

Court No. - 7

Case :- WRIT - C No. - 6095 of 2023

Petitioner :- Ghanshyam

Respondent :- State Of U.P. Thru. Secy. Revenue, Lucknow
And 5 Others

Counsel for Petitioner :- Manuvendra Singh, Shubh Prakash
Srivastava

Counsel for Respondent :- C.S.C., Mohan Singh, Prabhakar
Nath Mishra

Hon'ble Alok Mathur, J.

1. Heard Sri Vijay Bahadur Singh, Advocate holding brief of Sri Manuvendra Singh, learned counsel for petitioner as well as Sri Dev Prakash Mishra, learned Additional Chief Standing Counsel for respondent Nos. 1 to 4.

2. By means of present writ petition filed under Article 226 of the Constitution of India, the petitioner has assailed the order dated 12.06.2023 passed by District Collector in Appeal No. 1219/2022 (Sohan Lal Vs. Village Management Bhatgavan) U/S 67 of U.P. Revenue Code, 2006 wherein he has set aside the order dated 31.10.2022 passed by Tehsildar against respondent No. 6.

3. It has been submitted by learned counsel for petitioner that Gata No. 1176 area 0.0500 hectare situated Bhatgavan, Pargana - Amethi, Tahsil - Gauriganj, District Amethi was recorded as Banjar land in the revenue records and respondent No. 6 has constructed an illegal house over the said gaon sabha land and accordingly a complaint was made by the petitioner on which proceedings under Section 67 of U.P. Revenue Code, 2006 were initiated against respondent No. 6. It is stated that by means of impugned order dated 31.10.2022, the application under Section 67 of U.P. Revenue Code, 2006 was allowed and respondent No. 6 was found to have encroached upon the gaon sabha land and accordingly orders for his eviction and imposition of penalty for an amount of Rs. 10800/- was imposed by the Tehsildar, Gauriganj.

4. The order dated 31.10.2022 was challenged by respondent No. 6 under Section 67(4) of U.P. Revenue Code, 2006 before the District Magistrate, Amethi who has allowed the appeal and discharged the notice by means of order dated 12.06.2023

which has been impugned in the present writ petition.

5. Learned Standing Counsel at the very outset has raised a preliminary objection and has submitted that petitioner does not have any locus to assail the order dated 12.06.2023 inasmuch as he is neither aggrieved by the said order nor is anywhere connected with the said dispute and according to the petition is misconceived and deserves to be dismissed at the very outset. It has further been informed that even at the appellate stage the petitioner has sought his impleadment but the said application was rejected.

6. Before proceeding further in the matter, it is relevant to go through Section 67 of U.P. Revenue Code, 2006 which is reproduced here under:-

" Section 67- Power to prevent damage, misappropriation and wrongful occupation of Gram Panchayat property :-

(1) Where any property entrusted or deemed to be entrusted under the provisions of this Code to a Gram Panchayat or other local authority is damaged or misappropriated, or where any Gram Panchayat or other authority is entitled to take possession of any land under the provisions of this Code and such land is occupied otherwise than in accordance with the said provisions, the Bhumi Prabandhak Samiti or other authority or the Lekhpal concerned, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (1) has been damaged or misappropriated, or any person is in occupation of any land referred to in that sub-section in contravention of the provisions of this Code, he shall issue notice to the person concerned to show cause 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.

(3) If the person to whom a notice has been issued under sub-section (2) fails to show cause within the time specified in the notice or within such extended time as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person shall be evicted from the land, and may, for that purpose, use or cause to be used such force as may be necessary, and may direct that the amount of compensation for damage or

misappropriation of the property or for wrongful occupation, as the case may be, be recovered from such person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (2), he shall discharge the notice.

(5) Any person aggrieved by an order of the Assistant Collector under sub-section (3) or sub-section (4), may within thirty days from the date of such order, prefer an appeal to the Collector.

(6) Notwithstanding anything contained in any other provision of this Code, and subject to the provisions of this section every order of the Assistant Collector under this section shall, subject to the provisions of sub-section (5) be final.

(7) The procedure to be followed in any action taken under this section shall be such as may be prescribed. "

7. From the perusal of the aforesaid provisions, it is noticed that proceedings are initiated as per Section 67(2) of U.P. Revenue Code, 2006 where it is provided that from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (1) has been damaged or misappropriated, or any person is in occupation of gaon sabha land, he shall issue notice to said person and proceed thereon. It has further been noticed that the information can be derived by the Assistant Collector from any source which can be either a report submitted by any of the revenue authorities or even on an application submitted by any member of villagers who is aware of the said illegal encroachment. The moment information is received that there is illegal encroachment or damages to the gaonsabha land the Assistant Collector immediately on receipt of the said information and after recording his satisfaction has to proceed to issue notice to the alleged encroacher and determine the factum of encroachment and pass orders of eviction in case it is proved that the said noticee has in fact encroached upon the gaon sabha land.

8. Needless to say the authorities are competent to protect the government land and will take all steps necessary compliance of the same.

9. In this regard, Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs Collector reported in (2012) 4 SCC 407** with regard to locus of a complainant has held as under:-

"58. Shri Chintaman Raghunath Gharat, Ex-President was the complainant, thus, at the most, he could lead the evidence as a witness. He could not claim the status of an adversial litigant. The complainant cannot be the party to the lies. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eyes of law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*

59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lies. A fanciful or sentimental grievance may not be sufficient to confer a locus stand to sue upon the individual. There must be *injuria* or a legal grievance which can be appreciated and not a *stat pro ratione voluntas* reasons

60. Under the garb of being necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lies, as the person wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party."

10. The Division Bench of this Court in the case of **Dharam Raj Vs. State of U.P and Ors reported in (2010) 2 AWC 1878 (All)** with respect to the locus of complainant has held as under:-

"9. As evident from narration of the facts given above, it is evident that the petitioner was one of the complainants in the complaint against the respondent No. 4 on 12.3.2008. The action has since been taken on the complaint so made by the petitioner and others against the respondent No. 4, and fine of Rs. 5,000 has been imposed.

10. In the circumstances, the petitioner cannot have any grievance in the matter, and he is not an aggrieved person rather he is a person annoyed,

1. In the case of *R. v. London Country Keepers of the Peace of*

Justice, (1890) 25 QBD 357, the Court has held: A person who cannot succeed in getting a conviction against another may be annoyed by the said findings. He may also feel that what he thought to be a breach of law was wrongly held to be not a breach of law by the Magistrate. He thus may be said to be a person annoyed but not a person aggrieved, entitle to prefer an appeal against such order.

12. According to our opinion a "person aggrieved" means a person who is wrongly deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. "Person aggrieved" means a person who is injured or he is adversely affected in a legal sense.

13. It is settled law that a person who suffers from legal injury only can challenge the act/action/order etc. by filing a writ petition. Writ petition under Article 226 of the Constitution is maintainable for enforcing a statutory or legal right or when there is a complaint by the petitioner that there is a breach of the statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfied the Court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction [Utkal University etc. v. Dr. Nrusingha Charan Sarangi and Ors. AIR 1999 SC 943 and Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr. (2003) 5 SCC 413].

14. Legal right is an averment of entitlement arising out of law. It is, in fact, an advantage or benefit conferred upon a person by a rule of law, [Shanti Kumar R. Canji v. Home Insurance Co. of New York AIR 1974 SC 1719 and State of Rajasthan v. Union of India and Ors. AIR 1977 SC 1361].

15. In Jasbhai Motibhai Desat v. Roshan Kumar Hazi Bashir Ahmad and Ors.: AIR 1976 SC 578, the Apex Court has held that only a person who is aggrieved by an order, can maintain a writ petition. The expression "aggrieved person" has been explained by the Apex Court observing that such a person must show that he has a more particular or peculiar interest of his own beyond that of the general public in seeing that the law is properly administered. In the said case, a cinema hall owner had challenged the sanction of setting up of a rival cinema hall in the town contending that it would adversely affect monopolistic commercial interest, causing pecuniary harm and

loss of business from competition. The Hon'ble Apex Court observed as under:

Such harm or loss is not wrongful in the eye of law because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity. Judicially, harm of this description is called *damnum sine injuria*. The term *injuria* being here used in its true sense reason why law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large. In the light of the above discussion, it is demonstratively clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully effect his title to something. He has not been subjected to legal wrong. He has suffered no grievance. He has no legal peg for a justiciable claim to hang on. Therefore, he is not a "person aggrieved" to challenge the ground of the no objection certificate."

In *Northern Plastics Ltd. v. Hindustan Photo Films Mfg Co. Ltd. and Ors.* MANU/SC/1151/1997 MANU/SC/1151/1997 : (1997) 4 SCC 452, the Hon'ble Supreme Court again considered the meaning of "person aggrieved" and "locus of a rival Government undertaking" and held that a rival businessman cannot maintain a writ petition on the ground that its business prospects would be adversely affected.

16. The view taken by us that the petitioner is not a person aggrieved, thus he has no locus standi to file the present writ petition thereby challenging the order dated 16.3.2009 passed by Sub-Divisional Magistrate, Jaisinghpur, district Sultanpur is also supported by the decision of this Court in the case of *Suresh Singh v. Commissioner Moradabad Division* 1993 (1) AWC 601, where it was held that in an inquiry under Section 95(g) of the U.P. Panchayat Raj Act, 1947, the complainant who was Up-Pradhan could be a witness in. an inquiry but had no locus standi to approach this Court against the order of the State authorities, for the reasons that none of his personal statutory right are affected.

17. As such the petitioner has no focus standi to file the present writ petition under Article 226 of the Constitution of India. Even otherwise having regard to the facts and circumstances of the case, we are not inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution of India."

11. From a perusal of the law laid down by the Apex Court in the case of **Ravi Yashwant Bhoir (supra)** as well as the Division Bench judgment in the case of **Dharam Raj (supra)** it clearly comes out that for a person to prefer the petition, he has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. Thus in order to prefer a writ, the person entitled would be one who has either been wrongly deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. It is settled proposition of law that the person who suffers from legal injury only can challenge the act or action or order by filing a writ petition inasmuch as the writ petition under Article 226 of Constitution of India is maintainable for enforcing a statutory or legal right or when there is a complaint by the petitioner that there is breach of statutory duty on the part of authorities. Thus, there must be a judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to and not for the purpose of settlement of a personal grievance.

12. The petitioner on the other hand has failed to indicate as to how he is concerned with the said land inasmuch as none of his rights are affected and from the perusal of the affidavit it is clear that no right or interest is vested upon the petitioner is adversely affected and therefore he is not a person "aggrieved" so as to entertain this petition under Article 226 of the Constitution of India.

13. From the aforesaid provisions, it further transpires that the role of the informant is limited only to submitting the information regarding to encroachment to the Assistant Collector and not to the extent of contesting the said matter before the Assistant Collector or at the appellate stage. Once the cognizance is taken by the Assistant Collector under Section 67 of U.P. Revenue Code, 2006 then the case is registered in the name of gaon sabha and proceed accordingly. Section 67 of U.P. Revenue Code, 2006 cannot be incorporated to justify or grant liberty to individuals to file complaints against all absurdly and actively participate and contest the said case against the alleged encroachers and even the statutory scheme does not provide for such a procedure. The role of the complainant comes to an end on submission of a complaint and does not extend beyond the same to participate in the proceedings are an adversary to the alleged illegal occupant. Accordingly, the manner in which the petitioner has sought to implead himself in the appellate stage and he has also filed the present writ petition clearly indicates that the same is not bonafide to advance the cause of filing but out of some personal malice or vengeance which cannot be permitted under the garb

of proceeding under Section 67 of U.P. Revenue Code, 2006 in case such a procedure is allowed it would cause unnecessary frivolous litigation to commence which would be difficult to curb.

14. Accordingly, the preliminary objection raised by learned Standing Counsel is upheld. The petitioner is neither aggrieved person nor is entitled to pursue the proceedings under Section 67 of U.P. Revenue Code, 2006 or at the appellate stage or before this High Court by filing a writ petition. Accordingly, the writ petition is not maintainable at the instance of petitioner which is accordingly **dismissed**.

(Alok Mathur, J.)

Order Date :- 30.5.2024

Ravi/