



2026:AHC-LKO:20154

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 2713 of 2026

Hasmat Ali And 9 Others

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Revenue Deptt.,
Lko And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Mohd. Waris Farooqui
Counsel for Respondent(s)	:	C.S.C., Pankaj Gupta

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Mohd. Waris Farooqui, learned counsel for the petitioners as well as learned Standing Counsel for respondent nos. 1 to 3 and Sri Pankaj Gupta, learned counsel appearing for respondent no. 4.

2. It has been submitted by learned counsel for the petitioners that proceedings under Section 67 of the U.P. Revenue Code, 2006 were initiated against petitioners with regard to property being Gata No. 1573, area 0.81 dismil situated in Village - Sehriya Kalan, Tehsil and Block Colonglganj, District Gonda, which is recorded as "Funeral Place (Marghat)" in the revenue records.

3. The petitioners have participated in the said proceedings and also filed their objections before the Tehsildar, Tehsil - Colonelganj, District - Gonda, who rejected the objections filed by the petitioners and declared petitioners to be in illegal occupation of the Gaon Sabha land and passed orders for eviction and imposition of penalty, by means of order dated 5.12.2023.

4. The petitioners filed appeals against orders dated 5.12.2023 before the Collector, Gonda which are (1) Hashmat Ali vs State (2) Noor Hasan vs State (3) Amita @Amina vs State (4) Sirajuddin vs State (5) Nasirunnisa vs State (6) Nauhar Husain vs State (7) Kulsum Bano vs State (8) Badshah Hussain vs State (9) Sikandar vs State and (10) Amina vs State. It has been submitted that next date fixed in the matter was 22.1.2026 and

despite filing of the appeal it has been submitted that the State respondents are proceeding to implement order dated 5.12.2023 and to demolish the house of the petitioners situated on the disputed land. It has been submitted that till appeal is pending respondents should be restrained from demolishing the house of the petitioners.

5. Learned Standing Counsel has opposed the writ petition, but does not dispute the aforesaid facts.

6. Considering the aforesaid facts and specially that the orders for eviction and imposition of penalty has already been passed holding petitioners to be in illegal occupation of the Gaon Sabha land by means of order dated 5.12.2023, against which appeal has been preferred by the petitioners which are pending consideration before the Collector. This Court further take note of the orders passed by the Division Bench of this Court in **Writ - C No. 16357 of 2020 - Abbas Ansari and Another Vs. State of U.P. and 3 Others** (alongwith connected Writ-C No. 16298 of 2020, decided on 15.10.2020). The Divisional Bench of this Court has observed as under :-

"However, before parting with the case ,we have noticed that before this court a large number of cases are being filed before this Court (burdening the dockets of this already overburdened court), complaining of demolitions being carried out even before the expiry of prescribed period for filing of an appeal, coupled with the fact that the statutes namely the U.P. Urban Planning and Development Act, 1973 as well as U.P. (Regulation of Building Operations) Act, 1958,provide for an alternative remedy of an appeal within 30 days, we deem it appropriate to issue general mandamus in respect of actions being taken under the two statutes in the entire State. We are doing so in view of the categorical pronouncement of the Supreme Court in the case of Chairman Indore Vikas Pradhikaran vs Pure Industrial Coke & Chemicals Limited and Others,(2007) 8 SCC 705 wherein the Supreme Court considered the nature of the town planning statutes viz-a-viz the rights of the citizens to live, the Supreme Court held that the Town Planning Statutes are basically in the nature of expropriatory legislation and must be given strict construction, the Act being regulatory in nature restrict the right of

a owner of a property to use and develop the same, and any omission by the regulatory authority entitles the owner of the property to use the same for any purpose unless there exists a certain regulation to the contrary, the Supreme Court as observed as under:

"46. Where, however, a scheme comes into force, although it may cause hardship to the individual owners as they may be prevented from making the most profitable use of their rights over property, having regard to the drastic consequences envisaged thereunder, the statute should be considered in such a manner as a result whereof greater hardship is not caused to the citizens than actually contemplated thereby. Whereas an attempt should be made to prevent unplanned and haphazard development but the same would not mean that the court would close its eyes to the blatant illegalities committed by the State and/or the statutory authorities in implementation thereof. Implementation of such land development as also building laws should be in consonance with public welfare and convenience. In United States of America zoning ordinances are enacted pursuant to the police power delegated by the State. Although in India the source of such power is not police power but if a zoning classification imposes unreasonable restrictions, it cannot be sustained. The public authority may have general considerations, safety or general welfare in mind, but the same would become irrelevant, as thereby statutory rights of a party cannot be taken away. The courts must make an endeavour to strike a balance between public interest on the one hand and protection of a constitutional right to hold property, on the other.

47. For the aforementioned purpose, an endeavour should be made to find out as to whether the statute takes care of public interest in the matter vis-à-vis the private interest, on the one hand, and the effect of lapse and/ or positive inaction on the part of the State and other planning authorities, on the other.

48. The courts cannot also be oblivious of the fact that the owners who are subject to the embargos placed under the statute are deprived of their valuable rightful use of the property for a long time. Although ordinarily when a public authority is asked to perform statutory duties within the time stipulated it is directory in nature but when it involves valuable

rights of the citizens and provides for the consequences therefor it would be construed to be mandatory in character.

52. The courts should, therefore, strive to find a balance of the competing interests.

*57. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or a statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right of property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable one. [See *Balram Kumwat v. Union of India & Ors.* (2003) 7 SCC 628; *Krishi Utpadan Mandi Samiti & Ors. v. Pilibhit Pantnagar Beej Ltd. & Anr.* (2004) 1 SCC 391; and *Union of India & Ors. v. West Coast Paper Mills Ltd. & Anr.* (2004) 2 SCC 747]. The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.*

58. Expropriatory legislation, as is well-known, must be given a strict construction".

As already recorded above that a large number of cases are being filed alleging that before the period prescribed for filing an appeal, steps are being taken by the authorities for carrying out demolition, and considering the fact that statute being silent on this aspect, we deem it appropriate to pass the following directions in respect of the demolition orders that are passed by the authorities in the State of Uttar Pradesh under the 1958 Act as well as 1973 Act, keeping in view the fact that the statutes are held to be ex-proprietary in nature and should be construed strictly as they purport to take away the valuable constitutional rights of the citizens.

Accordingly, we direct that:

1. The State authorities, where ever demolition orders are passed in

respect of constructions raised on the private properties under the two acts, should wait from taking any action for actual demolition till the statutory period of appeal comes to an end.

2. The Appellate authority empowered the two Acts should endeavour to decide the interim applications filed along with the appeals, if any ,expeditiously preferably within a period of two weeks from the date of filing of the interim application

3. Till the disposal of the interim application filed in the statutory appeals the authorities should not take any steps for executing the demolition orders.

4. Copies of the demolition orders, passed under the acts should be properly served upon the persons against whom the orders are passed.

5. The orders of demolition proposed should be passed after giving an opportunity of hearing to the persons against whom the orders are proposed to be passed."

7. Accordingly, in the light of above, let application for interim relief be considered expeditiously by the appellate Court/Collector, Gonda within next two weeks, in accordance with law. Till necessary orders are passed on the application for interim relief respondents are restrained from taking any coercive action against petitioners in pursuance to the order dated 5.12.2023, passed by Tehsildar, Tehsil - Colonelganj, District - Gonda.

8. It is made clear that once necessary orders are passed by the appellate authority on the interim relief application, present order shall cease to operate.

*9. With aforesaid directions, present writ petition stands **disposed of**.*

(Alok Mathur,J.)

March 19, 2026

J. K. Dinkar