

Faiyaz Khan And Another vs State Of U.P. Thru. Collector, Hardoi ... on 30 April, 2025

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:24734

Court No. - 7

Case :- WRIT - C No. - 253 of 2025

Petitioner :- Faiyaz Khan And Another

Respondent :- State Of U.P. Thru. Collector, Hardoi And Others

Counsel for Petitioner :- Chandra Has Misra

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

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the petitioners, Shri Hemant Kumar Pandey, learned State Counsel as also Shri Dilip Kumar Pandey, learned counsel for the Gaon Sabha and perused the material available on record.

2. The instant petition has been preferred seeking following main relief:-

"i. issue a writ, order or direction in the nature of certiorari, quashing the impugned order dated 25.09.2024 passed by the Additional District Magistrate (Judicial) Hardoi, the opposite party no.2 in case no.00160 of 2021, computerized case

no.D-202110330000160 (Faiyaz Khand and another versus Land Management Committee) under section 67(5) of the U.P. Revenue Code, 2006 contained in Annexure No.1 to this writ petition.

ii. issue a writ, order or direction in the nature of certiorari, quashing the impugned order dated 27.11.2020 passed by the opposite party no.3 in case no.02348/2020, computerized case no.T202010330102348 under section 67 of the Code without having jurisdiction, contained in Annexure No.2 to this writ petition.

iii. issue a writ, order or direction in the nature of Mandamus, commanding the opposite parties thereby directing them not to disturb the peaceful possession of the petitioners and also not to change the right, title and nature of the property in question in any manner."

3. The concerned Authorities namely Additional District Magistrate/Collector (Judicial), Hardoi and Tehsildar, Tehsil, District- Hardoi have passed the impugned orders dated 25.09.2024 and 27.11.2020, respectively, in exercise of power under Section 67 of U.P. Revenue Code, 2006 (in short "Code of 2006").

4. Challenging the impugned orders, learned counsel for the petitioners stated that the authority concerned namely Additional District Magistrate/Collector (Judicial), Hardoi and Tehsildar, Tehsil, District- Hardoi have not followed the procedure prescribed and while passing the impugned order dated 25.09.2024, the Additional District Magistrate (Judicial), Hardoi has also failed to take note of the fact that Tehsildar, Tehsil, District- Hardoi has not followed the procedure prescribed while passing the order dated 27.11.2020.

5. Learned counsel for the petitioners further submitted that the procedure to be followed, after taking note of the statutory provisions, has been settled by this Court in the judgments passed in the case of Rishipal Singh vs. State of U.P. and Others, 2022 SCC Online All 829 and in Writ-C No.9500 of 2022, (Sharda Industries Thru. Partner Mayank vs. The Additional District Collector, District Unnao And 2 Others).

6. Learned counsel for the side opposite opposed the present petition. However, he could not dispute the law settled by this Court in the judgment referred by the learned counsel for the petitioners, which indicates the procedure to be followed while deciding the case instituted under Section 67 of the Code of 2006 and the same was not followed while passing the order dated 27.11.2020 subsequently affirmed by the order dated 25.09.2024.

7. Considered the submissions made by the counsel for the parties and perused the record.

8. The procedure, which should be followed while deciding the case instituted under Section 67 of the Code of 2006, has already been settled by this Court as it would appear from para 74 of the judgment passed in the case of Rishipal Singh (Supra) as also the judgment passed in the case of Sharda Industries Thru. Partner Mayank (Supra). The relevant para 74 of the judgment passed in

the case of Rishipal Singh (Supra) 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 sub rule 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."

9. In the judgement passed in the case of Sharda Industries Thru. Partner Mayank (Supra), this Court has observed that the report of lekhpal should be proved as per law and an unproved report cannot be relied upon.

10. A perusal of the order(s) indicate that the procedure, as prescribed by this Court, has not been followed, which is also not in dispute. Accordingly, the orders dated 25.09.2024, passed by opposite party no.2 and the order dated 27.11.2020, passed by opposite party no.3 are hereby set aside.

11. The matter is remanded back to the opposite party no.3, i.e. Tehsildar, Tehsil, District- Hardoi, who shall conclude the proceedings within a period of three months from the date of production of certified copy of this order.

12. For concluding the proceedings, the Tehsildar, Tehsil, District- Hardoi shall not provide any adjournment to the petitioners and in case, the petitioners fail 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.

13. In case, the present petitioners fail to produce the certified copy of this order before the authority concerned within 15 days from today, the benefit of this order would not be available to the petitioners.

14. With the above observation and direction, the writ petition is allowed.

Order Date :- 30.4.2025 Anand/-