HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 36701 of 2026

Gama

.....Petitioner(s)

Versus

State of U.P. and 5 others

.....Respondent(s)

Counsel for Petitioner(s) : Antima Rajbhar, Hari Prakash Tiwari
Counsel for Respondent(s) : Bhupendra Kumar Tripathi, C.S.C.

Court No. - 4

HON'BLE KSHITIJ SHAILENDRA, J.

1. Supplementary affidavit filed is taken on record.

2. The petitioner is aggrieved of the orders dated 12.02.2024 and 26.06.2025, respectively, passed under Section 67 and 67(5) of the U.P. Revenue Code, 2006 ('the Code'). Third order under challenge is dated 30.06.2026, whereby the revisional court has dismissed the revision against the appellate order, being not maintainable, and rightly so.

2. Learned counsel for the petitioner submits that order was passed without ensuring service of notice upon petitioner when he filed recall application, the same was illegally rejected on 08.07.2024, whereafter, statutory appeal was filed which has been dismissed simply relying upon Lekhpal's report, which was prior in the point of time, i.e., to say that it came in existence before institution of proceedings.

3. Further submission is that neither statement of Lekhpal was recorded nor spot inspection was carried in presence of the petitioner and, therefore, the entire exercise is hit by the decision of this Court in **Rishipal Singh v. State of U.P. and others : 2023 (1) AWC 4** and, therefore, the orders impugned are unsustainable.

4. Learned Standing Counsel as well as counsel for the Gaon Sabha have vehemently opposed the submissions and it is contended that when the petitioner chose not to participate in the proceedings, the officer was well within his rights to examine the record position and once the Lekhpal had reported that the petitioner had encroached upon part of the Gata

No.1350, obstructing the chakmarg, order of dispossession has been rightly passed.

5. I have considered the submissions and have perused the material available on record.

6. The order sheet of proceedings under Section 67 reveals that the case was registered on 16.08.2023, whereafter, five dates were fixed and on every date, the lawyers had abstained from work. The matter was then taken up on 08.02.2024, on which date, the arguments of the Government Counsel were heard and order was reserved to be pronounced on 12.02.2024, on which date, it was passed. The recall application filed by the petitioner was dismissed on 08.07.2024 observing that notice issued to the petitioner was served and is annexed on record and that the petitioner cannot be given benefit of encroachment made over *chakmarg*.

7. The appellate authority has dismissed the appeal reiterating the decision of the first authority.

8. Apparently, the Lekhpal's report relied upon by the authority is prior in point of time, i.e., before institution of proceedings. The order sheet of proceedings under Section 67 does not reflect that notice was served upon the petitioner and, even if, one line observation as come in the order rejecting recall application that notice was served, the same may or may not be correct, however, one thing is apparent on record that neither any spot inspection was carried in presence of the petitioner nor, otherwise, the lekhpal's *ex-parte* statement was recorded and the manner, in which, the proceedings have been hurriedly decided and the petitioner has not been given opportunity to make his say though he immediately filed recall application, which was rejected and then appeal was dismissed, it is case where the petitioner has been deprived of making his submissions.

9. Since the proceedings of the above nature have a serious impact on the possession of a person, may be said to be unauthorized, authorities should have granted proper opportunity to the petitioner, particularly when in the recall application, specific indication was made that neither any vakalatnama was filed by the petitioner nor he was aware of the proceedings and that he had gone to Mumbai in connection with his

employment.

10. In view of the above discussion, this Court deems it appropriate to restore the proceedings under Section 67 for re-decision, in accordance with law.

11. The writ petition is **allowed**.

12. The orders dated 12.02.2024 and 26.06.2025, respectively, passed by Assistant Collector/Tehsildar, Rajatalab, Varanasi and Collector/District Magistrate, Varanasi are **set aside**.

13. Proceedings under Section 67 are **restored** to their original number.

14. Officer need not issue fresh notice to the petitioner, who himself has filed this writ petition.

15. The petitioner undertakes to file response to the notice and other material on record before the authority concerned within a period of **one month from today** and no further time shall be granted to the petitioner for the said purpose.

16. The officer shall proceed to decide the matter strictly, in consonance with the guidelines prescribed by this Court in **Rishipal Singh (Supra)**.

17. The matter shall be decided within a period of **four months** from the date of receipt of response by the petitioner.

(Kshitij Shailendra,J.)

October 24, 2026
Jyotsana

Digitally signed by :-
JYOTSANA SINGH
High Court of Judicature at Allahabad