

**Court No. - 51**

**Case :-** WRIT - C No. - 28431 of 2023

**Petitioner :-** Juneja Poultry Products Pvt Ltd

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Uma Nath Pandey, Suresh Chandra Varma

**Counsel for Respondent :-** C.S.C

**Hon'ble Chandra Kumar Rai, J.**

1. Heard Mr. S.C. Varma, learned Counsel for the petitioner, Mr. J.N. Maurya, learned Chief Standing Counsel for the State-respondents assisted by Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. The instant petition has been filed for following relief:-

*"I) Issue a writ, order or direction in the nature of mandamus commanding the respondent no.4 not to give effect of the order dated 26.04.2023 passed in Case No.7799 of 2022 Computerized Case No. T202203410407799 (State of U.P. vs. Juneja Poultry Products Pvt. Ltd.) under Section 166 and 167 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 by which direction has been issued to vest 10.5764 Hectare petitioner's land in State Government due to violation of section 154(2) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 during the pendency of the Appeal no.1113 of 2023 (Juneja Poultry Products Pvt. Ltd. vs. State of U.P. and others) pending before the Commissioner, Kanpur Division Kanpur.*

*I-A) Issue a suitable writ, order or direction in the nature of certiorari to quash the impugned order dated 25.10.2023 (Annexure No.22 to this writ petition) passed by the Commissioner in Revision no.1113 of 2023 (Computerized Case No.C202303000001113) (Juneja Poultry Products Pvt. Ltd. vs. State of U.P.) and may stay the effect and operation of the order dated 26.04.2023 (Annexure No.16 to the writ petition) passed by Sub Divisional Officer during the pendency of the revision before the respondent no.2.*

*II) Issue a writ, order or direction in the nature of mandamus commanding the respondent no.2 to decide the stay application pending in Appeal No.1113 of 2023 (Juneja Poultry Products Pvt. Ltd. vs. State of U.P. and others) within time bound period.*

*III) Issue any other suitable writ, order or direction which this Court may deem fit and proper in the circumstance of the case.*

*IV) Award costs of the writ petition to the petitioner."*

3. This Court on 6.10.2023 passed the following order:-

*"1. Heard Mr. S.C. Verma, learned Counsel for the petitioner and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.*

*2. Counsel for the petitioner submitted that petitioner is a private limited company which is registered under the Companies Act. He further submitted that petitioner company purchased 15.6350 hectare agricultural land of Khasra Nos. 948, 962 and 1027 vide four registered sale deed dated 31.3.2006 accordingly name of petitioner company has been mutated in revenue record. He further submitted that aforementioned sale deed was executed beyond the area prescribed under Section 154 (1) of U.P.Z.A. and L.R. Act, as such, proceeding of regularization of the excess land is pending before the State-Government under Section 154 (3) of U.P.Z.A. and L.R. Act but in spite of the pendency of the proceeding, Sub-Divisional Officer passed an order under Section 166/ 167 of U.P.Z.A. and L.R. Act against the petitioner which is wholly illegal and without jurisdiction. He further submitted that against the order passed in the proceeding under Section 166/ 167 of U.P.Z.A. and L.R. Act, appeal filed by the petitioner along with stay application is pending before Commissioner, Kanpur Division Kanpur being appeal No. 1113 of 2023, Computerized case No. C202303000001113. He further submitted that appeal has been registered and on the point of maintainability, the date has been fixed for hearing. He submitted that no interim order has been passed which is causing injury to the interest of petitioner. He further submitted that if the order under appeal or revision has serious civil consequences then interim protection be granted in favour of the petitioner in view of the law laid down by this Court reported in 2007 (102) RD 498, Ali Sher Vs. State of U.P. Through Collector, Bijnor and Others reported in 2007 (102) RD 498.*

*3. Considering the argument advanced by learned Counsel for the petitioner, it will be appropriate that pending stay application in the appeal filed by the petitioner be decided expeditiously.*

*4. In view of the above, respondent no.2, Commissioner, Kanpur Division Kanpur is directed to pass order on the stay matter application filed along with appeal No. 1113 of 2023, Computerized case No. C202303000001113 within period of two weeks from the date of production of certified copy of this order and communicate the order to this Court by the next date fixed in the matter.*

*5. Put up this matter as fresh on 2.11.2023.*

*6. Registrar (Compliance) is directed to communicate this order to respondent no.2, Commissioner, Kanpur Division Kanpur within three days."*

4. In compliance of the order of this Court dated 6.10.2023, stay application filed by the petitioners has been rejected by the Commissioner vide order dated 25.10.2023 although one amendment application filed by petitioner was allowed and appeal was treated as revision. Counsel for the petitioner has filed amendment application along with the prayer to set aside the order dated 25.10.2023 rejecting the stay application filed by petitioner during pendency of revision. Counsel for the petitioner has accordingly amended the prayer in the instant writ petition.

5. Counsel for the petitioner submitted that in view of the provisions contained under Section 154 (3) of the U.P.Z.A. and L.R. Act, the

petitioner's sale deed can be regularized. He further submitted that matter regarding approval is pending before State Government, as such, the order vesting the land in the State-Government. is wholly illegal. He submitted that revision under Section 333 of U.P.Z.A. and L.R. Act against the order vesting the land in the State- Government is pending before Commissioner, as such, petitioner is entitled to the interim protection as petitioner has purchased the land after payment of consideration although area is beyond prescribed limit, as such, the petitioner's right cannot be interfered with during pendency of the proceeding. He submitted that in view of the ratio of law laid down by Apex Court in **Mool Chand vs. Raja Buland Sugar Industries reported in 1982 (3) SCC 484** as well as by this Court in **Ali Sher Vs. State of U.P. Through Collector, Bijnor and Others reported in 2007 (102) RD 498**, the interim protection is to be granted if the order under appeal or revision has serious civil consequences.

6. On the other hand, Mr. J.N. Maurya, learned Chief Standing Counsel for the State-respondents assisted by Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents submitted that petitioner has not come with clean hands, as such, he is not entitled to any interim protection in the matter. He further submitted that initially along with the revision, no application for stay was filed but after order passed by this Court to decide the application for interim relief, fresh application was filed which has been rightly rejected. He submitted that necessary direction may be issued for the disposal of pending revision but no interim order is required during pendency of the revision. He submitted that writ petition is liable to be dismissed as petitioner has prayed for disposal of the stay application which has been decided in accordance with law.

7. In reply, Counsel for the petitioner submitted that first prayer made in the writ petition is not to give effect, the order dated 26.4.2023 passed in the proceeding under Section 166/167 of U.P.Z.A. and L.R. Act as well as by amendment prayer has been made to quash the order rejecting the stay application, as such, petitioner is entitled to interim relief against the order dated 26.4.2023 vesting the land in State Government.

8. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

9. There is no dispute about the fact that revision under Section 333 of U.P.Z.A. and L.R. Act filed by petitioner against the order dated 26.4.2023 passed under Section 166/167 of U.P.Z.A. and L.R. Act is pending before respondent no.2 but the application for interim relief has been rejected, vide order dated 25.10.2023.

10. In order to appreciate the controversy, the provisions contained under Section 154 of U.P.Z.A. and L.R. Act will be relevant for perusal which is 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 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 for the industrial purposes or in favour of a registered cooperative society or an institution established for a charitable purpose, which does not have sufficient land for its need or that the transfer is in the interest of general public.*

*Explanation 1. - For the purposes of this section, "family" means transferee himself, his/her wife or husband, as the case may be, and minor children and where transferee is minor also the parents of such minor children.*

*Explanation 2. - "Industrial purposes" mentioned in sub-section (2) means the purchase of the land within the whole territory of district Pithoragarh, Uttarkashi, Chamoli, Champawat, Rudraprayag, Bageshwar, Pauri Garhwal, Tehri Garhwal and Almora and all other hilly abundance development blocks of district Dehradun except Vikasnagar, Doiwala, Sahaspur and Raipur and all other hilly abundance development blocks of district Nainital except Haldwani and Ramnagar development blocks of the State of Uttarakhand.]*

*[(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]"*

11. The perusal of the provisions contained under Section 154 of U.P.Z.A. and L.R. fully reveals that where the prior approval of the State Government is not obtained under this Section, the State Government may give its

approval afterward in such manner and on payment manner of an amount as fine equal to 25% of the cost of the land which demonstrate that petitioner's sale deed can be regularized in view of the proviso contained under Section 154 (3) of U.P.Z.A. and L.R. Act.

12. It is admitted fact that proceeding of regularization of the excess land is pending before the State Government under Section 154(3) of U.P.Z.A. & L.R. Act and report has been called from the District Magistrate which is mentioned in the impugned order dated 25.10.2023 passed by Commissioner while rejecting the petitioner's stay application.

13. Considering the entire facts and circumstances, the impugned order rejecting the petitioner's stay application vide order dated 25.10.2023 cannot be sustained in the eye of law. Accordingly, the impugned order dated 25.10.2023 passed by respondent No.2, is hereby, set aside. Writ petition is **allowed**. Respondent no.2, Commissioner, Kanpur Division, Kanpur is directed to decide the Revision No. 1113 of 2023 being Computerized case No.C202303000001113, (Juneja Poultry Products Pvt. Ltd. vs. State of U.P.) after affording opportunity of hearing to the parties in accordance with law expeditiously preferably within period of three months from the date of production of certified copy of this order.

14. The petitioner will cooperate in the pending proceeding of revision and no unnecessary adjournment shall be granted to the parties. It is further directed that till the disposal of the aforementioned revision, as indicated above, the operation of the order dated 26.4.2023, passed by respondent No.4 shall remain in abeyance.

**Order Date :- 9.11.2023**

Vandana Y.