2026:AHC-LKO:65958

HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW

WRIT - C No. - 9093 of 2026

Gorakhnath Dubey

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Revenue, Lko. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Anand Dubey, Prashant Dubey
Counsel for Respondent(s)	:	C.S.C.

AFR

RESERVED ON 25.08.2026
DELIVERED ON 18.09.2026

<u>In Chamber</u>

HON'BLE KARUNESH SINGH PAWAR, J.

1. Heard Shri Anand Dubey, learned counsel for the petitioner and learned Standing counsel for the respondents. By means of the present writ petition, the petitioner has prayed for the following reliefs:

> *"(i) Issue a writ, order or direction in the nature of certiorari quashing the orders dated 13.03.2023 passed by opposite party No. 3 in Case No. 02123 of 2018 (Computerized Case No. T201804230302123) and 05.08.2026 passed by opposite party No. 2 in Case No. 1346 of 2026 (Computerized Case No. D202604230001346), as contained in Annexure Nos. 1 and 2 to the present writ petition.*
>
> *(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to drop the proceedings initiated against the petitioner under Section 67 of the U.P. Revenue Code, 2006."*

2. Learned counsel for the petitioner submits that the petitioner has constructed his residential house over Gata Nos. 949, 953 and 955 and has not made any encroachment over Gata No. 954-Ka. It is contended that the area of the petitioner's land shown in the revenue map is less than the area actually recorded in the Khatauni and, therefore, the allegation of encroachment over the adjoining public land is wholly misconceived.

3. It is further submitted that no effective opportunity of hearing was afforded to the petitioner before passing the impugned order contained in Annexure No. 1. Learned counsel submits that the petitioner could not appear before opposite party No. 3 on account of his chronic ailment, but this aspect was neither considered nor dealt with by opposite party Nos. 2 and 3 while passing the impugned orders. It is also contended that the impugned orders are non-speaking orders and have been passed without proper consideration of the material available on record or the actual position at the spot. According to learned counsel, the petitioner has merely raised a boundary wall over his own land and has not encroached upon any public land.

4. Learned counsel for the petitioner has placed reliance upon the judgment of this Court in ***Rishi Pal Singh v. State of U.P., 2022 SCC OnLine All 829***, as also the guidelines laid down therein. It is submitted that, in terms of the procedure prescribed therein, the enquiry contemplated under sub-rule (2) of Rule 67 of the U.P. Revenue Code Rules, 2016, is a condition precedent to the issuance of notice under the said provision. According to learned counsel, the said mandatory procedure was not followed in the present case.

5. It is, therefore, submitted that the notice itself was issued without following the procedure prescribed under Rule 67(2), as elucidated in *Rishi Pal Singh (supra)*, and that both the authorities below failed to consider this material aspect while passing the impugned orders.

6. Per contra, learned Standing Counsel submits that the petitioner's house and boundary wall are situated over land recorded as *Naveen Parti*, which is public land, and that the petitioner has illegally raised construction thereon. It is further submitted that the encroachment is also apparent from the revenue map.

7. It is contended that the petitioner had filed his objection in the year 2018 and had sought time to produce evidence in support of his claim. Despite having been afforded an opportunity, however, he failed to produce any evidence. The impugned order was thereafter passed on the basis of the report submitted by the Revenue Inspector/Lekhpal, which records that the petitioner had encroached upon the public land.

8. In support of his submissions, learned Standing Counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Kaniz Ahmed v. Sabuddin, 2025 SCC OnLine SC 995***, and the judgment of the Coordinate Bench of this Court in ***Shahban v. State of U.P., 2026 SCC OnLine All 1246.***

9. Perused the record.

10. A perusal of the record indicates that the proceedings under Section 67 of the U.P. Revenue Code, 2006 were initiated on the basis of the report submitted by the Lekhpal on 24.04.2018. As per the said report, Gata No. 954-Kha, admeasuring 0.006 hectare, is recorded as Naveen Parti land belonging to the Gaon Sabha. The report further records that the petitioner had made an unauthorized encroachment over the said land and had raised a pucca residential house and boundary wall thereon.

11. The record further indicates that the petitioner submitted his objection on 09.07.2018 and sought time to produce evidence in support of his claim. However, despite the opportunity sought by him, the petitioner did not produce any evidence in support of his objection from 09.07.2018 till 17.03.2023, when the proceedings were ultimately decided.

12. It also transpires from the record that the proceedings were concluded pursuant to the directions issued by this Court in PIL No. 36251 of 2018 vide order dated 14.12.2018, whereby the competent authority was directed to conclude the proceedings within a period of one month.

13. In view of the aforesaid facts and circumstances, particularly the report of the Lekhpal, the objection submitted by the petitioner and the fact that, despite having sought and been afforded opportunity, the petitioner did not produce any evidence in support of his claim, the competent authority proceeded to decide the proceedings under Section 67 of the U.P. Revenue Code, 2006 vide order dated 17.03.2023, contained in Annexure No. 1 to the writ petition. The order dated 17.03.2023 is extracted hereinbelow:

> "प्रस्तुत वाद क्षेत्रीय लेखपाल की रिपोर्ट-24.04.2018 के आधार पर योजित होकर आर०सी प्रपत्र 19 जारी किया गया जो वाद तामीला संलग्न पत्रावली है। लेखपाल की आख्या दिनांक-24.04.2018 एवं संलग्न नजरी नक्शा आदि के अवलोकन किया गया, जिससे स्पष्ट है कि गोरखनाथ पुत्र राम चन्दर निवासी ग्राम ककोली, परगना

पश्चिमराठ, तहसील बीकापुर जिला अयोध्या द्वारा भूमि सं0 954मि रकबा 0.006हे० जो भू-अभिलेखों में नवीन परती के खाते में दर्ज है, पर प्रतिवादी द्वारा वाउण्ड्री वाल व आवासीय पक्का मकान बनाकर अवैध कब्जा कर लिया गया है। प्रतिवादी द्वारा प्रार्थनापत्र प्रस्तुत कर आपत्ति एवं साक्ष्य हेतु अवसर चाहा गया। उक्त भूमि के सम्बन्ध में क्षेत्रीय लेखपाल की रिपोर्ट प्राप्त की गयी जिसमें लेखपाल द्वारा मुख्य रूप से कहा गया कि ग्राम ककोली, परगना पश्चिमराठ, तहसील बीकापुर जिला अयोध्या की गाटा सं0 954क मि0/0.006 हे0 नवीन परती खाते की भूमि है। जिसपर गोरखनाथ पुत्र रामचन्दर निवासी ग्राम ककोली द्वारा अवैध ढंग से आवासीय पक्का मकान की वाउन्ड्री वाल बनाकर अवैध कब्जा किया गया है जो वर्तमान मान समय मे भी मौजूद है। प्रतिवादी द्वारा दिनांक-09.07.2018 को आपत्ति प्रस्तुत कर साक्ष्य हेतु अवसर चाहा गया परन्तु आजतक कोई साक्ष्य सबूत प्रस्तुत नही किया गया। जबकि उक्त प्रकरण के सम्बन्ध में माननीय उच्च न्यायालय इलाहाबाद खण्डपीठ लखनऊ में पी०आई०एल संख्या 36251/2018 में दिनांक-14.12.2018 को आदेश पारित किया गया है कि प्रकरण का निस्तारण । माह में किया जाना है। आपत्तिकर्ता/प्रतिवादी द्वारा जानबूझकर वाद को लम्बित किये जाने के उद्देश्य से अपना साक्ष्य सबूत नही प्रस्तुत किया जा रहा है।

अतः प्रतिवादी/आपत्तिकर्ता के आपत्ति/साक्ष्य का अवसर समाप्त किया जाता है। मैने पत्रावली का अवलोकन एवं आख्या लेखपाल से स्पष्ट है कि प्रतिवादी द्वारा अवैध कब्जे की पुष्टि होती है। भूमि सं0 954क मि रकबा 0.006 हे0 ग्राम समाज नवीन परती की भूमि है, जिसपर प्रतिवादी ने अवैध रूप से कब्जा कर रखा है। ऐसी स्थिति में ग्राम समाज की भूमि से प्रतिवादी को बेदखल किया जाना उचित प्रतीत होता है।

आदेश

अतः आदेश हुआ कि ग्राम ककोली, परगना पश्चिमराठ, तहसील बीकापुर जिला अयोध्या की गाटा सं0 954क मि रकबा 0.006हे0, से गोरखनाथ पुत्र रामचन्दर निवासी ग्राम ककोली, परगना पश्चिमराठ, तहसील बीकापुर जिला अयोध्या को बेदखल करते हुए मु0-5000रू क्षति पूर्ति व 5/-रू0 निष्पादन व्यय आयात किया जाता है। नियमानुसार बेदखली नोटिस जारी हो। बाद वसूली व बेदखली पत्रावली दाखिल दफ्तर हो।"

14. Against the aforesaid order, the petitioner appears to have preferred an appeal before the appellate authority on 27.03.2023. The said appeal was initially dismissed in the absence of the appellant vide order dated 27.05.2024.

15. Aggrieved by the aforesaid order, the petitioner/appellant moved an application for restoration on 23.07.2024. Upon consideration of the said application, the appeal was restored to its original number and was thereafter heard afresh. The appellate authority, upon such reconsideration, passed the impugned order dated 05.08.2024.

16. While deciding the appeal, the appellate authority took note of the report of the Lekhpal, according to which Gata No. 954-Kha is recorded as *Naveen*

Parti land and the appellant had made an illegal encroachment over an area measuring 0.006 hectare. It is further evident from the record that the proceedings before the trial court were instituted in the year 2018 and remained pending for a considerable period before the order dated 17.03.2023 came to be passed. Despite the matter remaining pending for nearly five years, the petitioner did not adduce any evidence in support of his objection before the trial court.

17. Taking into consideration the aforesaid facts, including the report of the Lekhpal and the failure of the petitioner to produce any evidence in support of his claim despite having been afforded opportunity, the appellate authority affirmed the order dated 17.03.2023 passed by the trial court and dismissed the appeal vide order dated 05.08.2024. The relevant portion of the appellate order is extracted hereinbelow:

> "पत्रावली प्रस्तुत। पक्ष उपस्थित, शासकीय अधिवक्ता को सुना गया तथा अवर न्यायालय की पत्रावली का अवलोकन किया गया। अपीलार्थी की तरफ से लिखित बहस प्रस्तुत की गयी, जिसमें मुख्य रूप से अपील दावा में किये गये कथनों की पुनरावृत्ति करते हुए कहा गया है कि अपीलार्थी का मकान व बाउण्ड्रीवाल अपीलार्थी के स्वयं के गाटा सं0-955 व 949 में निर्मित है, नवीन परती गाटा सं०-954क की सीमा अपीलार्थी के बाउण्ड्रीवाल के बाद शुरू होती है। अवर न्यायालय में अपीलार्थी को समुचित अवसर प्रदान किये बगैर एकपक्षीय रूप से पारित किया गया है।
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> अवर न्यायालय की पत्रावली पर उपलब्ध साक्ष्यों/अभिलेखों के अवलोकन से स्पष्ट है कि विवादित भूमि सं0-954क नवीन फरती के खाते की भूमि है, जिसमें से 0.006 हे० पर अपीलार्थी का अवैध कब्जा है। अवर न्यायालय में प्रश्नगत वाद वर्ष 2018 में योजित हुआ है जिसमें अपीलार्थी के विरूद्ध सन्दर्भित आदेश वर्ष 2023 में पारित हुआ है। अवर न्यायालय में अपीलार्थी उपस्थित है, किन्तु इतनी लम्बी अवधि तक वाद के विचाराधीन रहते हुए भी अवर न्यायालय में अपीलार्थी द्वारा अपना कोई साक्ष्य आदि नहीं प्रस्तुत किया गया। इस प्रकार अवर न्यायालय में अपीलार्थी को पर्याप्त अवसर प्रदान किया गया है। अपीलार्थी को उक्त भूमि पर किसी भी प्रकार का पट्टा आदि भी नहीं दिया गया है और न इस सम्बन्ध में अपीलार्थी द्वारा कोई वैध साक्ष्य ही प्रस्तुत किया गया है। ऐसी स्थिति में अवर न्यायालय द्वारा पारित आदेश में कोई विधिक त्रुटि नहीं प्रतीत होती है, तत्क्रम में अपीलार्थी द्वारा प्रस्तुत अपील निराधार एवं बलहीन प्रतीत होती है, जो निरस्त होने योग्य है।
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> आदेश
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> अतः उपरोक्त विवेचन के आधार पर अपीलार्थी द्वारा प्रस्तुत अपील निराधार एवं बलहीन होने के कारण निरस्त की जाती है। अर्चर न्यायालय की पत्रावली आदेश की प्रमाणित प्रति के साथ वापस प्रेषित की जाए। बाद आवश्यक कार्यवाही यह पत्रावली संचित अभिलेखागार हो।"

18. The Hon'ble Supreme Court, in *Kaniz Ahmed v. Sabuddin & Others (supra)*, has reiterated that Courts are required to adopt a strict approach while dealing with cases of illegal or unauthorized construction and that judicial discretion cannot be exercised so as to facilitate or regularize such illegality. The relevant observations contained in paragraph 7 of the judgment are extracted below:-

> *"7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society. [See : Ashok Malhotra v. Municipal Corporation of Delhi, W.P. (c) No. 10233 of 2024 (Delhi High Court)]"*

19. A perusal of paragraph 74 of the judgment in *Rishi Pal Singh (supra)* shows that the Coordinate Bench laid down certain guidelines to be followed while dealing with proceedings under Sections 67, 67-A and 26 of the U.P. Revenue Code, 2006.

20. The aforesaid guidelines came to be considered by the Coordinate Bench in *Shahban (supra)*. The Court, upon examining the directions contained in paragraph 74 of *Rishi Pal Singh (supra)*, observed that, except for a particular requirement introduced therein, the remaining directions were essentially clarificatory or amplificatory in nature and were already contemplated by the provisions of the U.P. Revenue Code, 2006 read with the Rules framed thereunder. However, the Coordinate Bench noticed a significant departure from the procedure prescribed under the existing statutory framework in clause (vi) of paragraph 74 of *Rishi Pal Singh (supra)*, whereby examination of the persons submitting the report, including their cross-examination, was made mandatory.

21. The Court, in *Shahban (supra)*, observed in paragraph 29 that if the guidelines issued in *Rishi Pal Singh (supra)* were to be adopted and implemented in their entirety, the summary procedure contemplated under Section 67 of the U.P. Revenue Code, 2006 would, in effect, stand converted into a regular procedure. It was, accordingly, held that proceedings under Section 67 of the U.P. Revenue Code, 2006 would have to be considered in accordance with the procedure existing under the statutory framework, unless and until the guidelines framed in *Rishi Pal Singh (supra)* were adopted by the State by amending the U.P. Revenue Code Rules. Consequently, in paragraph 30, the Coordinate Bench held that the guidelines issued in *Rishi Pal Singh (supra)* were not mandatory unless and until the same were adopted by the State of Uttar Pradesh.

22. In the present case, the petitioner does not contend that any procedure expressly prescribed under the U.P. Revenue Code, 2006 or the Rules framed thereunder was not followed. The principal grievance of the petitioner is that he was not afforded an adequate opportunity of hearing and that the procedure indicated in *Rishi Pal Singh (supra)* was not followed.

23. The said contention, however, does not find support from the record. The petitioner submitted his objection under Section 67 of the U.P. Revenue Code, 2006 on 09.07.2018 and, at that stage, sought time to produce evidence in support of his objection. The proceedings thereafter remained pending till March, 2023. Thus, the petitioner had sufficient opportunity, over a considerable period of time, to place the relevant material and evidence on record in support of his claim. Despite the opportunity available to him, no such evidence was produced before the competent authority.

24. The further contention that the petitioner could not participate in the proceedings or produce evidence on account of his chronic ailment also cannot be accepted. The medical documents placed on record by the petitioner himself indicate that he was admitted on 30.11.2023 and that the subsequent prescriptions relate to December, 2023, January, 2024 and thereafter. Significantly, all these documents are subsequent to the order dated 17.03.2023 passed by the competent authority under Section 67 of the U.P. Revenue Code, 2006. The medical documents, therefore, do not establish that the petitioner was incapacitated during the period when he was

required to participate in the proceedings or produce evidence in support of his objection. The plea of illness, in the facts of the present case, therefore, cannot furnish a ground to hold that the petitioner was denied an effective opportunity of hearing.

25. It is also significant that the findings recorded by the authorities below are concurrent in nature. The scope of interference with concurrent findings of fact in exercise of jurisdiction under Article 226 of the Constitution is narrow. The High Court does not ordinarily interfere with such findings unless they are shown to be perverse, based on no evidence, or suffer from an error of law. The Apex Court has reiterated this principle in **Municipal Corporation, *Aurangabad v. State of Maharashtra, (2015) 16 SCC 689 : (2016) 3 SCC (Civ) 741, and Surinder Singh v. S. Teja Singh Manshia, (2007) 15 SCC 785***.

26. In the present case, the petitioner submitted his objection on 09.07.2018 and the proceedings remained pending before opposite party No. 3 until March, 2023. During this period, the petitioner had adequate opportunity to substantiate his objection by producing relevant evidence, but failed to do so. Having regard to the said factual position, the petitioner cannot, at this stage, after conclusion of the proceedings and lapse of several years, successfully contend that he was denied an opportunity of hearing.

27. It is further relevant that opposite party No. 3 was required to conclude the proceedings in compliance with the order dated 14.12.2018 passed by this Court in PIL No. 36251 of 2018, whereby a time-bound direction had been issued for conclusion of the proceedings. The proceedings had already remained pending for a considerable period, and the record does not disclose any material to demonstrate that the petitioner was prevented from producing his evidence during the period available to him.

28. The matter also concerns alleged encroachment over public land. In this regard, the observations of the Hon'ble Supreme Court in *Kaniz Ahmad (supra)* assume significance. Where encroachment upon public land is found to have been established in accordance with law, the authorities are not expected to adopt an unduly lenient approach towards such encroachment.

29. Thus, having regard to the law laid down in *Shahban (supra)*, the

observations of the Hon'ble Supreme Court in *Kaniz Ahmad (supra)*, the material available on record and the concurrent findings recorded by the authorities below, this Court finds no illegality, infirmity or perversity in the impugned orders warranting interference in exercise of its jurisdiction under Article 226 of the Constitution of India.

30. The writ petition is, accordingly, devoid of merit and is ***dismissed***.

(Karunesh Singh Pawar,J.)

September 18, 2026
R.C.