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A Mutation is no Proof of Ownership

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Mutation known as dakhil kharij is the process of recording the transfer in the title of the ownership after the selling of the property or the change/transfer of title in the records of the local municipal body for various purposes like tax etc. it is essential for deciding the tax liability. 'Mutation is no proof of ownership' delves into certain areas like that the mutation is not a legal document and mutation is no proof of ownership. This paper also deals with the Mutation of agricultural land and the mutation of non-agricultural land - the two types of mutation. It also explores the area of Registration and mutation and the difference between the two concepts, the time limit for mutation and whether can it be challenged. The question 'what happens if the mutation is not done in both the agricultural and non-agricultural land' will also be answered in this paper.

Keywords: *mutation, dakhil kharij, ownership.*

INTRODUCTION

Section 3¹ of the Transfer of Property Act says that 'immovable property does not include - standing timber, growing crops, and grass'. There are two types of property - movable and immovable. Transfer of Property Act mainly deals with immovable property. Immovable

¹ Transfer of Property Act 1882, s 3

property refers to property that cannot be moved from one place to another and is attached to the earth's surface. Section 3² also defines what 'attached to earth means':

- Rooted in the earth, in the case of trees and shrubs;
- Imbedded in the earth, in the case of walls and buildings;
- Attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

Mutation of a property refers to the transfer or change of the title in the revenue records of the local municipal corporation. The municipal body of the city keeps a record of the property owner to fix the liability of the payment of taxes. Mutation in Hindi is called dakhil-kharij. Mutation of land or property shows that a property has been transferred to the other person and it also helps the authorities to determine the taxpayer's liability. Though it's not a legal document while transferring the property but it is one of the important documents. There is a proper procedure involved for the mutation of property and also there is a list of documents required for the same. Though the documents required differ as the case may be. The mutation of a property takes place in the following cases:

- Death of the original owner and transfer of the property to the heir by will or inheritance;
- Purchasing of property;
- Part of government settlement;
- Received property as a gift;
- Property bought through power of attorney.

Illustration - If agricultural land is acquired by the government and the land is registered in the name of X while mutation is in the name of Y, the government will release the funds for the acquisition in the name of Y, as in the revenue records the owner of that land is Y and not X.

² *Ibid*

LITERATURE REVIEW

Various news articles, case laws, and journals on various websites dealing with this topic talked about what is mutation, how it is different from registration, the types of mutation, the procedure for mutation, and how mutation does not confer the title of ownership over that property to the person in whose name the property is mutated. The case laws read also dealt with mutation as not a proof of ownership.

MUTATION IS NOT A PROOF OF OWNERSHIP: ANALYSIS

The mutation also known as dakhil kharij is an important procedure that is to be completed when buying a property so that the local municipal bodies have a record for determining the taxpayer's liability. Not a legal document but it is an important one. There are two types of mutation –

- Mutation of agricultural land;
- Mutation of non-agricultural land.

Mutation of agricultural lands - In the case of agricultural areas, the mutation is critical. If the mutation process is not followed, one will be unable to transfer the land title to the new owner. The mutation, as well as the identity of the owner, should be recorded in the revenue records. Compensation is only given to those individuals whose names are documented in the revenue records when the government acquires land.

Mutation of non-agricultural lands - Failure to mutate does not take away the right in the sale deed in the event of non-agricultural lands such as apartments, independent dwellings, residential plots, and so on. This means that the buyer's title will not be changed, and they will remain the property's owner. If the owner of these structures does not change, they will lose their power and water connections, as well as their ability to pay the municipal tax.

PROCEDURE OF MUTATION

The procedure to be followed for mutation is –

- Submission for the application for mutation with the Tehsildar;
- A proclamation asking for the objection to the proposed mutation is issued;
- Statements of the parties are also noted and then matched with the contents of the documents submitted.

This is a generic procedure and can vary from one state to another.

REGISTRATION AND MUTATION: DIFFERENCE

Registration and mutation are two different concepts concerning the transfer of property.

1. Registration is the process of getting the title of the ownership of the land legally transferred in the name of the buyer and **mutation** is done once the registration is done, getting a land mutated means that the registration has been duly registered in the revenue records.

2. Registration is an important legal process for buying a property but the **mutation** is not a legal process but an important one concerning the revenue records.

3. Registration confers the title of ownership and acts as a proof for the same but **mutation** does not confer the title of ownership nor is the proof for ownership of a property.

JUDICIAL DECISIONS GIVEN BY THE HONORABLE SUPREME COURT OF INDIA

There are several cases discussed and passed by the courts stating that mutation is not proof of ownership of a property. Some of these cases are discussed below-

Jitendra Singh v State of Madhya Pradesh³

Brief Facts - The Additional Commissioner, Rewa Division, directed that the petitioner's name be changed in the revenue records based on a will given by the petitioner. The order was overturned by the Madhya Pradesh High Court, and the petitioner was told to go to the

³ *Jitendra Singh v State of Madhya Pradesh* 2021 SCC Online SC 802

appropriate court to have his rights clarified, after which he filed a Special Leave Petition with the Supreme Court.

Judgment- The Supreme Court held that the recording of a mutation in a revenue record is solely for fiscal purposes and does not confer any right, title, or interest on a person. If there is a disagreement over the title when a mutation entry is sought based on the will, the party claiming right under the will must first apply to the proper Court to have his rights crystallized, and only then may the requisite mutation entry be made based on the Court's ruling.

Ajit Kaur v Darshan Singh⁴

Brief Facts - In this case, a widow claimed the possession of the property of her husband mutated in her name based on an oral gift from her husband before the enforcement of the Hindu Succession Act, 1956.

Judgment - In this case, the Supreme Court held that the widow had the subject property, but not under any of the devices mentioned in the explanation to Section 14(1) of the Act, 1956, and mere possession would not confer a pre-existing right of possession over the subject property to claim full ownership rights after the Act, 1956 came into effect by operation of law.

Smt. Bhimabai Mahadeo Kambekar (D) Th. LR v Arthur Import and Export Company & Ors.⁵

Brief Facts - The issue over the title was first brought before the Court of Superintendent of Land Records by the parties. It was then appealed to the Deputy Director of Land Records. Then to the State for reconsideration, and finally to the High Court via Writ Petition. Following the High Court's dismissal of the Writ, the Petitioners filed a Special Leave Petition with the Supreme Court.

⁴ *Ajit Kaur v Darshan Singh* (2019) 13 SCC 70

⁵ *Smt. Bhimabai Mahadeo Kambekar (D) Th LR v Arthur Import & Export Company* (2019) 3 SCC 191

Judgment - The Supreme Court stated that the mutation entries of land in the revenue records do not create or extinguish the title to any land, nor does such an entry have any presumption value on the title to such land. Only the person in whose favor the mutation is liable to an entry.

SOME MORE CASE LAWS

In the case of *Balwant Singh v Daulat Singh*⁶, it was held that property mutations in revenue records do not generate or destroy title to the property, and they have no presumed value. Only to collect land revenue are such entries necessary. In the case of *Suraj Bhan v Financial Commissioner*⁷, it was held that the person whose name is there on the record of rights does not have title over the property just because of an entry in the revenue records. In the case of *Narasamma & Ors v State of Karnataka & Ors*⁸, it was held that the entries in the revenue record cannot act or create a title concerning the land in dispute.

It is noticed that the Supreme Court since the beginning is of the same view that irrespective of the case or the facts if a property is mutated in the name of one person it does not mean that he/she can inherit the property or be the owner of the property just because his name appears on the revenue records. The mutation is solely for revenue records and for determining the taxpayer's liability. The mutation is not a legal document but it is important so that the municipal body has proper records for a particular property while collecting the land revenue. It is also not a one-time document, it should be renewed every six months to avoid any conflict or penalty. The penalty, in this case, is not very high as it is in the other cases, the penalty is RS 25/- to RS 100/- if the mutation is delayed.

CONCLUSION AND SUGGESTION

To conclude, it can be said that mutation is only to collect land revenue and for determining the taxpayer's liability. Just because the land is mutated in a person's name, that person cannot claim to be the owner of that particular property. Moreover, mutation over a property and ownership

⁶ *Balwant Singh v Daulat Singh* (1997) 7 SCC 137

⁷ *Suraj Bhan v Financial Commissioner* (2007) 6 SCC 186

⁸ *Narasamma & Ors v State of Karnataka & Ors* (2009) 5 SCC 591

over a property are totally two different concepts. The mutation is not a legally binding concept but of course, an important one to avoid any penalty and miscommunication between the owner and the municipal bodies where all the records of the lands are maintained or a process for purchasing a property on the same hand if anyone wants to purchase a property then the process of registration is a crucial legal aspect or a procedure for the same, so the concept of registration and mutation should not be mixed or both the terms should not be confused concerning the purchase of a property. The process for getting the property mutated differs from state to state. The mutation entries should be updated every six months to avoid any misunderstanding that malafide or wrongful transactions have occurred.

After reading the judgments given by the honorable Supreme Court of India in this regard, it is an inevitable conclusion that mutation of a property in a person's name does not confer/create or extinguish the title of an owner of that property to the person in whose name the property is mutated. The mutation entries have a sole purpose and that is to ensure that the land revenue is paid by the person whose name is there on the records also these entries are maintained solely for fiscal purposes. It was also noted that even in the past times like in the year 1997 and even now that is in the recent year [2019,2021] the Supreme Court has shown consistency towards its judgment concerning mutation cases. No matter what the case, whether it be a case where the widow is claiming ownership of property just based on mutation of property or be it a case of the person claiming ownership because his name was there on the revenue records, the Honorable Supreme Court has taken only one stand and has said that just because the property is mutated in the name of that person it doesn't mean that person is the owner of that property as mutation does not create or extinguish the ownership title over that person and the court also clarified that mutation is only for the tax, revenue purposes and nothing else.

To answer the research question of this research paper – The mutation of a property is not enough for conferring the person with the title of the owner of that property because mutation has no connection with the registration or with the ownership of a property. Mutation has a sole purpose and that is for fiscal purposes also for determining the taxpayer's liability and for

collecting the land revenue from the person whose name is there on the revenue records of the local municipal body.