

(2014) 09 AHC CK 0264
In the Allahabad High Court
Case No : C.M.W.P. No. 47953 of 2014

Swami Brhamanand Saraswati Charitable Trust	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Co-operative Societies Act, 1965 — Section 77
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154,
154(1), 154(2), 154(3), 167

Citation : (2014) 11 ADJ 117 : (2014) 125 RD 751

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : Tarun Agarwal, Advocate for the Appellant

Judgement

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Dr. Dhananjaya Yeshwant Chandrachud, C.J. and Dilip Gupta, J.—The first petitioner is a public charitable trust and the second petitioner is its authorized representative. The trust was set up with the object to revive and resuscitate Vedic Science and promote its study as a primary source of knowledge, establish the correlation of Vedic Science and other branches of knowledge and with the discipline of life and to disseminate the same amongst people. Clause 3 of the Deed of Trust contains an exhaustive enumeration of the objects of the trust. The first petitioner applied on 10 June 2000 for the grant of permission for the purchase of land in excess of 12.50 acres, in public interest for the accomplishment of a proposed project which envisaged setting up educational institutions for the dissemination of Vedic knowledge, construction of residences for students and for ancillary purposes. The permission was sought in order to enable the trust to purchase land in excess of 12.50 acres, as mandated by section 154 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (the Act). When no action was taken, the petitioners again applied to the Commissioner, Kanpur Division, Kanpur on 21 August 2000 for the grant of

permission under section 154(2) for the purchase of 725.50 acres of land spread over 21 villages on the banks of river Ganges or Kanpur Nagar. On 21 October 2000, the Commissions recommended to the State Government for the grant of permission as sought by the first petitioner. Thereafter, there was an exchange of correspondence regarding certain queries being raised with the petitioners.

2. On 14 December 2006, the State Government passed an order to the effect that since the petitioners had purchased land admeasuring 544 acres in excess of the prescribed limit under section 154(1) without the permission of the State Government, the land stood vested in the State under section 167 of the Act. The order was challenged in Writ - C No. 2982 of 2007 which was disposed of by a Division Bench of this Court on 11 March 2010. The Division Bench recorded the statement of the petitioners that an application would be filed under section 154(3) before the State Government which was directed to pass an appropriate order in accordance with law, after furnishing to the petitioners an opportunity of being heard.

3. The petitioners, thereupon, made a representation on 23 August 2010 to the Commissioner, Kanpur Division which was forwarded to the State Government on 1 September 2010. The petitioners have stated that the District Magistrate had also duly recommended to the State Government the grant of an exemption under section 154(2), and that the Tehsildar, in the course of an enquiry in April 2011, had opined that the activities proposed by the first petitioner were in the interest of the general public. A separate recommendation was made by the District Magistrate on 2 September 2011. The State Government, however, rejected the application on 25 June 2012 on the ground that the purpose for which the land was purchased, did not qualify as a public purpose.

4. The order of the State Government was challenged by the petitioners in Writ-C No. 45114 of 2012. During the pendency of the petition, the petitioners made an unconditional statement of their readiness and willingness to deposit an amount of fine as required by the first proviso to section 154(3). On 17 April 2013, the Court was apprised on behalf of the State that in view of the readiness expressed by the petitioners, a decision was expected shortly by the State Government under section 154(3). On 31 May 2013, the application submitted by the petitioners was once again rejected, following which the earlier writ petition was disposed of as infructuous with liberty to file a fresh writ petition. Thereupon, the petitioners filed a fresh writ petition, being Civil Misc Writ Petition No. 67058 of 2013 for challenging the order dated 31 May 2013. The Division Bench allowed the petition on 9 December 2013 with the following observations:

"Once land in question belonged to private land holders and petitioners have proceeded to purchase the same for charitable purpose, and educational purpose and provision for post facto ratification of the said transaction, on fulfillment of terms and conditions as contained in the first proviso to sub-section (3) of section 154 of U.P. Zamindari Abolition and Land Reforms Act, 1950, then request made by petitioner ought to have been considered by reasoned order as

to why petitioners" request cannot be accepted. Merely because mutation has been made in favour of the State Government, same cannot be made foundation and basis for not considering the request of the petitioners. Mutations are made for a specific purpose, and are always subject to transactions and proceedings that take place. Once there is a provision, then the claim of petitioners should have been considered on merit, instead of proceeding to non suit the claim of petitioners, merely on the premises that mutation has taken place.

Consequently, in view of the fact stated above, order dated 31.5.2013 passed by the State Government is hereby quashed and set aside and the State Government is directed to take a fresh decision in the matter in accordance with law, preferably within period of next four months from the date of production of certified copy of this order.

With these observations, writ petition is allowed."

5. Following the order of remand, a fresh order has been passed by the Principal Secretary (Revenue) to the State Government on 14 August 2014 rejecting the representation. The Principal Secretary has held that the petitioners had acquired land in excess of the prescribed limit under section 154(1) without the approval of the State Government and without any precise policy or project and, hence, it was not appropriate to grant permission.

Section 154 of the Act provides as follows:

"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 garden 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.

Explanation.--For the removal of doubt it is hereby declared that in this sub-section the expression "person" shall include and be deemed to have included on June 15, 1976 a "Co-operative Society":

Provided that where the transferee is a Co-operative Society, the land held by it having been pooled by its members under clause (a) of sub-section (1) of section 77 of the Uttar Pradesh Co-operative Societies Act, 1965 shall not be taken into account in computing the 5.0586 hectares (12.50 acres) land held by it.

(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.

(3) For every transfer of land in excess of the limit prescribed under sub-section (1) prior approval of the State Government shall be necessary:

Provided that where the prior approval of the State Government is not obtained under this sub-section, the State Government may on an application give its approval afterward in such manner and on payment in such manner of an amount, as fine, equal to twenty five per cent of the cost of the land as may be prescribed. The cost of the land shall be such as determined by the Collector for stamp duty:

Provided further that where the State Government is satisfied that any transfer has been made in public interest, it may exempt any such transferee from the payment of fine under this sub-section."

6. Sub-section (1) of section 154 imposes a limit of 12.50 acres beyond which, save as provided in sub-section (2), no bhumidhar shall have the right to transfer, by way of sale or gift, any land to any person where the transferee shall, by virtue of the sale or gift, be entitled to land which together with land, if any, held by his family, in the aggregate, exceeds 12.50 acres. However, the limit under sub-section (1) of section 154 is expressly subject to sub-section (2), as the opening words of sub-section (1) would indicate. Sub-section (2) empowers the State Government, either by a general or special order, to authorise a transfer in excess of the prescribed limit in sub-section (1) if the State Government is of the opinion that such a transfer is in favour of a registered Cooperative Society or an institution established for a charitable purpose, which does not have land sufficient for its need or where the transfer of the land is in the interest of the general public. Under sub-section (3), for every transfer in excess of the prescribed limit under sub-section (1), prior approval of the State Government is necessary. However, under the first proviso to sub-section (3), the State Government is empowered to grant its approval post facto, subject to the payment of an amount equal to 25 percent of the cost of the land as prescribed. The second proviso to sub-section (3) further empowers the State Government to exempt from the payment of fine, where it is satisfied that any transfer has been made in public interest.

7. In the present case, it is apparent that the State Government has repeatedly disabled itself from applying its mind to the considerations relevant to the exercise of the power under sub-section (2) or, as the case may be, sub-section (3) of section 154 of the Act. As the record before the Court would indicate, the orders passed by the State Government have been interfered with in the exercise of the writ jurisdiction under Article 226 of the Constitution by directing the Government to apply its mind to the requirements which are contained in sub-section (2) and the provisos to sub-section (3) of section 154 at various stages. The State Government, in the present case, has declined to exercise the

discretion which has been conferred upon it under sub-section (3) of section 154 on the ground that the petitioners have acquired land in excess of the prescribed limit and, hence, there was no reason or justification to grant approval. The second reason which has weighed for the rejection is that the petitioners have proceeded to purchase the land without any specific purpose or project in mind.

8. We find merit in the contention of the learned Counsel appearing on behalf of the petitioners, that the State Government has, once again, rejected the application without considering the circumstances which are relevant and germane to the exercise of the power. The fact that the holding of the petitioners would exceed the limit prescribed under sub-section (1) cannot be a reason, in itself, to reject the application. As a matter of fact, sub-section (1) of section 154 begins with an expression that save as provided in sub-section (2), no bhumidhar shall have the right to transfer land in excess of the limit as prescribed, where the transferee shall, as a result of the sale or gift, become entitled to land which together with his existing holding exceeds 12.50 acres. The provisions of sub-section (2) indicate that the State Government is duly empowered, by general or special order, to authorise a transfer in excess of the limit prescribed, where it is satisfied that (i) the transfer is in favour of a registered Cooperative Society; or (ii) the transfer is in favour of an institution established for a charitable purpose which does not have land sufficient for its need; or (iii) that the transfer is in the interest of the general public. Obviously, if the limit of 12.50 acres is to be an inflexible norm which does not admit of any exception, there was no occasion for the legislature to make a provision under sub-section (2) for transfer in excess of the limit prescribed under sub-section (1). Sub-section (3) of section 154 mandates the prior approval of the State Government. The first proviso to sub-section (3) also contemplates a situation in which a post facto permission can be granted, the discretion being vested in the State Government to do so, subject to the payment of a fine. The second proviso to sub-section (3) further authorises the State Government to dispense with the payment of fine, where it is satisfied that the transfer has been made in public interest.

9. In the present case, a statement was made on behalf of the petitioners in earlier writ proceedings that they were ready and willing to deposit the fine as required by the first proviso to sub-section (3) of section 154. Hence, there would be no occasion to dispense with the condition of a fine, as is contemplated in the second proviso, where the State Government is satisfied that the transfer is in public interest. But more importantly, the State Government has to exercise its discretion on objective considerations and the statute itself provides the guidelines and circumstances in which the discretion can be exercised. Sub-section (2) of section 154 provides the circumstances in which the State Government may authorise a transfer in excess of the limit prescribed under sub-section (1). There is absolutely no reference in the impugned order to whether the petitioners satisfy any of the guiding factors which are stipulated in the statutory provision. There has been no application of mind to whether the

institution is established for a charitable purpose; whether it does not have land sufficient for its need; or whether the transfer is in the interest of the general public. Merely holding that the petitioners had acquired land in excess of the prescribed limit under sub-section (1) does not, by itself, disable the State Government from exercising the powers vested in it by sub-section (2) and by the first proviso to sub-section (3) of section 154. The infirmity in the impugned order lies in the fact that the State Government has abdicated its discretion and has rejected the application without considering circumstances relevant and germane to the exercise of discretion under the statute. Where an application is made to the State Government for the exercise of its discretion under sub-section (2) or the first proviso to sub-section (3) of section 154, the burden lies on the institution to establish the element of public interest or, as provided in sub-section (2), to demonstrate that the institution is established for a charitable purpose. Where an institution has purchased a tract of land in excess of the prescribed limit without the approval of the State Government, this judgment should not be construed to mean that the State Government is bound to grant its permission without application of mind to whether the institution has a concrete proposal or project which would subserve its charitable purpose or which has an element of public interest. The petitioners would have to duly establish the purpose that is involved and the public interest that would be subserved by the project. The prescribed limit of 12.50 acres has been introduced as a part of the legislation which subserves the wider social policy of the State, made in pursuance of the Directive Principles of State Policy in the Constitution. Consequently, any dispensation from the prescribed limit of 12.50 acres will have to meet the conditions of exemption which have been stipulated in the statute and it is only subject to compliance with those conditions that a dispensation can be granted in the exercise of discretion by the State.

10. In the present case, *prima facie*, it cannot be held that the petitioners have no specific project or purpose behind the acquisition of the land. The petitioners have submitted a detailed project report to the State Government. The proposal was recommended both by the District Magistrate as well as by the Commissioner to the State Government. Having regard to this factual background, it was necessary for the State Government to take those recommendations of responsible officers of the State into consideration. In the present case, having considered all materials on record, we have come to the conclusion that the impugned order does not take into account relevant and germane circumstances and has been passed without a due and proper application of mind.

11. In view of the above, the petition deserves to be allowed and is, accordingly, allowed. The order dated 14 August 2014 passed by the Principal Secretary (Revenue) is set aside. The matter is remanded to the State Government for a decision afresh, which shall be made after furnishing to the petitioners a reasonable opportunity of being heard.

12. We grant liberty to the petitioners to produce any additional material upon which they seek to place reliance before the State Government. We also leave it open to the State Government to direct the petitioners to produce further information and material, as may be required by the State Government to arrive at a proper conclusion for the exercise of its discretion, in accordance with the provisions of section 154(3) of the Act. The petition is accordingly disposed of. In the circumstances of the case, there shall be no order as to costs.