

Court No. - 16

Case :- WRIT - C No. - 11757 of 2023

Petitioner :- Satya Prakash Tripathi

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Revenue Lko. And 4 Others

Counsel for Petitioner :- Chandan Srivastava, Yogesh Somvanshi

Counsel for Respondent :- C.S.C., Pankaj Gupta

Hon'ble Subhash Vidyarthi, J.

1. The matter has been placed before this specially constituted Bench during ongoing winter vacation under an order passed by the Hon'ble Chief Justice.

2. Heard Sri Chandan Srivastava, the learned counsel for the applicant, Sri Shailendra Kumar Singh, the learned Chief Standing assisted by Sri Anirudh Singh, learned Standing Counsel Counsel for opposite party nos. 1 to 4, and Sri Pankaj Gupta, the learned counsel for opposite party no. 5-Gram Sabha.

3. By means of the instant writ petition, the petitioner has assailed validity of the order dated 20.12.2022 passed by the Assistant Collector (First Class)/ Tehsildar Payagpur, Bahraich in Case No. 2953 of 2022, under Section 67 of the U.P. Revenue Code, 2006 for eviction of the petitioner from land bearing Gata No. 831M measuring 0.0308 hectares and recovery of Rs. 56,000/- towards damages and Rs. 4.50 towards execution expenses, order dated 02.06.2023 passed by the Assistant Collector in Case No. 2953/T 202208150502953 rejecting the petitioner's application for setting aside the order dated 20.12.2022 and the order dated 02.06.2023 and the order dated 19.12.2023 passed by the Collector, Bahraich in Case No. 1001 of 2023, under Section 67(5) of U.P. Revenue Code, 2006 dismissing the petitioner's appeal filed against the aforesaid orders dated 20.12.2022 and 02.06.2023.

4. The learned counsel for the applicant has submitted that a notice was issued to the petitioner, a copy whereof has been annexed as Annexure No. 4 to the affidavit, which does not contain the name and designation of the authority who has issued the notice and which contains blank spaces regarding the

date of appearance and other particulars. He has submitted that Rule 67 of U.P. Revenue Code Rules, 2016 provides that the notice will be issued by an Assistant Collector whereas the signatures on the aforesaid notice were made by the Lekhpal concerned and not by the Assistant Collector. He has submitted that no other notice was served upon the petitioner.

5. Opposing the petition, the learned Chief Standing Counsel has submitted that the notice annexed as Annexure No. 4 to the writ petition is merely a notice issued by the Lekhpal for conducting inquiry, as provided in Rule 66 of the U.P. Revenue Code Rules, 2016 and a separate notice under Rule 67 was issued to the petitioner on RC Form-20. However, the instructions provided to the learned Chief Standing Counsel do not contain a copy of any other notice issued to the petitioner, except the notice which has been annexed with the writ petition.

6. The format of notice annexed as Annexure No. 4 to the writ petition, does not contain any space for the addressee of the notice whereas the format of notice required to be sent under Rule 67(2) and 67(5) of the U.P. Revenue Code Rules is RC Form-20 and it categorically mentions the particulars of addressee which are required to be filed in the format.

7. Prima facie, it appears that the notice annexed as Annexure No. 4 to the writ petition is not a notice issued under Rule 67(2) and 67(5) on RC Form-20.

8. The learned counsel for the opposite parties agree that instead of keeping the writ petition pending, it may be disposed off at this stage by providing an opportunity to the opposite parties to take action after issuing a fresh notice in accordance with law.

9. As the order dated 20.12.2022 passed by the Assistant Collector was an ex parte order and the petitioner's application for setting aside an ex parte order has been rejected and his appeal has also been rejected, the petitioner is being evicted from the property which is in his occupation without an adequate opportunity to defend having been provided to the petitioner.

10. In view of the aforesaid facts, the impugned order dated 20.12.2022 passed by the Assistant Collector (First Class)/ Tehsildar Payagpur, Bahraich in Case No. 2953 of 2022, under Section 67 of the U.P. Revenue Code, 2006 for eviction of the petitioner from land bearing Gata No. 831M measuring 0.0308 hectares and recovery of Rs. 56,000/- towards damages and Rs. 4.50 towards execution expenses, order dated 02.06.2023 passed by the Assistant Collector in Case No. 2953/T

202208150502953 rejecting the petitioner's application for setting aside the order dated 20.12.2022 and the order dated 02.06.2023 and the order dated 19.12.2023 passed by the Collector, Bahraich in Case No. 1001 of 2023, under Section 67(5) of U.P. Revenue Code, 2006 dismissing the petitioner's appeal filed against the aforesaid orders dated 20.12.2022 and 02.06.2023 are set aside.

11. The opposite parties are given liberty to issue a fresh notice to the petitioner in accordance with law within a period of two weeks from today. The petitioner may submit his written reply to the notice within a further period of two weeks. In case any proceedings are instituted against the petitioner in furtherance of the notice, the same shall be decided expeditiously in accordance with law without granting any unnecessary adjournment to any of the parties, within the period provided under Rule 67(6) of the U.P. Revenue Code Rules., 2016.

12. With the aforesaid observations, the writ petition stands finally ***disposed of***.

Order Date :- 27.12.2023

Pradeep/-