

Court No. - 52

Case :- WRIT - C No. - 38108 of 2023

Petitioner :- Mukat Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Vijay Kant Dwivedi

Counsel for Respondent :- C.S.C., Hari Narayan Singh

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Vijay Kant Dwivedi, learned counsel for petitioner and Sri Prabhakar Tripathi, learned Standing Counsel for the State-respondent nos.1 to 3 as well as Sri Hari Narayan Singh, learned counsel for respondent no.4 i.e. Gram Sabha.

2. It is the case of petitioner that proceedings under Section 67 of U.P. Revenue Code, 2006 (in short 'Code') has been instituted against him for alleged encroachment carried out by him over plot no.4902, situated at Village Lakh, Tehsil Tirwa, District Kannauj for which, specific notice under Section 67(1) of the Code has been issued specifically against petitioner.

3. The said notice which was undated, unnamed and without specific designation disclosed therein through which petitioner was required to submit his explanation on or before 08.06.2019 but by bare perusal of the records appended along with petition which has also been apprised by learned counsel for petitioner, it has been transpired that no objection has ever been preferred by petitioner and in absence of any specific reply, respondent no.3 proceeded ex-parte which culminated into order dated 27.05.2022 through which, petitioner has been directed to be evicted from plot no.4902 along with penalty of Rs.15,00,000/-.

4. Being aggrieved with the order dated 27.05.2022, petitioner preferred an appeal under Section 67(5) of the Code before respondent no.2 on several other grounds inter-alia specifically on the ground that whatsoever encroachment has been determined by respondent no.3, does not pertain to petitioner, whereas while finalizing ex-parte proceedings under Section 67 of the Code, no inquiry has been made with regard to status of petitioner. It has been specifically mentioned in the memo of appeal preferred by petitioner that petitioner is only rendering his services in the educational institute, namely, Maharana Pratap Junior High School

Lakh as Principal and no notice has every been issued against the Manager of the said institution and as such, the proceedings initiated against petitioner, is highly illegal and not in consonance with the provisions contained under Section 67 of the Code.

5. Learned counsel for petitioner informed that during pendency of appeal, certain coercive action were initiated by the responding authorities which arises cause of action for filing Writ C No.23665 of 2022 before this Court which was decided vide order dated 23.08.2022 whereby specific direction was issued in favour of respondent no.2 for expeditious disposal of the appeal preferred by petitioner within three months and till disposal of the same, no coercive action will be initiated against petitioner.

6. In pursuance of the order and direction dated 23.08.2022, although appeal preferred by petitioner has been decided on dated 20.09.2023 but the vital ground taken up while preferring the appeal by petitioner has not been considered in detail and no scrutiny of the factual aspect has been taken into consideration while passing the order which culminated into order dated 20.09.2023 which impugned the present petition.

7. At the admission stage, learned Standing Counsel was requested to seek instructions in the matter specifically with regard to status of petitioner. Sri Prabhakar Tripathi, learned Standing Counsel received the instructions through which the factual aspect of the matter mentioned in the petition, has been broadly accepted that petitioner is having no interest over the property in dispute, rather he is rendering his services as Principal in the said institution. Although, learned Standing Counsel highlighted one fact that petitioner is also one of the Member of Managing Committee of Maharana Pratap Junior High School Lakh for the year 2023-24 but by perusal of of list of the Members of Committee of Management, it is transpired that petitioner being the Principal, is only ex-officio member of Committee and if that be so, no action can be initiated under Section 67 of the Code specifically against the petitioner for determining the illegal possession carried out by the said institution over the property in dispute.

8. Sri Hari Narayan Singh, learned counsel appearing on behalf of Gram Sabha on a fair submission accepted that no proceedings can be initiated and permitted under the statutory provisions contained under Section 67 of the Code against an employee of the institution, if any illegal possession has been extended by the institution itself, in that case also the petitioner cannot be determined as liable for the same.

9. In view of the aforesaid facts and circumstances and after hearing the rival submissions extended by learned counsel for parties as well as bare perusal of the factual aspect that petitioner being the Principal, preferred an appeal against the determination drawn by respondent no.3 while finalizing the proceedings under Section 67 of the Code through which he has been determined as illegal encroacher over plot no.4902 along with penalty of Rs.15,00,000/-, once the same has been apprised before the Appellate Authority that the entire proceedings has been convened ex-parte and no proper inquiry has been made with regard to status of petitioner who is only an employee in the said institution and being the Principal, petitioner cannot be fastened any type of penalty whatsoever has been determined by respondent no.3 with regard to illegal possession carried out, if by the institution itself.

10. In view thereof, orders dated 27.05.2022 and 20.09.2023 passed by respondent nos.3 and 2 respectively are hereby quashed and set aside and writ petition stands **allowed** accordingly.

11. However, it is made clear that the abovementioned order does not restrain the responding authorities to proceed afresh against the specific person who have encroached upon plot no.4902 which is a property pertains to public utility land, situated at Village Lakh, Tehsil Tirwa, District Kannauj.

Order Date :- 12.12.2023

Vivek Kr.