

Court No. - 52

Case :- WRIT - C No. - 34221 of 2022

Petitioner :- Naraina

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Siya Ram Sahu

Counsel for Respondent :- CSC,Achal Singh

Hon'ble Saurabh Srivastava,J.

1. Heard Shri Siya Ram Sahu, learned counsel for the petitioner, Shri Achal Singh, learned standing counsel for Gaon Sabha and Shri Prabhakar Tripathi, learned standing counsel for the State respondents.

2. The present writ petition has filed by petitioner with the following prayer:

I. To issue a writ, order or direction in the nature of certiorari to quash the imugned order dated 25.7.2022 passed by District Magistrate/Collector Banda in Appeal No.542/2022 (Computerized Case No. D202207110000542) (Naraina vs. Gaon Sabha) under Section 67(5) of the U.P. Revenue Code, 2006 and order dated 25.10.2021 passed by respondent no.3/Tehsildar Tehsil and District Banda passed in Suit No.4441/2017 (Computerized Case No. T2017071142014441) (Gaon Sabha vs. Naraina) under Section 67(3) U.P. Revenue Code, 2006.

3. The case of the petitioner is that on the basis of Lekhpal report dated 27.10.2017 the petitioner was served with a notice on 26.12.2017 and proceedings under Section 67(2) of U.P. Revenue Code has been initiated against the petitioner on the allegation interalia that the petitioner has taken unauthorized possession by constructing boundary wall and fixing a gate on the land of khalihan in an area 0.025 hectare of Gata no.657M. In response to the notice petitioner filed objection on 7.2.2018 denying the allegations. In support of the Lekhpal's report, Lekhpal Satyanarayan was examined on 25.9.2020, in his statement he had clearly stated that he has not done any measurement on the spot. His house is more than 60-70 years old and the petitioner is residing in the house alongwith his family, which is

the old construction and no new construction was made on Gata No.657 measuring area 0.25 hectare which is reserved for khalian and the same is lying vacant and adjoining Gata No.657, there is a Gata No.650 which Sankramaniya land and also admitted that the petitioner has no house except the present one. In support of petitioner's case Village Pradhan also examined and has stated that petitioner has no unauthorized possession on the land in dispute.

4. By bare perusal of the appellate court order dated 25.7.2022 passed by respondent no.2 it is evident that the appeal was preferred well within the limitation of 30 days but somehow the same has been adjudicated by appellate authority by way of determining that the same has been preferred after six months which is apparent error of finding recording the facts contrary to the factual position mentioned and available on face of records itself.

5. In view of the aforementioned facts and circumstances and without interfering in the order dated 25.7.2022 passed by respondent no.2 is hereby quashed. Matter is remitted back to respondent no.2 to decide afresh on the basis of merits of the matter.

6. The appeal may be restored on its original number and the same shall be decided as expeditiously as possible preferably within a period of six months from the date of production of certified copy of this order, after affording due opportunity to all the concerned and affected parties.

7. Writ petition is **partly allowed** accordingly.

Order Date :- 14.12.2023

Rakesh