

Neutral Citation No. - 2023:AHC:226800

AFR

Court No. 51

Reserved on: 2.11.2023

Delivered on: 28.11.2023

WRIT – C No. - 25025 of 2023

Petitioner :-	Smt. Haseena and Others
Respondent :-	State of U.P. & Others
Counsel for Petitioner:-	Sanjay Kumar Pundir
Counsel for Respondent :-	Abhishek Shukla, Addl. C.S.C., B.K. Singh Raghuvanshi, Kaushal Kumar Mani

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Sanjay Kumar Pundir, learned counsel for the petitioners, Mr. Abhishek Shukla, learned Addl. C.S.C. for the state-respondents and Mr. B.K. Singh Raghuvanshi, learned counsel for respondent no.6.

2. Brief facts of the case are that Khata No.151 Plot No.163 area 0-4-0 Biswa situated in Village- Bhuribans, Tehsil- Nakur, District- Saharanpur was recorded as banjar in the basic year khatauni of 1359 fasli. In the first consolidation operation commenced in the year 1967-68 New Plot No. 123 area 0-6-0 Biswa of Khata No. 115 was carved out from old Plot No. 163/2 of Khata No.151. According to petitioner, he belongs to OBC category caste 'teli' Muslim by religion and permanent resident of Village- Bhuribans being landless agricultural labourer living below poverty line. According to petitioners they have constructed pucca house with bricks and khaprail to its appurtenant land in area of 180 square meters and are in possession over the same for last more than 25-30 years

however respondents are denying the petitioner's possession in any manner. Department of Telecommunications Government of India under the Universal Service Obligation Fund (USOF) has planned to provide connectivity in India's rural and remote area wherein BSNL has required co-operation from the Government of U.P. to provide land measuring in area 200 square meter free of cost in each village. On the basis of report dated 22.10.2022 submitted by Lekhpal, a letter dated 14.4.2023 has been issued to BSNL for installation of BSNL tower over Plot No.123 area 0.0300 hectare out of its total 0.0620 hectare. Tehsildar vide letter dated 30.6.2023 issued auction notice for cutting down the trees on Plot No.123 accordingly trees were cut down on 17.7.2023 in presence of revenue authorities. According to petitioners their house was demolished by the authorities on 22.7.2023 and started digging the ground to facilitate the installation of BSNL Tower. Hence this writ petition on behalf of petitioners for mandamus commanding the respondent authorities, Collector/District Magistrate Saharanpur to prevent the eviction of the petitioners' Pucca house built with bricks and 'khaprail' to its appurtenant land measuring in area about 180 sq.m. over Banjar land of Plot No.123 out of its total 0.0620 hectare ,existing since before 29.11.2012,more than 25-30 years back, as by operation of law under enactment of Section 67-A of U.P. Revenue Code, 2006, r/w Rule 68 of the U.P. Revenue Code Rules,2016 the site of said house shall be presumed to be held by owner and deemed to be settled with the occupant thereof, and thereby, the petitioners shall be treated to have been already perfected their perpetual rights and title over the same, and further the BSNL

authorities maybe directed not be install the proposed tower over/within the premises of petitioners existing house on the proposed Plot No.123,situated in Village- Bhuribans, Tehsil- Nakur, District- Saharanpur, so that their constitutional rights guaranteed under Article 300A of the Constitution of India may be safeguarded, otherwise the petitioners' shall suffer irreparable loss and injury.

3. This court on 7.8.2023 passed the following order:-

“1. Heard Sri Sanjay Kumar Pundir, learned counsel for petitioner and Sri B.K. Singh Raghuvanshi, learned counsel for respondent no. 6 and Sri Dhananjai Singh, learned Standing counsel appearing on behalf of respondent no. 1, 2, 3, 4 and 7 and Sri Ramesh Prasad holding brief of Sri Kaushal Kishore Mani, learned counsel for respondent no. 5.

2. It is the case of the petitioner that he was having a house fortified with a boundary and the same has been demolished on the behest of the portion of land over which the construction has been raised by the petitioner has already been entered as Banjar in the revenue records. There is a proposal for installation of tower by the respondent no. 6 for smooth connectivity of the telephone/ mobile connections.

3. It is the admitted case on behalf of the petitioner that the plot in question does not belongs to the petitioner but at the same time the occupation over the same is covered under Section 67(a) of the U.P. Revenue Code, 2006 and the benefit of the same may be extended in favour of him and without conducting any proceeding under Section 67 of the Code of 2006 the revenue authorities proceeded illegally against the petitioner.

4. Sri Dhananjai Singh, learned Standing counsel is hereby granted 10 days time to seek instructions specifically over the issue whether any demolition proceeding has been initiated? Whether any coHon'ble Chandra Kumar Rai,J.

1. Mr. Rakesh Pathak, learned counsel for the petitioners, Mr. Sanjay Srivastava, State Law Officer and Mr. Sher Bahadur Singh, learned counsel for the respondent- Land Management Committee.
2. Learned counsel for the petitioners submitted that the lease granted in favour of petitioners has been cancelled in arbitrary manner. He further submitted that the revision has been also dismissed without summoning the record of the proceedings.
3. Matter requires consideration.
4. Issue notice to respondent nos. 5 to 11 returnable at an early date.
5. Steps be taken within two weeks.
6. Respondent nos.12 to 15 are stated to be proforma respondents, as such, notices to respondent nos.12 to 15 are dispensed with.
7. All the respondents including State & Gaon Sabha shall file counter affidavit within six weeks.
8. Petitioner will file rejoinder affidavit within two weeks thereafter.
9. List this case in the additional cause list on 5.2.2024.
10. The application for interim relief shall be considered on the next date fixed in the matter.

Order Date :- 30.11.2023

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nstruction is raised by the petitioner over plot no. 123 situated at Village Bhuribans, Tehsil Nakur, District Saharanpur.

5. Learned counsel for the respondents prays for and are granted two weeks time for filing counter-affidavit.

6. One week time thereafter is granted for filing rejoinder affidavit, if any.

7. Put up this case on 28.08.2023 as fresh."

4. In pursuance of the order dated 7.7.2023 passed by this court counter affidavit as been filed by state as well as short counter affidavit has been filed by respondent no.6/BSNL. Petitioners have filed their rejoinder affidavit also.

5. Counsel for the petitioners submitted that petitioners belongs to OBC category (teli) Muslim by religion and permanent resident of village in question being landless agricultural labourer is entitled to benefit of Section 67-A of U.P. Revenue Code, 2006 but respondent authorities have illegally demolished the petitioner's residential construction without initiating proper proceeding in accordance with law. He further submitted that land in dispute was initially recorded as banjar in revenue record and at present is abadi as such petitioners are entitled to benefit of Section 67-A of U.P. Revenue Code, 2006. He further submitted that villagers of the village in question have submitted affidavit before the authorities that petitioners are in possession of the plot for the last more than 5 years and their residential construction without following procedure of law. He further submitted that petitioners belong to Muslim Community as such authorities have proceeded with malice intention against the petitioners. He further submitted that title and entitlement of the petitioners being infringed which is guaranteed under Article 300A of the Constitution of India as such petitioners are entitled to the relief claimed in the writ petition. He further placed the provisions contained under Sections 64, 67 and 67-A of U.P. Revenue Code, 2006 as well as Rule 68 of U.P. Revenue Code Rules 2016 in support of his argument. He further placed reliance upon the judgment of

Hon'ble Apex Court reported in *AIR 2003 Supreme Court 4102 Manorey alias Manohar Versus Board of Revenue (U.P.) and Others* in order to demonstrate that petitioners are entitled to benefit of Section 67-A of U.P. Revenue Code, 2006.

6. On the other hand Mr. Abhishek Shukla learned Additional Chief Standing Counsel for the state respondents submitted that Plot No.123 area 0.06620 hectare is recorded as category 5(3)- Bajar in the revenue record. He further submitted that there was no construction of the petitioners over plot in dispute and the averments made to this effect in the writ petition are wholly false. He further submitted that in order to provide proper mobile connectivity to the villagers, the land in dispute was proposed for installation of BSNL Tower but the ownership of the land shall remained with Gaon Sabha. He further submitted that construction/installation of BSNL Tower of BSNL Tower has been completed. He further submitted that after inspection/demarcation of the land in dispute illegal construction of Mohar Singh, Ratan and Bhullan were found accordingly three cases under Section 67(1) of U.P. Revenue Code, 2006 have been registered being Case No. T202309600306164, T202309600306165 and T202309600306166 which are pending before Tehsildar. He further submitted that petitioners have taken contradictory stand in their defense by stating at one hand that their residential construction is situated over disputed land and on the other hand stating that trees are situated over the land in dispute after demolition of the house. He further submitted that in view of the entry of the plot in dispute as well as the other facts

relating to possession of the plot in dispute petitioner is not entitled to the protection of Section 67-A of U.P. Revenue Code, 2006 and writ petition is liable to be dismissed.

7. Mr. B.K.Singh Raghuvanshi, learned counsel for the respondent no.6 submitted that state has given plot to respondent no.6 for construction/installation of BSNL Tower to provide mobile connectivity to the villagers and the work has already been completed as such no interference is required in the matter. He further submitted that petitioner is neither owner nor in possession of the land in dispute as such petitioners are entitled to claim any relief in the matter.

8. Mr. Kaushal Kishore Mani, learned Counsel for the respondent no.5/Gram Panchayat submitted that petitioners have not found in possession of the land in dispute as such petitioners cannot claim benefit of Section 67-A of U.P. Revenue Code, 2006. He further submitted writ petition filed on behalf of petitioners for mandamus claiming benefit of Section 67-A U.P. Revenue Code, 2006 in respect to the plot in dispute is not maintainable before this court.

9. I have considered the argument advanced by learned counsel for the parties and perused the records.

10. There is no dispute about the fact that Plot No. 123 area 0.0620 hectare is recorded as banjar class 5(3) in the latest Khatauni of 1429-1434 fasli (1.7.2021 to 30.6.2027) as well as

in C.H. Form 45 which have been annexed as Annexure No.2 to the writ petition.

11. Petitioners are claiming benefit of Section 67-A U.P. Revenue Code, 2006 read with Rule 68 of U.P. Revenue Code Rules, 2016 as such perusal of Sections 64,67-A and Rule 68 of U.P. Revenue Code Rules, 2016 will be relevant which is as under:-

“U.P. Revenue Code, 2006

64. Allotment of abadi sites—(1) The following order of preference shall be observed in making allotment of land referred to in Section 63—

(a) an agricultural labourer or a village artisan residing in the Gram Sabha and belonging to a Scheduled Caste or Scheduled Tribe or Other Backward Classes or a person of general category living below poverty line as determined by the State Government.

(b) any other agricultural labourer or a village artisan residing in the Gram Sabha.

(c) any other person residing in the Gram Sabha and belonging to a scheduled caste or scheduled tribe or other Backward Classes or a person of general category living below poverty line as determined by the State Government:

Provided that preference will be given to widow and physically handicapped person within same category.

Explanation.—For the purposes of this sub-section—

(1) “other backward class” means the backward classes of citizens specified in Schedule I of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (U.P. Act No. 4 of 1994);

(2) “person of general category living below poverty line” means such persons as may be determined from time to time by the State Government.

(3) In making an allotment under this section, preference shall be given to a person who either holds no house or has insufficient accommodation considering the requirements of his family.

(4) Every land allotted under this section shall be held by the allottee on such terms and conditions as may be prescribed[:]

[Provided that if the allottee is a married man and his wife is alive, she shall be co-allottee of equal share in the land so allotted.]

Section 67-A. Certain house sites to be settled with existing owners thereof.—(1) If any person referred to in sub-section (1) of Section 64 has built a house on any land referred to in Section 63 of this Code, not being land reserved for any public purpose, and such house exists on the November 29, 2012, the site of such house shall be held by the owner of the house on such terms and conditions as may be prescribed.

(2) Where any person referred to in sub-section (1) of Section 64, has built a house on any land held by a tenure holder (not being a government lessee) and such house

exists on November 29, 2000, the site of such house, notwithstanding anything contained in this Code, be deemed to be settled with the owner of such house by the tenure holder on such terms and conditions as may be prescribed.

Explanation.—For the purpose of sub-section (2), a house existing on November 29, 2000, on any land held by a tenure holder, shall, unless the contrary is proved, be presumed to have been built by the occupant thereof and where the occupants are members of one family by the head of that family.]

U.P. Revenue Code Rules, 2016

68. Settlement of house sites with existing owners thereof (Section 67-A).— (1) Where any person referred to in sub-section (1) of Section 64 has built a house on any land referred to in Section 63 of the Code, not being land reserved for any public purpose and such house exists on twenty-ninth day of November 2012, the site of such house shall be held by the owner of the house on terms and conditions prescribed in Rule 64.

Note.—For the removal of doubt it is hereby declared that the maximum area of the site settled under Section 67-A(1) of the Code or the rules framed thereunder shall not exceed two hundred square metres.

(2) Where any person referred to in sub-section (1) of Section 64 has built a house on any land held by a tenure holder (not being a government lessee) and such house exists on twenty-ninth day of November 2000, the site of such house shall be deemed to be held by the owner of the house on the following terms and conditions—

(a) the maximum area of the site settled under Section 67-A(2) of the Code or the rules framed thereunder shall not exceed two hundred square meters.

(b) the owner of the house as well as his heirs shall have a heritable interest in the site and shall also have unrestricted right to use the trees and wells existing on the site subject to existing rights of easements.

(c) he shall have a right to use the site for construction of a residential house, subject to existing rights of easement.

(d) the owner of the house shall not be liable to pay to the tenure holder or the State Government any future rent in respect of the site.

(e) the succession over the site shall be governed by personal law which the house owner was subject to.

(f) the owner of the house and his heirs shall not be liable to ejectment on any ground whatsoever.

(g) if the building is abandoned or if the owner thereof dies without any heir entitled to succeed, the land or site shall escheat to the State.

(h) the tenure holder shall be allowed remission of the proportionate land revenue for the portion of his holding settled under this rule with house owners. The land shall also be classified as abadi in the Khatauni maintained under the Code.”

12. In the instant matter petitioners are claiming benefit of Section 67-A U.P. Revenue Code, 2006 in exercise of

jurisdiction under Article 226 of Constitution of India by way of writ of mandamus although respondent authorities are denying the possession of the petitioners in any manner nor any document on record demonstrate that petitioners are in possession over the plot in dispute for the last 25 years. Respondents have not initiated proceeding against the petitioners under Section 67 of U.P. Revenue Code, 2006 as petitioners have not found in possession over the plot in dispute.

13. The scheme has been provided under Section 67 of U.P. Revenue Code, 2006 for settlement of the house site in favour of occupant provided occupant built a house which exists on 29.11.2012 and occupant belong to particular category as well as land should also be of particular category upto certain area but all the mandatory condition as mentioned above are not fulfilled in the instant matter.

14. This court in the case reported in ***2020 (147) RD 360 Bajj Nath Versus Commissioner Varanasi and Others*** as well as ***2020 (149) RD 434 Raju Versus State of U.P. and Others*** has adjudicated the same controversy. Paragraph Nos. 11 to 17 of the judgment rendered in ***Raju(Supra)*** will be relevant for perusal which are as under:-

“11. It is not disputed that land from where the petitioners have been ordered to be evicted, is recorded as ‘Banjar’. It has not been earmarked as an abadi site till date and is therefore, not land referred to under Section 63 of the Code.

12. Section 64 extracted above, shows the order of preference to be followed up while making allotment of an abadi site. Highest in this order of preference are agricultural labourers or village artisans belonging to the scheduled caste or scheduled tribes followed by other backward classes and, thereafter, by persons of general category living below the poverty line.

13. None of the petitioners belongs to the scheduled caste or scheduled tribe as already noted herein above. Two of them claim to belong to the backward class while two appear to be from the general category.

14. Careful perusal of the applications under Section 67A, which are stated to have been filed by the petitioners, reveals that nowhere in these applications have the applicants stated that no agricultural labourers or village artisan belonging to the scheduled caste or scheduled tribe are residing in village Pachrukhiya. This was necessarily required to be pleaded by them.

15. Merely because a person lower in order of preference has encroached upon Gaon Sabha land, he cannot and should not be granted the benefit of Section 67A unless and until he is in a position to establish categorically that a person higher in preference is not available in the village. Any other interpretation of Section 67A would result in great injustice as an unauthorized occupant would be liable to be granted its benefit only on account of him or her having illegally encroached upon Gaon Sabha property, despite other needier and persons higher in preference being available in the village.

16. Therefore, and for the reasons given above, this Court is constrained to hold that not only is the land in issue in this writ petitions not land governed by Section 63 of the Code, as it has not been reserved for allotment as abadi site, the petitioners are also, prima facie, not eligible to the benefit of Section 67A as their applications are bereft of necessary pleadings. Therefore on both counts the benefit of Section 67A cannot be extended to the petitioners. Although, reference has also been made in the writ petition as also the applications under Section 67A to provisions of the U.P. Zamindari Abolition and Land Reforms Act, such reference or reliance, in my considered opinion, is not tenable because on date, as also on the date the applications under Section 67A have been filed by the petitioners, the said Act, namely U.P. Zamindari Abolition and Land Reforms Act stood repealed.

17. In view of the foregoing, these writ petitions lack force and are accordingly dismissed.”

15. In view of the ratio of law laid down by this court in *Raju (supra)* and *Bajnath (supra)* petitioners are not entitled to any type of declaration or settlement as provided under Section 67A of U.P. Revenue Code, 2006 in exercise of jurisdiction under Article 226 of Constitution of India by way of writ of mandamus.

16. So far as case law of Hon'ble Apex Court in *Manorey alias Manohar (supra)* is concern, the ratio of *Manorey alias Manohar (supra)* is not available to petitioners as petitioners have failed to demonstrate from any evidence on record that petitioners were in possession over the plot in dispute which is

the mandatory condition for settlement under Section 67-A of U.P. Revenue Code, 2006.

17. Considering the entire facts and circumstances of the case no interference is required in exercise of jurisdiction under Article 226 of Constitution of India by way of writ of mandamus.

18. Writ petition is dismissed accordingly.

Order Date :- 28.11.2023

C.Prakash

(Chandra Kumar Rai, J.)