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Reserved on 16.8.2021

Delivered on 06.9.2021

Court No. - 32

Case :- WRIT - C No. - 4340 of 2021

Petitioner :- Maulana Mohammad Ali Jauhar Trust

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Syed Safdar Ali Kazmi

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard Sri Syed Safdar Ali Kazmi, learned counsel for the petitioner and Sri Ajeet Kumar Singh, learned Additional Advocate General along with Sri Sudhanshu Srivastava, learned Additional Chief Standing Counsel for the State.

2. The present petition has been preferred for quashing of report dated 16.03.2020 submitted by Sub-Divisional Magistrate, Rampur as well as for quashing the order dated 16.01.2021 passed by Additional District Magistrate (Administration) Rampur/respondent No.2 in proceedings initiated under Section 104/105 of the U.P. Revenue Code, 2006 (*hereinafter called as "the Code"*).

3. The facts, in nutshell, as disclosed in the petition are that petitioner is a Society registered under the provisions of Societies Registration Act, 1860 (*hereinafter called as "Act, 1860"*) in the year 1995. It was in the year 2005 that State of Uttar Pradesh enacted U.P. Act No.19 of 2006 and thus came into existence the Mohammad Ali Jauhar University Act, 2005 (*hereinafter called as "Act, 2005"*). The preamble of the Act, 2005 was as under :

"An Act to establish and incorporate a Teaching University sponsored by Maulana Mohammad Ali Jauhar Trust at Rampur in Uttar Pradesh and to provide for matters connected therewith or incidental thereto."

4. Pursuant to the enactment of Act, 2005, the State Government in exercise of power under Section 154(2) of U.P. Zamindari Abolition & Land Reforms Act, 1950 (*hereinafter called as "Act, 1950"*) on 07.11.2005 granted permission to Maulana Mohammad Ali Jauhar Trust (*hereinafter called as "Trust"*) to acquire 400 acres of land against ceiling of 12.5 acres (5.0586 hectare) for establishment of University. The said permission was granted with certain restrictions/conditions, which are as under :

“(1) उक्त भूमि धारित करने हेतु किया गया संक्रमण प्रचलित अधिनियमों, नियमों, विनियमों आदि एवं समय-समय पर जारी किए गये शासनादेशों के अधीन होगा।

(2) उक्त ट्रस्ट द्वारा भूमि का उपयोग अंकित शैक्षणिक संस्थाओं की स्थापना/निर्माण हेतु यह आदेश जारी होने के 05 वर्ष के भीतर कर लिया जायेगा एवं किसी भी दशा में उक्त प्रयोजन से भिन्न प्रयोजन के लिए नहीं किया जायेगा।

(3) संस्था/उसके किसी भी पदाधिकारी द्वारा भूमि का कोई भी भाग किसी संस्था/व्यक्ति को किसी भी रूप में शासन की पूर्वानुमति के बिना हस्तान्तरण नहीं किया जायेगा, लेकिन ऋण प्राप्त करने के उद्देश्य से उक्त ट्रस्ट को प्रश्नगत भूमि बिना कब्जा दिए वित्तीय संस्थाओं के पक्ष में बन्धक रखने का अधिकार रहेगा।

(4) ट्रस्ट द्वारा प्रत्येक वित्तीय वर्ष के अन्त तक क्रय/धारित की गई भूमि/निर्माण आदि का विस्तृत विवरण जिलाधिकारी, रामपुर द्वारा शासन की प्रत्येक अप्रैल मास में प्रस्तुत किया जायेगा।

(5) उपर्युक्त किसी भी शर्त का उल्लंघन होने पर 12.50 एकड़ से, जो भी भूमि अधिक होगी, उसे राज्य सरकार में निहित कर लिया जायेगा तथा ऐसे निहितन के बदले कोई प्रतिकर नहीं दिया जाएगा, लेकिन ऐसे निहितन के पूर्व ट्रस्ट को सुनवाई को एक अवसर प्रदान किया जायेगा।

(6) ट्रस्ट द्वारा स्थापित किये जाने वाले शिक्षण संस्थानों/संकायों हेतु निर्धारित मानक के अनुसार भूमि तथा उससे सम्बन्धित एन0ओ0सी0 प्रशासनिक विभाग के निर्धारित मानक के अनुसार प्राप्त किया जाना होगा।”

5. Thereafter, on 17.01.2006, the State Government further permitted the petitioner-Trust to purchase 45.91 acres (18.587 hectare) land. The said permission was in continuation with earlier order dated 07.11.2005 with the same condition. Thereafter, on 16.9.2006, an additional permission for purchase of 25 acres land was granted by the State Government to the Trust with the same conditions as was laid down in the earlier order dated 7.11.2005. Copies of permission granted by the State Government have been brought on record as Annexures 3, 4 and 5 to the writ petition.

6. According to the petitioner-Trust, an inspection was made by Sub-Divisional Officer, Tanda, District Rampur on 28.4.2009 and a report was submitted to the District Magistrate, Rampur wherein it was stated that construction was going on over 24000 Sq.Mts. of land. Details of construction being carried out by the Trust was given in the said report.

7. It was in the year 2020, on report submitted by Sub-Divisional Magistrate, Sadar to the District Magistrate under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (*hereinafter called as “Act, 1960”*) that matter was assigned to the Additional District Magistrate (Finance & Revenue) Rampur. On 28.02.2020, the Additional District Magistrate (Finance & Revenue) directed the Sub-Divisional Magistrate to prepare a report observing that Section 10(2) of Act, 1960 was not applicable and was wrongly invoked. On 02.03.2020, the District Magistrate directed the Sub-Divisional Magistrate to prepare report in accordance with the observation of Additional District Magistrate (Finance & Revenue) pursuant to

which a detailed report was submitted by the Sub-Divisional Magistrate to respondent No.2 i.e. District Magistrate, Rampur on 16.03.2020. On 17.03.2020, the matter was referred to respondent No.3 by District Magistrate directing him to adjudicate the matter on merits under Section 104/105 of the Code.

8. The report dated 16.03.2020 contain four major allegations against the petitioner-Trust i.e.

- (i) Violation of Condition No.1 of the permission granted by State Government in the year 2005 specially by violating Section 157-A of the Act, 1950 and also wrongfully acquiring the chak road.
- (ii) Condition No.2 was also violated as the completion time fixed in the permission i.e. 5 years was also not adhered to by the petitioner-Trust and a mosque was constructed within the premises of University.
- (iii) Condition No.4, which was in regard to the submission of annual report, the status of purchase and acquisition of land and construction thereon was to be reported to the District Administration annually but the Trust failed to adhere to the said condition.
- (iv) The Trust was not doing any work in public interest.

9. Taking cognizance on the report, a notice was issued on 18.03.2020 by respondent no.3 to the Trust. On 14.08.2020, the petitioner Trust through an advocate had submitted an application before respondent No.3 that Chairman of the Trust was languishing in Sitapur Jail and no notice was served upon the petitioner-Trust and it came to the knowledge only through the media reports. It was further brought to the notice of respondent No.3 that as the Chairman and

Secretary both are in Sitapur Jail, proper reply could not be filed. However, on 17.09.2020, a reply was filed on behalf of the Trust before respondent No.3 stating that report dated 16.03.2020 was an *ex parte* report.

10. The Additional District Magistrate (Administration) Rampur (respondent No.3), after hearing the State as well as the petitioner-Trust, vide order dated 16.01.2021 held that the petitioner-Trust had violated the condition laid down in the permission granted on 07.11.2005, as such land in excess of 12.50 acre stood vested in the State in view of Section 104/105 of the Code.

11. Sri Syed Safdar Ali Kazmi, learned counsel for the petitioner submitted that all the active members of the Trust such as Mohammad Azam Khan (President), Dr. Tazeen Fatima (Secretary) and Abdullah Azam Khan (Member) are in Sitapur Jail since 26.02.2020 and no notice was served upon them in jail. The objection was filed only on behalf of the Trust on 17.09.2020 and preliminary objection regarding jurisdiction was filed which was wrongly rejected on 14.10.2020. The said order is under challenge before the Board of Revenue. He further contended that written submission, which was submitted by the State was not served upon the petitioner and they were not granted time to rebutt the same.

12. Learned counsel emphasised that once the Trust was granted permission under Section 154(2) of the Act, 1950, the land purchased from different tenure holders, details of which have been given in para 16 of the writ petition and declaration under Section 143 of the Act, 1950 was made for large part of the land. Further, the inspection report dated 28.4.2009 fortifies the fact that condition No.2 was fulfilled by the Trust as construction was made over 24000 Sq.Mts. of land.

13. Sri Kazmi further submitted that no land has been purchased in contravention of Section 157-A of the Act of 1950 and the proceedings, which was initiated, was turned down by the Sub-Divisional Magistrate, Rampur and Commissioner, Moradabad on 17.7.2013 and 7.11.2013, and the said orders were challenged before the Board of Revenue after considerable delay and the Board of Revenue, on 14.01.2020, reversed the orders of Sub-Divisional Magistrate and Commissioner, which is pending consideration before this Court.

14. As far as finding recorded for violation of Condition No.4 of the permission is concerned, he submitted that the District Authorities are well aware of the sale deeds executed in favour of the Trust and the report dated 28.4.2009 is ample proof for the said charge. He further tried to impress upon, that University was doing a great public work by imparting education in 23 different streams and was catering to large area of population. Lastly, it was contended that if the land was acquired in excess of permission granted under Section 154(2) of the Act, 1950, the same is saved by provisions of Section 154(3), which provides for approval of the State Government, if any application is filed and the approval is made after deposit of fine, as contained in the explanation to the said section.

15. Opposing the writ petition, learned Additional Advocate General Sri Ajit Kumar Singh, submitted that the order impugned under Section 104/105 of the Code was revisable under Section 210 of the Code and writ petition was not maintainable.

16. However, on merits, he contended that the permission granted on 07.11.2005 was very specific and it provided that any land, which was acquired, was subject to the provisions of the Act and Rules. In the present case, land was acquired from members of Scheduled Caste

community such as Laxman Singh, Bhagwan Das, Rajveer, Mahesh, Chandrawati, Ram Prasad and Ram Chandra Singh, all resident of Village Seegankhera as well as Bansi Singh, who is a lease holder under Section 4-A of the Act, 1960, without obtaining mandatory permission under Section 157-A of the Act, 1950 i.e. Section 89 of the Code. Not only the land of Scheduled Caste community was taken without permission, but also the Chak Road and the land adjoining the river, which is a public utility land of Gaon Sabha, was also taken over by the Trust. Further, the land of number of tenure holders had been forcibly taken by the Trust and the proceedings under Section 134 of the Code is pending before the Revenue Authorities. It was further contended that not only this, the tenure holders had lodged first information report against the Trustees. It is also contended that the petitioner-Trust had taken over the land of enemy property. About 26 farmers had lodged a first information report against the Chairman of the Trust Mohammad Azam Khan for land grabbing.

17. Replying to the argument of petitioner that no land from the Scheduled Caste/Scheduled Tribe was purchased by the Trust without consent of District Magistrate, it was contended that after the order of Board of Revenue dated 14.01.2020 petitioner -Trust preferred Writ - B No.437 of 2020 (Maulana Mohammad Ali Jauhar Trust vs. State of U.P. and Another) and this Court on 21.10.2020 had dismissed the petition filed by the Trust in which the counsel, after filing the writ petition, did not appear before the Court. Once the writ was dismissed, and it was held that the sale deed executed by person belonging to Scheduled Caste in favour of the member of general category being hit by provision of Section 157-A, the condition No.1 stands violated.

18. Secondly, the permission granted on 7.11.2005 was specific in regard to completion of work within five years, while the report dated 28.4.2009 only takes note of the fact that certain constructions were in

progress over certain part of land and the petitioner has not brought any material on record to prove that construction was completed within the time fixed by the State Government and the intimation was given. Sri Singh further contended that construction of a mosque inside the University premises was against the spirit of sanction granted by the State Government on 07.11.2005 which categorically provided that the land was strictly to be used for educational Trust and not otherwise.

19. I have heard rival submissions of the parties and perused the material available on record.

20. Before proceeding to decide the issue in hand, a necessary glance of certain provisions of Act, 1950 as well as Code is necessary. Relevant Sections 154, 157-A, 157-C, 166 and 167 of the Act, 1950 and Sections 89, 98, 104, 105 and 230 of Code are extracted hereasunder:

Provisions of Act, 1950

***“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 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 transferee is a minor also his or her parents.

(3) For every transfer of land in excess of the limit prescribed under subsection (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”

“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 transferor 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 transferor 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.”

“157C. Mortgage of holdings by members of Scheduled Caste or Scheduled Tribe in certain circumstances. - *Notwithstanding anything contained in Sections 157-A and 157-B, a bhumidhar or asami belonging to a Scheduled Caste or Scheduled Tribe may mortgage without possession his holding or part thereof in the circumstances specified in sub-section (3) of Section 152.*

Explanation.- In. this chapter, the expressions 'Scheduled Castes' and 'Scheduled Tribes' shall mean respectively the Scheduled Castes and the Scheduled Tribes specified in relation to Uttar Pradesh under Articles 341 and 342 of the Constitution.”

“166. Transfer made in contravention of the Act to be void.- *Every transfer made in contravention of the provisions of this Act shall be void.”*

“167. Consequences of void transfers- *(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; and*
- (c) the transferee may remove other moveable 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.”

Provisions of Code

“89. Restrictions on transfer by bhumidhar.-*(1) No bhumidhar shall have the right to transfer any holding or part thereof where such transfer contravenes or is likely to contravene the provisions of sub-section (2) or sub-section (3).*

(2) Subject to the provisions of sub-section (3), no person shall have the right to acquire by purchase or gift any holding or part thereof from a bhumidhar with transferable rights, where the transferee shall, as a result of such acquisition, become entitled to land which together with land, if any, held by such transferee and where the transferee is a natural person, also together with land, if any, held by his family shall exceed 5.0586 hectares in Uttar Pradesh.

(3) The State Government or an officer authorized for this purpose under this Act may approve an acquisition or purchased done or propose to be done, in excess of the limits specified in sub-section (2), if such acquisition or purchase is in favour of a registered firm, company, partnership firm, limited liability partnership firm, trust, society or any educational or a charitable institution; and if it is of opinion that the acquisition or purchase would be in public interest and likely to generate economic activities (other than agricultural) and provide employment. In such case, the provisions of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 shall not apply to such acquisition :

Provided that where the land has been acquired or purchased by a registered firm, company, partnership firm, limited liability partnership firm, trust, society or any educational or a charitable institution, without obtaining prior approval under this sub-section the State Government or an officer authorized for this purpose under this Act, may give its approval for regularizing such acquisition or purchase afterwards on payment of an amount as fine, which shall be five percent of the cost of the land in excess of the limit prescribed under sub-section (2), calculated as per the circulated as per the circle rate prevailing at the time of making the application.

(4) Permission under sub-section (3) for acquisition or purchase of land by a registered firm, company, partnership firm, limited liability partnership firm, trust, society or any educational or a charitable institution in excess of limits prescribed under sub-section (2) shall be granted, on the conditions and in the manner prescribed, by:-

- (i) the Collector concerned for acquisition or purchase of land upto 20.2344 hectares ;*
- (ii) the Commissioner concerned for acquisition or purchase of land more than 20.2344 hectares and upto 40.4688 hectares ;*
- (iii) the State Government for acquisition or purchase of land more than 40.4688 hectares:*

Provided that if the applicant fails to set up the project within a period of five years from the date of grant of permission under sub section (3), the same shall lapse and the land acquired or purchased in excess of the limit prescribed under sub-section (2) shall vest in the State and the consequences of section 105 shall become applicable:

Provided further that the State Government may extend the period of permission granted under sub section (3) for a further period of maximum three years, after recording reasons for the same."

"98. Restrictions on transfer by bhumidhars belonging to a scheduled caste- (1) Without prejudice to the provisions of this

Chapter, no bhumidhar belonging to a scheduled caste shall have the right to transfer, by way of sale, gift, mortgage or lease any land to a person not belonging to a scheduled caste, except with the previous permission of the Collector in writing:

Provided that the permission by the Collector may be granted only when-

- (a) the bhumidhar belonging to a scheduled caste has no surviving heir specified in clause (a) of sub-section (2) of Section 108 or clause (a) of Section 110, as the case may be; or*
- (b) the bhumidhar belonging to a scheduled caste has settled or is ordinarily residing in the district other than that in which the land proposed to be transferred is situate or in any other State for the purpose of any service or any trade, occupation, profession or business; or*
- (c) the Collector is, for the reasons prescribed, satisfied that it is necessary to grant the permission for transfer of land.*

(2) For the purposes of granting permission under this section, the Collector may make such inquiry as may be prescribed."

"104. Every Lease or transfer of interest in any holding or part thereof made by a bhumidhar or any asami in contravention of the provisions of this Code shall be void."

105. Consequences of transfer by bhumidhar in contravention of the Code.- *(1) Where transfer of interest in any holding or part made by a bhumidhar is void under Section 104, the following consequences shall, with effect from the date of such transfer, ensue, namely--*

- (a) the subject matter of such transfer shall vest in the State Government free from all encumbrances;*
- (b) the trees; crops, wells and other improvements; existing on such holding or part shall vest in the State Government free from all encumbrances;*

(c) the interests of the transferor and the transferee in the properties specified in clauses (a) and (b) shall stand extinguished;

(d) the extinction of interest of the transferor under clause (c) shall operate to extinguish the interest of any asami holding under him;

(e) the provisions of this section shall not apply to any lease made under section 94.

(2) Where any land or other property has vested in the State Government under subsection (1) it shall be lawful for the Collector to take over possession of such land and other property, and to direct that any person occupying such land or property be evicted therefrom, and for that purpose, the Collector may use or cause to be used such force as may be necessary and the provisions of Section 59 mutatis mutandis shall apply to such property."

230. Repeal.- *(1) The enactments specified in the First Schedule are hereby repealed.*

(2) Notwithstanding anything contained in sub-section (1), the repeal of such enactments shall not affect--

(a) the continuance in force of any such enactment in the State of Uttarakhand;

(b) the previous operation of any such enactment or anything duly done or suffered thereunder; or

(c) any other enactment in which such enactment has been applied, incorporated or referred to; or

(d) the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title or obligation or liability already acquired, accrued or incurred (including, in particular, the vesting in the State of all estates and the cessation of all rights, title and interest of all the intermediaries therein), or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation,

liability, claim or demand, or any indemnity already granted or the proof of any past act or thing; or

- (e) any principle or rule of law or established jurisdiction, form or course of pleading practice or procedure or existing usage, custom, privilege, restriction, exemption, office or appointment:*

Provided that anything done or any action taken (including any rules, manuals, assessments, appointments and transfers made, notifications, summonses, notices, warrants, proclamations issued, powers conferred, leases granted, boundary marks fixed, records of rights and other records prepared or maintained, right acquired or liabilities incurred) under any such enactment shall, in so far as they are not inconsistent with the provisions of this Code, be deemed to have been done or taken under the corresponding provisions of this Code, and shall continue to be in force accordingly, unless and until they are superseded by anything done or action taken under this Code.”

21. The provisions of Section 89 of Code is corresponding to Section 154 of Act, 1950. Similarly, Section 98 of Code is corresponding Section 157-A of the Act, 1950. Further, Section 104 and 105 of the Code are corresponding to Sections 166 and 167 of the Act, 1950 while Section 230 of the Code was introduced on 11.2.2016 repealing the enactment enlisted in the First Schedule and Act of 1950 finds place at Serial No.19. Thus, from 11.2.2016, Act, 1950 stood repealed.

22. The proceedings, which had commenced in the year 2020 on the basis of report of Sub-Divisional Magistrate, Rampur was registered under Section 104/105 of the Code. The report indicated that the land purchased by the Trust pursuant to the permission granted on 07.11.2005, 17.01.2006 and 16.09.2006 was in contravention to the provisions contained in Section 157-A of Act of

1950, which is *pari materia* to Section 89 of the Code. The opening words lay a restriction upon bhumidhar or asami, belonging to Schedule Caste, 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. Thus, the mandatory requirement contained in Section 157-A of Act, 1950 has to be adhered to before any transaction is entered into between the parties in respect of any land belonging to members of Scheduled Caste. Explanation to Section 157-C defines the expression ‘Scheduled Castes’ and ‘Scheduled Tribe’, which means Scheduled Castes and Scheduled Tribes specified in relation to Uttar Pradesh under Articles 341 and 342 of the Constitution.

23. Learned Additional Advocate General had pointed out from the order impugned the names of various persons such as Laxman Singh, Bhagwan Das, Rajveer, Mahesh, Chandrawati, Ram Prasad, Ram Chandra Singh and Banshi Singh, belonging to Scheduled Caste category and no prior permission was taken from Collector by the Trust before entering into transaction, as contemplated under Section 157-A of the Act, 1950. The argument of petitioner’s counsel to the extent that once permission was granted by the State Government on 07.11.2005, the Trust proceeded to purchase the land cannot be accepted. Furthermore, reliance upon the order of Sub-Divisional Magistrate, Rampur and Commissioner, Moradabad dated 17.7.2013 and 07.11.2013 regarding permission being granted by District Magistrate cannot be accepted as the said orders were quashed by the Board of Revenue on 14.01.2020 and writ petition filed before this Court was dismissed on 21.10.2020, wherein following order was passed :

“Case called out in the revised list. None has appeared to press this writ petition.

Similar has been the situation on earlier occasions.

I have perused the impugned orders and do not find any illegality, therein.

Land, which was subject matter of sale deed executed by a person belonging to the scheduled caste in favour of member of the general category has been found to be hit by Section 157-A of the U.P. Zamindari Abolition and Land Reforms Act having been executed without having obtained prior approval/permission for the same.

As a consequence and in view of Section 167 and 166 of the said Act, the land subject matter of this illegal sale deed has been ordered to vest in the State free from all encumbrances.

No evidence or order granting permission for executing the sale deed is filed with the writ petition, apart from the document which has been discarded by the Courts below for cogent reasons.

Accordingly, this Court finds that the impugned orders are perfectly justified and call for no interference.

The writ petition is accordingly, dismissed.”

24. Once the order of Board of Revenue became final and the writ petition was dismissed, the stand of the petitioner looses ground that transfer of land was not in contravention to Section 157-A of Act, 1950.

25. The finding recorded by respondent No.3 as to the transfer made by members of Scheduled Caste has not been denied by the petitioner-Trust in the writ petition to the extent that they have not purchased the land from the persons mentioned in the said judgment. Bare averment that provisions of Section 157-A of Act, 1950 is not violated will not suffice, as order clearly mentions the name of members of Scheduled Caste and the area of land, which was transferred by them. Once such finding has come and the same having not been assailed in the writ petition, the order passed in proceedings

under Section 104/105 of Code cannot be interfered and the land has rightly been vested with the State Government.

26. Now coming to the argument of the petitioner's counsel as to compliance of condition laid in permission dated 07.11.2005 and of year 2006, which is reflected from the report of Sub-Divisional Magistrate dated 28.4.2009 appears to be not convincing as the condition laid down in permission granted on 07.11.2005 specifically provided for construction to be completed within five years.

27. The report of the year 2009 only indicates that construction work was in progress over 24,000 Sq.Mts. of land. Moreover, no document was either produced before the authorities, nor placed before this court to substantiate that the condition was fulfilled. Finding recorded by respondent No.3 as to the construction of 'Mosque' is also in violation of condition of sanction/permission as the Trust was required to use land only for educational purpose. The argument that the campus had residential premises for teaching as well as non-teaching staff, a 'Mosque' was constructed for them cannot be accepted as it goes against the permission granted by the state.

28. As Section 154(2) of Act, 1950 clearly empowers the State to grant permission for transfer of land excess of the prescribed limit in favour of registered co-operative society or institution established for charitable purpose, the said permission comes with certain restriction/condition, which, if violated, the same stands withdrawn.

29. In the present case, permission for transfer of land in excess to 12.50 acres was granted solely for establishing an educational institution. The establishment of a 'mosque' was against the permission granted on 07.11.2005 thus the Trust violated the conditions and Condition no.5 clearly provided that in case of

violation of any of the condition, land excess of 12.50 acres will vest in the State Government after affording opportunity of hearing. Neither in the reply before respondent No.3 nor before this court petitioner-Trust could justify the action for establishing a 'mosque' which was in clear violation of the condition laid down in the permission order dated 07.11.2005.

30. Coming to the next argument which relates to submission of annual reports and information in regard to the land and construction to the District Magistrate in the month of April every year, the petitioner-Trust could not place any document to substantiate that compliance of Condition No.4 was made. From bare reading of permission granted on 07.11.2005, it appears that Condition no.2 and 4 are quite inter-related as the intention of the State in granting permission was clear that the construction was to be made within five years and the Trust was required to submit annual report regarding status of purchase of land as well as construction made over it before the Collector in the month of April.

31. From perusal of reply filed before respondent no.3 as well as averment in this writ petition nothing has been brought on record to justify the cause of the petitioner- Trust and compliance made to the conditions laid down by the State Government while granting permission. The finding recorded by respondent No.3 that condition no.4 has been violated holds ground in view of the fact that apart from report of Sub-Divisional Magistrate dated 28.4.2009, no material has been brought on record regarding information to the Collector, as envisaged in the permission granted by the State Government.

32. The purpose and object of granting permission under Section 154(2) of Act, 1950 is that cooperative societies and charitable institution could acquire land by purchase above the ceiling limit of

12.50 acres, but this is subject to the restriction imposed by the State Government so that permission is not misused by the person in favour of whom the same is granted. The object of imposing condition is to prevent fraudulent transfer in garb of the permission granted under Section 154(2) of Act, 1950 and in case it is found that such transfer is in contravention, the land in excess of the prescribed limit will vest in the State as held by the Apex Court in case of **Kripa Shanker vs. Director Consolidation 1979 ALJ 693 (SC)**.

33. The respondent No.3 has recorded finding to the effect that not only the Trust violated the provisions of Section 157-A of Act, 1950, condition Nos.2 and 4, but has forcibly encroached upon the land of number of tenure holders, whose land was adjoining the Trust and they had filed case under Section 134 of the Code. Furthermore, Chak Road, which is land of Gaon Sabha and land adjoining the river belt has also been included. A finding has been recorded that a first information report had been lodged against the former Cabinet Minister Mohammad Azam Khan, under Sections 342, 384, 447, 506 IPC for land grabbing.

34. Sri Kazmi while replying to the argument of State, submitted that 26 first information reports, as alleged in the order impugned, has been challenged before this Court in Criminal Misc. Writ Petition No.20665 of 2019 wherein this Court on 25.9.2019 had granted interim protection to the extent that Mohd. Azam Khan and Aley Hasan Khan shall not be arrested provided both of them cooperate in the investigation and appear in the concerned police station as and when required for the purpose of investigation.

35. Coming to the argument raised by the petitioner in regard to maintainability of the proceedings, it was contended that once the declaration was made under Section 143 of the Act, 1950, the

proceedings under the Code could not have been initiated. It is not in dispute that the Trust had acquired total of 70.005 hectare land which comprises of 18.074 hectare agricultural and 51.931 hectare non-agricultural land. Section 143 (2) of Act of 1950 though provides that upon grant of declaration mentioned in sub-section (1) the provisions of Chapter-VIII of Act, 1950 shall cease to apply to the bhumidhar with transferable rights, with respect to such land. Section 81 of Code is a *pari materia* to Section 143 of the Act, 1950. However, in the present case, the revenue authorities proceeded to declare the land surplus on the ground that transfer was made in contravention to Section 157-A of Act, 1950. The argument of Sri Kazmi does not hold ground that once the declaration was made under Section 143, Section 143(2) places an embargo and no proceedings can be initiated under Section 104/105 of Code, 2006, as the transfer of land had taken place prior to the declaration made under Section 143, which is hit by Section 157- A of Act, 1950. Once the transfer was void, subsequent proceedings under Section 143 would not save the transfer made in favour of the Trust by members of Scheduled Caste.

36. Moreover, the authorities had proceeded that the Trust had violated condition nos.2 and 4 by not completing the construction within the stipulated period and did not submit the statement in regard to acquisition of land and construction made thereupon annually as well as construction of 'mosque' over the acquired land.

37. The declaration under Section 143 of Act, 1950 will not save the case of the petitioner- Trust from being hit by provisions of Section 157-A and the violation of conditions of permission granted on 07.11.2005. Had it been a simple transfer of land, not hit by provisions of Section 157-A, then the Trust could have raised the objections that revenue authorities could not have proceeded once

declaration was made and was saved by sub-section (2) of Section 143 of Act, 1950.

38. It is a case where large part of land has been purchased as well as certain part of land belonging to tenure holders and Gaon Sabha has been encroached upon by a former Cabinet Minister of State for establishing an educational institution pursuant to an Act which has come up in the year 2005. The finding has not been assailed by placing documentary proof that the plots in question were purchased by the Trust and does not belong to Gaon Sabha or the tenure holders who have initiated proceedings under Section 134 of the Code.

39. From the order impugned, I find that the revenue authority, after considering not only the report dated 16.3.2020 but also the reply of the petitioner, as well as the representation of the State, had in depth recorded finding as to the violation of law and condition by the Trust in setting up the educational institution. The order impugned has rightly been passed in the proceedings under Section 104/105 of Code and the land except 12.50 acres vest in the State Government.

40. Considering the facts and circumstances of the case, I find that once this Court on 06.8.2021 took cognizance in the matter and directed the Standing Counsel to seek instructions in the matter, no question arises for relegating the matter under Section 210 of the Code on the ground of alternative remedy.

41. After hearing the counsel for the parties and on perusal of record, I find that no case for interference has been made out by the petitioner-Trust as the transfer of land by the Trust is hit by Section 157-A of Act, 1950 and further the conditions of the permission granted by the State on 7.11.2005 had been violated, which had required the institution to strictly follow the same and any

contravention would lead to the land vesting in the State Government except 12.5 acres.

42. No interference is required in the order impugned dated 16.01.2021 and report dated 16.03.2020 submitted by Sub-Divisional Magistrate, Rampur.

43. Writ petition stands **dismissed**.

Order Date :- 06.09.2021
Kushal