

Court No. - 18

Case :- WRIT - C No. - 3768 of 2024

Petitioner :- Kamlesh @ Kamlesh Kumar

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

Counsel for Petitioner :- Praveen Chandra

Counsel for Respondent :- C.S.C., Chandra Bhanu Singh, Dilip Kumar Pandey, Rajesh Kumar Gupta

Hon'ble Manish Kumar, J.

1. Heard learned counsel for the petitioners, learned Standing Counsel for the State and Sri Dilip Kumar Pandey, learned counsel for the Gram Sabha.

2. The present writ petition has been preferred for quashing of the impugned order dated 09.10.2023 passed by the respondent no. 4 Tehsildar, Sandila, District Hardoi in Case No. RST/06522/2019 (Computerized Case No. T201910330406522) under Section 67 of the U.P. Revenue Code, 2006 and also the order dated 30.01.2024 passed by opposite party no. 3 i.e. Collector Hardoi, in appeal no. 2456 of 2023 (Computerized Case No. D202310330002456) titled as Kamlesh versus Bhumi Prabandhak Samiti and others, under Section 67(5) of the U.P. Revenue Code, 2006 (hereinafter referred as Code, 2006).

3. Learned counsel for the petitioners has submitted that on the identical facts and issue challenging the order passed under Section 67 of the Code, 2006, a **Writ C No. 3020 of 2024 (Nikhet Faheem and 2 Ors. vs. State of U.P. and 7 Ors.)** was filed before this Court which has been allowed by the judgment/order dated 29.03.2024 placing reliance on the judgments in the cases of **Rishipal Singh vs. State of U.P. and 3 Ors. [2022 SCC Online 829]** and **Abbas Ansari and Anr. vs. State of U.P. and 3 Ors** passed in Writ C No. 16357 of 2020 decided on 15.10.2020. It is further submitted that the case of the petitioners is squarely covered by the judgment/order dated 29.03.2024 passed in Writ C No. 3020 of 2024.

4. For convenience, the judgment/order dated 29.03.2024 passed in Writ C No. 3020 of 2024 (**Nikhet Faheem and 2 Ors. vs. State of U.P. and 7 Ors.**) is quoted hereinbelow:-

'1. Heard learned counsel for the petitioners and learned State Counsel.

2. In view of the facts, as appears from record including impugned order and which could not be refuted by means of an affidavit, the present petition is being decided finally at admission stage.

3. Under challenge is the order dated 11.03.2024 passed by the respondent No.4- Tehsildar/Assistant Collector, Tehsil Sadar, District-Sultanpur, Computerized Case No.T202204680609497 (Gram Sabha vs. Smt. Nikhet Faheem and Others), whereby the respondent No.4 directed the revenue official(s) to evict the petitioner from Gata No.183 area 0.0420 hect. and imposed fine of Rs. 3402000.00,000/- (Rupees Thirty Four Lakh and Two Thousand only) as compensation.

4. Challenging the impugned order, learned counsel for the petitioners submitted that the procedure, which ought to have been followed by the opposite party No.4 at the time of passing of final order in the proceedings instituted under Section 67 of the Code of 2006, was not followed. He also stated that the report of Lekhpal should be proved and unproved report can not be relied upon and in the instant case, the impugned is based upon unproved report.

5. 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."

6. It is further submitted that a perusal of the impugned order dated 11.03.2024 would show that without following the procedure as indicated by this Court in the judgment, referred above, the opposite party No.4 passed the order dated 11.03.2024. As such, the indulgence of this Court is required in the matter.

7. Opposing the present petition, learned State Counsel, as well as counsel for the Gaon Sabha, submitted that in view of admission of the petitioner that he is in possession of land recorded as 'banjar', the procedure as indicated in the judgments relied upon would not apply.

8. In response, the counsel for the petitioners says that the procedure as prescribed in the judgment referred was/is mandatory and ought to have been followed, despite the fact that the petitioner is in occupation of land recorded as 'banjar', for the reason(s) that prior to initiation of proceedings under Section 67 of the Code of 2006, the proceedings under Section 122-B of U. P. Z. A & L. R. Act, 1950 (in short 'Act of 1950) were initiated in the year 1993 with regard to occupation of 0.072 Hectare land of Gata in issue, i.e., Gata No.183 and vide order dated 27.12.1996, the said proceedings were closed/dropped after considering the entries in the revenue records, i.e., Form No.41 and Form No.2-A, related to the land in issue, prepared during consolidation proceedings under the U.P. Consolidation of Holdings Act, 1953 and Khasra, Khewat of third settlement, and making observations, based upon the said documents, that the nature of the land is 'aabadi' and in the instant case, proceedings were initiated only with regard to the area of 0.042 Hectare and as such, the demarcation was required in the matter and proper report was also required and examination of lekhpal was also required.

9. He further submitted that being aggrieved by the order dated 27.12.1996, the State filed the Revision No.673 of 1997 and the same was dismissed vide order dated 04.01.1999.

10. He further submitted that no finding as required under the law has been recorded in the impugned order dated 11.03.2024 after considering the observations/ findings recorded in the earlier order dated 27.12.1996, according to which the land in issue was aabadi land, whereby the proceedings initiated under Section 122-B of the Act of 1950 were dropped, affirmed vide order dated 04.01.1999 passed in

Revision No.673 of 1997, and for this reason also the order impugned is liable to be interfered.

11. Considered the submissions advanced by the learned counsel for the parties and perused the record, including the impugned order dated 11.03.2024 passed by the opposite party No.4 and the order dated 27.12.1996 passed in the proceedings under Section 122-B of the Act of 1950, affirmed vide order dated 04.01.1999.

12. Upon due consideration, this Court finds that (i) the procedure indicated by this Court in the judgment(s), referred above, has not been followed, (ii) proper findings after considering the facts pertaining to order(s) dated 27.12.1996 and 04.01.1999 as also regarding Section 67-A of Code of 2006 have not been recorded, (iii) lekhpal has not been examined (iv) the period of eviction, i.e. one week, provided in the impugned order dated 11.03.2024, which is not appropriate in view of observations made by Division Bench of this Court in Writ - C No.16357 of 2020 (Abbas Ansari and Another vs. State of U.P. and 3 Others) decided on 15.10.2020.

13. In view of the aforesaid, this Court is of the opinion that the impugned order dated 11.03.2024 is liable to be set aside. It is accordingly set aside. The matter is remanded back to opposite party no.4- Tehsildar (Judicial)/ Assistant Collector, Tehsil- Sadar, District- Sultanpur to decide the case afresh, as per law, expeditiously, say, within a period of three months from the dated of production of certified copy of this order.

14. For concluding the proceedings, the opposite party no.4- Tehsildar (Judicial)/ Assistant Collector, Tehsil- Sadar, District- Sultanpur shall not provide any adjournment to the petitioners, and in case the petitioners fail to appear on the date fixed, then, 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.

15. With the aforesaid, the present petition is allowed.

16. No order as to costs.'

5. Learned counsel for the petitioners has further submitted that the procedure prescribed in the judgement passed in the case of **Rishipal Singh (supra)** has not been followed in the present case.

6. It is further submitted that the impugned order dated 09.10.2023 was passed by respondent no. 4 without calling for any spot inspection report from the lekhpal and no spot inspection report was submitted by the Lekhpal. In support of his submission, learned counsel for petitioner has relied upon the impugned order itself dated 09.10.2023, wherein only on the basis of statement which was made by the Lekhpal on the basis of the entry in the revenue records which shows that there was no spot inspection report of the Lekhpal which is in violation of the procedure laid down and settled by the judgment of this Court as mentioned above in the cases of Rishipal Singh (supra) and Nikhet Faheem (supra).

7. Learned counsel for the Gram Sabha has submitted that petitioners has an alternative remedy to file an appeal

under Section 67(5) of the Code, 2006, hence the writ petition is not maintainable.

8. On being specifically asked from the learned counsel for the respondents as to whether any special appeal or review has been preferred against the judgment and order dated 29.03.2024 passed in Writ C No. 3020 of 2024 (Nikheta Faheem and 2 Ors. vs. State of U.P. and 7 Ors.), they have very fairly stated that neither any review nor any special appeal has been preferred and this order still holds good. Shri Rajesh Kumar Gupta, learned counsel for the Caveator (Mohd. Shoaib Mansoori, complainant) has informed this court that the complainant has approached this Court by filing a Public Interest Litigation No. 707 of 2023 (Mohd. Shoaib Mansoori versus State of U.P. through Principal Secretary, Department of Revenue Lko and 5 others), the same has been disposed of on 08.08.2023 with a direction to the District Magistrate that he shall proceed with the matter in expeditious manner, in accordance with law and ensure that the proceedings are brought to a conclusion within a period of three months from the date of receipt of the certified copy of this order.

9. Learned counsel for the respondents including the counsel for the complainant (Caveator) are unable to dispute the submissions made by learned counsel for the petitioners as discussed hereinabove and also unable to distinguish the applicability of the judgment/order dated 29.03.2024 passed in Writ C No. 3020 of 2024 (Nikheta Faheem and 2 Ors. vs. State of U.P. and 7 Ors.).

10. In view of the facts, circumstances and discussion made hereinabove, the present writ petition is **allowed** in terms of judgment/order dated 29.03.2024 passed in the case of **Nikheta Faheem (supra)**.

11. The impugned orders dated 09.10.2023 passed by the respondent no. 4 Tehsildar, Sandila, District Hardoi and the order dated 30.01.2024 passed by opposite party no. 3 i.e. Collector, Hardoi are hereby **quashed**.

12. The matter is remanded to respondent no. 4 i.e. Tehsildar/Assistant Collector, Tehsil Sandila, District Hardoi to decide the case afresh, as per law, expeditiously say within a period of three months from the date of production/receipt of certified copy of this order.

13. For concluding the proceedings, the opposite party no. 4 shall not provide any adjournment to the petitioners, and in case the petitioners fail to appear on the date fixed, then, 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 :- 27.4.2024/DivYA