

Court No. - 18

Case :- WRIT - C No. - 10389 of 2023

Petitioner :- Nand Ram

Respondent :- State Of U.P. Thru. Secy. Revenue, Lucknow
And Others

Counsel for Petitioner :- Anand Pal Singh

Counsel for Respondent :- C.S.C., Pankaj Gupta

Hon'ble Shree Prakash Singh, J.

1. Heard Shri Anand Pal Singh, learned counsel for the petitioner, Shri Praful Kumar Yadav, learned Additional Chief Standing Counsel for the State and Shri Vikram Dutt Pandey, Advocate holding brief of Shri Pankaj Gupta, learned counsel for Gaon Sabha/ Gram Panchayat.

2. Learned counsel for the State has provided the instructions dated 10.12.2023, which is taken on record.

3. By means of the instant petition, the petitioner has assailed the order dated 26.07.2021 passed by the opposite party no.3 as well as the order dated 26.10.2023 passed by opposite party no.2.

4. Learned counsel for the petitioner submits that a lease was granted in favour of the petitioner and that too was approved by the competent authority on 14.06.2001 regarding the land bearing area 0.012 hectare situated at village- Katorva, Pargana- Ikauna & Tehsil- Payagpur, District- Bahraich. He added that after the grant of the aforesaid lease, the petitioner erected house, within the time prescribed, over the land in question and he alongwith his family, are residing over there.

5. Further argument of learned counsel for the petitioner is that under certain misconception, the proceeding under Section 67

of the Land Revenue Act, 2006 (hereinafter referred to as 'Act, 2006') was initiated by the State authorities and the Assistant Collector passed the order on 26.07.2021 without affording due opportunity of hearing to the petitioner. He submits that once this order came into the knowledge of the petitioner, he filed an appeal under Section 67 (5) of the Act, 2006, which too was dismissed, while upholding the order dated 26.07.2021 passed by the Assistant Collector and no reasons were assigned at all.

6. Further contention of learned counsel for the petitioner is that, in fact, the petitioner is having possession over the land which was allotted to him vide grant of lease and without demarcation the Assistant Collector has passed the order while assuming that the petitioner is having unlawful possession over the land of Gaon Sabha and therefore, the finding of the Assistant Collector in order dated 26.07.2021 is perverse and further, the appellate authority has also ignored the aforesaid question and thus both the orders are erroneous and are liable to be set aside.

7. Per contra, learned counsel appearing for the State on the basis of instructions dated 10.12.2023, submitted that the demarcation was done and it was found that the petitioner was having possession over the land in question, though thereafter, he removed the possession himself on 10.12.2023.

8. In rejoinder to the contention of the learned counsel for the State, the learned counsel for the petitioner submits that, in fact, the petitioner did not have any unlawful possession over the land in question, deliberately and as soon as it came into his knowledge that the certain lands of the Gaon Sabha, adjacent to his land, is being used/possessed by him, he removed his possession himself on 10.12.2023. Therefore, his submission is that the part of the order wherein the fine amounting

Rs.1,44,000/- have been imposed may be set aside.

9. In support of his contention, he has placed reliance on a judgment rendered ***Writ-C No.1834 of 2017 "Prakasha Vs. State of U.P. and Others"***, reported in ***2017 SCC Online ALL 3188*** and referred paragraphs 9 and 10. Paragraphs 9 and 10 are reproduced hereunder:-

"9. Lastly, learned counsel for the petitioner submits that the petitioner is ready to remove the encroachment over the plot in question on his own and he may be granted reasonable time for the purpose. He also disputes the imposition of damages to the tune of Rs.40,000/- stating that the said amount is highly excessive and the petitioner is not in a position to pay such huge damages.

10. Considering the said submission, it is provided that:-

(1). the petitioner shall file an undertaking before the Collector, Muzaffarnagar within a period of three weeks along with certified copy of this order that he will remove the encroachment in Plot No.103 M area 0.0050 hectares on or before 16.3.2017.

(2). In case the petitioner files such an undertaking before the Collector, Muzaffarnagar within the period given above, no coercive action shall be taken against him.

(3). It is, further, provided that in case, the petitioner removes the encroachment on his own expenditure within a period of two months as given above, he will not be liable to pay Rs.40,000/- towards damages as imposed by the Assistant Collector, (First Class), Tehsil Budhana."

10. Referring the aforesaid, he submits that the case of the present petitioner is also identical footings and therefore, he may be granted the same relief.

11. Learned counsel for the State has vehemently opposed the contention aforesaid.

12. Considering the submission of learned counsel for the parties and on perusal of material placed on record, it transpires that the proceeding under Section 67 of the Act, 2006 was initiated by the Assistant Collector and after the demarcation, it was found that the certain land of Gaon Sabha has illegally been encroached by the petitioner and thus the order dated

26.07.2021 was passed for removal of the unlawful possession of the petitioner over the same and further a fine of Rs.1,44,000/- was also imposed.

13. While examining the aforesaid case in fact and law, it is apparent that the petitioner was granted a lease in his favour in the year 2001 and he constructed house over the land and he is residing over there and therefore, it is not a case that without any basis, the petitioner is having unlawful possession over the land of Gaon Sabha. It might be that certain land adjacent to the land of lease, was being used by the petitioner and therefore, the same was removed by the petitioner himself as soon as the fact came into his knowledge that he is having some unlawful possession over the land of Gaon Sabha and the fact also remains that he never resisted for possession and the instructions of the State is also evident that the petitioner has removed his unlawful possession from the land on 10.12.2023.

14. In view of the aforesaid bona fide action of the petitioner and considering the ratio of the judgment in case of *Prakasha Vs. State of U.P. and Others (supra)*, the part of the order dated 26.07.2021, whereby fine of Rs.1,44,000/- is imposed, is hereby set aside, the rest of the order dated 26.07.2021 shall remain intact; subject to condition that he will not possess the land again.

15. In view of the aforesaid observations, the instant petition is hereby **partly allowed**.

16. Consequences shall be followed.

17. Consigned to record.

Order Date :- 14.12.2023
Mohd. Sharif