

Court No. - 8

Case :- WRIT - C No. - 3041 of 2024

Petitioner :- Mohd. Juber

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

Counsel for Petitioner :- Aviral Srivastava, Arti Ganguly, Ashish Kumar Singh, Dadu Ram Shukla (D.R. Shukla), Hemant Kumar Mishra

Counsel for Respondent :- C.S.C., Pankaj Gupta, Surya Kumar With

Case :- WRIT - C No. - 3025 of 2024

Petitioner :- Mohd. Mohsin

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

Counsel for Petitioner :- Aviral Srivastava, Dadu Ram Shukla (D.R. Shukla)

Counsel for Respondent :- C.S.C., Pankaj Gupta, Surya Kumar With

Case :- WRIT - C No. - 3036 of 2024

Petitioner :- Mohammad Asjad

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

Counsel for Petitioner :- Aviral Srivastava, Dadu Ram Shukla (D.R. Shukla)

Counsel for Respondent :- C.S.C., Pankaj Gupta, Surya Kumar With

Case :- WRIT - C No. - 3040 of 2024

Petitioner :- Mohd. Moin Siddqui

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

Counsel for Petitioner :- Aviral Srivastava, Dadu Ram Shukla (D.R. Shukla)

Counsel for Respondent :- C.S.C., Pankaj Gupta, Surya Kumar With

Case :- WRIT - C No. - 3042 of 2024

Petitioner :- Mohammad Hasnain

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

Counsel for Petitioner :- Aviral Srivastava,Dadu Ram Shukla (D.R. Shukla)

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

Hon'ble Jaspreet Singh,J.

1. Supplementary affidavit filed by learned counsel for the petitioner is taken on record.
2. Heard Shri Ravi Shankar Tiwari along with Shri Hemant Kumar Mishra, learned counsel for the petitioner, Shri Upendra Singh, learned Standing Counsel for the State-respondents and Shri Pankaj Gupta, learned counsel for respondent No.4.
3. This order shall decide the five connected cases, i.e., writ petition bearing (i) Writ-C No.3041 of 2024, (ii) Writ-C No.3025 of 2024, (iii) Writ-C No.3036 of 2024, (iv) Writ-C No.3040 of 2024 and (v) Writ-C No.3042 of 2024. However, for the sake of convenience the facts are being noticed from Writ-C No.3041 of 2024.
4. The parties are at consensus that the orders impugned arise from the proceedings initiated by the State-respondents under Section 67 of the U.P. Revenue Code, 2006 (hereinafter referred to as 'the Code, 2006'), wherein by means of the order dated 30th June, 2023 an order of eviction was passed against the petitioners of the respective petitions. The said petitioners filed separate appeals against the order dated 30th June, 2023 and all the five appeals were also dismissed by means of the order dated 07.03.2024, where after the petitioners have come up before this Court assailing the orders both under Section 67 of the U.P. Revenue Code, 2006 as well as the appellate order passed under Section 67(5) of the Code, 2006.
5. From the records, it would be seen that the dispute relates to

plot No.731. Since all the petitioners in the connected appeals are sons of Mohd. Yunus (the predecessor-in-interest of the petitioners), hence, five separate notices were issued. Five separate cases were initiated under Section 67 of the Code, 2006 bearing Suit No.8883 of 2022 (Gaon Sabha Vs. Juber), Suit No.8885 of 2022 (Gaon Sabha Vs. Mohd. Mohsin), Suit No.8884 of 2022 (Gaon Sabha Vs. Mohd. Asjad), Suit No.8886 of 2022 (Gaon Sabha Vs. Mohd. Moin) and Suit No.8887 of 2022 (Gaon Sabha Vs. Mohd. Hasnain).

6. The petitioners in their separate cases had raised a common defense and it is in the aforesaid backdrop that five separate orders were passed under Section 67 of the Code, 2006. Since they were against the petitioners that was escalated before the appellate court, which also dismissed the same by order dated 07.03.2024 and it is in this fashion that five separate writ petitions have been filed.

7. The controversy in question relates to plot No.731, which as per the State-respondents is a *Rasta*. It is alleged that the petitioners had encroached upon the said land and had raised constructions. Taking note of the aforesaid encroachments, notice was issued to the petitioners dated 01.08.2022 indicating that the petitioners had encroached upon plot No.731 and the constructions were about one year old and a damage of Rs.1,50,000/- was sought to be recovered. Thereafter, the proceedings were initiated under Section 67 of the Code, 2006, which was contested by the petitioners in their respective cases.

8. The primary defense taken by the petitioners was to the effect that the State Authorities had initially instituted proceedings under Section 129-B of the U.P. Z.A. & L.R. Act, 1950 against the father of the petitioners, namely, Mohd. Yunus. After due contest, the said proceedings were dismissed by means of the

order dated 07.12.2002, which was further escalated by the State-respondents by filing a revision, which too came to be dismissed on 04.06.2003. Even at that point of time, the defense raised by the father of the petitioners was to the effect that the constructions existing were on plot No.807, which was part of *Abadi* and never on plot No.731, which is alleged being the *Rasta*. It is urged that once the said orders were not assailed any further, it was not open for the State-respondents to have re-initiated the proceedings under Section 67 of the Code, 2006.

9. An additional ground had been taken that even, if at all, the proceedings were initiated under Section 67 of the Code, 2006, yet it was incumbent upon the State Authorities to have properly measured and demarcated the land in question. Since the nature of the proceedings under Section 67 of the Code, 2006 is adversarial in nature, hence, the State being the petitioner therein, it was the duty of the State to have proved that the constructions which were existing were on plot No.731. Without making demarcation or measuring or surveying the land and without proving this basic controversy, it was not open for the respondent No.3 to have passed an order on 30th June, 2023. This issue was further raised in an appeal, which has been dismissed by respondent No.2 vide order dated 7th March, 2024. It is these two orders which have been assailed in all the petitions.

10. Briefly, the submissions of learned counsel for the petitioners is that there has been no proper demarcation/identification of the land in question as there was a serious dispute as to whether the encroachment as alleged by the State-respondents was on plot No.731, which is said to be a *Rasta* or over plot No.807, which was the *Abadi*. It is submitted that without identifying this basic issue, no finding could have been returned. Even though, an attempt was made by the State-

respondents to establish their case but neither the Lekhpal was ever examined who could establish that the constructions in question were on plot No.731 and in absence thereof, the impugned order dated 30th June, 2023 could not have been passed and this aspect of the matter has also not been considered by the appellate court, which has resulted in sheer miscarriage of the justice.

11. Learned counsel for the petitioners further submitted that, this Court in the case of ***Rishipal Singh Vs. State of U.P. & others 2022 SCC Online All. 829*** has taken note of the manner in which the proceedings are undertaken by the State-respondents under Section 67 of the Code, 2006 and in the instant case there is complete and blatant violation of the guidelines laid down by the Court and for this reason as well the impugned orders are bad and cannot be sustained. It is further submitted that the arguments which were advanced before respondent Nos.2 and 3 have not been taken in its correct perspective, which has resulted in the impugned orders, which cannot be sustained in law.

12. Shri Upendra Singh, learned Additional Chief Standing Counsel and Shri Pankaj Gupta, learned counsel for the Gaon Sabha have jointly made submissions refuting the contention of learned counsel for the petitioners and have submitted that along with short counter affidavit certain photographs have been annexed to indicate the spot position and from the perusal thereof, it would indicate that the constructions which have been shown is apparently on the road and thus this aspect has been dealt with by the two authorities. Consequently, being concurrent finding of fact, this Court should not interfere with the same in exercise of its writ jurisdiction and consequently, the writ petitions deserve to be dismissed.

13. The Court has heard learned counsel for the parties and also perused the material on record.

14. At the outset, it is noticed that in Writ-C No.3041 of 2024, the petitioner had moved an application bearing I.A. No.5 of 2024 seeking to withdraw the petition with liberty to file fresh. Learned counsel for the petitioner submits that the said application had been moved as there was certain discrepancy in the pagination of the petition and this fact apart there was no other purpose and in the aforesaid circumstances, the petitioner does not wish to press the said application and the same made permitted to be withdrawn and the matter may be heard on merits.

15. In this light, the I.A. No.5 of 2024 in Writ-C No.3041 of 2024 is dismissed as not pressed.

16. This Court hastens to add that in the other connected petitions, no such application was moved and in all the connected petitions the order under challenge is the same, consequently, by withdrawing the application I.A. No.5 of 2024 will not have any impact on the merits of the case or the outcome of the writ petitions.

17. This Court from the perusal of the material on record finds that the report of the Lekhpal has been brought on record as Annexure No.5 to the writ petition. This indicates that the Lekhpal had visited the site and found that there was encroachment over plot No.731. It is primarily on the basis of the aforesaid report that the proceedings were initiated under Section 67(1) of the Code, 2006. While the petitioners had filed their response in the proceedings, the State had recorded the statements of Abhishek Singh, who was the Lekhpal of the given area. The statement was recorded on 20th January, 2023 and a copy thereof has been brought on record as Annexure

No.7 to the writ petition. From the perusal of the said statement, it reveals that it is a bald statement given by the Lekhpal. In his examination-in-chief, he has not stated that on which date and time he had visited the site to inspect the matter. It also does not indicate that he had furnished his report and he did not by any means connect his report to indicate that there were any encroachments, which were found by the Lekhpal upon visiting the site. Merely a map has been annexed to justify that the Lekhpal had visited the site. A copy of the said map has been brought on record at page No.54, which is the certified copy and is part of Annexure No.6 to the writ petition.

18. Having taken note of the aforesaid examination-in-chief as well as the map including the report, which has been referred to herein-above that does not indicate that the Lekhpal had visited the site in question or made any survey to identify that alleged encroachments were on plot No.731 or plot No.807. Merely conclusion has been drawn upon visual appearance and a conclusion recorded that the said constructions were found to be on plot No.731.

19. Learned counsel for the State-respondents as well as the Gaon Sabha could not dispute the fact that the report which has been placed on record ever indicates that proper measurement, date and time or prior notice was given to the petitioners. Even in the examination-in-chief, there is no reference or a statement as to on which date, the Lekhpal had visited the site nor there is any reference to the report and in this fashion the statement of the Lekhpal does not inspire confidence nor could have been made basis of returning the finding on the basis of which the eviction order under Section 67(1) of the Code, 2006 has been passed.

20. From the impugned order dated 30th June, 2023, which

reveals that the court concerned had erred as even without noticing the fact that the report of the Lekhpal was not proved, it has yet returned a finding by putting the reverse burden on the defendant to state that since they do not raise any objections to the said report, hence, the same would amount to being proved and the possession/constructions would be proved to be existing on plot No.731. There is no reasoning incorporated in the order dated 30th June, 2023 as to on what basis the amount of penalty which has been imposed has been arrived at. There is no consideration regarding the fact that at earlier point of time there was a dispute wherein the State had initiated proceedings against the father of the petitioners, which was dismissed and the revision had also failed.

21. In such circumstances, without there being any proper application of judicial mind, the impugned order dated 30th June, 2023 has been passed. In the same way, if the order passed by the appellate court dated 7th March, 2024 is examined, it would reveal that the same has been passed by the appellate court taking note of certain photographs. However, the core question which was in controversy has neither been adverted nor adjudicated by the appellate authority. Thus, the jurisdiction which is vested upon the appellate authority has also been violated. Learned counsel for the State as well as the Gaon Sabha could not dispute the fact that the report of the Lekhpal which was the basis of the proceedings, does not indicate the details as to how the inspection/survey was made and how the Lekhpal came to the conclusion that the offending construction was on plot No.731, which was the *Rasta*.

22. At this stage, it will be relevant to notice the dictum of this Court in the case of **Rishipal Singh** (supra), wherein it has been held 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."

23. Considering the aforesaid facts, circumstances as well as dictum of this Court in **Rishipal Singh** (supra), this Court is of the clear view that the impugned orders dated 30th June, 2023 and 7th March, 2024 passed by the Tehsildar as well as the Additional District Magistrate (Finance and Revenue), District-Gonda cannot be sustained. Both the orders are quashed and set aside. The proceedings shall stand restored on the Board of the Tehsildar, where the parties shall appear on 26th December, 2024. The Tehsildar shall take specific note of the observations made herein-above including the decision of this Court in the case of **Rishipal Singh** (supra) and after getting a fresh survey/inspection done in presence of the parties with due notice shall after affording opportunity of hearing to the parties and leading evidence, if so required, decide the matter afresh preferably within a period of eight weeks from 26th December, 2024.

24. It is also provided that in case if the petitioners do not cooperate, the authorities shall be at liberty to proceed in accordance with law.

25. It is further indicated that the orders impugned have been set aside primarily on the ground of non-compliance of the survey and it may not be taken as an expression of opinion on merits as to whether the offending constructions is on plot Nos.731 or 807.

26. The parties shall be at liberty of raising of all objections, which needless to say shall be considered by the authority by a reasoned and speaking order.

27. With the aforesaid, the impugned orders dated 30.06.2023

and 07.03.2024 are set aside.

28. The Writ-C No.3041 of 2024, Writ-C No.3025 of 2024, Writ-C No.3036 of 2024, Writ-C No.3040 of 2024 and Writ-C No.3042 of 2024 are **allowed**.

29. The costs are made easy.

Order Date :- 13.12.2024

Ashutosh