

Court No. - 51

Case :- WRIT - C No. - 36404 of 2023

Petitioner :- Raj Kumar

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

Counsel for Petitioner :- Bhagwan Dutt Pandey, Ashok Kumar Dwivedi

Counsel for Respondent :- C.S.C, Pankaj Kumar Gupta

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Ashok Kumar Dwivedi, learned counsel for the petitioner, Mr. Amit Kumar Srivastava, learned Standing Counsel for State-respondents and Mr. Pankaj Kumar Gupta, learned counsel for respondent No.3/Gaon Sabha.

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

"(1) Issue a writ, order or direction in the nature of mandamus directing the respondent no.2 to decide/ conclude the proceeding filed by the petitioner under section 207 of U.P. Revenue Code, 2006 being case no. D202317650000667 (Raj Kumar Chaudhary Vs. State of U.P.) within a stipulated period fixed by this Hon'ble Court and since then no coercive action be taken against the petitioner.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents not to dispossess the petitioner from the arazi no. 333 area 0.063 hectare over which the petitioner has constructed building and residing therein and the appurtenant thereto is also in his possession prior to Zamindari Abolition."

3. Learned counsel for the petitioner submitted that proceeding under Section 67 (1) of U.P. Revenue Code, 2006 has been decided against the petitioner in arbitrary manner. He placed the order passed by Tehsildar dated 18.05.2018, which is five line order, which demonstrate that there is no application of mind and no

opportunity of hearing has been afforded to the petitioner. He further submitted that petitioner challenged the order dated 18.05.2018 by way of appeal before the Collector being Appeal No.D202317650000667. He further submitted that Collector vide order dated 25.08.2021 summoned the record and fixed 27.09.2021 for disposal. He further submitted that during pendency of appeal, Tehsildar has issued notice/ order dated 18.08.2023 for implementation of order dated 18.05.2018 passed by Tehsildar for ejectment and damages. He further submitted that in view of the ratio of law laid down by this Court reported in 2007 (102) RD 498 Ali Sher Vs.State of U.P.through Collector Bijnor and others, order under appeal/revision must be suspended during the pendency of the proceeding if the order under Appeal/ revision has serious civil consequences. He further placed the ratio of law laid down by this Court reported in 2023 (1) ADJ 154 Rishipal Singh Vs.State of U.P. and 3 others in which Court has laid down the principle for the disposal of the cases under Section 67, 67-A as well as 67(5) of U.P. Revenue Code, 2006. He next submitted that appeal is pending before Collector and Tehsildar is enforcing the order of ejectment and damages passed against the petitioner, which is not proper.

4. On the other hand, Mr. Amit Kumar Srivastava, learned Standing Counsel for State-respondents and Mr. Pankaj Kumar Gupta, learned counsel for respondent No.3/ Gaon Sabha submitted that in view of the entry of plot in dispute order has been rightly passed by Tehsildar. They further submitted that appeal filed by petitioner under Section 67 (5) of U.P. Revenue Code, 2006 is pending before Collector as such as such no interference is required and petitioner should avail remedy in the pending appeal rather writ petition before this Court.

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

6. There is no dispute about the fact that appeal filed by the petitioner under Section 67 (5) of U.P. Revenue Code, 2006 against the order of Tehsildar dated 18.05.2018 is pending.

7. This Court in the case of Ali Sher (Supra) has held that the interim protection be granted during pendency of appeal / revision if the order under appeal/ revision has serious civil consequences. Paragraph Nos.4 & 5 of the judgment is relevant which is as follows:

"4. It is well settled that once an appeal or revision is entertained by a higher Court against an order having civil consequences stay normally should be granted to avoid swinging pendulum unless the Court for the reasons to be recorded finds that there is no case for grant of stay as observed by the Hon'ble Apex Court in the case of Mool Chand v. Raza Buland Sugar Industries.

5. Considering the facts and circumstances, impugned order dated 16.11.2006 is hereby quashed. Writ petition stands allowed. Appellate Court is directed to disposal of the appeal of petitioner in accordance with law as expeditiously as possible preferably within a period of two months from the date of production of certified copy of this order before him and till the disposal of appeal as directed above, parties shall maintain status quo with regard to nature and possession over the land in dispute."

8. This Court in the case **Rishipal Singh (Supra)** has considered the scope of Section 67, 67-A as well as 67-5 of U.P. Revenue Code, 2006 as well as laid down the Principle for disposal of cases under aforementioned Section Paragraph No. 74 of the judgment rendered in **Rishipal Singh (Supra)** is relevant for consideration 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 sub-rule 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 67A.

(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 law laid down by this court in **Ali sher (Supra)** as well as in **Rishipal Singh (Supra)**, interest of justice requires that appeal filed by the petitioner should be decided within stipulated period and till the disposal of the appeal order passed by Tehsildar should not be given effect.

10. Considering the entire facts and circumstances of the case as well as in view of the pendency of appeal against the order passed by the Tehsildar dated 18.5.2018, the writ petition is disposed of finally directing the respondent No.3 to decide the appeal being Case No.D202317650000667 expeditiously preferably within a period of three months from the date of production of certified copy of this order before him.

11. It is further directed that in view of ratio of law laid down by this Court in Ali Sher (Supra), the order dated 18.05.2018 as well as order/ notice dated 18.08.2023 passed by Tehsildar for ejectment and damages shall not be given effect till the disposal of petitioner's appeal under Section 67 (5) of U.P. Revenue Code, 2006 in accordance with law as indicated above.

Order Date :- 19.10.2023

PS*