of the U.P. Land Revenue, 1901 (now repealed).

33. The language of the section emphasizes that it applies to all orders passed by the revenue officers in matters relating to mutation and correction of errors or omission of revenue entries and it provides in clear terms that such order shall not debar any person from establishing his rights to the land by means of a declaratory suit under Section 144.

34. The object of the section being to enable a person to seek declaration of his rights on questions of title irrespective of the orders passed in mutation proceedings with regard to correction of revenue entries, the remedy of seeking a declaration on questions of title by filing a declaration suit remains open. The existence of an efficacious statutory alternative remedy would therefore also be a reason for not entertaining a writ petition in exercise of discretionary jurisdiction under Article 226.

35. The exceptions to the "rule of alternate remedy" are well laid out in terms of judicial precedents and would include situations where the statutory authority has not acted in accordance with the provisions of law or acted in defiance of

the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice.

36. The exceptions to the 'rule of alternate remedy' were considered in the case of **Whirlpool Corporation vs. Registrar of Trade Marks**³², wherein it was observed as follows :-

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

(emphasis supplied)

37. Following the aforesaid decision, in **Harbanslal Sahnia Vs. Indian Oil Corporation Ltd.**³³, it was stated thus :-

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii)

32 (1998) 8 SCC 1

33 (2003) 2 SCC 107

where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn.v. Registrar of Trade Marks, (1998) 8 SCC 1) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

(emphasis supplied)

38. The 'rule of alternate remedy' in the context of maintainability of a writ petition under Article 226 has been examined in a recent decision in the case of **Radha Krishan Industries vs. State of Himachal Pradesh and others**³⁴ and it has been held that since the power under Article 226 to issue writs can be exercised not only for enforcement of fundamental rights but for any other purpose as well, the High Court has the discretion not to entertain a writ petition and one of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person. The exceptions to the "rule of alternate remedy" have been held to arise where :

"(i) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;
(ii) there has been a violation of the principles of natural justice;
(iii) the order or proceedings are wholly without jurisdiction; or
(iv) the vires of a legislation is challenged."

39. The rule of exhaustion of statutory remedies has been held to be a rule of policy, convenience and discretion and existence of an alternate remedy would not divest the High Court of its powers under Article 226 which may be exercised in appropriate cases.

40. Having regard to the foregoing discussion the exceptions under which a writ petition may be entertained against orders passed in mutation proceedings would arise where :

34 (2021) 6 SCC 771

- (i) the order or proceedings are wholly without jurisdiction;
- (ii) rights and title of the parties have already been decided by a competent court, and that has been varied in mutation proceedings;
- (iii) mutation has been directed not on the basis of possession or on the basis of some title deed, but after entering into questions relating to entitlement to succeed the property, touching the merits of the rival claims;
- (iv) rights have been created which are against provisions of any statute, or the entry itself confers a title by virtue of some statutory provision;
- (v) the orders have been obtained on the basis of fraud or misrepresentation of facts, or by fabricating documents;
- (vi) the order suffers from some patent jurisdictional error i.e. in cases where there is a lack of jurisdiction, excess of jurisdiction or abuse of jurisdiction;
- (vii) there has been a violation of principles of natural justice.

41. In the case at hand, the grounds which were sought to be canvassed to raise a challenge to the orders of mutation passed in favour of the predecessor-in-interest of the private respondents was founded on the basis of the claim of the petitioner asserting herself to be the second wife of the recorded tenure holder and to support her claim reliance was sought to be placed on various pieces of documentary evidence.

42. It is not disputed that the claim of the petitioner that she was the second wife of the deceased tenure holder which was sought to be set up on the basis of documentary evidence would require adjudication of rights of the parties requiring detailed appreciation of facts and the same would be clearly beyond the scope and purview of summary proceedings relating to claims of mutation.

43. Counsel for the petitioner has not been able to point out any circumstance which may persuade this Court to entertain the writ petition in exception to the settled legal position that ordinarily orders passed in mutation proceedings are not to be

interfered with in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

44. At this stage, learned counsel for the petitioner seeks to urge that the findings returned in the mutation proceedings may prejudice the petitioner's case in a suit pertaining to claim of title. The aforesaid apprehension is wholly without basis since findings returned by mutation courts in summary proceedings are for the limited purpose of correction of revenue records and do not have any presumptive value on a question of title which is required to be adjudicated by the court of competent jurisdiction without being influenced by any finding returned in mutation proceedings. In this regard the provision contained under Section 39 of the Code has already been taken note of wherein it is provided in unequivocal terms that order passed under Section 35 would not debar any person from establishing his rights to the land by means of a suit under Section 144.

45. Having regard to the aforesaid this Court is not inclined to exercise its extraordinary discretionary jurisdiction under Article 226 of the Constitution of India in the facts of the present case.

46. The petition stands dismissed accordingly.

Order Date :- 5.4.2022

Pratima

(Dr.Y.K.Srivastava,J.)