

Reportable**Judgment reserved on: 06.04.2026****Judgment delivered on: 30.04.2026****HIGH COURT OF UTTARAKHAND AT NAINITAL****Writ Petition Misc. Single No.1722 of 2020**

Shishya Society, Atak Farm

--Petitioner

Versus

State of Uttarakhand & Ors.

--Respondents

Presence:-*Mr. Rajeshwar Singh, learned counsel for petitioner, appeared through V.C.**Mr. Tarun Lakhera, learned Brief Holder for the State of Uttarakhand/respondents.***Hon'ble Pankaj Purohit, J. (Oral)**

The present writ petition has been filed by petitioner seeking a direction to the respondents to register the Gift-deed dated 17.07.2018 presented for registration to the Registrar vide receipt No.74/23 and returned it to petitioner-Society and further to declare that the provisions of Section 154(3) of the Uttarakhand Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "the Act"), as applicable to State of Uttarakhand, are not applicable to Gift-deed; and alternate relief of directing the respondents to impound the document and refer it to competent authorities for adjudication after hearing the petitioner.

2. The facts of the case are that petitioner is a society registered under the Societies Registration Act, 1860, having its office at Atak Farm, P.O. Selakui, District Dehradun. The present writ petition has been filed through its Treasurer, who has been duly authorized by a Board Resolution dated 12.08.2020. It is stated that a parcel of land bearing Khasra No. 353/1/7, measuring 300 square meters, situated at Atak Farm, Kheri Village, Selakui, District Dehradun, was transferred in favour of petitioner-society by another society, *namely*, Inter Mission Industrial Development Association, by way of a Gift Deed dated 17.07.2018. The said Gift Deed was presented before Sub-Registrar, Vikas Nagar, Dehradun for registration on 17.07.2018. The requisite registration fee amounting to Rs. 21,710/- was deposited and the necessary formalities, were

completed. A receipt bearing No. 74/23 dated 17.07.2018 was issued in this regard. However, despite completion of formalities, the document was not returned to the petitioner. Upon approaching the office of the Sub-Registrar after a few days, the petitioner was informed that the registration had been postponed, though no written order to that effect was communicated. Subsequently, on 16.10.2018, the petitioner submitted a complaint before the District Registrar/Collector, Dehradun, stating that the Sub-Registrar had neither registered the document nor impounded it, and requested appropriate directions in the matter. The complaint was thereafter marked to the concerned authority for consideration. It is further stated that thereafter, the registering authorities sought reports and opinions from various departments, however, no final decision was taken, and the document remained neither registered nor impounded. The petitioner also sought information under the Right to Information Act and obtained copies of certain correspondence and opinions on 16.07.2019. After a lapse of more than two years from the date of presentation of the document, no action was taken by the Sub-Registrar or the concerned authorities, either to register the document or to impound and refer it for adjudication under the relevant provisions of law.

3. Learned counsel for petitioner has submitted that the action of respondent authorities in withholding registration of the Gift Deed is arbitrary, illegal and contrary to provisions of the Registration Act. He further argued that the Sub-Registrar is under a statutory obligation either to register the document or to impound and refer it for adjudication, and cannot indefinitely keep the matter pending. He further contended that even if provisions of Section 154 of the Act are attracted, the authority was required to follow due procedure under Sections 166/167 of the Act and could not refuse registration in limine.

4. It has also been strongly argued by learned counsel for petitioner that the transaction in question is a gift and not a sale, and therefore, does not fall within the mischief of Section 154(3) of the Act. According to petitioner, restriction contained

in Section 154 of the Act pertains primarily to transfers by way of sale and not to gratuitous transfers such as gifts. It is further submitted by learned counsel for petitioner that the donor society was a *bhumidhar* with transferable rights, as evidenced by the revenue records, and therefore, competent to execute the Gift Deed. On these premises, it is argued that the refusal or failure to register the document is unsustainable in law.

5. Learned State Counsel has opposed the writ petition by submitting that the document in question, though styled as a Gift Deed, is in substance a transfer of immovable property and therefore squarely governed by the provisions of Section 154 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 as applicable to the State of Uttarakhand. It is contended that the statutory restriction imposed under Section 154 of the Act is not confined to sale alone but extends to all forms of transfer, including gift, as is evident from the definition of “gift” under Section 122 of the Transfer of Property Act. According to the State, petitioner cannot be permitted to circumvent the statutory mandate by merely labeling the transaction as a gift when in effect it results in transfer of proprietary rights.

6. It is further submitted by learned State Counsel that the land in question measures 300 square meters, whereas the statutory framework under Section 154(4)(1)(a) of the Act permits transfer of land only up to 250 square meters without prior approval of competent authority. In the present case, no such prior permission was obtained by petitioner before execution of the Gift Deed. Petitioner, being a society and not a tenure-holder within the meaning of the Act, is mandatorily required to obtain such approval. In absence thereof, the transaction is clearly hit by the provisions of Section 154 of the Act and is liable to be treated as void, and therefore, the registering authority was justified in refusing registration.

7. Learned State counsel has also argued that the Sub-Registrar has acted strictly within the bounds of his statutory authority. It is submitted by learned State Counsel that the function of registering authority is not merely mechanical, and where a document appears to be in contravention of law, the

authority is competent to refuse registration and refer the matter to learned District Registrar/Collector for appropriate action. In the present case, upon finding the document not fit for registration, the same was referred to learned District Registrar, Dehradun in terms of legal advice received, and such action cannot be said to suffer from any illegality or arbitrariness warranting interference by this Court.

8. It is contended by learned State Counsel that petitioner has misconstrued the applicable statutory provisions, including the Uttarakhand amendments and the Ordinance of 2003, and has failed to demonstrate as to how the restrictions under Section 154 of the Act are not attracted in the present case. It is further contended by him that petitioner has attempted to cure lacunae in its case by filing documents at a belated stage through supplementary affidavits, which reflects lack of due diligence. In these circumstances, it is urged that the writ petition is devoid of merit, no mandamus can be issued for registration of a document which is *ex facie* contrary to law, and the writ petition is liable to be dismissed.

9. Having heard learned counsel for the parties and having perused the entire material available on record, this Court finds that the controversy lies in a narrow compass, namely, whether the restrictions contained in Section 154 of the Act, as applicable to the State of Uttarakhand, are confined only to a transfer by way of sale, as contended by petitioner, or whether they extend to all modes of transfer, including a gift. At the outset, it is necessary to notice the legal meaning of the expression “transfer”. Section 5 of the Transfer of Property Act, 1882 provides that “‘transfer of property’ means an act by which a living person conveys property, in present or in future, to one or more other living persons...” Section 122 of the said Act further provides that “‘Gift’ is the ‘transfer’ of certain existing movable or immovable property made voluntarily and without consideration...” Thus, a gift is a recognized mode of transfer, and forms part of the broader category of transfers of property.

10. Turning to provisions of Section 154 of the Act, it would be appropriate to notice the relevant statutory scheme in

some detail. Section 154(1) provides in clear terms that *“save as provided in sub-section (2), no bhumidhar shall have the right to transfer by sale or gift any land...”*. The legislative language thus expressly brings within its fold both sale and gift as recognized modes of transfer and subjects them to statutory restriction. The use of the words “sale or gift” leaves no manner of doubt that the embargo is not confined to one form of transfer but extends to multiple recognized modes.

11. Section 154(4)(3)(a) of the Act, as applicable in the State of Uttarakhand, further provides as follows:

“Subject to restrictions contained in Section 154, a person, society or corporate body may purchase land for purposes other than agriculture and horticulture, with the prior sanction of the Government in the State of Uttarakhand, as may be prescribed.”

12. The provision, when read in its plain terms, makes it abundantly clear that acquisition of land by a person, society or corporate body for non-agricultural purposes is not an unfettered right, but is conditioned upon obtaining prior sanction of the State Government. The expression “subject to restrictions contained in Section 154 of the Act” assumes significance, as it incorporates within sub-section(3) the entirety of the regulatory framework governing transfers. The requirement of prior sanction is thus a condition precedent, and not a mere procedural formality.

13. Section 154(4) of the Act, as amended and applicable in the State, carves out certain limited exceptions to the general restriction, which is quoted hereinbelow:-

“154(4)(1)(a) Subject to other restrictions and save as otherwise provided in this Act, “any person for his own or on behalf of his family (which means husband, his wife, minor children, unmarried sons, unmarried daughters and dependent parents) even though he is not a tenure holder under Section 129 or the owner of any immovable property in Uttarakhand, may purchase land not exceeding 250 sq. mts. for residential purpose in his lifetime without the permission; (b) A registered agreement to sell the land executed on or before 12.9.2003 shall be valid if the sale deed on the basis of such agreement is executed on or before 31.3.2004, irrespective of any time limit provided in the agreement, unless extended by the Collector of the district for reasons to be recorded in writing. (2) Nothing in sub-section 154(3) shall be deemed to prohibit the transfer of land by any person in favour of-

(a) the State Government or Central Government or a Government company, as defined in Section 617 of the Companies Act, 1956 or a Statutory Body or Corporation or Board established by or under a Statute and owned and controlled by the State or Central Government;

(b) a person who has become a non-tenure on account of-
(i) acquisition of his land for any public purpose under the Land Acquisition Act, 1894; or (ii) vestment of his land in the tenants under this Act;

(c) a non-tenure holder who purchases or intends to purchase land for the construction of a house or shop or purchases a built-up house or shop from the State Housing Board or from a Development Authority or from any other Statutory Corporation set up under any State or Central enactment;

(e) a person or company according to Industrial Policy of Uttaranchal in (i) Integrated Industrial Development Centre, (ii) Industrial Area, (iii) Industrial Estates;

(f) a person, society or trust for religious purposes; (g) a landless labourer of the Uttaranchal; or (h) a landless person belonging to a Scheduled Caste or Scheduled Tribe of the Uttaranchal; or (i) a village artisan of the Uttaranchal; or (j) a landless person carrying on an allied pursuit of the Uttaranchal.

(3)(a) Subject to restrictions contained in Section 154, a person, society or corporate body may purchase land for the following purposes, other than those for Agriculture and Horticulture purposes, with the prior sanction of the Government in the State of Uttaranchal as may be prescribed-

(i) Medical or health purposes, if it conforms to the Health and Population Policy of Uttaranchal;

(ii) Hotel, Lodge, Guest House, Restaurant, Bar, Spa, way side amenities or resort, if it conforms to the Tourism Policy of the State;

(iii) Educational purposes, on the recommendations of the Department of Education;

(iv) Cultural purposes; and

(v) For industrial purposes in areas other than those mentioned in Section 154(4)(2)(e) or for other purposes.

(b) A person, society or company may purchase land with prior sanction of the Collector of the district for Agricultural or Horticultural purposes, as may be prescribed, on furnishing an affidavit to the effect that such land will be used for Agricultural or Horticultural purposes and for uses incidental to and connected with Agriculture or Horticulture only. If the land use of such land as mentioned in the Affidavit is changed, the said transfer shall be void and consequences of Section 167 shall follow:

Provided that a person who is a non-tenure holder but purchases land either under Section 154(4)(1)(a), 154(4)(2)(c) and 154(4)(2)(f) or under the sanction granted under Section 154(4)(3) shall, irrespective of such purchase of land, continue to be a bhumidhar of special category as provided under Section 129-B and such bhumidhar shall be eligible to purchase land in future only with the permission, of the State Government or Collector of the district as the case may be : Provided further that such bhumidhar may mortgage or hypothecate such land for obtaining loan from banks and financial institutions or deriving any other benefit accruing from his bhumidhari rights under Section 129:

Provided further that a non-tenure holder who has purchased land under Section 154(4)(2)(e), 154(4)(2)(f) and who has purchased land under Section 154(4)(3) under the sanction of Government or Collector, as the case may be, shall put land to such use for which the sanction has been granted within a period of two years or further such period as may be allowed by the State Government for reasons to be recorded in writing, to be counted from the date of registration of sale deed and if he fails to do so or diverts the use of the land for which it was sanctioned or transfers the land by way of sale, gift or otherwise except for the purpose for which it was purchased, such transfer shall be void for the purpose of this Act, and consequences of Section 167 shall follow”

14. These provisions demonstrate that while certain relaxations are contemplated, they are narrowly tailored, conditional, and operate within the structured framework of the statute. The exemption permitting purchase of land up to 250 sq. mtr., without permission is clearly confined to individuals for residential use and cannot be extended to institutional bodies such as societies. Conversely, where a society or corporate body seeks to acquire land for specified purposes, even the exception itself mandates prior sanction of the State Government. The submission advanced on behalf of petitioner that section 154(4)(3)(a) of the Act employs the expression “purchase” and therefore applies only to sale, excluding other modes of transfer such as gift, cannot be accepted. A statutory provision cannot be read in isolation or in a manner that defeats the object of the enactment. Section 154 constitutes a composite and integrated scheme regulating transfers of land. Sub-sections (1), (3) and (4) are required to be read harmoniously. Once sub-section (1) expressly recognizes transfer by way of gift, it is not permissible to isolate Section 154(4)(3)(a) of the Act and construe it narrowly so as to exclude gift from the regulatory regime. This position is further reinforced by the general law governing transfers. Section 5 of the Transfer of Property Act defines “transfer of property” in the widest possible terms, and Section 122 thereof specifically recognizes gift as a mode of transfer. Therefore, when the Act regulates “transfer” of land and expressly includes gift under sub-section (1), the regulatory mechanism under Section 154 cannot be rendered inapplicable merely because a particular sub-clause uses the expression “purchase”. Any such

interpretation would enable circumvention of statutory restrictions by resorting to indirect modes such as gift, which is impermissible in law.

15. A conjoint reading of the aforesaid provisions thus leads to the conclusion that where land is sought to be transferred in favour of a society or institutional body for non-agricultural purposes, prior sanction of the State Government is a sine qua non. In the present case, the transfer is admittedly in favour of a society. The record does not disclose that any prior sanction, as contemplated under Section 154(4)(3)(a) of the Act or even under the exception carved out in Section 154(4)(3) of the Act, was ever obtained from the State Government or the competent authority. In absence of such mandatory approval, the transaction is clearly hit by the statutory limit. The reliance placed by the petitioner on Section 154(4) of the Act saying that it was not a sale purchase is, therefore, wholly misconceived. The said provision, being in the nature of an exception, must receive strict construction. The petitioner, being a society, does not fall within the limited category of individuals contemplated under Section 154(4)(1)(a) of the Act, and even otherwise, the requirement of prior sanction, as envisaged under Section 154(4)(3)(a) of the Act, has not been complied with. Consequently, the transaction in question cannot be sustained in law.

16. The object of the enactment is also of significance. The Act is a piece of socio-economic legislation intended to regulate land holdings and prevent circumvention of statutory restrictions. Acceptance of the petitioner's interpretation would enable a party to bypass restrictions imposed upon sale by resorting to a gift, thereby rendering the statutory control superfluous. Such an interpretation cannot be admitted in law. The reliance placed by the petitioner on principles of strict interpretation applicable to penal statutes is misplaced. Section 154 of the Act is not penal in nature but regulatory, and therefore warrants a purposive construction. Similarly, the reliance upon Section 154(4)(1)(a) of the Act is misconceived, as the said provision is in the nature of an exception and applies

only in limited circumstances, particularly in relation to individuals acquiring land for residential purposes within a prescribed limit, or in cases where prior sanction has been obtained for specified institutional purposes. In the present case, the transfer is admittedly by way of a gift in favour of a society, and no prior sanction, as contemplated under the statutory scheme, has been obtained. In view of the interpretation placed above, the contention of the petitioner that such a transaction falls outside the purview of Section 154 is untenable. The matter necessarily requires examination by the competent authority in accordance with law.

17. Insofar as the action of the Sub-Registrar is concerned, the record reveals that the document presented by the petitioner has neither been registered nor has any formal order of refusal been passed. It is equally evident that the Sub-Registrar has not taken recourse to the procedure contemplated under the statutory framework by referring the matter to the competent authority under Section 154(5)(a) and (b) of the Act. Instead, the document has been kept pending without any conclusive action. Section 154(5)(a) and (b) of the Act is extracted hereinbelow:-

“154(5)(a) the Registrar or Sub-Registrar appointed under the Indian Registration Act, 1908 before whom any document pertaining to transfer of land is presented for registration comes to know or has reason to believe that the transfer of land is in contravention of Section 154(3) or 154(4)(3); or

(b) a Revenue Officer either on an application submitted to him or on receipt of any information from any source comes to know or has reason to believe that the land has been transferred in contravention of the provisions of Section 152-A, 154(3), 154(4)(2)(e), 154(4)(2)(f) or 154(4)(3), such Sub-Registrar, Registrar or Revenue Officer, as the case may be, shall make a reference to the Collector of the district, who shall determine whether the transfer is in contravention of the provision of this Act in the manner prescribed and the consequences of Section 167 shall follow in respect of every transfer which is void”

18. Such inaction is clearly contrary to the scheme of the Act, which requires the authority, upon forming a *prima facie* opinion regarding violation of Section 154 of the Act, to take steps in accordance with law and not to indefinitely withhold the document. However, the aforesaid procedural lapse

on the part of the Sub-Registrar does not, by itself, confer any right upon the petitioner to seek a mandamus for registration of the document. The question as to whether the transaction in question is hit by the provisions of Section 154 of the Act involves examination of relevant facts and application of the statutory provisions, which falls within the domain of the competent authority and not this Court in exercise of its writ jurisdiction. The petitioner having failed to establish any legal right to compel registration, no interference is warranted.

19. In view of the foregoing discussion, this Court is of the considered opinion that the interpretation advanced by the petitioner is untenable and no ground for issuance of a writ of mandamus for registration of the document is made out.

20. The writ petition is, accordingly, dismissed.

21. It is, however, observed that the Sub-Registrar shall proceed in accordance with the provisions of Section 154(5)(a) and (b) of the Act and take appropriate steps within 15 days from today by referring it to Collector, Dehradun, who shall proceed strictly in accordance with the provision of Section 154(5)(b) of the Act in a time bound manner.

22. Pending application(s), if any, stands disposed of.

(Pankaj Purohit, J.)

30.04.2026

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