

Court No. - 7**Case :-** WRIT - C No. - 2929 of 2024**Petitioner :-** Mohd. Aslam**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Revenue, Lucknow
And Others**Counsel for Petitioner :-** Manoj Kumar Yadav**Counsel for Respondent :-** C.S.C., Pankaj Gupta**Hon'ble Saurabh Lavania, J.**

Heard Sri Manoj Kumar Yadav, learned counsel for the petitioner, Sri Badrish Kumar Tripathi, learned counsel for the State and Sri Vikram Dutt Pandey, Advocate holding brief of Sri Pankaj Gupta, learned counsel for the Gaon Sabha concerned.

Under challenge is the order dated 15.05.2023 passed by the respondent No.2-District Magistrate/Collector, District-Bahraich, in the proceedings carried out against the petitioner under Section 67(5) of the U.P. Revenue Code, 2006 (in short "Code of 2006") registered as Case No. 535 of 2023, Computerized Case No. D202308150000535 (Aslam vs. Gaon Sabha) and the order dated 26.06.2021 passed by the respondent No.4-Tehsildar, Tehsil-Kaisarganj, District-Bahraich in a Case No. T201408150300002 instituted under Section 122-B of U.P. Zamindari Abolition & Land Reforms Act, 1950 (in short "Act of 1950") has also been challenged.

By the order dated 26.06.2021 the respondent No.4 directed the revenue official concerned to evict the petitioner from Gata No. 930/0.010 hect.

A challenge has been made to the impugned order dated 26.06.2021 on the ground that the procedure, which ought to have been followed by the respondent No.4 at the time of passing of final order in the proceedings instituted under Section 122-B of the Act of 1950, 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."

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.

It is also stated that a perusal of the impugned order(s) would show that without following the procedure as indicated by this Court in the judgment, referred above, the respondent No. 4 passed the order dated 26.06.2021, which was affirmed by the impugned order dated 15.05.2023. As such, the interference of this Court is required in the matter.

Learned counsel for the side opposite could not dispute the principles settled by this Court while dealing with the proceedings instituted under Section 67 of the Code of 2006. However, it is stated that the present matter relates to Section 122-B of the Act of 1950, as such, the principles embodied in the judgment referred would not apply.

Considered the submissions advanced by the learned counsel for the parties and the orders including the order dated 26.06.2021 passed by the

respondent No.4 and the order dated 15.05.2023 passed by the respondent No.2.

In order to decide the aforesaid, it would be appropriate to consider the relevant provisions contained in the Rules namely U.P. Zamindari Abolition & Land Reforms Rules, 1952 (in short "Rules of 1952") and U.P. Revenue Code Rules, 2016 (in short "Rules of 2016"), as both the provisions i.e. Section 122-B of the Act of 1950 and Section 67 of the the Code of 2006 provides power to remove an encroachment from the Gaon Sabha/State land.

For the aforesaid purpose i.e. removal of an encroachment, under the Rules of 1952, Rules 115-C to 115-E were framed and in new Code of 2006, almost similar provisions have been inserted under Rule 67 regarding intimation to the competent authority and the duty of the competent authority ensuring removal of such encroachment in accordance with the provisions contained therein. For appreciation, a comparative chart of Rules 115-C to Rule 115-E of the Rules of 1952 and Rule 67 of the Rules are reproduced hereinunder:—

<u>U.P. Zamindari Abolition and Land Reforms Rules, 1952</u>	<u>Uttar Pradesh Revenue Code Rules, 2016</u>
<u>“115-C</u> <i>(1) It shall be the duty of the Land Management Committee to preserve or protect from damage, misappropriation and wrongful occupation, all properties vested in it under Section 117, including vacant land and land over which it is entitled to take possession under the Act and to manage and maintain all such property and land in its possession.</i> <i>(2) The Chairman or any Member or the Secretary of the Land Management Committee shall report all cases of damage to; or misappropriation or wrongful occupation of, the property referred to in sub-rule (1) to the Collector praying for recovery of compensation for damage to or</i>	<u>67. Further inquiry by Assistant Collector (Section 67)</u> <i>(1) On receipt of the information under rule 66, or on facts otherwise coming to his knowledge, the Assistant Collector may make such inquiry as he deems proper and may obtain further information regarding the following points:—(a) full description of damage or misappropriation caused or the wrongful occupation made with details of village, plot number, area, boundary, property damaged or misappropriated and market value thereof;</i> <i>(b) full address along with parentage of the person responsible for such damage, misappropriation or wrongful occupation;</i>

<i>misappropriation of the property or possession of the land together with damages for wrongful occupation thereof.</i> <i>(3) it shall be the duty of the Lekhpal to report to the Collector through the Tahsildar all cases of wrongful occupation of damage to and misappropriation of property vested in the Gaon Sabha as soon as they come to his notice and in any case after the conclusion of Kharif and Rabi Partial every year.</i> <i>(4) The Tahsildar shall satisfy himself in the month of May every year that each Lekhpal has submitted all such reports.</i> <i>(5) The provisions of sub-rules (1) to (3) shall mutatis mutandis apply to a local authority in respect of the properties vested in it, including vacant land and land over which it is entitled to take possession, under the Act:</i> <i>Provided that the duty in respect of sub-rule (3) above, shall be discharged by such official of the local authority as may be decided upon by the local authority concerned.</i> <u>115-D</u> <i>(1) Where the Land Management Committee or the local authority, as the case may be, fails to take action in accordance with Section 122-B, the Collector shall-</i> <i>(a) on an application of the Chairman; Member or Secretary of the Committee; or</i> <i>(b) on a report made by the Lekhpal under sub-rule (3) of Rule 115-C; or</i> <i>(c) on the report of the local authority concerned or its official referred to in the proviso to sub-rule (5) of Rule 115-C;</i>	<i>(c) period of wrongful occupation, damage or misappropriation and class of soil of the plots involved;</i> <i>(d) value of the property damaged or misappropriated calculated at the circle rate fixed by the Collector and the amount sought to be recovered as damages.</i> <i>(2) The Assistant Collector shall thereafter proceed to take action under section 67(2) and for that purpose issue a notice to the person concerned in R.C. Form-20 to show cause as to why compensation for damage, misappropriation or wrongful occupation not exceeding the amount specified in the notice be not recovered from him and why he should not be evicted from such land.</i> <i>(3) If the notice referred to in section 67(2) remains uncomplied with or if the cause shown by the person concerned is found to be insufficient, the Assistant Collector may direct by order that-(a) such person be evicted by using such force as may be necessary; or</i> <i>(b) the amount of compensation for damage or wrongful occupation ordered by the Assistant Collector, if not paid in specified time, may be recovered as arrears of land revenue, including the amount of expenses referred to in sub-rule (3).</i> <i>(4) The amount of damages sought to be recovered and the expenses of execution of the order shall be specified in such notice, which shall be determined in the following manner:—(a) In the case of damage or misappropriation, the amount of damages shall be assessed at the prevailing market rate.</i> <i>(b) In the case of unauthorized occupation of any land, the amount of damages shall be the amount equal to the five percent of the market value of</i>
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(d) on facts otherwise coming to his notice; call upon the person concerned through notice in Z.A. Form 49-A to refrain for causing damage or misappropriation, to repair the damage or make good the loss or remove wrongful occupation and to pay damages or to do or refrain from doing any other thing as the exigencies of the situation may demand or to show cause against it in such time not exceeding fifteen days as may be specified in the notice. (2) Before issuing a notice under sub-rule (1), the Collector may make such inquiry as he deems proper and may obtain information on the following points- (a) full description of damage or misappropriation caused or the wrongful occupation made, with details of village, mohalla or ward, plot number, area, boundary, property damaged or misappropriated and market value thereof; (b) full address along with father's name of the person responsible for the damage, misappropriation or wrongful occupation; (c) period of wrongful occupation, damage or misappropriation, class of soil of the plot numbers involved and hereditary rates applicable to them; and (d) value of the property damaged or misappropriation calculated at the prevailing market rate in the locality. <u>115-E</u> (1) Where any direction for eviction or recovery of any amount of compensation has been issued by the Collector under sub section (4) of Section 122-B an order in Z.A. Form 49-C shall be sent to the Tahsildar concerned for execution who shall as	the land calculated at the circle rate fixed by the Collector for each year of unauthorized occupation. (c) The expenses of execution of the order shall be assessed on the basis of one day's pay and allowances payable to the staff deputed. (5) If the person wrongfully occupying the land has done cultivation therein, he may be allowed to retain possession thereof until he has harvested the crops subject to the payment by him of the amount equal to the five percent of the market value of the land calculated as per the circle rate which shall be credited to the Consolidated Gaon Fund or the Fund of the local authority other than the Gram Panchayat as the case may be. If the person concerned does not make the payment of the aforesaid amount within the period specified in the notice in R.C. Form-20, the possession of the land shall be delivered to the Land Management Committee or the local authority, as the case may be, together with the crop: Provided that where such person again wrongfully occupies the same land or any other land within the jurisdiction of the Gram Panchayat or the local authority as the case may be, he shall be evicted therefrom forthwith and possession of the land vacant or together with the crop thereon shall be delivered to the Land Management Committee or the local authority as the case may be. (6) The Assistant Collector shall make an endeavour to conclude the proceeding under section 67 of the Code within the period of ninety days from the date of issuance of the show cause notice and if the proceeding is not concluded within such period the reasons for the same shall be recorded. (7) Nothing in sub-rule (5) shall debar
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<i>far as possible follow the procedure laid down in paragraphs 137 and 138 of Revenue Court Manual.</i> <i>(2) The order under Z.A. Form 49-C shall also specify the amount which shall be recovered from the person concerned as expenses of execution which shall include the pay and allowances of the staff deputed to be calculated according to the rates mentioned in paragraphs 405 of the Revenue Court Manual.</i>	<i>the Land Management Committee or the local authority as the case may be from prosecuting the person who encroaches upon the same land second time in spite of having been evicted under the Code or the rules, under section 447 of the Penal Code, 1860.</i> <i>(8) There shall be maintained in the office of each Collector a register in R.C. Form-21 showing details of the amount ordered to be realized on account of damages and compensation awarded in proceedings under section 67.</i> <i>(9) A similar register shall also be maintained by each tahsildar showing realization of damages and compensation awarded in such proceeding. The entries made in the register maintained at tahsil shall be compared with the register maintained by the Collector to ensure accuracy of the entries made therein.</i> <i>(10) A progress report showing realization of damages and compensation awarded in proceedings under section 67 shall be sent to Board of Revenue, U.P., Lucknow by the fifteenth day of April and October every year. The Board after consolidating the report so received from the districts shall send it to the Government.</i> <i>(11) Nothing in rules 66 and 67 shall debar any person from establishment of his right, title or interest in a court of competent jurisdiction in accordance with the law for the time being in force in respect of any matter for which any order has been made under section 67 of the Code.</i>
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From the provisions i.e. Rules of 1952 and Rules of 2016, referred above, it is apparent that the same are similar in nature.

In view of aforesaid, this Court is of the view that the procedure as indicated/provided in the judgments, referred above, would also apply in a case related to Section 122-B of the Act of 1950, which includes Section 122-B(4-F).

It is apparent from the impugned order dated 26.06.2021 that the procedure as indicated by this Court in the judgments, referred above, was not followed while deciding the case instituted under Section 122-B of the Act of 1950 by respondent No.4, affirmed by the respondent No. 2 vide order dated 15.05.2023, who also failed to take note of the fact that while passing the order dated 26.06.2021, the respondent No.4 has not followed the procedure prescribed. Thus, to the view of this Court, the interference is required in the matter.

Accordingly, the petition is *allowed*. The order(s) dated 15.05.2023 and 26.06.2021 are set aside and the matter is remanded back to respondent No.4-Tehsildar, Tehsil-Kaisarganj, District-Bahraich, to conclude the proceedings afresh strictly in terms of law laid down by this Court in the judgments, referred above, within a period of three months.

For concluding the proceedings, the respondent No.4 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 :- 29.3.2024

Arun/-