

# **Intezar Ahmad And Another vs State Of U.P. Thru. Addl. Chief Secy. ... on 3 March, 2025**

**Author: Saurabh Lavania**

**Bench: Saurabh Lavania**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12560

Court No. - 12

Case :- APPLICATION U/S 482 No. - 1538 of 2025

Applicant :- Intezar Ahmad And Another

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko. And Another

Counsel for Applicant :- Ram Raj Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel appearing for the applicants and learned Additional Government Advocate on behalf of State-respondent.
2. Present application has been filed for the following main reliefs:

"Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to set aside/quash the entire proceeding of Criminal Case No.14877 of 2023 (State Versus Intezar Ahmad & Another) arising out of F.I.R. No.0223 of 2022, under Section 2/3 of Prevention of Damages to Public Property Act, 1984, Police Station

Mohanganj, District Amethi, pending before the First Additional Civil Judge (Junior Division)/Judicial Magistrate, Raebareli, as well as the Charge Sheet No.221 of 2022 dated 23.8.2022 and summoning order dated 7.8.2023 passed by II Additional Civil Judge (Junior Division)/Judicial Magistrate, Raebareli.

It is further respectfully prayed that during the pendency of present petition, the further proceedings of Criminal Case No.14877 of 2023 (State Versus Intezar Ahmad & Another) as well as summoning order dated 07.08.2023 passed by II Additional Civil Judge (Junior Division)/Judicial Magistrate, Raebareli, may kindly be stayed."

3. Contention of learned counsel appearing for the applicants with regard to main relief sought, quote above, is to the effect that the case of the prosecution set forth is that the applicants are the encroachers of the Gata No. 931 recorded as 'Naveen Parti' situated at Village - Materiya Majre Janapur, P.S.- Mohanganj, District- Amethi and by doing agriculture work and poultry farm the portion occupied by the applicants and taking note of the same, the FIR was lodged by lekhpal namely Mahendra Dev Shukla. Thereafter, the Investigating Officer carried out the investigation and after completion of investigation submitted the charge-sheet under Sections 2 / 3 of Prevention of Damage to Public Property Act 1984 (in short "Act, 1984") and thereafter, the Trial Court on printed proforma took the cognizance on 07.08.2023.

4. He further submitted that in the above factual background of the case the present application seeking main relief, quoted above, has been filed particularly on the ground(s) that (i) Offense under Sections 2/3 of Act, 1984 is not made out against the applicant; (ii) the Magistrate has passed the cognizance order on an printed proforma as such the Magistrate has not applied his judicial mind; (iii) U.P. Revenue Code, 2006 (in short "Code, 2006"), is self-contained code and encroacher can be dealt with in the manner prescribed therein particularly Section 67 read with relevant rules. Under Section 67 of Code, 2006, after following the due process of law, the encroacher can be evicted and the penalty can also be imposed on the encroacher by the Revenue Authority namely Tehsildar and order of the Tehsildar passed in exercise of power under Section 67 of Code, 2006, is appealable.

5. He further submitted that tenure holder can file declaratory suit under Section 144 of Code, 2006 and the Gram Panchayat can file a suit for declaration under Section 145 of Code, 2006.

6. He further submitted that in view of scheme of Code, 2006, the FIR lodged by the lekhpal is nothing but an abuse of process of law as such, the indulgence of this Court is required in the matter.

7. He further submitted that this Court in the judgment passed in the case of Prabhakant And Another Vs. State of U.P. and others reported in 2023 SCC OnLine All 397, after considering the provisions of the Act, 1984 and the Code, 2006, interfered in the proceedings under Sections 2/3 of Act, 1984.

8. He further submitted that a perusal of Paras 14 to 22 of the judgment of this Court in the case of Prabhakant (supra) would show that the present application is squarely covered by the judgement

passed in the case of Prabhakant (supra). Relevant paras, referred, on reproduction, are as follows:

"(14). Now coming to yet another aspect of the issue, learned counsel for the applicants in order to buttress their contention have drawn attention of the Court to the provisions of Section 67 of the U.P. Revenue Code which speaks about the power to prevent damages, misappropriation and wrongful occupation of Gram Panchayat property:-

(i) 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.

(ii) Where from the information received under sub-section (i) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (i) 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.

(iii) If the person to whom a notice has been issued under sub-section (ii) 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.

(iv) 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 (ii), he shall discharge the notice.

(v) Any person aggrieved by an order of the Assistant Collector under Sub-section (iii) or Sub-Section (iv), may within thirty days from the date of such order, prefer an appeal to the Collector.

(vi) 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.

(vii) 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."

(15). Further, under Rule 67(1) of U.P. Revenue Code, 2016, it is incumbent upon the Assistant Collector to make an inquiry as he deems proper and obtain further information regarding the following issues :

(a) full description of damage or misappropriation caused or the wrongful occupation made with details of village, plot number, area, boundary, property damaged or misappropriated and market value thereof;

(b) full address along with parentage of the person responsible for such damage, misappropriation or wrongful occupation;

(c) period of wrongful occupation, damage or misappropriation and class of soil of the plots involved;

(d) value of the property damaged or misappropriated calculated at the circle rate fixed by the Collector and the amount sought to be recovered as damages."

(16). Thus, from the above it is clear that as per the U.P. Revenue Code, it is the Assistant Collector of the area who is the authority concerned to act a pivotal role in demarcation and holding and declaring the land in dispute is encroached by the applicants. The Investigating Officer of criminal cases is not even remotely connected to conduct this exercise. The entire procedure has been laid down in Section 67(2) that only after getting a reply from the alleged encroacher, the Assistant Commissioner/Sub Divisional Officer has to pass an order giving reasons for not exceeding the explanation, if so offered by the person concerned. The eviction from the land in dispute can only be recorded after disposal of the explanation offered by the person concerned keeping in line with the cardinal principle of natural justice by passing a well reasoned and speaking order while disposing of the said explanation. The Act is itself contained the amount of compensation of damage or misappropriation of the property or for wrongful occupation, as the case may be, may be recovered from such person as arrears of land revenue. Section 210 of the Revenue Code, 2006 confers supervisory power on the Board or the Commissioner to call for the record of any proceeding decided by the subordinate revenue court in which no appeal lies for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding.

(17). A careful reading of the provisions of the Revenue Code, 2006, thus, makes it clear that the proceeding for causing damage to the public property can be

undertaken against any person who is in wrongful occupation of the same or causes damage or misappropriations to the said property. The nature of eviction proceeding under Section 67 of the Revenue Code, 2006, is, however, summary in nature. The rights of the parties claimed, if gives rise to a dispute requiring adjudication on the questions of fact, a suit for declaration has to be instituted against such person. The Gram Sabha may institute a suit under Section 145 of the U.P. Revenue Code, 2006 for declaration of its right or to seek any further relief. In case of institution of such a suit, a temporary injunction may be granted by the Court concerned to prevent wastage, damage or alienation of the suit property. The Revenue Code, 2006 is a Special enactment providing for the law relating to the 'land' defined under Section 4(14) of the Code.

(18). As far as criminal proceeding for illegal encroachment, damage or trespass over the land belonging to Gram Sabha is concerned, the same can be undertaken but it would be subject to the adjudication of rights of the parties over the land in dispute as the said determination can be done only by the revenue Court.

#### LEGALITY OF CRYPTIC/SUMMONING ORDER ON A PRINTED PROFORMA :

(19). In addition to above, learned counsel for the applicants have drawn attention of the Court to the impugned summoning order whereby the concerned Magistrate, despite of the repeated directions of the Hon'ble Apex Court as well as of this Court, have adhered to the old fashion by taking the cognizance of offences on a printed proforma. Needless to mention here that on the previous occasion at least a dozen of the cases of different Benches of this Court in different proceedings have condemned and deprecated this practice of taking cognizance on a printed proforma, but it seems that the concerned Magistrates repeatedly in utter defiance of the directions of this Court are still taking cognizance on a printed praforma without applying their judicial mind. This is wholly unacceptable and condemned in strong term. The Session Judges of respective sessions divisions are required to look into the matter and issue an specific order that the cognizance order must be speaking and showing application of judicial mind.

(20). It was noted by Hon'ble Apex Court in the case of Abdul Rashid vs. State of U.P., 2010 SCC online Alld 2819, wherein it has been held that the judicial order cannot be allowed to be passed in a mechanical fashion either by filling in the blanks in a printed proforma or by affixing a readymade seal etc. of the order on a plain paper. Such tendency must be deprecated and cannot be allowed to perpetuate. This reflects not only lack of judicial mind to the facts of the case but is also against the settled judicial norms.

(21). Similarly in the case of Bhushan Kumar vs. State (NCT of Delhi), 2012 5 SCC 424, wherein the Hon'ble Apex Court has observed that Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It

clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. While explaining the true import of expression "sufficient ground for proceeding" the Hon'ble Apex Court in the case of Sunil Bharti Mittal vs. Central Bureau of Investigation, AIR 2015 sc 923 has held as under :

"47. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be swtated in the order itself?."

(22). As mentioned above, taking into account the gravity of offence and its nature in which there is no criminality as such and the apt remedy would be to proceed against the erring so called encroacher u/s 67 of the U.P. Revenue Code and get the land in dispute demarcated. It is the case exclusively falls within the domain of concerned revenue authority to impose the fine, if any, after taking the whole exercise as per the provisions of law contained u/s 67 of the U.P. Revenue Code. "

9. Prayer is to allow the present application.

10. Learned AGA for the State opposed the present application but he could not dispute observations made by this Court in the judgment passed in the case of Prabhakant (supra).

11. Upon due consideration of the facts of the present case, indicated above, and the observation in the judgment, referred above, this Court is of the view that the present case is squarely covered by the judgement of this Court passed in the case of Prabhakant (supra).

12. Having considered, the present application is allowed. The charge-sheet dated 23.08.2022 in Crime No.0223/2022, Under Sections 2 / 3 of Prevention of Damage to Public Property Act 1984, as also cognizance/summoning order dated 07.08.2023 passed byII Additional Civil Judge (Junior Division)/Judicial Magistrate, Raebareli inCriminal Case No.14877 of 2023 (State Versus Intezar Ahmad & Another) " contained in Annexure Nos.1 & 2 to this application, respectively, are quashed.

Order Date :- 3.3.2025 Renu/-