

Court No. - 10**Case :-** WRIT - C No. - 38411 of 2023**Petitioner :-** C/M Adarsh Kanya Inter College And Another**Respondent :-** State Of U.P. And 5 Others**Counsel for Petitioner :-** Prabhakar Awasthi,Saurabh Tripathi**Counsel for Respondent :-** C.S.C,Kushmondeya Shahi,Tanuj Shahi**WITH****Case :-** WRIT - C No. - 38610 of 2023**Petitioner :-** Committee Of Management Maharshi Dayanand Saraswati
Vaidik Shiksha Samiti And Another**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Prabhakar Awasthi,Saurabh Tripathi**Counsel for Respondent :-** C.S.C.**Hon'ble Kshitij Shailendra,J.****Order on Civil Misc. Impleadment Application No.2 of 2023.**

1. Heard Shri K. Shahi, learned counsel for the applicant-Yogesh Kumar who has sought his impleadment in Writ C No.38411 of 2023.
2. When this application came up before this Court on 07.12.2023 as a bare application, the Court fixed the date '19.12.2023' as the date for its consideration. However, the case has been listed today. Shri K. Shahi learned counsel for the applicant is present and is opposing the writ petition. In these circumstances, the Court summoned the application from the concerned Section and has taken up the same for consideration.
3. Shri Prabhakar Awasthi, learned counsel for the petitioners has vehemently opposed the impleadment of Yogesh Kumar stating that he happens to be husband of the Principal who was earlier removed from the post of Principal.
4. The Court perused the affidavit filed in support of the impleadment application and, except the fact that raising some objection with respect to transfer of property of the Institution, some complaint was moved by Yogesh

Kumar, it has not been disclosed as to how does he have locus in the present proceedings insofar as the merits of the impugned action are concerned.

5. In view of the facts and circumstances of the case, Yogesh Kumar is neither a necessary nor a proper party in the present proceedings.

6. The impleadment application has no force and is, accordingly, **rejected.**

Order on Writ Petition.

1. Heard Shri Prabhakar Awasthi, learned counsel for the petitioners and Shri I.P. Srivastava, learned Additional Chief Standing Counsel for all the respondents.

2. The issues involved in both the writ petitions being associated with each other, a common order is being passed noting all the relevant facts.

3. The petitioner no.1 is the Committee of Management of a recognized Inter College and it is contended that initially the said Institution was recognized as a High School in 1979, later on, upgraded as Inter College in 1988 and was being run on a land owned by the Management. By three sale deeds, executed in the years 2000, 2010 and 2012, additional lands were purchased by the Management of the Institution and in respect of part of the newly purchased land, a registered gift deed dated 17.03.2016 was executed by the Committee of Management of the Inter College in favour of Committee of Management of a Degree College. A complaint was made against the act of transfer alleging that the transfer having been done without obtaining prior permission from the Director of Education as per provisions of Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974 (hereinafter referred to as 'the Act, 1974'), the same is void. An order was passed by the Additional District Magistrate (Administration), Meerut on 26.11.2020 refusing to issue No Objection for establishment of a Degree College for want of sanction before transfer of land. The said order was set aside by

this Court on 15.11.2021 while allowing Writ C No.20974 of 2021 (C/M Maharshi Dayanand Saraswati Vaidik Shiksha Samiti And Another v. State of U.P. And 3 Others) on the ground that the order was passed without providing opportunity of hearing to the petitioners. The matter was remitted to the District Magistrate to pass fresh order. The District Magistrate passed an order on 24.02.2022 again refusing to issue No objection with a direction to the petitioners that they may approach the Director of Education under Section 5(1) of the Act, 1974 for obtaining requisite permission.

4. The petitioners filed Writ C No.34819 of 2022 (C/M Maharshi Dayanand Saraswati Vaidik Shiksha Samiti And Another v. State of U.P. And 4 Others) challenging the order dated 24.02.2022 and, after a hot contest made by the State, this Court, vide order dated 17.04.2023, specifically declared the gift deed as void having been executed in violation of the provisions of Section 5 of the Act, 1974. This Court further held that there was no infirmity in the order dated 24.02.2022. Relevant portion of the order dated 17.04.2023 disposing off the writ petition is reproduced as under:-

"7. Violation of Section 5 of the Act, 1974 is established. The transfer of land of the intermediate college in favour of the degree college is vitiated and void.

8. In this wake, there is no infirmity in the impugned order dated 24.02.2022 passed by the respondent No.3-District Magistrate, Meerut. The relief sought in the writ petition is accordingly declined."

5. After the aforesaid observations were made, this Court, accepting the statement made on behalf of the petitioners that they were inclined to obtain a **fresh permission** of transfer of land, not only permitted the petitioners to move a fresh application before the Director of Education

but also **directed the Director** to decide the representation for transfer of land in accordance with law within stipulated period of time.

6. It is contended that when the petitioners sought permission to transfer land in terms of the order dated 17.04.2023, the Director of Education (Madhyamik), U.P. by order dated 11.09.2023, rejected the representation of the petitioners observing that there was no occasion to send a letter for according permission after the land has already been transferred. The said observations contained in the order dated 11.09.2023 are quoted hereinbelow:-

"इस प्रकार प्रबन्ध समिति द्वारा भूमि अन्तरण के पश्चात उसकी अनुमति प्रदान किये जाने हेतु शिक्षा निदेशक (माध्यमिक) को पत्र प्रेषित किया जाना नियमानुकूल नहीं है।"

7. The said order dated 11.09.2023 is under challenge in the aforesaid Writ C No.38610 of 2023.

8. It is, therefore, clear that though this Court not only permitted the petitioners to move a fresh application for sanction but also directed the Director to pass order strictly in accordance with law, the Authorities were banking upon the situation which was existent prior to declaration of the gift deed as void by this Court under the order dated 17.04.2023 although, with the declaration of the gift deed as void, the land stood reverted in the Committee of Management of the Inter College. In fact, the action of the State was found to be justified by this Court on 17.04.2023 insofar as the illegal execution of the gift deed is concerned.

9. By order dated 06.10.2023, impugned in Writ C No.38411 of 2023, the State Government has superseded the Committee of Management in purported exercise of power under Section 16-D (4) of the U.P. Intermediate Education Act, 1921 on the same ground that the gift deed had been executed in violation of Section 5 of the Act, 1974. The Government has also relied upon the aforesaid order dated 11.09.2023 rejecting the representation of the petitioners.

10. Learned counsel for the petitioners, by assailing both the orders in the connected matters, submits that the Authorities are not justified in taking action against the petitioners on the basis of an action which was already turned down by this Court while declaring the gift deed as void and the only thing which was required to be seen by the Authorities was as to whether the fresh application filed by the petitioners seeking fresh permission for transfer of land by the Committee of Inter College is or is not according to law.

11. Shri I.P. Srivastava, learned Additional Chief Standing Counsel submits that the petitioners have alternative remedy of filing an appeal before the District Judge under Section 5(2) of the Act, 1974. He further submits that once the Committee of Management proceeded to indulge itself into illegal act of transfer, Authorities were justified in their action. Shri Srivastava further submits that the order dated 11.09.2023 does not mention that the petitioners ever applied for fresh permission.

12. Meeting these arguments, Shri Awasthi submits that provision of appeal is not applicable in the present case as the appeal under Section 5(2) of the Act, 1974 is provided against an order refusing sanction under Sub-Section (1) and, in the present case, no order refusing sanction has been passed, rather the application dated 15.05.2023 annexed at page 263 of the Writ C No.38610 of 2023 has not even been considered, rather, in specific words, Officer has refused to forward the same even for its consideration.

13. Having heard learned counsel for the parties, the Court finds that the directions contained in the order dated 17.04.2023 passed in Writ C No.34819 of 2022 have not been complied with. Any observation made by the Authorities in relation to the execution of the gift deed dated 17.03.2016 is wholly irrelevant once the said deed has already been declared as 'void'. In the considered opinion of the Court, every earlier action by the petitioners-Committee, whether lawful or unlawful, stands merged in the order dated 17.04.2023 passed by this Court and,

admittedly, the land stands reverted back to the Committee of Management of the Inter College. Therefore, the Authorities were not justified in refusing to forward the petitioners' application dated 15.05.2023 for consideration on merits and even in superseding the Committee of Management on the said ground.

14. Shri I.P. Srivastava, learned Additional Chief Standing Counsel admits that the application dated 15.05.2023 has not been considered on merits and the past proceedings have been relied upon.

15. While this Court proceeded to stay the effect and operation of the orders impugned in both the writ petitions, learned Additional Chief Standing Counsel made a submission that, in that event, the matter would remain pending for a significant period of time serving no purpose at all.

16. Considering the facts and circumstances of the case, both the writ petitions stand **allowed**.

17. The order dated **11.09.2023** impugned in Writ C No.38610 of 2023 and the order dated **06.10.2023** impugned in Writ C No.38411 of 2023 **are quashed**.

18. The Director of Education (Secondary), U.P. at Lucknow (respondent no.3) is directed to consider the application dated 15.05.2023 strictly in accordance with law **without referring to any proceedings prior to 17.04.2023**.

19. The respondent no.3 shall pass order **strictly as per the directions contained in the order dated 17.04.2023** by the **end of March 2024** after providing full opportunity of hearing to the petitioners, provided a certified copy of this order is served in the office of respondent no.3 alongwith photostat copy of the petitioners' application dated 15.05.2023 supported by its enclosures by 07.01.2024.

Order Date :- 12.12.2023

Jyotsana