

Court No. - 51

Case :- WRIT - C No. - 42720 of 2023

Petitioner :- Shakeel Ahmad

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

Counsel for Petitioner :- Akash Yadav, Devbratt Yadav, Ram Pratap Yadav

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

Hon'ble Chandra Kumar Rai, J.

1. Heard Shri Ram Pratap Yadav, learned counsel for the petitioner, Rajesh Kumar Dwivedi, learned Standing Counsel for the State-respondents and Shri Rameshwar Prasad Shukla, learned counsel for Gaon Sabha.

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

"(i) Issue a writ order or direction in the nature of mandamus directing the Additional District Magistrate(Finance & Revenue) Azamgarh to decide the Application for Interim protection along with the Appeal No.3317 of 2022 Computer Case no.D202215060003317 (Shakil Vs. Tehsildar) filed under section 67(5) of U.P. Revenue Code, 2006 in time frame without any further delay, and till the disposal of the application for interim protection status quo may be directed to be maintained on the spot, in the better interest of justice."

3. Learned counsel for the petitioner submitted that the order for ejectment and damages has been passed by the Tehsildar against the petitioner on 5.09.2022. He further submitted that the petitioner has filed an appeal, under section 67(5) of U.P. Revenue Code, 2006, which is registered as Appeal No.3317 of 2022 Computerized Case No.D202215060003317 before the Additional District Magistrate (Finance & Revenue), Azamgarh. He submitted that an application for interim relief has also been filed in the aforesaid appeal but no order for interim relief has been passed. He submitted that the authorities are adamant to take action in pursuance of the order passed by the Tehsildar dated 5.09.2022, as such, necessary direction be issued for disposal of the appeal and no coercive action be taken against the petitioner.

4. On the other hand Mr. Rajesh Kumar Dwivedi, learned State Law Officer and Mr. Rameshwar Prasad Shukla, learned counsel for the Gaon Sabha submitted that the petitioner should press his pending appeal as well as application for interim relief before the respondent No.3 rather writ petition before this Court. They further submitted that no interference is required against the impugned order.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

6. There is no dispute about the fact that the order of ejectment and damages has

been passed by the Tehsildar on 5.09.2022 against the petitioner. There is also no dispute about the fact that the petitioner has filed an appeal under section 67(5) of the U.P. Revenue Code, 2006 along with the prayer for interim relief.

7. 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."

8. Considering the ratio of law laid down in **Ali Sher** (supra), the instant petition is finally **disposed of** directing the respondent No.3 to decide the aforementioned Appeal, under section 67(5) of the U.P. Revenue Code, 2006 expeditiously preferably within a period of three months from the date of production of a certified copy of this order before him.

9. Till the disposal of the aforementioned appeal, the order dated 5.09.2022 passed by the Tehsildar, Tehsil Sadar (Judicial), District Azamgarh shall remain in abeyance.

Order Date :- 11.12.2023

SFH