

Court No. - 51

Case :- WRIT - C No. - 37350 of 2023

Petitioner :- Rambali

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

Counsel for Petitioner :- Ram Autar Bind

Counsel for Respondent :- C.S.C.,Pradeep Singh

Hon'ble Chandra Kumar Rai,J.

1. Supplementary affidavit file by learned counsel for the petitioner is taken on record.
2. Heard learned counsel for the petitioner, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Pradeep Singh, learned counsel for the respondent- Land Management Committee.
3. Learned counsel for the petitioner submitted that the order for ejectment and damages has been passed by the Tahsildar on 9.6.2023. He further submitted that the appeal under Section 67 (5) of U.P. Revenue Code, 2006 has been filed on behalf of the petitioner before the Collector, Mirzapur being Case No.D202316530001298. He further submitted that the appeal has been registered vide order dated 9.10.2023 and objection has been invited in the matter. He next submitted that next date fixed in the appeal is 1.12.2023. He further submitted that the authorities are enforcing the order for ejectment and damages dated 9.6.2023 against the petitioner. He also submitted that the order for ejectment and damages passed by the Tahsildar be stayed during pendency of the appeal under Section 67 (5) of U.P. Revenue Code, 2006.
4. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel and Mr. Pradeep Singh, learned counsel for the Land Management Committee submitted that the appeal filed by the petitioner is pending, as such, the petitioner should approach the appellate Court for the necessary relief in the matter. They further submitted that no interference is required 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 has been passed by the Tahsildar against the petitioner on 9.6.2023. There is also no dispute about the fact that the appeal under Section 67 (5) of U.P. Revenue Code, 2006 filed by the petitioner is pending before respondent no.1 i.e. Collector, Mirzapur.

7. This Court in the case reported in **2007 (102) RD 498, Ali Sher Vs. State of U.P. Through Collector, Bijnor and Others** 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 are 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. Considering the ratio of law laid down in **Ali Sher (supra)**, the instant petition is finally disposed of directing respondent no.1 i.e. Collector, Mirzapur to decide the pending Appeal No.D202316530001298, under Section 67 (5) of U.P. Revenue Code, 2006 on merits in accordance with law after affording proper opportunity of hearing to both parties, expeditiously preferably within a period of four months from the date of production of certified copy of this order before him. It is further directed that till the disposal of the aforementioned appeal filed by the petitioner, the effect and operation of the order dated 9.6.2023 passed by respondent no.2 shall remain in abeyance.

9. It is made clear that this Court has not expressed any opinion on the merits of the case pending before the Collector, Mirzapur, under Section 67 (5) of U.P. Revenue Code, 2006.

Order Date :- 30.11.2023

Rameez