
(2017) 06 UK CK 0049
In the Uttarakhand High Court
Case No : 1954 of 2010

Senior Citizen Home Complex Welfare Society	APPELLANT
Vs	
The Commissioner & others	RESPONDENT

Date of Decision : 27-06-2017

Acts Referred:

[Societies Registration Act, 1960](#), Section 5A, Section 12D

Citation : (2017) 06 UK CK 0049

Hon'ble Judges : Sudhanshu Dhulia

Bench : Single Bench

Advocate : U.K. Saxena, ?Prabha Naithani, ?C.S. Rawat

Judgement

1. The petitioner is a housing society, who is aggrieved by the impugned order dated 09.07.2009 passed by respondent No. 2 - Deputy Registrar, Firms, Societies & Chits, Dehradun, by which the registration of the petitioner's society has been cancelled by exercising power under Section 12-D of the Societies Registration Act, 1960 (from hereinafter referred to as "Act"). Against the said order, the petitioner preferred an appeal before the learned Commissioner, Garhwal Division, Pauri, which was also dismissed vide impugned order dated 13.05.2010. The main ground for cancellation of registration is that the petitioner society had not taken approval of the competent court, as provided under the then existing Section 5- A of the Act before transferring the property. There are other grounds as well for committing anomalies of the Act.

2. The private respondent No. 3 is represented by Mr. C.S. Rawat, Advocate, who submits that this society has given the property to them at Greater Noida and other places, but after a lapse of so many years, the lease deed has not been executed by the petitioner society. On the other hand, learned counsel for the petitioner - Mr. Saxena would argue that they are not in a position to execute the lease deed as on date, the society is not registered.

3. In this matter the anxiety of this Court is not whether the society is in

existence or not. The prime concern of this Court is that the bona fide consumers, who have been lured to purchase the property developed by the petitioner. They must not be put at a loss.

4. As far as Section 5-A of the Act is concerned, the same reads as under:-

"5-A Reconstruction on transfer of property (1) Notwithstanding anything contained in any law, contract or other instrument to the contrary, it shall not be lawful for the governing body of a society registered under this Act or any of its members to transfer, without the previous approval of the court, any immovable property belonging to any such society. (2) Every transfer made in contravention of sub- section (1) shall be void."

5. The aforesaid provision stands repealed in the State of Uttarakhand on 02.07.2014. All the same, it is again true that at the time when compliance was liable to be made, as provided under Section 5-A of the Act, was in existence. In case, there is any legal impediment, the same shall be looked into by the Registrar, as the matter is remanded to him for reconsideration.

6. All the same the Registrar shall also look into this aspect as to whether Section 5-A of the Act was actually a requirement, inasmuch as the learned Single Judge of the Allahabad High Court in *Rajnath Misra Vs Xth Additional District Judge & others* reported in 1991 All. L.J. 486 has held as under:-

"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. If there is any such case, the forum is not section 5 of the Societies Registration Act. The concerned person may have his remedy in some other provision of the law. All the submissions and objections raised by the counsel for the petitioner in this Court are outside the scope of section 5A of the Societies Registration Act in its application to the State of Uttar Pradesh. In this view of the matter I have rejected all the contentions made by the counsel for petitioner."

7. In view of the above facts, the writ petition stands disposed with a direction to the petitioner to approach the competent authority i.e. Registrar within a period of one month from today, who shall look into all the aspects of the case (referred above) and decide the matter, in accordance with law, as early as possible, but definitely within a period of six weeks thereafter.

8. It is further made clear that the Registrar shall also take a decision in the matter after providing opportunity of hearing to the petitioner as well as respondent No. 3. There is no one before this Court to represent other private respondents.