

Alim Khan @ Alim vs Additional Collector, Hardoi And ... on 30 April, 2025

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:24723

Court No. - 7

Case :- WRIT - C No. - 4123 of 2025

Petitioner :- Alim Khan @ Alim

Respondent :- Additional Collector, Hardoi And Others

Counsel for Petitioner :- Farhan Alam Osmany

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

Hon'ble Saurabh Lavania, J.

Heard Sri Farhan Alam Osmany, learned counsel for the petitioner, learned counsel for the State as also Sri Dileep Kumar Pandey, learned counsel for the Gaon Sabha.

Under challenge is the order dated 08.06.2022 passed by the opposite party No.2-Assistant Collector/Tehsildar, Tehsil-Bilgram, District-Hardoi, in the proceedings carried out against the petitioner under Section 67 of the U.P. Revenue Code, 2006 (in short "Code of 2006") which was registered as Case No.03447 of 2019, Computerized Case No.T201910330303447.

The petitioner has also challenged the order dated 21.10.2024 passed by the opposite party No.1-Additional Collector, District-Hardoi in the Appeal No. 3061/2022, Computerized Case No.D202210330003061 filed under Section 67(5) of the Code of 2006.

By the order dated 28.06.2022, the opposite party No.2 directed the revenue official to evict the petitioner from Gata No.490/0.1340 Hect. (recorded as Naveen Parti) alleging that the petitioner is encroacher of 0.1340 Hect. land of Gata No.490 and imposing fine of Rs. 10,800/-.

A challenge has been made to the impugned order(s) on the ground that the procedure, which ought to have been followed by the opposite party No.4 at the time of passing of final order in the proceedings instituted under Section 67(1) of the Code of 2006, was not followed. In continuation, it is stated that the procedure, which should be followed, has been indicated by this Court in the judgment dated 02.12.2022 passed in the bunch of petitions, leading of which, is Writ C No.6658 of 2022 (Rishipal Singh vs. State of U.P. & 3 Others) reported in 2022 SCC OnLine All 829. A reference has been made to para 74 of the report of Rishipal Singh (Supra), which reads as under:-

"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."

He stated that this Court in the judgment passed in Writ- C No.9500 of 2022 (Sharda Industries Thru. Partner Mayank vs. The Additional District Collector, District Unnao And 2 Others); also observed that the report of Lekhpal should be proved and unproved report can not be relied upon.

It is also stated that a perusal of the impugned order(s) would show that without following the procedure as indicated by this Court in the judgment, referred above, the opposite party No.2 passed the order dated 28.06.2022, which was affirmed by the impugned order dated 21.10.2024. As such, the interference of this Court is required in the matter.

Learned counsel for the side opposite could not dispute the principle settled by this Court while dealing with the proceedings instituted under Section 67 of the Code of 2006.

Considered the submissions advanced by the learned counsel for the parties and the orders particularly the order dated 28.06.2022 passed by the opposite party No.2 and the order dated 21.10.2024 passed by the opposite party No.1.

It is apparent from the impugned order dated 28.06.2022 that the procedure as indicated by this Court in the judgment, referred above, was not followed while deciding the case instituted under

Section 67 of the Code of 2006 by opposite party No.2 affirmed by the opposite party No.1 vide order dated 21.10.2024, who also failed to take note of the fact that while passing the order dated 28.06.2022 the opposite party No.2 has not followed the procedure prescribed. Thus, to the view of this Court, the interference is required in the matter.

Accordingly, the petition is allowed. The order(s) dated 28.06.2022 and 21.10.2024 are set aside and the matter is remanded back to opposite party No.2-Assistant Collector/Tehsildar, Tehsil-Bilgram, District-Hardoi to conclude the proceedings afresh strictly in terms of law laid down by this Court in the judgment, referred above, within a period of three months as statutory provisions says that the proceedings under Section 67 of the Code of 2006 ought to have been concluded within a period of 90 days.

For concluding the proceedings, the opposite party No.2 shall not provide any adjournment to the petitioner and in case, the petitioner fails to appear on the date fixed, then in that event, the authority concerned is at liberty to proceed ex-parte, however, in the light of the law laid down by this Court and conclude the proceedings within a period of three months.

Order Date :- 30.4.2025 Arun/-