

(2012) 09 SC CK 0028

In the Supreme Court Of India

Case No : Civil Appeal No. 6621 of 2012 (Arising out of S.L.P. (Civil) No. 19661 of 2009)

State of Uttarakhand and Others

APPELLANT

Vs

Guru Ram Das Educational Trust Society

RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143, 154, 154(1), 154(2), 166

Citation : (2012) 11 ADJ 495 : (2012) 6 ALLMR 452 : (2012) 6 AWC 5490
Supp : (2012) 6 AWC 5490 : (2012) 9 SCALE 448 : (2012) 11 SCC 648

Hon'ble Judges : R.M. Lodha, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Rachana Srivastava and Utkarsh Sharma, for the Appellant; Shanti Bhushan Sushendra K. Chauhan, Suman Gupta and Vipin Gupta, for the Respondent

Final Decision : Disposed Of

Judgement

R.M. Lodha, J.—We have heard Ms. Rachana Srivastava, Learned Counsel for the Petitioners, and Mr. Shanti Bhushan, learned senior Counsel for the Respondent.

2. Delay condoned.

3. Leave granted.

4. The controversy in this Appeal, by special leave, is in respect of land admeasuring 1.626 hectares situate in village Chalang, Dehradun out of 6.785 hectares which was transferred by the Bhumidhar to Respondent, Guru Ram Das Educational Trust Society in 1992. A notice Under Sections 166 and 167 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short, '1950 Act') was issued by the Assistant Collector First Class/Sub Divisional Magistrate, Dehradun to the Respondent to show cause why the said land should not be entered into the revenue records in the name of the State Government and possession of the

same be taken forcibly as the transfer in its favour was void. In response to the notice, the Respondent filed its objections and set up diverse grounds. One of the objections raised by the Respondent was that there was no prohibition under Section 154 of the 1950 Act on transfer by way of sale to a charitable trust for charitable purpose.

5. The Assistant Collector overruled the objections and, by his order dated January 27, 2006, came to the conclusion that the Respondent held 1.626 hectares in excess of the permissible limit and declared that the excess land admeasuring 1.626 hectares shall vest in the State Government.

6. Against the order of the Assistant Collector, the Respondent filed a revision application before the Commissioner, Garhwal Division. The revisional authority dismissed the revision application preferred by the Respondent Trust.

7. Not satisfied with the orders of the Assistant Collector and Commissioner, the Respondent challenged these orders in a Writ Petition before the High Court of Uttarakhand. The single Judge of the High Court allowed the Writ Petition principally on the ground that the subject land was being used for non agricultural purpose for more than ten years and declaration u/s 143 of the 1950 Act was not necessary. He further held that the provisions of Section 154 were not applicable and, accordingly, quashed and set aside the orders of the Commissioner and Assistant Collector. It is against this order that the State of Uttaranchal (Now, Uttarakhand) and its functionaries have come up in appeal by special leave.

8. Section 154 of the 1950 Act, as it stood at the relevant time, read as under:

Section 154. Restriction on transfer by a bhumidhar. (1) Save as provided in Sub-section (2), no bhumidhar shall have the right to transfer by sale or gift, any land other than tea gardens to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceed 5.0586 hectares (12.50 acres) in Uttar Pradesh.

(2) Subject to the provisions of any other law relating to the land tenures for the time being in force, the State Government may, by general or special order, authorise transfer in excess of the limit prescribed in Sub-section (1) if it is of the opinion that such transfer is in favour of a registered co-operative society or an institution established for a charitable purpose, which does not have land sufficient for its need or that the transfer is in the interest of general public.

Explanation.- For the purposes of this section, the expression 'family' shall mean the transferee, his or her wife or husband (as the case may be) and minor children, and where the transferee is a minor also his or her parents.

9. The question before us is - Whether a charitable trust is covered by the expression 'any person' occurring in Section 154(1) of the 1950 Act?

10. It may be immediately noticed that the expression used in Section 154(1) is "...to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceed 5.0586 hectares (12.50 acres) in Uttar Pradesh." (emphasis supplied) A close look at the above expression would show that the Legislature intended to cover only natural person. It is so because the words 'any person' are followed in the sentence by the words 'his family'. 'Family' is explained in the explanation appended to Section 154 which means the transferee, his or her wife or husband, as the case may be, and minor children and where transferee is a minor, his or her parents. This makes it clear that a legal person is not intended to be included in the expression 'any person'. The word 'person', in law, may include both a natural person and a legal person. Sometimes it is restricted to the former. Having regard to the text of Section 154(1) and also the scheme of that provision, there remains no doubt that the expression 'any person' refers to a natural person and not an artificial person. This is fortified by the fact that in 1997 the Legislature inserted Explanation by U.P. Act No. 20 of 1997 declaring that in Sub-section (1) the expression 'person' shall include and be deemed to have been included on June 15, 1976 a 'Co-operative Society'. Had the expression 'person' included artificial person, no explanation was necessary. Since the expression 'person' in Section 154 did not include legal or artificial person, the Legislature brought in Co-operative Society by way of an Explanation. The Explanation came to be added in 1997 in a declaratory form to retrospectively bring 'Co-operative Society' within the meaning of expression 'any person'.

11. Accordingly, we hold, as it must be held, that a 'charitable institution' is not included within the meaning of the expression 'any person' occurring in Section 154 of the 1950 Act and, therefore, the Assistant Collector was not justified in issuing notice to the Respondent Under Sections 166 and 167 of the 1950 Act.

12. Though we are not in agreement with the reasoning of the High Court fully, but in view of what we have indicated above, no interference is called for in the impugned order.

13. Appeal is, accordingly, dismissed. No order as to costs.