

Court No. - 51

Case :- WRIT - C No. - 39131 of 2023

Petitioner :- Jang Bahadur

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

Counsel for Petitioner :- Brajesh Kumar Singh

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

Hon'ble Chandra Kumar Rai, J.

1. Heard Counsel for the petitioner, Mr. Rajesh Kumar Dwivedi, learned State Law Officer for the State-respondents and Mr. Bhupendra Kumar Tripathi for respondent no. 3, Gaon Sabha.

2. The instant petition has been filed against the order dated 10.6.2023 passed by respondent no.2, Tehsildar, Tehsil Shahganj, District Jaunpur for ejectment and damages against the petitioner in case No. 02658 of 2020, Computerized case No. T2021014360102658 Gaon Sabha Vs. Jang Bahadur.

3. Counsel for the petitioner submitted that since the order impugned has been passed by Tehsildar without notice and proper opportunity of hearing to the petitioner, as such, the impugned order be set aside and matter be remanded back before the Tehsildar to decide the proceeding afresh in accordance with law. He further submitted that similar controversy has been entertained by this Court in Writ C No. 21139 of 2023, 21198 of 2023, 24560 of 2023 in which interim protection has been granted.

4. On the other hand, Mr. Abhinav Ojha, learned Standing Counsel for the State-respondents submitted that order impugned is appealable under Section 67 (5) of the U.P. Revenue Code, 2006, as such, writ petition is not maintainable. He submitted that petitioner should file appeal against the impugned order rather writ petition under Article 226 of the Constitution of India.

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 against the petitioner by Tehsildar on 10.6.2023 under Section 67 (1) of the U.P. Revenue Code, 2006.

7. In order to appreciate the controversy, the perusal of Section 67 (5) of the U.P. Revenue Code, 2006 will be relevant which is as follows:-

"(5) Any person aggrieved by an order of the Assistant Collector under sub-section (3) or sub-section (4), may within thirty days from the date of such order, prefer an appeal to the Collector."

8. The perusal of Section 67 (5) of U.P. Revenue Code, 2006 fully demonstrate that impugned order dated 10.6.2023 passed by Tehsildar is appellate before Collector.

9. 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 interim protection be granted during pendency of appeal / revision if the order under appeal/ revision has serious civil consequences. Paragraph Nos. 4 and 5 of the judgment are relevant for perusal 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."

10. Considering the entire facts and circumstances of the case as well as ratio of law laid down by this Court in Ali Sher (Supra), the instant petition is finally **disposed of** directing the petitioner to file appeal before Collector under Section 67 (5) of U.P. Revenue Code, 2006 against the order impugned dated 10.6.2023 along with the prayer for condonation of delay within period of **three weeks** from today which shall be considered and disposed of taking liberal view on the delay condonation matter within period of four months from the date of filing of appeal along with certified copy of this order. Till the disposal of the appeal filed by petitioner against the order of ejectment and damages passed by Tehsildar, the order dated 10.6.2023 shall remain in abeyance.

Order Date :- 9.11.2023

Vandana Y.