

Neutral Citation No. - 2023:AHC:198742

Court No. - 51

Case :- WRIT - C No. - 36127 of 2023

Petitioner :- Indal

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Harish Chandra Singh, Anand Pal Singh

Counsel for Respondent :- C.S.C., Sudhir Bharti

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. A.P. Singh, learned counsel for the petitioner, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Sudhir Bharti, learned counsel for respondent No.4/Land Management Committee.

2. The instant petition has been filed for following relief:

"(i) to issue a writ, order or direction in the nature of certiorari quashing the demolition notice dated 07.10.2023 passed by the respondent No.5 /Tehsildar, Tehsil-Padrauna, District-Kushinagar (Annexure No.12 to the writ petition).

(ii) to issue a writ order or direction in the nature of mandamus commanding and directing the respondent No.5 i.e. Tehsildar Padrauna, District-Kushinagar to decide the restoration application dated 13.09.2021 of the petitioner for recalling the ex-parte order dated 27.08.2021 passed by respondent no.5 in computerized Case No.T202105440100214 (Gaon Sabha Vs. Indal) under Section 67 (2) of the U.P. Revenue Code, 2006 may be decided immediately or stipulated period.

(iii) to issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to not being demolish the dwelling house of the petitioner situated in village-Narchochwa, Tappa-Basichirgora, Pargana-Sidhua Jobna, Tehsil-Padrauna, District-Kushinagar alleged plot No.357 recorded as a Khalihan during the pendency of restoration application of the petitioner."

3. With the consent of the learned counsel for the parties, the writ petition is being heard and disposed of finally without inviting counter affidavit.

4. Learned counsel for the petitioner submitted that plot No. 357 of khata No.1461 is recorded as Khalihan in the revenue record and plot No.359 of khata No.1067 is bhumidhari plot of the petitioner. He further submitted that proceeding under Section 67 of U.P. Revenue Code, 2006 has been initiated in respect to the Khalihan land and order for ejectment and damages dated 27.08.2021 has been passed by respondent No.5/ Tehsildar, Padrauna, District-Kushinagar in ex-parte manner against the petitioner. He next submitted that against the order of Tehsildar dated 27.08.2021, a restoration application was filed on 13.09.2021. He further submitted that since no order has been passed on the petitioner's restoration application as such authorities started interference with the possession of the petitioner, accordingly, appeal under Section 67 (5) of U.P. Revenue Code 2006 has been filed but appellate court has dismissed the petitioner's appeal on the ground of the pendency of restoration application filed against the order of Tehsildar dated 27.08.2021. He further submitted that even on merit the order passed by the Tehsildar is not in accordance with law as the petitioner is bhumidhar of adjoining plot No.359 but no

survey/ demarcation has been made by the authorities as held by this Court in case reported in **2023 (1) ADJ 154 Rishipal Singh Vs. State of U.P. and Others**. He further submitted that even the proceeding for exchange under Section 101 of U.P. Revenue Code, 2006 is pending before the Court concerned, as such the order of demolition and damages will cause irreparable injury to the petitioner.

5. On the other hand Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr.Sudhir Bharti, learned counsel for Gaon Sabha submitted that considering the entry of the plot in dispute, the order for ejectment and damages has been passed in accordance with law. He further submitted that petitioner has already filed restoration/recall application against the order of the Tehsildar, as such appeal was rightly dismissed by the Collector in view of the admission made in the ground No.8 of the grounds of appeal. They further submitted that no ground was taken before the appellate court regarding survey and demarcation of the plot in dispute as such no interference is required against the impugned order.

6. I have considered the arguments advanced by the counsel for the parties and perused the record.

7. There is no dispute about the fact that order for ejectment and damages has been passed against the petitioner by the Tehildar and against the order of Tehsildar a restoration application dated 13.09.2021 is pending before the Tehsildar. There is also no dispute about the fact that during pendency of the restoration application, appeal under Section 67 (5) of U.P. Revenue code, 2006 was filed, which has been dismissed on the ground of pendency of the restoration application filed against the order of

Tehsildar.

8. In order to appreciate the controversy, perusal of para No.74 of **Rishi Pal Singh (Supra)** will be relevant, 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. In view of the pendency of petitioner's restoration application dated 13.09.2021 it will be in the interest of justice that Tehsildar should decide the petitioner's restoration application dated 13.09.2021 taking into consideration the ratio of law laid down by this Court in **Rishi Pal Singh (Supra)**.

10. In view of the aforementioned facts and circumstances of the case, instant petition is finally disposed of directing the

respondent No.5 to decide the petitioner's restoration application dated 13.09.2021 on merit in accordance with law expeditiously and preferably within a period of **three months** from the date of production of certified copy of this order after giving opportunity of hearing to the parties concerned and without granting unnecessary adjournments to either of the parties.

11. It is material that authorities are adamant to demolish the petitioner's construction in pursuance of the order of Tehsildar dated 27.08.2021 hence it is further directed that till disposal of petitioner's restoration application dated 13.09.2021, no coercive action shall be taken against the petitioner in pursuance of the order of Tehsildar dated 27.08.2021/07.10.2023.

Order Date :- 13.10.2023

PS*