

Court No. - 52

Case :- WRIT - C No. - 36254 of 2023

Petitioner :- Dayashankar

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

Counsel for Petitioner :- Jainendra Kumar Pandey, Phool Singh Yadav

Counsel for Respondent :- C.S.C., Azad Rai

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Jainendra Kumar Pandey, learned counsel for petitioner and Sri Rajkumar Singh, learned Standing Counsel for the State-respondents as well as Sri Azad Rai, learned counsel appearing on behalf of Gram Sabha.

2. The present petition has been filed for seeking quashing of the order dated 30.09.2023 passed in Appeal No.723 of 2023, under Section 67(5) of U.P. Revenue Code, 2006 and order dated 30.05.2023 passed in Case No.3791 of 2022, under Section 67 of U.P. Revenue Code, 2006 and further not to demolish/evict petitioner from his residential house.

3. It is the case of petitioner that in the year 2016, he purchased some parcel of plot no.255 from one Lalji Tiwari who is recorded tenure holder of the said plot, thereafter petitioner constructed a house over purchased portion of plot no.255 and started residing over the same along with his family in the year 2016. Plot no.278 recorded as Khad ka Gaddha in the revenue record is adjacent to the plot no.255. The concerned Lekhpal submitted a report before the respondent no.3 that petitioner encroached upon plot no.278 which is a public utility land, whereupon respondent no.3 passed order dated 03.05.2023, under section 67 of U.P. Revenue Code, 2006 directing petitioner to be evicted from plot no.278 and also imposed penalty. Being aggrieved with the said order, petitioner preferred an appeal which was registered as Appeal No.723 of 2023, under Section 67(5) of the U.P. Revenue Code, 2006 before respondent no.2 and the same was also dismissed vide order dated 30.09.2023 by respondent no.2 which impugned the present petition.

4. Learned counsel for petitioner submitted that petitioner has not encroached upon the plot no.278, his house is situated over plot

no.255 and plot no.278 is adjacent plot pertains to Gram Sabha. The order dated 30.05.2023 has been passed by respondent no.3 only on the basis of report submitted by the concerned Lekhpal without considering the fact that no proceeding has ever been initiated for demarcation of plot no.278. Respondent no.2 while passing the order dated 30.09.2023, also not returned any finding with regard to conduction of demarcation of plot no.278 and rejected the appeal preferred by petitioner and as such, the orders impugned are illegal and liable to be quashed.

5. Per contra, learned Standing Counsel vehemently opposed the prayer as made in the petition and supported the order impugned on the ground that petitioner has illegally encroached upon the land pertains to Gram Sabha and such the orders passed by responding authorities are correct.

6. By bare perusal of the order impugned, the Court finds that the ground taken by the petitioner in appeal that no demarcation proceeding has ever been conducted, has not been considered by respondent no.2 while adjudicating the appeal preferred by petitioner and as such, without demarcating the plot no.278, it is impossible to decide that petitioner has encroached upon plot no.278 which pertains to Gram Sabha.

7. In view of the aforesaid facts and circumstances, order dated 30.09.2023 and order dated 30.05.2023 passed by respondent nos.2 and 3 respectively are set aside and the present petition stands **allowed**.

Order Date :- 30.10.2023

Vivek Kr.