

Court No. - 52

Case :- WRIT - C No. - 37127 of 2023

Petitioner :- Jamuna Prasad

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

Counsel for Petitioner :- Anurag Bhatt

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Anurag Bhatt, learned counsel for the petitioner, learned Standing Counsel appearing for the respondents no. 1 to 4 and Sri Jyoti Srivastava, Advocate, holding brief of Sri Bhupendra Kumar Tripathi, Advocate for respondent no. 5.

2. It is the case of the petitioner that proceedings under Section 67 of U.P. Revenue Code, 2006 has already been initiated against the petitioner, which culminated in the order dated 11.12.2019 through which petitioner has been determined as illegal encroacher over plot no. 636 measuring 0.008 hectare. Being aggrieved with the order dated 11.12.2019, the same has been challenged under Section 67 of the U.P. Revenue Code, 2006 before appellate authority, i.e., respondent no. 2 and the same is still pending to be adjudicated.

3. During the pendency of the Appeal No. 4 of 2020 under Section 67(5), notice dated 27.09.2023 has been issued against the petitioner by respondent no. 4 for removing the encroachment carried out by the petitioner over plot no. 636 situated at Village Umari Kalan, Tehsil Badlapur, District Jaunpur.

4. Learned counsel for the petitioner submitted that during the pendency of appeal preferred under Section 67(5), respondent 4 is not authorized to proceed with the order dated 11.12.2019 for compelling the petitioner to remove his residential accommodation which has been determined by respondent no. 4 as encroachment, since under Section 67(6) it is specifically mentioned that every order of Assistant Collector under Section 67 shall, subject to provision of Sub-section 5, be final and it is admitted fact that appeal preferred by the petitioner under Section 67(5) is still pending to be adjudicated finally by respondent no. 3.

5. Per contra, learned Standing Counsel although vehemently opposed the prayer but showed agreement to the provisions contained under U.P. Revenue Code, specifically under Section 67(6) of the same.

6. In view of the aforementioned facts and circumstances, notice dated 27.09.2023 issued by respondent no. 4 is hereby set aside and no coercive action shall be

initiated in pursuance to the order dated 11.12.2019 till the disposal of the appeal preferred by the petitioner under Section 67(5) of the U.P. Revenue Code, 2006.

7. It is made clear that respondents-authorities may proceed in accordance with the law but the entire action shall be dependent upon the proceedings under Section 67(5), which is preferred by the petitioner and pending before appellate authority.

8. The writ petition stands allowed.

Order Date :- 30.10.2023

P.Sri.