

Court No. - 8

Case :- WRIT - B No. - 742 of 2024

Petitioner :- Chiraunji Lal

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

Counsel for Petitioner :- Madan Gopal
Misra,Dwijendra Prasad Gupta

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

Hon'ble Jaspreet Singh,J.

1. Heard Shri Madan. Gopal. Misra, learned counsel for the petitioner, Shri Hemant Pandey, learned standing Counsel for the State-respondents and the learned counsel Shri Dilip Kumar Pandey for Gram Panchayat.

2. Under challenge is the order dated 16.05.2023 passed by the respondent no.4 imposing penalty of Rs.40,000/- for 0.0009 hectares land of Gata No.502, situate at village Hulaskheda, Pargana and Tahsil Mohanlalganj, District Lucknow, holding that the petitioner has illegally encroached upon the vacant land. i.e. Gata no. 502 measuring 0.0009 hectares of total 0.076 hectares. The said order was assailed in appeal under Section 67(5) of the U.P. Revenue Code, 2006 and the appeal has been dismissed by the respondent no.3 by means of order dated 29.01.2024.

3. It is submitted that on the complaint of Gram Samaj, respondent no.4 served a notice to the petitioner alleging encroachment of land bearing Gata No.502, situated at the aforesaid village. The petitioner submitted reply to the aforesaid notice, denying the allegations of encroachment on any part of land in question and submitted written reply before the respondent no.4. The respondent no.4 did not consider the reply submitted by the petitioner and passed order dated 16.05.2023 imposing penalty of Rs.40,000/- for 0.009 hectare of Gata No.502 while the same court has imposed

penalty of Rs.23,883/- has been imposed for 0.084 hectares land situated in the same village decided by means of non-speaking order dated 18.01.2024, which is discriminatory, illegal and arbitrary.

4. It is further submitted that being aggrieved against the aforesaid order dated 16.05.2023 passed by the respondent no.4, the petitioner preferred an appeal under Section 67(5) of the U.P. Revenue Code, 2006 before the Appellate Authority but the Appellate Authority did not consider the grounds of appeal and the written arguments and dismissed the appeal by means of non-speaking order dated 29.01.2024 confirming the judgment and order dated 16.05.2023 passed by the respondent no.4. Thereafter the petitioner preferred a revision before the Board of Revenue and the same has also been dismissed, hence this petition.

5. It is thus urged that even the appellate order suffers from the vice of being arbitrary and it it deserves to be set aside. In support of his submission, learned counsel for the petitioner has relied upon the decision of this Court in ***Rishipal Singh Vs. State of U.P. & others 2022 SCC Online All. 829.***

6. Learned Standing Counsel though made his submissions refuting the contentions of the counsel for the petitioner and attempted to justify the impugned orders.

7. Considering the aforesaid, this Court is of the clear view that both the impugned orders suffer from the vice of being arbitrary and definitely there is no compliance of the guidelines laid down by this Court in the case of Rishipal Singh (supra) wherein this Court has issued the guidelines to be adopted as procedure to be applied to proceedings under Sections 67, 67A and 26 of the U.P. Revenue Code, the relevant part of the said order 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. "

8. In light of the aforesaid, this Court does not deem appropriate to keep the matter pending rather the Court is of the opinion that since no fruitful purpose shall be served in calling for a counter as the basic guidelines as noticed above have not been followed and in such circumstances merely calling for the counter will delay the proceedings. Since there is no proper compliance in the proceedings under Section 67 of the U.P. Revenue Code, 2006, hence it will be in the ends of justice that the impugned orders dated 16.05.2023 and 29.01.2024 are quashed and set aside. The proceedings under under Section 67 of the U.P. Revenue Code, 2006 shall stands restored to its original number before the respondent no.4, who shall after complying with the necessary guidelines as indicated by this Court in Rishipal Singh (supra) shall get a fresh inspection done in presence of the parties after due notice and following the guidelines, the proceedings shall be decided afresh after affording full opportunity of hearing the parties but without granting any unnecessary adjournments.

9. The parties shall appear before the Tehsildar on 2nd of August, 2024 and he shall after affording full opportunity of hearing to the parties, as noticed above, shall decide the matter afresh within a period of three months. It is also stated that the petitioner shall co-operate and shall not

seek adjournments except in exceptional circumstances both in the court of the Tehsildar as well as before the Sub Divisional Magistrate concerned so that the proceedings can be decided expeditiously.

10. Subject to the aforesaid, it is made clear that this Court has not examined the contentions of the petitioner regarding his demarcation proceedings on merits.

11. With the aforesaid, the writ petition is **allowed**. Costs are made easy.

Order Date :- 23.7.2024

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