

(2013) 10 AHC CK 0078
In the Allahabad High Court
Case No : Writ C. No. 56523 of 2013

Arun Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 121 RD 750

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : D.S. Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Srivastava and the learned Standing Counsel for the respondent Nos. 1, 2 and 3 and the learned Counsel Gaon Sabha for the respondent No. 4. It is not necessary to issue any notice to the respondent No. 5 at this stage in view of the facts that have been brought on record and the status of the proceedings which are under challenge.

2. The petitioner was served with a notice u/s 122-B of U.P.Z.A. & L.R. Act, 1950 alleging encroachment over the land which was entered as a drainage. The petitioner filed his objection in the suit and led evidence in the shape of a report said to have been obtained from the Nagar Palika Parishad as also a report of the Lekhpal concerned. The order was passed presuming encroachment by the petitioner even though the petitioner alleged that the constructions were raised after obtaining due permission and sanction of the competent authority. The petitioner urged that he has not encroached upon any land that is drainage and therefore the findings recorded in the order of the Tehsildar are without any basis.

3. Advancing this argument the petitioner filed a revision before the Collector which has been decided by the learned Additional Collector holding that it was open to the petitioner to have led his evidence before the Tehsildar and since the fact remains that the encroachment is over drainage, this plea appears to have

been taken only with a view to delay the proceedings. The revision is said to have been dismissed again relying on some report which has been challenged by the petitioner. The petitioner also alleged that no opportunity was given to contest the proceedings which has been decided behind the back of the petitioner.

4. Learned Standing Counsel for the Gaon Sabha contends that it was open to the petitioner to have filed documents in the proceedings that have been made the basis of the impugned order. The petitioner has not led any evidence in his favour. It is also urged that the fact that the land is recorded as drainage has not been disputed and in the circumstances no ground is made out for interference with the impugned order in the aforesaid circumstances.

5. Having heard the learned Counsel for the parties and having considered the submissions raised, it appears that the petitioner though filed his objections the same was not considered particularly in the light of the report and neither the Lekhpal nor the Naib Tehsildar were produced to prove the report on the basis whereof the impugned order was passed.

6. This ground was specifically taken in the revision but the Revisional Court has treated the same to be a ground solely for causing delay in the proceedings instead of recording any independent findings thereon. In the opinion of the Court both the orders suffer from the said infirmity and in such circumstances the matter deserves to be decided again keeping in view the nature of the objection filed by the petitioner. Accordingly the order passed by the Additional Collector dated 6.5.2013 and that by the Tehsildar dated 30.6.2012 are quashed. The writ petition is allowed and the matter is remanded back to the Tehsildar concerned to consider the objections filed by the petitioner and to proceed to decide the same in accordance with law. The matter shall be disposed of by the Tehsildar concerned keeping in view the observations made herein above as expeditiously as possible.