

Court No. - 51

Case :- WRIT - C No. - 38140 of 2023

Petitioner :- Sobhnath Yadav

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

Counsel for Petitioner :- Madan Mohan, Parmeshwar Yadav

Counsel for Respondent :- CSC, Pradeep Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Parmeshwar Yadav, learned counsel for the petitioner, Mr. Anil Srivastava, learned Standing Counsel for the State-respondents and Mr. Pradeep Singh, learned counsel for the respondent- Land Management Committee.

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

"(a) Issue a writ, order or direction in the nature of Mandamus directing the Respondent no.;2 to decide the Stay Application pending in Appeal No. D202316670000961 (Sobhnath Yadav vs. Gaon Sabha) filed under Section 67(5) of U.P. Revenue Code, 2006 regarding Plot No.38 Old No. 44/2 Area 12 Biswa situated at Village- Ghuripur Kuraiya, Tehsil and District - Bhadohi.

(b) Issue a writ order or direction in the nature of Mandamus directing the Respondents to not dispossess the petitioner during pendency of the Appeal No.D202316670000961 (Sobhnath Yadav vs. Gaon Sabha) filed under Section 67 (5) of U.P. Revenue Code, 2006 before respondent no.2 from plot no.38 old no.44/2 area 12 biswa situated in village- Ghuripur Kuraiya, tahsil and district- bhadohi."

3. Learned counsel for the petitioner submitted that against the order for ejectment and damages passed by the Tahsildar dated 3.7.2023, under 67 (1) of U.P. Revenue Code, 2006, petitioner filed an appeal under Section 67 (5) of U.P. Revenue Code, 2006 before the Collector / respondent no.2 being Appeal No.D202316670000961 (Sobnath Yadav vs. Goan Sabha), under Section 67 (5) of U.P. Revenue Code, 2006 along with stay application.

4. Learned counsel for the petitioner submitted that the authorities are adamant to enforce the order of Tahsildar dated 3.7.2023, as such, necessary direction be issued for disposal of petitioner's appeal in accordance with law and till the disposal of appeal, authorities be directed not to take coercive action against the petitioner in pursuance of the order for ejectment and damages dated 3.7.2023. He further placed reliance upon the order of this Court reported in **2007 (102) RD 498, Ali Sher Vs. State of U.P. Through Collector, Bijnor and Others.**

5. On the other hand, learned Standing Counsel & learned counsel for the Land Management Committee submitted that the appeal along with the stay application filed by the petitioner is pending before respondent no.2 / Collector, Bhadohi, as such, petitioner should approach respondent no.2 who shall consider the grievance of the petitioner in accordance with law.

6. I have considered the argument advanced by learned counsel for the parties and perused the record.

7. There is no dispute about the fact that the order for ejectment and damages was passed by the Tahsildar against the petitioner on 3.7.2023 against which the petitioner filed an appeal under Section 67 (5) of U.P. Revenue Code, 2006, which is pending before respondent no.2.

8. 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."

9. Considering the ratio of law laid down by this Court in **Ali Sher (supra)**, the instant petition is finally disposed of directing respondent no.2 i.e. Collector/ District Magistrate, Bhadohi to decide the petitioner's Appeal No.D202316670000961 (Sobnath Yadav vs. Goan Sabha), under Section 67 (5) of U.P. Revenue Code, 2006, under Section 67 (5) of U.P. Revenue Code, 2006 on merits in accordance with law after affording proper opportunity of hearing to the parties, expeditiously preferably within a period of three months from the date of production of certified copy of this order before him.

10. Till the disposal of the aforementioned petitioner's appeal by respondent no.2, the effect and operation of the order dated 3.7.2023 passed by

respondent no.3 / Tahsildar, Bhadohi shall remain in abeyance.

11. It is made clear that this Court has not expressed any opinion on the merits of the case.

Order Date :- 2.12.2023

Rameez