
(2008) 10 AHC CK 0030
In the Allahabad High Court

Kisan Education Society

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Societies Registration Act, 1860 — Section 5A

Citation : (2009) 2 AWC 1379 : (2008) 3 UPLBEC 2736

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri Shashi Nandan, the learned Senior Counsel assisted by Sri A.C. Srivastava, the learned Counsel for the petitioner and Sri R.K. Chaubey, the learned standing Counsel who was directed to assist the Court.

2. The petitioner, Kishan Education Society is a Society registered under the Societies Registration Act and, one of its object is, to establish an educational institution. For this purpose, the Society purchased 1.054 Hectares of land in plot No. 26 situated in village Jurrampur, Pargana, Tehsil and District Meerut vide a sale-deed dated 27.7.2006 for a sum of Rs. 30,32,240/-. Based on the said sale-deed, the name of the Society was mutated in the revenue records.

3. Before the project for construction of an educational institution could start on the plot in question, it is alleged that the Meerut Development Authority earmarked the said plot as a green belt in the Master Plan of 2001, which became effective from 23.10.2008 and consequently, the plot purchased by the petitioner could not be utilised to set up an educational institution.

4. In view of the aforesaid, it is alleged that the members of the Society passed a resolution dated 29.2.2008 for the sale of the property and to purchase another property from the consideration so received. Based on the said resolution, the Society filed an application u/s 5-A of the Societies Registration Act seeking permission to sell the land of the Society. It is stated that the District

Judge issued notices to all the members of the Society and, a notice was published in the newspaper inviting objections. It has been stated that no objection was filed.

5. However, by the impugned order dated 11.9.2008, the District Judge refused to accord permission to sell the and on the ground that the petitioner had not mentioned the name of the purchaser nor had mentioned the rate at which the plot in question was to be sold. The District Judge further held that the petitioners had not provided the circle rate of that area. The petitioner, being aggrieved by the said order, has filed the present writ petition.

6. Section 5-A of the Societies Registration Act, as applicable in the State of U.P. provides-

5. Property of society how vested- The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

7. The aforesaid provision has been incorporated in order to protect the properties of the Society and the interest of its members. This Section places an embargo on the Society from transferring its immovable properties without previous permission from the District Judge. The idea behind this is that the Court should be satisfied that the transfer of the property of the Society was being made in the larger interest of the Society and not to the detriment of the members of the Society.

8. Similar view was held in *Raj Nath Misra v. The Xth Additional District Judge, Varanasi and Ors.* 1991 ALJ 486, wherein the Court held-

The said Section has been enacted for putting a check on the society from transferring its immovable properties without the previous approval of the Court so that the Court may also look into it and give permission only if the Court is satisfied that the transfer of any immovable property is being made in the interest of the society and not in the manner which is detrimental to the interest of the society. This is the entire scope of said section. The only objection which is contemplated within the purview of the aforesaid Section is that the governing body of the society is proposing to transfer its immovable property which is contrary to the interest of the institution. It is not within the scope of the said Section to examine as to whether the society has ceased to be the owner of its immovable property.

9. In view of the aforesaid, the Court is required to consider as to whether the transfer of the immovable property was being made in the interest of the Society. Keeping this fact in mind, the petitioner has come forward with an application for the transfer of the property alleging that the land which they had purchased for setting up an educational institution cannot be utilised because the said land has

now been marked as a green belt in the Master Plan issued by the Meerut Development Authority. Consequently, the land which the Society had purchased was sought to be sold and the consideration which the Society would receive would be utilised for the purchase of another plot. In my opinion, this was a valid and reasonable ground for the transfer of the property.

10. The Court below, however, fell in error in rejecting the application on the ground that relevant details had not been supplied by the petitioner. The Court while considering the application could always impose a condition that the proposal for the sale of the land in question would be submitted to the Court for its final approval and the Court at that stage would consider as to whether the sale consideration being received by the Society was adequate or not and that would safeguard the interest of the members of the Society.

11. The Court below fell in error in rejecting the application on the ground that the name of the purchaser was not placed. The name of the purchaser will only come forward after permission is granted. Other details with regard to the circle rate and the value on which the land would be transferred is subsequent to the tentative permission being granted by the Court, which would be subject to the final permission being granted.

12. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The matter is remitted to the District Judge again for reconsideration of the matter in the light of the observations made above.

13. The writ petition stands allowed.