

Court No. - 40

Case :- WRIT - C No. - 33783 of 2023

Petitioner :- Achhey Lal And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Saurabh Kumar Pandey, Pradeep Chauhan

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioners and Sri Ambrish Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. The present writ petition is preferred questioning the validity of the impugned notice dated 01.07.2023 passed by the Assistant Collector/ Tehsildar, Tehsil Sadar, District Farrukhabad under Section 67(2) and 67(5) of the U.P. Revenue Code, 2006.

3. Learned counsel for the petitioners vehemently submitted that the impugned order is per se unsustainable in view of the law laid down by this court in **Writ - C No.6658 of 2022 (Rishipal Singh vs. State of U.P. and 3 others)** and other connected petitions, decided on **02.12.2022**, wherein the court has considered the procedure which is required to be adhered by the respondents while carrying out the removal of illegal encroachment/ claim over the Gaon Sabha land. He submits that the writ petition is liable to be entertained.

4. Learned Additional Chief Standing Counsel has raised an objection regarding the maintainability of the writ petition on the ground that the present writ petition is preferred against the impugned notice dated 01.07.2023. Proceeding under Section 67 of the U.P. Revenue Code, 2006 (in short 'Code') is yet to be finalized and without responding to the said notice, straightway the present writ petition has been preferred. The U.P. Revenue Code, 2006 is a self contained Act and against the proceedings which are finalized under Section 67 of the Code, aggrieved person has remedy to file appeal. Section 67(5) of the Code itself provides that any person aggrieved by an order of Assistant Collector under sub-Section (3) or sub-Section (4), may within thirty days from the date of such order, prefer an appeal to the Collector. He submits that the land belongs to Gaon Sabha, the petitioner is trespasser and the authority has every right to protect its land. He further submits that in case the petitioner files objection, it will be considered and while deciding the objection, the respondents would definitely ensure necessary compliance in view of **Rishipal Singh (supra)**.

5. We have heard rival submissions and perused the record. While considering the U.P. Revenue Code and the procedure to be adopted to the proceedings under Sections 67, 67A and 26 of the Code, certain guidelines have been framed by the court in the case of **Rishipal Singh (supra)**. The relevant paragraph of the

aforesaid judgment in **Rishipal Singh (supra)** is extract below:

"74. Thus, in my view, following guidelines be adopted as procedure to be applied to proceedings under Sections 67,67A and 26 of the U.P. Revenue Code. It is all aimed at ensuring transparency in the procedure, judiciousness in approach by the authorities and to thwart every complaint made with ulterior and oblique motive to dislodge a long settled possession and causing of unnecessary harassment to an innocent villager:

(i) In case of complaint made on RC Form 19, the official making it shall ensure that proper survey is done in the light of observations made in this judgment; the land, occupation of which has stood identified to be unauthorized is in exact measurement and so also shown in the survey map prepared on scale, as per the Land Revenue Survey Regulations, 1978; the exact assessment of damages on the basis of circle rate with details of calculation made on that basis.

(ii) In a case of suo motu action, before issuing RC Form 20, the authority will ensure that proper report upon RC Form 19 is submitted as per para (i) above on parameters of subrule 1 Rule 67.

(iii) RC Form 20 must be accompanied by a copy of report and spot survey submitted alongwith RC Form 19 to the person against whom proceedings have been instituted, or even otherwise submitted in case of suo motu action vide para (ii) above.

(iv) Upon reply being filed to the notice, if authority finds that spot survey/explanation report is not satisfactory, it may order for a fresh spot report to be prepared in presence of the party aggrieved.

(v) In the event, objection includes a plea of statutory protection/ benefit under Section 67-A, the authority should invite the objection from the Gaon Sabha, and will decide the same alongwith the matter under Section 67, without requiring aggrieved party to move separate application under Section 67-A.

(vi) If the report is admitted on record, may be in case no objection is filed, the authority must ensure presence of the person preparing the report before it, to prove the report by his statement, with a right to aggrieved party to cross question him.

(vii) The authority must endeavour to decide the case within time framed provided under the relevant Act and the Rules and should desist from granting adjournment to the parties in a routine manner.

(viii) In case of appeal under Section 67(5) of the U.P. Revenue Code, 2006, preferred/ filed within the time prescribed alongwith interim relief application, the interim relief application as far as possible should be decided within two weeks' time with prior notice to other side and where plea of settlement under Section 67-A has been taken before Assistant Collector-1st Class, and damages to the tune of 25 % at-least of the total damages are paid and an affidavit of undertaking is filed for not raising any further construction upon the land in question, the authorities including civil administration should avoid taking any coercive measure pursuant to the order appealed against until the disposal of interim relief application. The Appellate authority may also consider granting interim relief on the very first day of filing of appeal with stay application if above conditions are fulfilled by the appellant.

(ix) The appellate authority should as far as possible decide the appeal within a period of two months of its presentation."

6. It is pressed before us that respondents have issued a notice which is contrary to the condition of Paragraph No.74(iii) of the aforesaid judgment and order dated 02.12.2022.

7. In view of the law laid down by this court in **Rishipal Singh (supra)**, we deem it appropriate that while filing the objection to the impugned notice, the petitioners are at liberty to rely upon the said judgment and in case any such objection is filed within ten days from today, definitely the concerned authority would proceed to

consider the objection in accordance with law.

8. The writ petition stands **disposed of**.

Order Date :- 6.11.2023

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