
(2010) 06 UK CK 0102
In the Uttarakhand High Court

Sheikhul-Hind Educational Charitable Trust	APPELLANT
Vs	
State of Uttaranchal	RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154(2), 166, 167

Citation : (2010) 06 UK CK 0102

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Heard learned Counsel for the parties and perused the record.

2. By means of this writ petition, the petitioner has sought a writ in the nature of certiorari quashing the impugned order dated 15-11-2006 passed by respondent No. 1 (Annexure No. 1 to the writ petition), whereby the land, which was purchased after obtaining permission u/s 154(2) of the U.P.Z.A. and L.R. (Amendment) Act 2003, vested in the State Government.

3. Brief facts giving rise to the present writ petition are that the petitioner, which is a charitable institution, had applied for permission to purchase 20 Acres of land within the State of Uttaranchal for establishment of the school. After due inquiry, the permission was granted to the petitioner to purchase 20 acres of land vide order dated 15-3-2004 (Annexure-2 to the petition) subject to certain restrictions as mentioned in the order. It is stated in paragraph 6 of the petition that the land measuring 15-19 acres was purchased by the petitioner society pursuant to the said permission before 14-9-2004.

4. The petitioner applied for extension of time for purchase of the remaining land. By the order dated 18-1-2005 (Annexure-4 to the petition), time was extended for further four months by the State Government.

5. Counter affidavit has been filed by the State. The first contention taken in the counter affidavit that the impugned order was passed on the ground that as per

Rule 2(10) of the Uttaranchal (The Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952) (First Amendment) Rules, 2004 it is provided that any sanction issued by the Government under this Rule shall be valid for 180 days and there is no provision in this Rule to extend the period, therefore, the subsequent order for extension of time was bad in law. Secondly, the stand taken in the counter affidavit is that there were security threats to the Indian Military Academy, so that permission for construction of the institution cannot be granted and for security reason, the Home Department recommended to cancel the permission.

6. The main argument advanced on behalf of the petitioner is that the respondent-State has acted in illegal and arbitrary manner and has passed the impugned order without giving opportunity of hearing to the petitioner and in the garb of the subsequent order dated 15-11-2006, passed by the respondent-State (Annexure-4 to the petition) whereby further time was extended for four month, earlier permission granted in favour of the petitioner was also cancelled, after execution of the sale-deed in favour of the petitioner.

7. I have perused the order impugned.

8. The ground mentioned in paragraph No. 3 of the impugned order is that the permission would be valid for 180 days and there is no mention in the Rules for extension of time.

9. So far as the extension part is concerned, Rule 2(10) of the Uttaranchal (The Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952) (First Amendment) Rules, 2004 does not any such provision. This sub-rule only provides that any sanction issued by the Government shall be valid for 180 days. The respondents in their counter affidavit in paragraph No. 9 have stated that the petitioner had purchased about 15.19 acres of land till 14-9-2005 and no land was purchased by the petitioner during the extended period, although permission was granted by the State Government. The petitioner in paragraph No. 9 of the rejoinder affidavit has also made averment to that effect that no land has been purchased in the extended period. Since the land was not purchased by the petitioner during the extended period, there is no question of any violation of the Rules and the respondent-State in the garb of the impugned order (Annexure-1 to the petition) has cancelled the earlier permission after the execution of the sale-deed in favour of the petitioner against the provisions of the Act. This fact is not disputed that 15.19 acres of land was purchased by the petitioner within a period of 180 of the permission.

10. Since no opportunity of hearing was given to the petitioner prior to the cancellation of the permission, which had already been acted upon, the order of cancellation of permission, after execution of sale deed in favour of the petitioner is bad in law, pertaining to the purchase made by the petitioner within a period of 180 days. So far as the order of extension of time is concerned, admittedly no land was purchased in the extended period. The provisions of Section 167 of the

U.P. Zamindari Abolition and Land Reforms Act, 1950 would not be attracted in the present case. Section 167 applies only to the transfer made in contravention of the provisions of the U.P.Z.A. and L.R. Act. Section 166 of the said Act provides that "every transfer made in contravention of the provisions of this Act shall be void." There is no question of vesting of land in the State, when the land was purchased within the period of 180 days of the sanction issued by the Government.

11. So far as the cancellation of the permission on account of security reason is concerned, if the Government feels that there are some security threats to the Indian Military Academy, the Government may take independent decision on that issue either to give permission or not for any construction in the land in dispute. If the government forms opinion not to give permission to the petitioner to construct any building in the land in dispute, in that event, the petitioner would be at liberty to sell out the land with the permission of the Government-respondents.

12. In view of the discussion above, the writ petition deserves to be partly allowed. The purchase of 15.19 acres of land made by the petitioner pursuant to the permission of the State Government dated 15-3-2004 shall be valid.

13. The writ petition is partly allowed. The part of the impugned order dated 15-11-2006 (Annexure-1 to the petition) is set aside in so far as it pertains to cancellation of permission of purchase of land by virtue of Government Order dated 15-3-2004 in favour of the petitioner, within a period of 180 days. However, it is provided that if the Government forms an opinion not to give permission to the petitioner for construction of building because of security threats to the Indian Military Academy, petitioner would be at liberty to sell out the land in question with permission of the State Government. Costs easy.

14. Interim order dated 29-11-2006 is vacated.