
(1998) 09 AHC CK 0064
In the Allahabad High Court
Case No : C.M.W.P. No. 17680 of 1989

Vayu Sena Hindon Sahakari Avas Samiti Ltd.	APPELLANT
Vs	
State of U.P. and another	RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 13(2), 19(1), 19(4), 20, 21(3)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 20, 21
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 153, 154, 154(1), 154(2)

Citation : (1999) 1 AWC 574 : (1998) 3 UPLBEC 2180

Hon'ble Judges : P.K. Jain, J;B.K. Roy, J

Bench : Division Bench

Advocate : Krishna Mohan Misra and R.N. Singh, for the Appellant; J.P. Pandey and S.G. Hasnain, Addl. C.S.C., for the Respondent

Judgement

P.K. Jain, J.—The petitioner society, registered under the U. P. Cooperative Societies Act, 1965, having its object to achieve and improve the social and economic conditions of its members through the common ownership and democratic management of the instrument of wealth. Only retired Defence personnel and their dependents numbering 476 are its members. The society originally acquired 11 acres of land through an agreement with the tenure-holders. Later on the membership of the society increased and to meet the needs of the members. the society needed additional land for purposes of developing residential colonies for its members. Till the date of filing of the petition, the society acquired total 31.5 acres of land through negotiations with tenure-holder"s. After developing the land, the plots of land have been allotted to its members and the sale deeds were got registered on various dates. A notice dated 7.5.1988 as contained in Annexure-3 u/s 154 (2) read with Section 167, of the U. P. Z. A. and L. R. Act, (hereinafter referred to as "the Act") was received by the petitioner from D. M. Ghaziabad. The petitioner instead of making a representation to the District Magistrate, respondent No. 2, moved the State

Government, respondent No. 1, for grant of permission to purchase the land. . The representation is contained in Annexure-4. The respondent No. 1. without considering the case of the petitioner, rejected the same vide order dated 21.7.89 copy whereof is appended as Annexure-5. Respondent No. 2 was directed by respondent No. 1 to take possession of the land of the society (the petitioner).

2. By the present writ petition, the petitioner has challenged the notice Issued to it by respondent No. 2 as contained in Annexure-3 and order of respondent No. 1 as contained in Annexure-5 on various grounds. However, now this writ petition is pressed only in respect of Annexure-5 and a prayer has been made to quash the order of respondent No. 1 dated 21.7.1989.

3. The main ground on which the impugned order is challenged is that respondent No. I rejected the representation on the sole ground that such a representation for permission to purchase the land in excess of the limits u/s 154 (1) of the Z. A. and L. R. Act was made after purchase of the land and such permission cannot be granted under the provisions of Section 154 (2) of the Act. which is legally erroneous.

4. The respondents have not filed any counter-affidavit as the facts were not in dispute and only legal question was involved.

5. We have heard Sri R. N. Singh, learned Senior Advocate, appearing for the petitioner as also Sri Krishna Mohan Misra, learned counsel for the petitioner and Sri S. G. Hasnain, learned Additional Chief Standing Counsel, appearing for the respondents. Both the parties have also made their written submissions after they were heard at length.

6. Section 154 (1) of the Act provides that no Bhumtdhar 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. Sub-section (2) of Section 154 of the Act further provides that the State Government may, by general or special order, authorise transfer in excess of the limit prescribed in subsection (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.

7. There is no dispute that the petitioner made a representation dated 8.6.1989 to respondent No, 1 whereas the land (area 31.5 acres) was acquired much prior to the said date. The question, therefore, arises if post facto permission u/s 154 (2) of the Act could be granted by respondent No, 1 and whether the order as contained in Annexure-5 passed by the respondent No. 1 deserves to be quashed in view of the fact that the same has been passed without consideration that the State Government has power to authorise transfer of land in excess of the prescribed limit under sub-section (1) of Section 154 of the Act, if the transfer is

in favour of a registered Cooperative Society which does not have sufficient land for its need or that the transfer is in the interest of general public. The submission of Sri R. N. Singh, learned counsel for the petitioner is that the view taken by the State Government, respondent No. 1. that Section 154 (2) of the Act does not provide for post facto authorisation of transfer, is erroneous as the Legislature, wherever needed or deemed necessary provided for prior permission/sanction whereas in Section 154 (2) the words used are "by general or special order" and not "prior permission" as used in Sections 154A and 157A. and that sub-section (2) of Section 154 itself provides that transfer in favour of a registered Cooperative Society in excess of the prescribed limit under sub-section (1) can be authorised if State Government is satisfied that such a society does not have sufficient land for its need or that the transfer is in the interest of general public. It is argued by Mr. Singh that the second part of the provisions contained in sub-section (2) of Section 154 of the Act has not at all been considered by the State Government, respondent No. 1. Sri S. G. Hasnain appearing for the State, respondent No. 1, has drawn our attention to the provisions contained in Sections 166 and 167 of the Act and has vehemently argued that the provisions of Section 154 of the Act have to be read and interpreted in conformity with the provisions of Section 166 and 167 of the Act.

8. Before we proceed to consider the rival arguments, it is necessary to have a look on the various provisions of the Act which have been referred by the learned counsel for the parties. Sections 154, 154A, 157A, 166 and 167 are reproduced below :

"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 Cooperative 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.

154A. Foreign national not to acquire land.--(1) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, no foreign national shall acquire any land by sale or gift without prior permission in writing from the State Government.

(2) No bhumidhar shall have the right to transfer any land to any person in contravention of subsection (1).

(3) Every transfer made in contravention of the provisions of this section shall be void.

157A. Restrictions on transfer of land by members of Scheduled Castes.-- (1) Without prejudice to the restrictions contained in Sections 153 to 157, no bhumidhar or asami belonging to a Scheduled Caste shall have the right to transfer any land by way of sale, gift, mortgage or lease to a person not belonging to a Scheduled Caste, except with the previous approval of the Collector ;

Provided that no such approval shall be given by the Collector, in case where the land held in Uttar Pradesh by the transfer on the date of application under this Section is less than 1.26 hectares or where the area of land so held in Uttar Pradesh by the transfer on the said date is after such transfer, likely to be reduced to less than 1.26 hectares.

(2) The Collector shall, on an application made in that behalf in the prescribed manner, make such inquiry as may be prescribed.

166. Every transfer made in contravention of the provisions of this Act shall be void.

167. (1) The following consequences shall ensue in respect of every transfer which is void by virtue of Section 166, namely-

(a) the subject-matter of transfer shall with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances ;

(b) the trees, crops and wells existing on the land on the date of transfer shall, with effect from the said date, be deemed to have vested in the State Government free from all encumbrances :

(c) the transferee may remove other movable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed.

(2) Where any land or other property has vested in the State Government under sub-section (1), it shall be lawful for the Collector to take over possession over such land or other property and to direct that any person occupying such land or property be evicted therefrom. For the purposes of taking over such possession or evicting" such unauthorised occupants, the Collector may use or cause to be used such force as may be necessary."

9. Admittedly the petitioner society had purchased total 31.5 acres of land from time to time before . the date of notice, i.e.. 7.5.1988. The case of the petitioner is that it had sold the land after carving out small residential plots to various members numbering 476. Annexure-2 filed with the writ petition shows that

around 250 members were sold small plots between 100 sq. Metres to 550 sq. Metres various members in the year 1985 whereas rest of the members were given residential plots in the year 1987-88. There is no material as to whether at a particular time, the total land acquired by the petitioner exceeded the limit of 12.5 acres as provided u/s 154 (1) of the Z. A. and L. R. Act. There is no doubt that if at any point of time, the Society had acquired more than 12.5 acres of land, then such transfers in favour of the Society exceeding 12.5 acres of land would be void in view of the provisions contained in Section 166 of the Act. The consequences which will follow to such transfer would be that the land acquired in excess of the limits u/s 154 (1) shall be deemed to have vested in the State Government free from all encumbrances and the Collector shall be entitled to take over possession over such land. Sub-section (2) of Section 154 of the Act. however, permits transfer of land in excess of the limit provided u/s 154 (1) of the Act if the State Government by general or special order authorises such transfer and 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. There is no dispute that the petitioner applied to the State Government for grant of permission u/s 154 (2) claiming to be a registered Cooperative Society which does not have land sufficient for its need and also claiming that the transfer is in the interest of its members. The State Government rejected such a representation on the sole ground that the permission is sought after transfer of the land was effected in favour of the Society. The main question which arises for determination is whether in view of the various provisions of the Act as reproduced above, the order of the State Government refusing to grant permission was in accordance with law and justified.

10. Sri Hasnain, Additional Chief Standing Counsel, vehemently argued that the permission should have been obtained prior to the transfer and in case the transfer is void in view of the provisions contained u/s 166 of the Act, the land stood vested in the State Government and grant of permission would amount to divesting the State Government. On the other hand, learned counsel for the petitioner argues that such permission can be granted after such sale deed is effected since sub-section (2) of Section 154 does not specifically provide for prior sanction. He further submits that where-ever prior sanction is deemed necessary by the Legislature, it has so provided in various provisions of the Act. Learned counsel has referred to Section 154A (1) which speaks that no foreign national shall acquire any land by sale or gift without prior permission in writing from the State Government. Likewise, in Section 157A it is provided that no bhumidhar or asami belonging to a Scheduled Caste shall have the right to transfer any land by way of sale, gift, mortgage or lease to a person not belonging to a Scheduled Caste, except with the previous approval of the Collector. In support of his contention, learned counsel has relied upon the decision of the Supreme Court. Life Insurance Corporation of India Vs. Escorts

Ltd. and Others, . This case related to Foreign Exchange Regulation Act of 1973. Section 29 of the said Act provided as follows :

"29 (1). Without prejudice to the provisions of Section 28 and Section 47 and notwithstanding any thing contained in any other provision of this Act or the provisions of the Companies Act. 1956, a person resident outside India (whether a citizen of India or not) or a person who is not a citizen of India but is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India or in which the non-resident, interest is more than forty per cent, or any branch of such company, shall not, except with the general or special permission of the Reserve Bank.

(a) carry on in India, or establish in India a branch, office or other place of business for carrying on any activity of a trading commercial or Industrial nature, other than an activity for the carrying on of which permission of the Reserve Bank has been obtained u/s 28. or

(b) acquire the whole or any part of any undertaking in India of any person or company carrying on any trade, commerce or industry or purpose the shares in India in any such company."

The said section prohibited without general or special permission of the Reserve Bank carrying on in India, or establishing in India a branch, office or other place of business, for carrying on any activity of a trading, commercial or industrial nature, other than an activity for the carrying on of which permission of the Reserve Bank has been obtained u/s 28 or acquisition of whole or any part of an undertaking in India carrying on trade or business of sale and purchase of shares in India. The question that had cropped up before the Apex Court was whether the special or general permission of the Reserve Bank envisaged u/s 29 of the Act was prior permission or could be subsequent permission also. The Apex Court approved the following observations in the case of Shakir Husain Vs. Chandoo Lal and Others .

"Ordinarily the difference between approval and permission is that in the first the act holds good until disapproved, while in the other case, it does not become effective until permission is obtained. But permission subsequently obtained may all the same validate the previous Act."

11. After discussing the object of the enactment and other provisions contained in the Act. the Apex Court held as follows :

"We have already extracted Section 29 (1) and we notice that the expression used is "general or special permission of the Reserve Bank of India" and that the expression is not qualified by the word "previous" or "prior". While we are conscious that the word "prior" or "previous" may be Implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29 (1). On the other hand, the Indications are all to the contrary. We find, on a

perusal of the several, different sections of the very Act, that the Parliament. has not been unmindful of the need to clearly express its intention by using the expression "previous permission" whenever it was thought that "previous permission" was necessary. in Sections 27 (1) and 30. we find that the expression "permission" is qualified by the word "previous" and in Sections 8{1}. 8[2(and 31. the expression "general or special permission" is qualified by the word "previous", whereas in Sections 13(2). 19(1). 19(4). 20. 21 (3), 24, 25. 28(1) and 29, the expression "permission" and "general or special permission" remain unqualified.....The significance of the use of the qualifying word in one provision and its non-use in another provision may not be disregarded. In our view, the Parliament deliberately avoided the qualifying word "previous" in Section 29(1) so as to invest the Reserve Bank of India with a certain degree of elasticity in the matter of granting permission to non-resident companies to purchase shares in Indian companies. The object of the Foreign Exchange Regulation Act. as already explained by us, undoubtedly, is to earn, conserve, regulate and store foreign exchange. The entire scheme and design of the Act is directed towards that end.....The foreign Exchange Regulation Act is, therefore, clearly a statute enacted in the national economic interest. When construing statutes enacted in the national interest, we have necessarily to take the broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the particular national interest whose advancement 1"s proposed by the legislation. Traditional norms of statutory interpretation must yield to broader notions of the national interest. If the legislation is viewed and construed from that perspective, as indeed it is imperative that we do. we find no difficulty in interpreting "permission" to mean "permission", previous or subsequent, and we find no Justification whatsoever for limiting the expression "permission" to "previous permission" only. In our view, what is necessary is that the permission of the Reserve Bank of India should be obtained at some stage for the purchase of shares by non-resident companies.

.....The Reserve Bank of India is not bound to give ex post facto permission whenever it is found that business has been started or shares have been purchased without its previous permission. in such cases. wherever the Reserve Bank of India suspects an oblique motive, we presume that the Reserve Bank of India will not only refuse permission but will further resort to action under Sections 50, 61 and 63, not merely punish the offender but also confiscate the property involved. We do not think that the scheme of the Act makes previous permission imperative u/s 29(1) though the failure to obtain prior permission may expose the foreign investor to prosecution, penalty, conviction and confiscation if permission is ultimately refused. Even if permission is granted, it may be made conditional. The expression "special permission" is wide enough to take within its stride a "conditional permission" we do not think that the Parliament intended to lay down in absolute terms that the permission contemplated by Section 29(1) had necessarily to be previous permission. The principal object of Section 29 is to regulate and not altogether to ban the

carrying on in India of the activity contemplated by clause (a) and the acquisition of an undertaking or shares in India of the character mentioned in clause (b). The ultimate object is to attract and regulate the flow of Foreign Exchange into India. If that much is obvious, it becomes evident that the Parliament did not intend to adopt too rigid an attitude in the matter and it was, therefore, left to the Reserve Bank of India, than whom there could be no safer authority in whom the power may be vested, to grant permission, previous or ex post facto, conditional or unconditional."

12. In the case before us. we do find that permission u/s 154 (2) can be granted by the State Government by general or special order if (i) 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 ; (ii) which does not have land sufficient for its need or (iii) that the transfer is in the Interest of general public. We have already seen above that the Legislature, wherever it thought necessary, it has provided for prior permission or previous approval as in Section 154A and Section 157A. From reading of Section 154 (2) we find that the purpose of granting permission for acquisition of land in contravention of the provisions contained in subsection (1) of Section 154 is a public purpose and in the interest of the public at large. Therefore, in our view, post facto permission can be granted if the conditions contained in Section 154 (2), as stated above, are satisfied.

13. There is no doubt that the consequences of transfer of land without obtaining permission and in contravention of the provisions of Section 154(1) of the Act are of far-reaching effect Inasmuch as such transfer is void and the transferred land stands vested in the State Government from the date of such transfers. But, in our view, such consequences do not to lead to the inevitable conclusion that post facto permission is not permissible u/s 154(2) of the Act. We may point out here that by grant of such post facto permission, no third party is going to be adversely affected. The land vests in the State Government in case the transfer is in contravention of the provisions of Section 154(1) and the State Government can divest itself of the land so long as the State Government has not transferred the land to some third party. In the L. I. C. case (supra), the Apex Court had observed "It is true that the consequences of not obtaining the requisite permission where permission is prescribed are serious and even severe. It is also true that the burden of proof is on the person proceeded against and that mens rea may consequently be interpreted as ruled out. But that cannot lead to the inevitable conclusion that the permission contemplated by Section 29 is necessarily previous permission."

14. Learned counsel for the petitioner has also relied upon the decision of the Apex Court, Smt. Darothi Clare Parreira and others Vs. State of Maharashtra and others, . That was a case relating to Urban Land (Ceiling and Regulation) Act. The appellants' land admeasuring 13410.88 Sq. meters was declared surplus land on December 22, 1977 and notification u/s 10 (3) of the Act was published

on March 12.1979. In the meantime, the appellants had filed an application u/s 20 for exemption which was disposed of on January 22.1979. Thereafter an application u/s 21 of the Act was moved which was rejected by the State Government on the ground that decision had already been taken for allotment of the land in question for other public purpose. An argument was made before the Apex Court that until the application u/s 21 of the Act was considered and disposed of the competent authority had no power to have the notification u/s 10 (3) published. The Hon"ble Court after considering the provisions of the Act held that it cannot be said that until the application u/s 21 or 20 is disposed of the competent authority has no power to have notification u/s 10 (3) vesting the excess land in the Government published. The very language of Sections 20 and 21 and the exercise of power thereunder would arise only when the land stands vested in the Government. The power of examination and exemption would arise only when the Government becomes the owner and the erst-while owner seeks to obviate the hardships u/s 20 or to subserve the housing scheme for weaker sections u/s 21 as envisaged thereunder.

15. On the basis of the above observations, it is argued that question of granting permission u/s 154(2) would arise only after the land has vested in the State Government. We do not agree with this contention of the learned counsel for the petitioner. So far as the Land Acquisition Act is concerned, question of granting exemption u/s 20 arises only when a person is found holding excess vacant land. Similarly the question of permission to continue to hold excess vacant land u/s 21 of the said Act would arise only after the declaration of the excess vacant land held by the holder. Under the U. P. Z. A. and L. R. Act. there is no such condition and the permission can be granted even prior to the transfer and vesting of land in the State Government. Therefore, in our view the decision in the case of Smt. Darothi Clare Parretra does not apply to the facts of the present case.

16. However, as we have already held above, the permission envisaged or contemplated u/s 154 (2) of the Z. A. and L. R. Act could be both, prior or ex post facto permission. The representation of the petitioner by the State Government could not have been rejected on the sole ground that the permission was sought after the sale was effected. The State Government while disposing of the representation of the petitioner has not considered other aspects as enumerated above. viz., the petitioner's claim to be registered Co-operative Society and further claim that they did not have sufficient land for their need. The object of forming the society is said to be providing residential facility after purchase of land to the members of the society which has as many as 476 members who are retired Defence personnel and thus the claim of the society is that the excess land is required for public purpose. In our view, the impugned order dated 21.7.89 passed by the State Government is. therefore, liable to be quashed.

17. Petition is partly allowed. Order dated 21.7.89 passed by the State Government as contained in Annexure-5 is hereby quashed and the State

Government is directed to decide the representation of the petitioner de novo after consideration of the claim of the petitioner that it is a registered Co-operative Society meant for providing for housing facility to retired Defence personnel having its membership to the tune of 476 and that it did not have sufficient land for its need.

18. Costs of this petition are made easy.

B.K. Roy, J.

19. I agree.