

Court No. - 51

Case :- WRIT - C No. - 35457 of 2023

Petitioner :- Asraf And 2 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Shyamdhara Pandey, Rama Shanker

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

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Shyamdhara Pandey, learned counsel for the petitioners, Mr. Shridhar Tripathi, learned Standing Counsel for the State-respondents and Mr. Bhupendra Kumar Tripathi, learned counsel for the respondent- Land Management Committee.

2. The instant petition has been filed against the order dated 17.4.2023 passed by the Additional Commissioner, Varanasi Division, Varanasi as well as order passed by the Assistant Collector / Tahsildar dated 9.9.2021 in the proceeding under Section 67 of U.P. Revenue Code, 2006.

3. Learned counsel for the petitioners submitted that plot no.1233Ka area 0.1700 hectare situated in Village Malhath, Tahsil- Pindara, District-Varanasi is recorded as gaddha in the revenue records. He further submitted that the proceeding was initiated under Section 67 of U.P. Revenue Code, 2006 and order for ejectment and damages has been passed on 9.9.2021 against the petitioners treating the petitioners' construction over plot no.1233Ka area 0.170 hectare. He further submitted that the petitioners' construction is in the abadi land but without making proper survey and demarcation of the plot in dispute, the order for ejectment and damages has been passed by the Tahsildar concerned. He also placed the annexure no.8 to the writ petition which is report of gram pradhan dated 9.9.2023 in order to demonstrate that pond is situated over the plot no.1233 Ka area 0.1700 hectare, as such, there is no question of encroachment of plot no.1233 Ka area 0.170 hectare by the petitioners. He further submitted that under the wrong legal advice, appeal under Section 207 of U.P. Revenue Code, 2006 was filed before the Commissioner against the order passed by the Tahsildar in place of appeal under Section 67 (5) of U.P. Revenue Code, 2006 before the Collector. He next submitted that the Additional Commissioner has decided the appeal on merit without considering the fact that the appeal is not maintainable before Commissioner and the same should be dismissed on the ground of maintainability. He placed the judgment of this Court reported in **2023 (1) ADJ 154, (Rishipal Singh Vs. State of U.P. & Others)** in order to demonstrate that without conducting the proper survey and demarcation of

the plot in dispute specially when the person is disputing the possession over the Gaon Sabha land / State land.

4. On the other hand, Mr. Shridhar Tripathi, learned Standing Counsel for the State-respondents submitted that in view of the entry of the plot in dispute, the order for ejectment and damages has been rightly passed by the Tahsildar concerned. He further submitted that the appeal filed by the petitioners although before Commissioner has been dismissed on merit, as such, petitioners are not entitled to any relief in the matter.

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

6. There is no dispute about the fact that the order for ejectment and damages dated 9.9.2021 has been passed by the Tahsildar in respect to plot no.1233Ka against the petitioners under Section 67 of U.P. Revenue Code, 2006, which was maintained by the Additional Commissioner while dismissing the petitioners' appeal.

7. Since, the remedy against the order of Tahsildar is under Section 67 (5) of U.P. Revenue Code, 2006 before the Collector, as such, the order passed by the Additional Commissioner in appeal under Section 207 of U.P. Revenue Code, 2006 on merit is not proper.

8. This Court in the case of **Rishipal Singh (supra)** has held that without conducting proper survey and demarcation, the order for ejectment and damages cannot be passed. Paragraph No.74 of the judgment is relevant for perusal, which is as under:

"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."

9. Perusal of the order of Tahsildar dated 9.9.2021 fully reveals that there is no consideration of the petitioner's objection nor the ratio of law laid down by this Court in Rishipal Singh (supra) has been taken into consideration, the Tahsildar has mentioned the case of the parties and passed the order for ejection and damages without recording reason in support of the order for ejection as well as arbitrary imposition of damages against the petitioner's, as such, order dated 9.9.2021 passed by Tahsildar cannot be sustained in the eye of law.

10. So far as the appellate order dated 17.4.2023 is concerned, the same cannot be maintained as Commissioner / Additional Commissioner is not empowered to entertain and decide the appeal against the order passed by

Tahsildar under Section 67 (1) of U.P. Revenue Code, 2006.

11. Considering the entire facts and circumstances of the order dated 9.9.2021 passed by Assistant Collector / Tahsildar, Pindara, District-Varanasi and order dated 17.4.2023 passed by Additional Commissioner Varanasi Region Varanasi are liable to be set aside and are hereby set aside.

12. The writ petition is ***allowed in part*** and matter is remitted back before respondent no.5 i.e. Assistant Collector / Tahsildar, Pindara, District-Varanasi to register the proceeding of its original number and decide the same afresh in accordance with law after affording opportunity of hearing to both parties taking into consideration the ratio of law laid down by this Court in ***Rishipal Singh (supra)*** within period of four months from the date of production of certified copy of this order before him.

Order Date :- 19.10.2023/Rameez