



Government of Jammu and Kashmir,
In the court of Additional Commissioner, Jammu
[With the powers of Divisional Commissioner]

In the matter of:- Mohd Hussain S/O Fateh Mohd
R/O Village Samote Ward No. 6 Tehsil Surankote District Poonch
(Applicant)

V/s

1. Deputy Commissioner Poonch
2. Divisional Forest Officer (T) Poonch.
3. Tehsildar Surankote.

(Non-Applicants)

In the matter of:- Appeal against the order passed by the District Collector, Deputy Commissioner, Poonch under No. DCP/SQ/3164-68 dated 23.11.2019 where under mutations No. 10 & No. 246 in favour of Mohd Hussain S/O Gulam Mohd, Mir Mohd S/O Jumma and Hassan Din, Mohd Sadiq S/O Lal Din Qureshi with respect to land comprising survey No.992 measuring 56 Kanals 02 Marlas situated at village samote have been declared void ab-initio and cancelled thereby adversely affecting the rights of the appellant over the land comprising survey No. 992 measuring 14 kanal 14 marlas.

ORDER

The applicant has filed an appeal before the Court of Divisional Commissioner Jammu against the order passed by the District Collector, Deputy Commissioner, Poonch under No. DCP/SQ/3164-68 dated 23.11.2019 where under mutations No. 10 & No. 246 of village Samote have been declared void ab-initio and cancelled. The appeal has been transferred from Court of Divisional Commissioner Jammu to this court for further proceedings. The appellant has filed the appeal on the grounds that the Deputy Commissioner Poonch has passed order on the basis of the information tendered by DFO Poonch to the effect that the Khasra No. 992 of village Samote Poonch is forest land recorded as **Gair Mumkin Jungle**, without providing opportunity of being heard in violation of Principle of natural justice and fair play, by exercising suo-moto powers. The operative part of the impugned order of Deputy Commissioner Poonch is as under:-

The revenue records of interested parties against their claim have been duly verified from revenue records mainly in light of records of rights, which is a substantial evidence in the court of law, by the undersigned. As records of these interested parties has been duly considered against their claim in reference to Hon'ble High Court directions in WPPIL No. 2765/2019 & CM No. S642/2019 dated 06.09.2019 and it has been found that Khasra No. 992 village samote is being forest land and mutation are attested contravention to land Revenue Act and Forest Act. Therefore claim of interested parties is not maintainable.

Since the khasra No. 992 village Samote is being forest land on the basis of RoR (1961-62) & Aks Tatima and Mutation No. 10 (LB-6/C) & No. 246(S-432) in favour of Mohd Hussain S/o Ghulam Mohd, Mir Mohd S/o Jumma and Hassan Din, Mohd Sadiq S/o Lal Din Qureshi has been attested against statutory provisions and mandatory instrument of Revenue Act & Forest Act. As

Ashish

recommended by Hon'ble High Court J&K, Jammu in WPPIL No. 19/2011 & MP No. 10/2016 titled Prof. S.K.Bhalla v/s State & Ors vide Government order No. Rev.(LB) 133 of 1989 dated 26.05.1989, Section 4-A cancellation of mutations, vide standing order No. 23-A Mutation (Hidayat Intiqalat) Para 104 that mutation against statutory provisions are not recognized by law & Government order LB-C/6 of 1958 & S-432 of 1966 shall not apply to Demarcated forest or forest land that mutation for the exempted land by any Revenue Officer on his own or in pursuance of orders which were not permitted under the act, shall be void ab-initio. Therefore said mutations are declared void ab-initio.

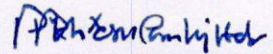
As mutation No. 10 (LB-6/C) & No. 246(S-432) are being declared void ab-initio, therefore there is no provisions to file any appeal against said illegal mutations on exempted land (ref. letter No. DCP/SQ/3183-84 dated 10.10.2019).

In this regard, Tehsildar Surankote is hereby directed to rectify the revenue record and make requisite entry in favour of forest department. Forest Department & Revenue department shall proceed for physical eviction of encroachers from the forest land after following due procedure of law.

Perusal of order sheet reveals that the appellant has not been attending the court for many hearings from which it is inferred that the appellant has lost interest to prosecute the case. Further continuance of proceedings in the instant case would only be wastage of time to this court. Hence the appeal is dismissed in default for non-prosecution. Tehsildar Surankote shall proceed in the matter as per order dated 23.11.2019 of Deputy Commissioner, Poonch. The interim order, if any, issued by this court stands vacated. The file be consigned to records after due completion.

No:801/Addl.Com/P/2021-22/ 217

Dated:- 29.03.2022.



Additional Commissioner

With the power of Divisional Commissioner

Jammu

Copy to the:-

1. Deputy Commissioner Poonch for information and n/action.
2. Tehsildar Surankote for information and n/a.
3. Counsel for the applicant.