Court No. - 52

Case :- WRIT - C No. - 37012 of 2023

Petitioner :- Nisar Ahmad
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Bhuvnesh Kumar Singh,Jitendra Singh
Counsel for Respondent :- CSC,Arun Kumar Pandey

Hon'ble Saurabh Srivastava,J.

1. Heard Mr. Bhuvnesh Kumar Singh, learned counsel for the petitioner, Mr. Rajesh Kumar Tiwari, learned Additional Chief Standing Counsel for the State-respondents and Mr. Arun Kumar Pandey, Counsel for respondent no.5, Gram Sabha.

2. The instant petition has been filed for following reliefs:-

"(i) Issue a writ, order or direction in the nature of mandamus to directing the Tehsildar, Tehsil- Dhampur, District- Bijnor to hear and decide the restoration application expeditiously within short span of time and not to give effect to order dated 10.4.2023 passed by Tehsildar, Dhampur, District- Bijnor in case No. 5886 of 2022 (Gram Sabha Vs. Nisar Ahmad) under Section 67 of U.P. Revenue Code, 2006 till the disposal of the restoration application dated 28.4.2023 and maintain status quo on spot.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned notice dated 11.7.2023 issued by Revenue Inspector, Seohara Region, Tehsil- Dhampur, District- Bijnor."

3. Counsel for the petitioner submitted that khata No. 53, Khasra No. 304M area 0.0133 hectare situated in Village Pitthapur, Tehsil- Dhampur, District- Bijnor is a minzumla plot. He further submitted that plot No. 304M is bifurcated in two parts, one is khata No. 53 khasra No. 304M area 0.076 hectare situated in Village Pitthapur is recorded in the name of legal heir of Akbar Hussain and another khata No. 216, khasra No. 304M area 0.0076 hectare situated in Village Pitthapur is recorded as kabristaan in the revenue record. He further submitted that khata No. 216 consists of 7 plot including plot No. 304M. He next submitted that Akbar Hussain was recorded on khata no. 53, khasra No. 304M area 0.0760 hectare and Akbar Hussain have given 133 square meter area to the petitioner's father in the year 1965 for constructing the house accordingly petitioner is in possession over the same since 1970 and constructed house in the year 1968. He submitted that

proceeding under Section 67 of the U.P. Revenue Code, 2006 has been initiated against the petitioner and without making proper survey/ demarcation of the plot in dispute, the order for ejectment and damages has been passed in arbitrary manner against the petitioner on 10.4.2023. He submitted that petitioner filed restoration/ recall application within time on 28.4.2023 which is pending for consideration before the Tehsildar but authorities are adamant to demolish the petitioner's construction during pendency of the restoration application.

4. On the other hand, learned Additional Chief Standing Counsel for State and Gaon Sabha submitted that Tehsildar has passed the order on merit, as such, the restoration/ recall application against the order of Tehsildar is not maintainable. He submitted that considering the nature of the plot, no right will accrue to the petitioner. He further submitted that restoration application filed by petitioner is misconceived and the same is liable to be rejected.

5. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

6. There is no dispute about the fact that order for ejectment and damages has been passed by Tehsildar against the petitioner in the proceeding under Section 67 of the U.P. Revenue Code, 2006 on 10.4.2023 and petitioner filed a restoration/ recall application on 28.4.2023 which is pending for consideration before the Tehsildar.

7. Since the Tehsildar has passed the order for ejectment and damages without considering the objection of the petitioner as well as without conducting proper survey of the plot in dispute, as such, it requires reconsideration of the dispute by the Tehsildar. This Court in the case reported in **2023 (1) ADJ 154 Rishi Pal Singh Vs. State of U.P. and Others** has held that while exercising jurisdiction under Section 67 of U.P. Revenue Code, 2006, the authorities should make proper demarcation/ survey of the plot in dispute specially when the person in possession of the plot is disputing the possession over particular area of the plot or the person is claiming that he is in possession of the adjoining plot rather disputed plot.

8. In the instant matter, the Tehsildar has ordered for ejectment and damages against the petitioner without following the ratio of law laid down by this Court in **Rishi Pal Singh (Supra)**.

9. Considering the entire facts and circumstances, the instant petition is **disposed of** directing the respondent no.3, Tehsildar,

Tehsil- Dhampur, District- Bijnor to consider and decide the petitioner's restoration application dated 28.4.2023 within period of four weeks from the date of production of certified copy of this order. It is further directed that Tehsildar shall follow ratio of law laid down by this Court in the case of Rishi Pal Singh (Supra).

10. It is further directed that till the disposal of the petitioner's restoration application as mentioned above, the order of the Tehsildar dated 10.4.2023 for ejectment and damages passed against the petitioner shall remain in abeyance.

Order Date :- 19.10.2023
Vivek Kr.

Digitally signed by :-
VIVEK KUMAR
High Court of Judicature at Allahabad