

Court No. - 7

Case :- WRIT - C No. - 4521 of 2022

Petitioner :- Mahesh Kumar Agrawal

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue Deptt. Lko. And 3 Others

Counsel for Petitioner :- Ram Asarey Verma

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

Hon'ble Abdul Moin, J.

Heard.

Instant petition has been filed praying for quashing of the order dated 30.12.2021 passed by the Assistant Collector/Tehsildar, Sitapur, a copy of which is Annexure-4 to the petition, by which the petitioner has been held to be encroacher and a penalty of Rs.5,40,200/- has been imposed upon the petitioner and recovery proceedings have been directed to be initiated against the petitioner. Also under challenge is the order dated 10.06.2022, a copy of which is Annexure-7 to the petition, passed by the Collector, Sitapur, on an appeal filed under Section 67(5) of the Code, 2006, by which the penalty amount has been reduced.

Learned counsel for the petitioner contends that the proceedings under Section 67 of the U.P. Revenue Code, 2006 (hereinafter referred to as the 'Code, 2006') read with Rule 67 of the U.P. Revenue Code Rules, 2016 (hereinafter referred to as the 'Rules, 2016') were initiated against the petitioner. The petitioner did not receive any notice with the result that the authority concerned passed an ex-parte order and the petitioner was held to have encroached upon the land bearing Gata No.474 on an area 0.073 hectares out of 0.102 hectares.

From perusal of the order dated 30.12.2021, it emerges that the said encroachment is said to have been carried out by the petitioner for a period of 20 years by building a boundary wall and a house over the land in dispute. However, two years earlier, the order records, that the encroachment was

removed by demolishing the wall and that presently i.e. at the time of passing of the order dated 30.12.2021 the land is lying vacant. However, on account of possession of the petitioner for a period of 20 years the aforesaid amount of compensation has been imposed. Upon an appeal being filed, the Collector has modified the order and reduced the penalty to some extent.

Learned counsel for the petitioner contends that there cannot be any occasion for the petitioner to have encroached upon the land in disputed inasmuch as the land Gata No.475 i.e. the land adjacent to disputed land has been purchased by the petitioner through a registered sale deed on 27.05.2016, a copy of which is Annexure-1 to the petition and as such by no stretch of imagination it can be said that the petitioner could have ever encroached upon the land in dispute prior to even purchasing certain property adjacent to it. However, the impugned order is challenged on the ground that at no stretch of time was any notice received by the petitioner although it is a mandatory provision taking into consideration Rule 67(2) of the Rules, 2016. A specific averment has been made in paragraph 5 of the writ petition.

Learned counsel for the petitioner also argues that even for the sake of arguments the alleged encroachment made by the petitioner is accepted yet considering that adjacent land has only been purchased by him in the year 2016 as such there would not have been any occasion for the petitioner to have encroached certain land adjacent to his own land once the petitioner only got a title of the adjacent land in the year 2016. Thus, it is contended that the penalty which has been imposed upon the petitioner for a period of 20 years could not validly have been imposed inasmuch as the encroachment can only be said to be from 2016, if at all, till two years earlier to passing of the impugned order i.e. 2019 and thus if at all penalty could be imposed it could be for a period of three years.

Considering the aforesaid argument, the Court is of the view that instructions should be called from the Assistant Collector/Tehsildar, who had

passed the initial order dated 30.12.2021 as to how the notice of proceedings under Section 67 of the Code, 2006 was served upon the petitioner.

However, certain glaring aspects of the matter also emerge which are essential to be indicated in this order.

The first aspect of the matter is that the proceedings under Section 67 of the Code, 2006 have been initiated in the year 2019. A perusal of the order dated 30.12.2021 would indicate that the petitioner has encroached upon the land 20 years earlier i.e. he was an encroacher for a period of 20 years. Further, the order indicates that the petitioner has encroached upon the Gaon Sabha land by building a boundary wall and a building. The impugned order dated 30.12.2021 itself records that two years earlier (prior to passing of the order) the boundary wall has been removed. However, the order is completely silent as to the building which is said to have been constructed over the aforesaid land more particularly when the fact of a building having been made specifically finds place in the order dated 30.12.2021. Obviously the alleged encroachment for about 20 years prima facie could not have continued without active connivance of the officials who were responsible for removal of the said encroachment. Waking up after 20 years and thereafter proceeding to demolish the alleged encroachment though laudable yet would require the authorities to explain as to which of the officials were in active connivance and did not ensure that Gaon Sabha property is not encroached.

Considering the aforesaid, let the Principal Secretary (Revenue) himself enquire into the matter on the aforesaid points including ascertaining the liability/guilt of the officials who were responsible for preventing encroachment over Gaon Sabha land yet encroachment was made and as to the action which is proposed to be taken against such officials after identifying them.

Let the preliminary enquiry be completed within four weeks from today and a personal affidavit of the Collector, Sitapur, be filed in this regard within next two weeks thereafter.

Meanwhile, learned Standing Counsel shall seek instructions as to how the service of notice of the proceedings under Section 67 of the Code, 2006 was made on the petitioner.

List this case in the next week as fresh.

Order Date :- 19.7.2022

A. Katiyar