

Court No. - 19

Case :- WRIT - C No. - 8643 of 2024

Petitioner :- Mohd. Hasnain

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

Counsel for Petitioner :- Mohd. Mansoor, Mohammad Danish

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

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Mohd. Mansoor, the learned counsel for the petitioner, Sri Hemant Kumar Pandey, the learned Standing Counsel for the State of U.P., Sri Dilip Kumar Pandey, the learned counsel for opposite party no. 6-Gram Sabha Saraydamu.

2. By means of the instant writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged validity of a judgment and order dated 18.09.2024 passed by the Assistant Collector First Class/ Tehsildar Sadar, District Raebareli in Case No. RST/6410/2023, under Section 67 of the U.P. Revenue Code, 2006.

3. The learned counsel for the opposite parties raised a preliminary objection that the order has been passed under Section 67(3) of U.P. Revenue Code, 2006 and Section 67(5) of U.P. Revenue Code, 2006 provides that 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.

4. The learned Standing Counsel has relied upon a decision of the Hon'ble Supreme Court in the case of *M/s Radha Krishan Industries v. State of Himanchal Pradesh & Ors.*: AIR 2021 SC 2114, wherein the principles regarding availability of alternative remedy were summarized in the following words:-

"(i) The power under Article 226 of the Constitution to issue writs can

be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

5. The learned Standing Counsel has also relied upon a judgment rendered by Division Bench of this Court in the case of ***Career Convent Educational & Charitable Trust & Ors. v. State of UP & Ors.***: Misc. Bench No. 8889 of 2020 decided on 16.06.2020, wherein the Division Bench declined to entertain the writ petition in view of availability of statutory remedy under Section 67(5) of U.P. Revenue Code, 2006.

6. Replying to the aforesaid preliminary objection, the learned counsel for the petitioner has submitted that earlier the Tehsildar had passed an order dated 06.01.2024 under Section 67(3) of U.P. Revenue Code, 2006 which order was challenged by the petitioner in Writ C No. 263 of 2024, which was entertained and allowed by means of a judgment and order dated 12.01.2024 in spite of existence of statutory remedy of appeal. In these circumstances, it is not proper for this Court to decline to entertain the writ petition this time on the ground of

availability of statutory remedy.

7. The learned counsel for the petitioner has also placed reliance on a judgment of this Court in ***Smt. Beena Tiwari & Ors. v. State of U.P. & Ors.***: Writ C No. 7978 of 2024 decided on 19.09.2024, wherein a preliminary objection was raised on the ground of alternative remedy of filing a revision under Section 210 of U.P. Revenue Code, 2006. This Court had relied upon a decision of the Coordinate Bench of this Court in *Bharat Mint and Allied Chemicals v. Commissioner Commercial Tax & Ors*: Writ Tax No. 1029 of 2021 decided on 04.03.2022, wherein the Coordinate Bench stated the following exceptions to the statutory rule of alternative remedy:

"(i) Where there is complete lack of jurisdiction in the officer or authority to take the action or to pass the order impugned.

(ii) Where vires of an Act, Rules, Notification or any of its provisions has been challenged.

(iii) Where an order prejudicial to the writ petitioner has been passed in total violation of principles of natural justice.

(iv) Where enforcement of any fundamental right is sought by the petitioner.

(v) Where procedure required for decision has not been adopted.

(vi) Where Tax is levied without authority of law.

(vii) Where decision is an abuse of process of law.

(viii) Where palpable injustice shall be caused to the petitioner, if he is forced to adopt remedies under the statute for enforcement of any fundamental rights guaranteed under the Constitution of India.

(ix) Where a decision or policy decision has already been taken by the Government rendering the remedy of appeal to be an empty formality or futile attempt.

(x) Where there is no factual dispute but merely a pure question of law or interpretation is involved.

(xi) Where show cause notice has been issued with preconceived or premeditated or closed mind."

8. In ***Smt. Beena Devi (supra)***, the Tehsildar had struck out the names of recorded tenure holders without issuing any notice to them. Further, after ordering the names of the recorded tenure holders to be struck out and for

recording the same as *talab*, the Tehsildar had granted liberty to the aggrieved person to file objection against the same. This Court was of the view that calling for objections after passing an order striking out names of the recorded tenure holder, would not serve any purpose when the authority has already passed an order against them. The purpose of giving an opportunity of hearing is that the party, which may be affected by the order proposed, may have an opportunity to present his case, which has to be taken into consideration by the authority before passing an order. The opportunity to file objections after passing a final order will be an empty formality and it will not serve any purpose.

9. The aforesaid order was passed keeping in view the peculiar facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in ***M/s Radha Krishan Industries (supra)*** and Career Convent Educational & Charitable Trust(supra) were not considered in the aforesaid case.

10. Therefore, the judgment in the case of Beena Devi (supra) will not help the petition in the present case.

11. So far as the question of the petitioner's earlier Writ C No. 263 of 2024 having been entertained by this Court is concerned, a perusal of the order dated 12.01.2024 passed in that writ petition shows that the availability of statutory remedy under Section 67(5) of U.P. Revenue Code, 2006 was not taken into consideration in the aforesaid order dated 12.01.2024. Therefore, the fact of the earlier writ petition having been entertained in spite of availability of statutory remedy, without advertng to the fact of availability of statutory remedy, will not disentitle the opposite parties from raising an objection against maintainability of the writ petition and the said judgment cannot be treated as a precedent which will bind this Court while deciding the question of availability of statutory remedy.

12. The learned counsel for the petitioner next submitted that Dushara vacations are onswing and in these circumstances, the petitioner should not be relegated to the alternative remedy.

13. In response to this submission, the learned counsel for the Gaon Sabha stated that only High Court is closed and the revenue courts remain functional.

14. The learned counsel for the petitioner next submitted that the directions issued by this Court in the earlier order dated 12.01.2024 have not been complied with by the Tehsildar and the orders suffer from procedural illegality. He further submitted that the Tehsildar has acted maliciously against the petitioner and facts in this regard have been pleaded in the petition.

15. As the petitioner has got a statutory remedy available, it is open to the petitioner to raise all the pleas before the appellate authority while filing appeal under Section 67(5) of the U.P. Revenue Code, 2006.

16. The petition is ***dismissed*** leaving it open to the petitioner to avail statutory remedy in accordance with law.

Order Date :- 3.10.2024

Pradeep/-