

Court No. - 6

Case :- WRIT - C No. - 9984 of 2023

Petitioner :- Mahadev Singh Dal Bahadur Singh

Respondent :- State Of U.P. Thru. Prin. Secy. (Revenue), Lko.
And Others

Counsel for Petitioner :- Pankaj Gupta

Counsel for Respondent :- C.S.C.,Mohan Singh

Hon'ble Rajnish Kumar,J.

1. Heard Shri Tushar Gupta, Advocate holding brief of Shri Pankaj Gupta, learned counsel for the petitioner, learned Standing Counsel and Shri Ravindra Singh, Advocate holding brief of Shri Mohan Singh, learned counsel for the Gaon Sabha.

2. This petition has been filed challenging the orders dated 21.05.2022 passed in Case No.86 of 2022 under Section 67 of the U.P. Revenue Code- 2006 (here-in-after referred as Code-2006) by the Tehsildar/ Assistant Collector (First Class), Gauriganj, District- Amethi/ respondent no.3 and the order dated 11.09.2023 passed by the Collector, District- Amethi/ respondent no.2 in Appeal No.525 of 2022 under Section 67(5) of Code-2006.

3. Learned counsel for the petitioner submits that the impugned order dated 21.05.2022 has been passed in a haste manner without affording opportunity to the petitioner and following the procedure as prescribed by this Court in Writ-C No.6658 of 2022 (Rishipal Singh VS. State of U.P. & 3 others) reported in 2022 SCC OnLine All 829 on the ground that the case was registered under Section 67 of the U.P. Revenue Code on 12.01.2022 and the notice was issued to the petitioner on 13.05.2022 and the impugned order was passed on 21.05.2022. He further submits that the land in dispute i.e. Gata No.166 Min/0.025 hec., though recorded as Talab (pond), is not in the shape of Talab (pond) and residential. The name of the petitioner is recorded on Gata No.165, which is adjacent to the said Gata and in case the opportunity would have been afforded,

the petitioner could have claimed exchange from his land i.e. Gata No.165, therefore the impugned order is not tenable in the eyes of law. The grounds taken by the petitioner in the appeal have also not been considered and the appeal has been dismissed. Thus, the submission is that the impugned orders are not sustainable in the eyes of law and liable to be quashed.

4. Per contra, learned Standing Counsel submits that the impugned order has rightly been passed after affording opportunity to the petitioner. The petitioner had submitted his reply to the show cause notice, in which he had admitted that the land in dispute is recorded as Talab (pond), though he claimed that his house is built on the said land which is in the shape of Abadi (residential). A contradictory objection has been taken in paragraph-5 of the objection that he has not made any encroachment on the land of pond and is residing in his ancestral house and the report has been submitted without spot inspection. The opportunity of cross-examination with the Lekhpal was also afforded to the petitioner, which was made by the petitioner on 08.05.2022, in which the Lekhpal has specifically stated that he had made the inspection, in which he had found that the petitioner has constructed the house on Gata No.166/ area 0.025 hec. situated in Village- Jagdishpur. Therefore, the contention of learned counsel for the petitioner that the impugned order dated 21.05.2022 has been passed without affording opportunity to the petitioner is misconceived and not tenable. The appeal has also been dismissed, after considering the grounds raised by the petitioner. Even otherwise, there is admission by the petitioner that he is having house on the recorded pond, which is adjacent to his ancestral land. Thus the impugned orders have rightly been passed in accordance with law after affording opportunity to the petitioner and there is no illegality or error in the impugned order. The petition is misconceived and liable to be dismissed with cost.

5. I have considered the submissions of learned counsel for the parties and perused the records placed on record with this petition.

6. On the basis of a report of Lekhpal, a case under Section 67 of the Code- 2006 for eviction from Gata No.166/0.025 hec. of

Village- Jagdishpur, Pargana- Amethi, Tehsil- Gauriganj, District- Amethi and damages was registered. Admittedly a show cause notice was issued to the petitioner and served on him. In response thereof, the petitioner had submitted objections. In the objections, the petitioner has admitted in paragraph-2 that the land in dispute is recorded as Talab (pond) but stated that the said land is in the shape of Abadi since last fifty years and his house is built on the said land and he is residing in the same. He has also stated that others have also made a house on the land in dispute. In paragraph-3 of objection, the petitioner has stated that he is residing on the land in dispute after constructing house since the time of his ancestors and he has no other place except the said house. In paragraph-5 of the objection, the petitioner has stated that he has not made any encroachment on the land of pond, rather he is residing in his ancestral house and he has no other house. He has further stated that the Halka Lekhpal has submitted the report without making any inspection.

7. After the objections were submitted by the petitioner, the evidence of the concerned Lekhpal was recorded on 18.05.2022, in which the opportunity of cross-examination was also afforded to the petitioner. The concerned Lekhpal has deposed that he had made the inspection, in which it was found that the petitioner has constructed his house on Gata No.166/0.025 hec., which is reserved for Talab. The petitioner could not extract any thing in the cross-examination, which may create even any doubt on the evidence of Lekhpal.

8. In view of above and the admission of the petitioner in the objections in regard to the land in dispute i.e. Gata No.166, it is recorded as Talab and the petitioner has built a house on the said land after making illegal encroachment on it, which as submitted by learned counsel for the petitioner is adjacent to his ancestral land and the ancestral land of the petitioner is Gata No.165 and Gata No.190 in the name of petitioner. Therefore it is apparent that the petitioner has made encroachment on the land of Talab (pond) and the plea that he has no other place is also false and not sustainable.

9. So far as the plea of exchange taken by the petitioner before this Court is concerned, it was not taken before the authority

concerned, therefore it is nothing but an after thought, after passing of the order by the authority concerned and dismissal of appeal and strengthens his admission of encroachment on pond. Therefore, this Court is of the view that the impugned orders have rightly been passed in accordance with law.

10. The power to prevent damage, misappropriation and wrongful occupation of Gram Panchayat property has been given in Section 67 of the U.P. Revenue Code- 2006, which is extracted here-in-below:-

"(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 provisions of this Code, and subject to the provisions of this section every order of the Sub-Divisional Officer 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.

Explanation. - For the purposes of this section, the word "land" shall include the trees and building standing thereon."

In view of above, in case of wrongful occupation of the Gram Panchayat property the action can be taken after issuing a show cause notice and considering the reply, if any, submitted by the person concerned.

11. This Court, in the case of **Rishipal Singh Vs. State of U.P. and 3 Others (Supra)**, has issued the guidelines to be adopted as procedure to be applied to proceedings under Section 67, 67A and 26 of the U.P. Revenue Code, which is extracted here-in-below:-

"74. Thus, in my view, following guidelines be adopted as procedure to be applied to proceedings under Sections 67,67A and 26 of the U.P. Revenue Code. It is all aimed at ensuring transparency in the procedure, judiciousness in approach by the authorities and to thwart every complaint made with ulterior and oblique motive to dislodge a long settled possession and causing of unnecessary harassment to an innocent villager:

(i) In case of complaint made on RC Form 19, the official making it shall ensure that proper survey is done in the light of observations made in this judgment; the land, occupation of which has stood identified to be unauthorized is in exact measurement and so also shown in the survey map prepared on scale, as per the Land Revenue Survey Regulations, 1978; the exact assessment of damages on the basis of circle rate with details of calculation made on that basis.

(ii) In a case of suo motu action, before issuing RC Form 20, the authority will ensure that proper report upon RC Form 19 is submitted as per para (i) above on parameters of subrule 1 Rule 67.

(iii) RC Form 20 must be accompanied by a copy of report and spot survey submitted alongwith RC Form 19 to the person against whom proceedings have been instituted, or even otherwise submitted in case of suo motu action vide para (ii) above.

(iv) Upon reply being filed to the notice, if authority finds that spot survey/explanation report is not satisfactory, it may order for a fresh spot report to be prepared in presence of the party aggrieved.

(v) In the event, objection includes a plea of statutory protection/ benefit under Section 67-A, the authority should invite the objection from the Gaon Sabha, and will decide the same alongwith the matter under Section 67, without requiring aggrieved party to move separate application under Section 67-A.

(vi) If the report is admitted on record, may be in case no objection is

filed, the authority must ensure presence of the person preparing the report before it, to prove the report by his statement, with a right to aggrieved party to cross question him.

(vii) The authority must endeavour to decide the case within time framed provided under the relevant Act and the Rules and should desist from granting adjournment to the parties in a routine manner.

(viii) In case of appeal under Section 67(5) of the U.P. Revenue Code, 2006, preferred/ filed within the time prescribed alongwith interim relief application, the interim relief application as far as possible should be decided within two weeks' time with prior notice to other side and where plea of settlement under Section 67-A has been taken before Assistant Collector-1st Class, and damages to the tune of 25 % at-least of the total damages are paid and an affidavit of undertaking is filed for not raising any further construction upon the land in question, the authorities including civil administration should avoid taking any coercive measure pursuant to the order appealed against until the disposal of interim relief application. The Appellate authority may also consider granting interim relief on the very first day of filing of appeal with stay application if above conditions are fulfilled by the appellant.

(ix) The appellate authority should as far as possible decide the appeal within a period of two months of its presentation. "

12. This Court, in the aforesaid guidelines, has provided in paragraph (iv) that upon reply being filed to the notice, if authority finds that spot survey/explanation report is not satisfactory, it may order for a fresh spot report to be prepared in presence of the party aggrieved. Paragraph (v) provides that in the event, objection includes a plea of statutory protection/benefit under Section 67-A, the authority should invite the objection from the Gaon Sabha, and will decide the same alongwith the matter under Section 67. Paragraph (vi) provides for presence of the person, who has prepared the report to prove it and for cross-examination by the aggrieved party.

13. In the present case, the petitioner has admitted that the land in dispute i.e. Gata No.166/0.025 hec. is recorded as Talab (pond), on which the house has been constructed, in which he is residing, therefore there is admission of illegal encroachment on pond by the petitioner. Therefore, the plea that the report has been submitted by the Lekhpal without any inspection in the objection, which has not been pressed subsequently and the inspection proved by the evidence of the Lekhpal, from whom the petitioner had also made the cross-examination but could not extract anything contrary to the same, it could not have been disputed and has not been disputed and has also not been found

unsatisfactory. Even otherwise, once a fact is admitted, it is not required to be proved. The cardinal principles of law of evidence is that a fact admitted need not be proved.

14. So far as the plea taken by the petitioner in the objection that the land in dispute is in the shape of Abadi is concerned, it is immaterial, once it has been admitted that the land in dispute is recorded as Talab (pond) because the nature of the land in dispute may have been changed and created by the encroachers which includes the petitioner and it does not give any right to the petitioner on the land of pond. The petitioner has not taken any plea of his statutory protection/ benefit in the objection filed against the show cause notice, therefore such plea is not tenable at this stage. Even otherwise, this plea is not available to the petitioner on the land of pond and he is also having his ancestral property.

15. So far as the plea of the petitioner for exchange of the land in dispute from the land of the petitioner is concerned, the plea is totally misconceived and not tenable because the exchange can be made by any Bhumidhar under Section 101 of the Code-2006 of his land with the land held by another Bhumidhar or entrusted or deemed to be entrusted to any gram panchayat or local authority under Section 59, whereas the petitioner wants to exchange from the recorded pond, which is not permissible, even if it has been created as abadi and it is liable to be get vacated and restored as pond.

16. The Hon'ble Supreme Court, in the case of **Hinch Lal Tiwari Vs. Kamala Devi and Others; (2001) 6 SCC 496** has held that the material resources of the community like forests, tanks, **ponds**, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution and no part of pond could have been allotted to anybody for construction of house building or any allied purposes. A further direction has been issue by the Hon'ble Supreme Court for restoration of the pond, it's development and maintenance as a recreational spot, which will undoubtedly be in the best interest of the villagers and it will also help in maintaining ecological balance and protecting

the environment in regard to which this Court has repeatedly expressed its concern and such measures must begin at the grass-root level if they were to become the nation's pride. Therefore, if others have also made encroachment on the land of pond as stated by learned counsel for the petitioner, the respondents shall get the same also vacated in accordance with law and restore the pond.

17. Even otherwise the encroachers, who have their own land, can not be said to be entitled for exchange of their land with the same and if it is permitted, then the persons having muscle power will make encroachment on prominent and valuable land of the Government and others and on being found as encroachers would seek exchange from their land, which may be of lesser value, therefore exchange can not be considered and allowed in such circumstances.

18. In view of above and considering the over all facts and circumstances of the case, this Court is of the view that the impugned orders have rightly been passed in accordance with law after affording opportunity to the petitioner by reasoned and speaking orders, which does not call for any interference by this Court and the pleas taken by the petitioner before this Court are not tenable at all in the eyes of law. This petition is misconceived, lacks merit and liable to be dismissed. No other points or grounds have been raised or argued before this court.

19. This petition is, accordingly, **dismissed**. No order as to costs.

(Rajnish Kumar, J.)

Order Date :- 9.11.2023

Haseen U.