

Court No. - 51

Case :- WRIT - C No. - 41604 of 2023

Petitioner :- Jaynath Memorial Education Jan Seva Trust Village Harairampur And Another

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

Counsel for Petitioner :- Vinod Shankar Tripathi, Vijai Shanker Tripathi

Counsel for Respondent :- C.S.C., Rameshwar Prasad Shukla

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Vinod Shankar Tripathi, learned counsel for the petitioner, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State and Mr. Rameshwar Prasad Shukla for respondent no. 4, Land Management Committee.
2. The instant petition has been filed against the order dated 29.9.2022 passed by Assistant Collector/Tehsildar-respondent no. 3 under Section 67(1) of the U.P. Revenue Code, 2006.
3. Counsel for the petitioner submitted that order for eviction and damages has been passed in arbitrary manner against the institution. He submitted that students are getting education in the institution, as such, the order of ejectment and damages will cause irreparable injury to the interest of students studying in the institution. He further submitted that no proper opportunity of hearing has been afforded before passing the order of ejectment and damages. He further placed reliance upon the judgment of Supreme Court reported in **2011 (113) RD 329 Jagpal Singh & others Vs. State of Punjab & others**. He further submitted that impugned order passed by Tehsildar dated 29.9.2022 be set aside.
4. On the other hand, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State submitted that remedy of appeal under Section 67(5) of the U.P. Land Revenue Code, 2006 is available against the impugned order, as such, the writ petition is not maintainable. He further submitted that plot in dispute is recorded as Charagaah, as such, no right will accrue to the petitioner. He further submitted that petitioner can take whatever objection he wants in appeal rather writ petition before this Court.
5. I have considered the arguments advanced by the counsel for the parties and perused the record.
6. There is no dispute about the fact that plot in dispute is recorded as Charagaah in the revenue record and order for ejectment and damages has been passed by Tehsildar against the petitioner on 29.9.2022.

7. In view of the provisions contained under Section 67(5) of the U.P. Revenue Code, 2006 remedy of appeal is available against the order of Tehsildar passed under Section 67(1) of the U.P. Revenue Code, 2006.

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 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 as laid down by this Court in the case of Ali Sher (supra), the instant petition is finally disposed of directing the petitioner to file appeal under Section 67(5) of the U.P. Revenue Code, 2006 before Collector within period of three weeks against the order dated 29.9.2022 along with the prayer for condonation of delay.

10. The Collector shall take liberal view with respect to delay condonation matter and decide the appeal on merits after affording opportunity to the parties in accordance with law, expeditiously, preferably within a period of three months from the date of filing of appeal along with certified copy of this order.

11. Till the disposal of aforementioned appeal, the order of ejectment and damages dated 29.9.2022 passed by Tehsildar Lalganj, Azamgarh shall remain in abeyance.

Order Date :- 4.12.2023

S.A.