

Court No. - 7

Case :- WRIT - C No. - 1886 of 2024

Petitioner :- Smt. Shailendra

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Revenue, Lko. And Others

Counsel for Petitioner :- Dwijendra Mishra

Counsel for Respondent :- C.S.C., Dilip Kumar Pandey

Hon'ble Saurabh Lavania, J.

1. Heard learned counsels for the parties.

2. The present petition has been filed for the following main reliefs:-

"a) To issue writ, order or direction in the nature of Certiorari by quashing the order dated 08-12-2022 passed by Tahsildar Beegharpur, Unnao in case no. 375/2022 (Gram Sabha versus Smt. Shailendra) computerize case no. T202210690500375 as well as the illegal and arbitrary order dated 19-01-2024 passed by District Collector, Unnao in Appeal No. 36/2022 under section 67 (5) of the Uttar Pradesh Revenue Code, 2006 being case no. 6714/2022 computerize case no. D202210690006714 (Smt. Shailendra versus State and others) contained as Annexure No. 1 and 2 respectively to the writ petition in the interest of justice.

b) To issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to settle the plot no. 10 measuring area 0.015 hectare in favour of the petitioner by necessary implication of section 67 A of the U.P. revenue Code, 2006 read with Rule 68 of the U.P. Revenue Code Rules, 2016 as being landless, poor widow lady having no other house in the Village- Danuhi Khera, Tahsil Beegharpur, District- Unnao, U.P."

3. It is submitted that vide impugned order dated 08.12.2022, affirmed vide impugned order dated 19.01.2024 passed by the opposite party No.2, the opposite party no.3 directed the revenue officials to evict the petitioner from Plot No. 10/ 0.015 Hectare situated at village-Dhanuhi Khera, Pargana-Danudiya Khera, Tehsil-Beegharpur, District-Unnao.

4. A challenge has been made to the impugned orders on the ground that the procedure, which ought to have been followed

by the opposite party No.3 before passing the final order in the proceedings instituted under Section 67(1) of the Code of 2006, was not followed. In continuation, it is stated that the procedure, which should be followed, has been indicated by this Court in the judgment dated 02.12.2022 passed in the bunch of petitions, leading of which is **Writ C No.6658 of 2022 (Rishipal Singh vs. State of U.P. & 3 Others)** reported in **2022 SCC OnLine All 829**. A reference has been made to para 74 of the report of Rishipal Singh (Supra), which reads as under:-

"74. Thus, in my view, following guidelines be adopted as procedure to be applied to proceedings under Sections 67,67A and 26 of the U.P. Revenue Code. It is all aimed at ensuring transparency in the procedure, judiciousness in approach by the authorities and to thwart every complaint made with ulterior and oblique motive to dislodge a long settled possession and causing of unnecessary harassment to an innocent villager:

(i) In case of complaint made on RC Form 19, the official making it shall ensure that proper survey is done in the light of observations made in this judgment; the land, occupation of which has stood identified to be unauthorized is in exact measurement and so also shown in the survey map prepared on scale, as per the Land Revenue Survey Regulations, 1978; the exact assessment of damages on the basis of circle rate with details of calculation made on that basis.

(ii) In a case of suo motu action, before issuing RC Form 20, the authority will ensure that proper report upon RC Form 19 is submitted as per para (i) above on parameters of subrule 1 Rule 67.

(iii) RC Form 20 must be accompanied by a copy of report and spot survey submitted alongwith RC Form 19 to the person against whom proceedings have been instituted, or even otherwise submitted in case of suo motu action vide para (ii) above.

(iv) Upon reply being filed to the notice, if authority finds that spot survey/explanation report is not satisfactory, it may order for a fresh spot report to be prepared in presence of the party aggrieved.

(v) In the event, objection includes a plea of statutory protection/ benefit under Section 67-A, the authority should invite the objection from the Gaon Sabha, and will decide the same alongwith the matter under Section 67, without

requiring aggrieved party to move separate application under Section 67-A.

(vi) If the report is admitted on record, may be in case no objection is filed, the authority must ensure presence of the person preparing the report before it, to prove the report by his statement, with a right to aggrieved party to cross question him.

(vii) The authority must endeavour to decide the case within time framed provided under the relevant Act and the Rules and should desist from granting adjournment to the parties in a routine manner.

(viii) In case of appeal under Section 67(5) of the U.P. Revenue Code, 2006, preferred/ filed within the time prescribed alongwith interim relief application, the interim relief application as far as possible should be decided within two weeks' time with prior notice to other side and where plea of settlement under Section 67-A has been taken before Assistant Collector-1st Class, and damages to the tune of 25 % at-least of the total damages are paid and an affidavit of undertaking is filed for not raising any further construction upon the land in question, the authorities including civil administration should avoid taking any coercive measure pursuant to the order appealed against until the disposal of interim relief application. The Appellate authority may also consider granting interim relief on the very first day of filing of appeal with stay application if above conditions are fulfilled by the appellant.

(ix) The appellate authority should as far as possible decide the appeal within a period of two months of its presentation."

5. He stated that this Court in the judgment passed in **Writ - C No.9500 of 2022 (Sharda Industries Thru. Partner Mayank vs. The Additional District Collector, District Unnao And 2 Others)**; also observed that the report of Lekhpal should be proved and unproved report can not be relied upon.

6. It is stated that a perusal of the impugned orders would show that without following the procedure as indicated by this Court in the judgment(s), referred above, the opposite party No.3 has passed the order dated 08.12.2022 and the opposite party no. 2 while passing the impugned order dated 19.01.2024 failed to take note of the fact that opposite party no.3 has not followed the procedure prescribed under the law while passing the order dated 08.12.2022. As such, the interference of this Court is required in the matter.

7. Learned counsel for the side opposite could not dispute the aforesaid including the principle settled by this Court while dealing with the proceedings instituted under Section 67 of the Code of 2006.

8. Considered the submissions advanced by the learned counsel for the parties and the order dated 19.01.2024 passed by the opposite party No.2 as well as order dated 08.12.2022 passed by opposite party no.3.

9. It is apparent from the impugned orders dated 19.01.2024 and 08.12.2022 that the procedure as indicated by this Court in the judgment(s), referred above, was not followed while deciding the case instituted under Section 67(1) of the Code of 2006 by opposite party No.3, and the opposite party no.2 while passing the impugned order dated 19.01.2024 has failed to take note of the fact that opposite party no.3 has not followed the mode, manner and procedure prescribed under the law while passing the order under Section 67(1) of the Code of 2006. Thus, to the view of this Court, the interference is required in the matter.

10. Accordingly, the petition is **allowed**. The orders dated 19.01.2024 and 08.12.2022 are set aside and the matter is remanded back to opposite party No.3 to conclude the proceedings afresh strictly in terms of law laid down by this Court in the judgment(s), referred above, within a period of three months as statutory provisions says that the proceedings under Section 67 of the Code of 2006 ought to have been concluded within a period of 90 days.

11. For concluding the proceedings, the opposite party No.2 shall not provide any adjournment to the petitioner and in case, the petitioner fails to appear on the date fixed, then in that event, the authority concerned is at liberty to proceed ex-parte, however, in the light of the law laid down by this Court and conclude the proceedings within a period of three months.

Order Date :- 26.2.2024

Jyoti/-