

Court No. - 52

Case :- WRIT - C No. - 36582 of 2023

Petitioner :- Bechan Lal

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

Counsel for Petitioner :- Shiv Shankar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava,J.

1. Heard Shri Shiv Shankar Singh, learned counsel for the petitioner and the learned Standing Counsel for the State respondents.
2. The impugned order dated 18.05.2018 passed by the respondent No.3-Tehsildar/Collector Ist Class District Mirzapur rendered in proceedings registered as Computerized Case No. 201816530103005 under Section 67 of the Uttar Pradesh Revenue Code, 2006 (hereinafter referred to as the 'Code'), finds that the petitioner had illegally encroached over the disputed parcels of land, and accordingly it was directed that the petitioner be evicted from the disputed parcel of land. Damages and other charges were also imposed upon the petitioner. Petitioner filed restoration in the said case which was also rejected by respondent no. 3 vide order dated 05.08.2022.
3. The learned appellate court/District Magistrate, District Mirzapur, by the impugned order dated 03.10.2022 agreed with the findings of the learned trial court-Tehsildar/Collector Ist Class District Mirzapur, and affirmed its order dated 05.08.2022.
4. Shri Shiv Shankar Singh, learned counsel for the petitioner contends that the defence of Section 67A of the U.P. Revenue Code, 2006 taken by the petitioner was not adverted to by both the courts below. Further without proper demarcation of the lands, a finding of illegal encroachment cannot be determined.
5. Learned Standing Counsel for the State-respondent contends that protection of Section 67-A of the U.P. Revenue Code, 2006 can only be allowed to persons who satisfy the mandatory preconditions for the same.
6. All these relevant facts for just adjudication of the controversy can be prised out from the impugned orders. Exchange of affidavits shall unnecessarily delay the disposal of the controversy. With consent of parties the matter is being decided finally.

7. To make a finding of illegal encroachment upon any disputed parcel of land in proceedings taken out under Section 67 of the U.P. Revenue Code, 2006, the demarcation of the boundaries of the disputed parcel of land is an essential prerequisite. Admittedly, the same has not been done in this case. On this count alone the finding of illegal encroachment made by the learned court below is vitiated.

8. The petitioner claimed entitlement to the protection of Section 67A of the U.P. Revenue Code, 2006. The learned courts below have clearly neglected to consider the aforesaid issue. This reflects non application of mind.

9. Section 67 as well as Section 67-A of the Code reflect the composite intent of legislature. The legislature by enacting the aforesaid provision has recognized the vulnerability of the State land to illegal encroachment and the need for urgent corrective measures. Simultaneously the legislature has also acknowledged the reality of a large number of persons who have erected dwelling units on lands which are not reserved for any public purposes. The legislature has protected their rights in the manner prescribed in the provision. For ease of reference the provisions are extracted hereunder:

"67 Power to prevent damage, misappropriation and wrongful occupation of Gram Panchayat property.-

(1) Where any property entrusted or deemed to be entrusted under the provisions of this Code to a Gram Panchayat or other local authority is damaged or misappropriated, or where any Gram Panchayat or other authority is entitled to take possession of any land under the provisions of this Code and such land is occupied otherwise than in accordance with the said provisions, the Bhumi Prabandhak Samiti or other authority or the Lekhpal concerned, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (1) has been damaged or misappropriated, or any person is in occupation of any land referred to in that sub-section in contravention of the provisions of this Code, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation not exceeding the amount specified in the notice be not recovered from him and why he should not be evicted from such land.

(3) If the person to whom a notice has been issued under sub-section (2) fails to show cause within the time specified in the notice or within such extended time as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person shall be evicted from the land, and may, for that purpose, use or cause to be used such force as may be necessary, and may direct that the amount of compensation for damage or 34

misappropriation of the property or for wrongful occupation, as the case may be, be recovered from such person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (2), he shall discharge the notice.

(5) Any person aggrieved by an order of the 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.

(6) Notwithstanding anything contained in any other provision of this Code, and subject to the provisions of this section every order of the Assistant Collector under this section shall, subject to the provisions of sub-section (5) be final.

(7) The procedure to be followed in any action taken under this section shall be such as may be prescribed.

Explanation. - For the purposes of this section, the word 'land' shall include the trees and buildings standing thereon

10. 67-A Certain house sites to be settled with existing owners thereof.-

(1) If any person referred to in sub-section (1) of section 64 has built a house on any land referred to in section 63 of this Code, not being land reserved for any public purpose, and such house exists on the November 29, 2012, the site of such house shall be held by the owner of the house on such terms and conditions as may be prescribed.

(2) Where any person referred to in sub-section (1) of section 64, has built a house on any land held by a tenure holder (not being a government lessee) and such house exists on November 29, 2000, the site of such house, notwithstanding anything contained in this Code, be deemed to be settled with the owner of such house by the tenure holder on such terms and conditions as may be prescribed.

Explanation. - For the purpose of sub-section (2), a house existing on November 29, 2000, on any land held by a tenure holder, shall, unless the contrary is proved, be presumed to have been built by the occupant thereof and where the occupants are members of one family by the head of that family. "

11. The aforesaid ingredients have to be established as a mandatory prerequisite for grant of protection under Section 67-A of the U.P. Revenue Code, 2006. Section 67-A of the Code confers rights on certain people who have encroached upon public land. The conditions precedent for invoking the protection of Section 67-A of the Code are these. The person against whom proceedings are taken out has built his house on any land referred to in Section 63 of the Code, the person who seeks protection of Section 67-A of the Code should be in the category of persons referred to in Section 63 of the Code. The land should not be reserved for any public purpose. The date of the construction of the house should be prior to 29 November, 2012. The house of such persons should

be existing on the disputed parcels of land on or before 29 November 2012.

12. In many instances, as in the present case, a noticee under Section 67 of the Code may invoke the protection of Section 67-A of the Code to resist the proceedings under Section 67 of the Code.

13. The authority/ court having jurisdiction to decide the proceedings taken out under Section 67 of the Code or Section 67-A of the Code is the same. When the defence of Section 67-A of the Code is taken in proceedings of Section 67 of the Code, the same issues will be directly and substantially in issue in both the proceedings. Usually in such matters pleadings, defence, and evidence of the parties are same in both the proceedings. In case proceedings under Section 67 and 67-A of the Code are conducted separately and in isolation to one another, it would lead to multiplicity of litigation and inconsistent judgments. There will also be an avoidable delay in decision of the controversy and may even result in miscarriage of justice.

14. The courts in proceedings under Section 67 of the Code are under obligation of law to decide the eligibility of the noticee for protection under Section 67-A of the Code. In case defence under Section 67-A of the Code is taken by the noticee, the said proceedings shall be registered separately. But both cases will be consolidated and heard and decided together.

15. This procedure would faithfully implement the legislative intent and also serve the interest of justice.

16. In the facts and circumstances of this case, the failure of the learned courts below to enquire into the validity of the defence of the petitioner under Section 67-A of the Code has resulted in a miscarriage of justice.

17. In wake of preceding discussion, the impugned orders dated 03.10.2022 passed by the appellate court/District Magistrate, District Mirzapur and the order dated 18.05.2018 passed by the trial court-Tehsildar/Collector Ist Class District Mirzapur, are vitiated and contrary to law. The orders dated 03.10.2022 and 18.05.2018 are liable to be set aside and are set aside, and needs for remand.

18. It has been held by the Hon'ble Apex Court in **2013 (32) LCD 30: (2013) 6 SCC 530 (Chairman LIC of India & ors. vs. A. Masilamani)** if an Authority/Court sets aside the order on technical grounds then the matter may be remanded back to the Authority, in the instant matter non consideration of Section 67(A) is the technical error on part of the

responding authorities and as such the matter is thus remitted to the Tehsildar/Collector Ist Class District Mirzapur, for a fresh determination consistent with the observation made in this judgment.

19. The following directions are being passed to serve the interest of justice in this case:

(i) The petitioner shall file a fresh application under Section 67-A of the Code before the Tehsildar/Collector Ist Class District Mirzapur, within a period of one month from the date of receipt of a certified copy of this order.

(ii) The Tehsildar/Collector Ist Class District Mirzapur, shall register the proceedings under Section 67-A of the Code upon submission of such application.

(iii) Proceedings under Section 67-A of the Code so instituted shall be consolidated and heard with proceedings under Section 67 of the Code registered as Computerized Case No. 201816530103005 and decided by a common order, consistent with the observations made in this judgement.

(iv) Prior to entering a final judgement the court below shall ensure that demarcation of disputed parcels of lands is completed as per law.

20. The writ petition is ***allowed*** to the extent indicated above.

Order Date :- 1.11.2023

Shaswat