HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 41655 of 2026

Shivnath

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Narendra Singh, Sandeep Kumar Chaturvedi
Counsel for Respondent(s)	:	C.S.C., Sudhir Bharti, Ved Prakash Shukla

Court No. - 37

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard learned counsel for the petitioner, Mr. Dinesh Kumar Tiwari, learned Standing Counsel for the State, Mr. Ved Prakash Shukla, learned counsel for the complainant and Mr. Sudhir Bharti, learned counsel for the Gaon Sabha.

2. Brief facts of the case are that the order for eviction and damages has been passed in the proceeding under Section 67 of U.P. Revenue Code, 2006 against the petitioner by Tahsildar vide order dated 15.12.2022. Against the order of Tahsildar dated 15.12.2022, appeal under Section 67 (5) of U.P. Revenue Code, 2006 filed on behalf of petitioner has been dismissed by Additional District Magistrate vide order dated 21.11.2024. Against the order dated 21.11.2024 recall application has been filed on behalf of petitioner which was allowed vide order dated 18.2.2026 and appeal was restored to its original number. Appellate Court/ Additional District Magistrate again heard the appeal and dismissed the same vide order dated 11.6.2026. Hence, this writ petition on behalf of petitioner for the following reliefs:

"issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 11-06-2026 passed by respondent no. 2 in Appeal no. RST/11/2023, bearing its Computerized Case no.D202305440000011 (Shivnath Vs. Gaon Sabha), under section 67(5) of U.P. Revenue Code-2006 and order dated 15-12-2022 passed by respondent no. 3 in Case no. 347/2022, bearing its Computerized Case no. T202205440500347 (Gaon Sabha Vs. Shivnath, under section 167 of U.P. Revenue

Code-2006 (which are annexure no. 10 and 5 respectively to the writ petition)."

3. Learned counsel for the petitioner submitted that the order for eviction and damages has been passed against the petitioner in illegal and arbitrary manner without considering the fact that revision filed on behalf of petitioner before the Consolidation Court is pending for consideration. He further submitted that in the similar circumstance, the appeal filed by other persons have been allowed and matter has been remitted back before Tahsildar vide appellate order dated 11.7.2025, as such, petitioner's case should also be examined afresh. He further submitted that reason assigned in the appellate order dated 11.7.2025 will be applicable in the petitioner's case also. He further submitted that there is no partition of plot no.1376, as such, the order for eviction and damages cannot be sustained in the eye of law. He further submitted that the impugned order should be set aside and proceeding against the petitioner should be dropped.

4. On the other hand, learned Standing Counsel for the State, learned counsel for the Gaon Sabha and learned counsel for the complainant submitted that no interference is required in this matter in view of the entry of the plot in question. They further submitted that no right will accrue in favour of petitioner in view of the entry of the plot in question. They further submitted that proper demarcation was made by the authorities and it has been found that the petitioner is in possession of plot no.1376, as such, no interference is required in this matter. They further submitted that mere filing of revision before the Consolidation Court will not stop the authority, under Section 67 of U.P. Revenue Code, 2006 to decide the matter on the basis of entry of the plot in question. He further submitted that the remand order passed in appeal at the instance of other parties will not entitle the petitioner that his claim should also be considered afresh rather he should establish his case before the Court. They further submitted that the writ petition filed by petitioner should be dismissed.

5. I have considered the argument advanced by learned counsel for the parties and perused the records.

6. There is no dispute about the fact that the order for eviction and

damages has been passed against the petitioner in the proceeding under Section 67 of U.P. Revenue Code, 2006 which has been maintained in appeal.

7. In order to appreciate the controversy involved in the matter, perusal of the remand order passed in Case No.12 of 2023, under Section 67 (5) of U.P. Revenue Code, 2006 will be relevant, which is as under:-

"न्यायालय : अपर जिलाधिकारी, (न्यायिक)

मण्डल : गोरखपुर, जनपद: कुशीनगर, तहसील: खड्डा

वाद संख्या: -12/2023 कंप्यूटरीकृत वाद संख्या:-*D202305440000012*

ओमप्रकाश बनाम गावसभा

अंतर्गत धारा:- 67(5), अधिनियम : उत्तर प्रदेश राजस्व संहिता - 2006

उपरोक्त के परिप्रेक्ष्य में उभय पक्षों के विद्वान अधिवक्तागण के तार्किक बहस को सुना तथा पत्रावली में संलस्त साक्ष्यों, और न्यायालय की पत्रावली तथा उसमें संलग्न समस्त साक्ष्यों व प्रश्नगत आदेश दिनांक 15.12.2022 का विधिवत अवलोकन एवं परीक्षण किया गया। विवेचनोपरान्त विदित है कि प्रश्नगत आदेश दिनांक 15.12.2022 पारित होने के के पूर्व अवर न्यायालय के समक्ष अपीलकर्ता द्वारा आपत्ति व साक्ष्य दाखिल किया गया है, इसके अतिरिक्त अवर न्यायालय के समक्ष अपीलकर्ता जो अवर न्यायालय में आपत्तिकर्ता है के द्वारा विस्तृत लिखित बहस भी दाखिल किया गया है परन्तु अवर न्यायालय द्वारा आपत्तिकर्ता के आपत्ति व लिखित बहस में उल्लिखित विन्दुओं का संज्ञान न लेकर हल्का लेखपाल के रिपोर्ट को आधार बनाकर प्रश्नगत आदेश पारित किया गया है। जबकि अवर न्यायालय को आपत्तिकर्ता द्वारा उल्लिखित विन्दुओं व साक्ष्यों की विवेचना करके विधिं सम्मत आदेश पारित किया जाना चाहिये था। यह भी उल्लेखनीय है कि भूखण्ड संख्या 1377क व 1377ख का भूचित्र अलग अलग विभाजित नही है। इसके अतिरिक्त प्रश्नंगत भूखण्ड संख्या 1377क के बावत चकबंदी न्यायालय में वाद विचाराधीन है। इस प्रकार अवर न्यायालय के समक्ष अपीलकर्ता द्वारा प्रस्तुत आपत्ति व साक्ष्य एवं लिखित बहस में उल्लिखित तथ्यों की विवेचना किये बिना ही अवर न्यायालय द्वारा प्रश्नगत आदेश पारित किया गया है जो विधि सम्मत नही होने के कारण निरस्त होने योग्य है। ऐसी स्थिति में प्रस्तुत अपील में पर्याप्त बल होने के कारण अपील स्वीकार किया जाना न्यायहित में आवश्यक प्रतीत होता है।

<u>आदेश</u>

उपरोक्त विवेचना के आधार पर अपीलकर्ता द्वारा प्रस्तुत अपील दिनांक 02.01.2023 स्वीकार करते हुए अवर न्यायालय का आदेश दिनांक 15.12.2022 निरस्त किया जाता है। यदि कोई स्थगन आदेश हो तो उसे समाप्त किया जाता है। आदेश की प्रति के साथ अवर न्यायालय की पत्रावली इस निर्देश के साथ प्रतिप्रेषित किया जाता है कि निर्णय के अन्तिम पैरा में उल्लिखित निर्देशों के आलोक में पक्षों को सुनवाई का अवसर प्रदान करते हुये गुण-दोष के आधार पर विधि सम्मत आदेश पारित करें। पक्ष अवर न्यायालय में दिनांक 24.07.2025 को उपस्थित हो। इस न्यायालय की पत्रावली वाद आवश्यक कार्यवाही दाखिल दफतर हो।

दिनॉक :

(प्रेम कुमार राय) अपर जिलाधिकारी (न्यायिक) कुशीनगर।"

8. Perusal of the appellate order passed in Case No.12 of 2023 as quoted above demonstrates that the appeal filed by certain person in respect to the same plot in dispute has been allowed and matter has been remitted back before the Tahsildar to decide the proceeding afresh considering the pendency of the consolidation case in respect to the plot in question.

9. Considering the aforementioned facts and circumstances of the case, the instant matter also requires fresh consideration by Tahsildar along with the cases which have already been remanded back by the appellate Court vide order dated 11.7.2025.

10. Considering the entire facts and circumstances of the case, impugned order dated 11.6.2026 passed by respondent no.2 and order dated 15.12.2022 passed by respondent no.3 are liable to be set aside and the same are hereby set aside.

11. The writ petition stands allowed. The matter is remitted back before respondent no.3 to register the proceeding against the petitioner on its original number and decide the same afresh after affording proper opportunity of hearing to the parties along with other cases, which has been remanded back in appeal by appellate Court, expeditiously preferably within a period of three months from the date of production of certified copy of this order.

(Chandra Kumar Rai,J.)

October 23, 2026
Rameez

Digitally signed by :-
RAMEEZ AHMED
High Court of Judicature at Allahabad