

Court No. - 52

Case :- WRIT - C No. - 32724 of 2023

Petitioner :- Kishor

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Awadhesh Kumar Malviya

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Awadhesh Kumar Malviya, learned counsel for petitioner and Sri Prabhakar Tripathi, learned Standing counsel appearing for respondent no. 1 to 3.

2. Present petition has been filed seeking following reliefs:

"(a) to issue a writ, order or direction in the nature of certiorari quashing the order impugned dated 11.08.2023 passed by the respondent no. 2 in appeal no. 76/2023 computerized case no. D202314290000076 and order dated 15.12.2022 passed by the respondent no. 3 in case no. 01981 of 2018 as well as recovery certificate dated 28.08.2023 issued by the respondent no. 3 (Annexure no. 2, 5 & 6 respectively to the writ petition).

(b) to issue a writ, order or direction in the nature of mandamus directing the respondents not to adopt any coercive method against the petitioner in pursuance to the recovery certificate dated 28.08.2023 issued by respondent no. 3."

3. It is the case of the petitioner that proceedings under Section 67 of U.P. Revenue Code, 2006 has already been initiated against him but at no point of time the notices which has to be required to be served under Section 67(1) of U.P. Revenue Code, 2006, has never been received at the end of the petitioner and as such the entire proceedings whatsoever has been initiated as ex parte which culminated into order dated 15.12.2022 passed by respondent no. 3.

4. Having being aggrieved with the order dated 15.12.2022 passed without hearing the contention of the petitioner, he preferred an appeal under Section 67(5) of the U.P. Revenue Code, 2006 but unfortunately the same was also decided without hearing the contentions with regard to ex parte order passed by respondent no. 3 and the vital ground which has been taken in the memo of appeal has not been considered by respondent no. 2.

5. Per contra, learned Standing counsel vehemently opposed the prayer as made in the petition and rebutted the stand taken up by learned counsel for petitioner but at the same time failed to dispute that the notice has ever been served and the same has been endorsed in the order sheet prepared and maintained at the time of proceedings initiated under Section 67 of U.P. Revenue Code, 2006.

6. In view of the aforesaid facts and circumstances, both the orders dated 11.08.2023 and 15.12.2022 passed by respondent no. 2 and 3 respectively are hereby set aside. Matter is remitted back to respondent no. 3 for deciding afresh after affording due opportunity of hearing to the petitioner.

7. Writ petition stands ***allowed*** accordingly.

Order Date :- 19.10.2023

Shaswat