

# **Panchayati Akhara Sri Niranjani ... vs M/S R. K. & Associates And 13 Others on 3 March, 2025**

**Author: Rohit Ranjan Agarwal**

**Bench: Rohit Ranjan Agarwal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29637

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 2012 of 2025

Petitioner :- Panchayati Akhara Sri Niranjani Goahyan Naga Sed, Prayagraj

Respondent :- M/S R. K. & Associates And 13 Others

Counsel for Petitioner :- Ajad Singh, Shad Khan

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal, J.

1. Heard Sri Shad Khan, learned counsel for petitioner and Sri Sanjai Kumar Singh, learned ACSC for respondent nos. 2 and 3. Notices need not to be issued to other respondents, at this stage.
2. This writ petition has been filed with the following prayer;

"1. Issue an order or direction to that this Hon'ble Court may kindly be pleased to issue an order or direction to the Learned District Judge, Prayagraj, to decide the Misc Case No. 342 of 2024 (Panchayati Akhara Sri. Niranjani Goahyan Naga Set, Prayagraj (Allahabad) Vs. M/s R. K. & Associates And Others) within stipulated

period of time."

3. Petitioner before this Court is a registered society under Societies Registration Act, 1860 (hereinafter referred as the 'Act of 1860') and its head office is situated at Daraganj, Prayagraj. Earlier, petitioner's society on 25.03.2015 resolved to let out the land to one M/s R.K. & Associates for construction of 125 flats over the land situated at Rishikesh, District Dehradun, Uttarakhand. A developer agreement was entered upon between the petitioner's society and developer/respondent no. 1 on 10.07.2015, according to which certain amount was to be paid to the society by the developer once 125 flats are constructed. The entire construction, as per the developers agreement, was to be carried out by 31.03.2019.

4. From perusal of application moved before the District Judge, Prayagraj, it transpires that due to names of present office bearers of the society having been not entered into the revenue records the necessary permission for construction was not granted by the development authority at Dehradun, Uttarakhand. An application for mutation of names of the present office bearers was moved, which was allowed by Tehsildar on 26.02.2024. Thereafter, office bearers of the society found that the developers agreement entered upon between the parties in the year 2015 could not be carried out as much time has elapsed so in a meeting held on 27.06.2023 it was resolved that the land be given to respondent no. 1 M/s R.K. & Associates on perpetual lease and necessary lease deed be executed in favour of respondent no. 1. An application under Section 5 (A) of the Act of 1860 was moved before the District Judge, Prayagraj for seeking necessary permission.

5. Learned counsel for petitioner submits that this Court has the jurisdiction for giving direction to the District Judge, Prayagraj for entertaining and deciding the application moved under Section 5 (A) of the Act of 1860 as Section 5 has to be read in harmony with Section 13 of the Act of 1860. He further submits that the agreement which was entered with respondent no. 1 in the year 2015 was for the development and construction of 125 flats over the land which was leased out to the respondent no. 1 as much time has elapsed which has necessitated for execution of further lease in favour of respondent no. 1. He next contended that there was no necessity to disclose the amount of consideration which will be transferred to the society as already in the year 2015 the said fact was taken into consideration and the amount which was to be given to the society was agreed between the parties in the year 2015.

6. Learned Standing Counsel has opposed the writ petition on the ground of maintainability of application filed under Section 5 (A) of the Act of 1860 as it does not disclose the consideration which is being paid to the society by respondent no. 1 pursuant to the proposed sale which is to be executed between the parties. He submits that the Section 5 (A) prohibits the transfer of property of the society and only the transfer can take place once competent court grants permission for the same. According to him, the Court can only grant permission on satisfaction that necessary consideration has been passed on to the society in lieu of transfer proposed to be made in favour of any party. In the instant case there is no disclosure of the fact that subsequent sale which is to be take place pursuant to the permission having been granted by the court below no consideration is being passed on. He further submits that the earlier developers agreement has not been rescinded or recalled and application indicates that the sale deed is going to be executed in favour of respondent

no. 1/developer.

7. I have heard respective counsel of the parties and perused the material on record.

8. Section 5 (A) of the Act of 1860 was inserted as U.P. Amendment in the Act of 1860, it was earlier repealed in the year 2008 but has now been inserted again, which reads as under;

"5A. Restriction on transfer of property.---(1) Notwithstanding anything contained in any law, contract or other instrument to the contrary, it shall not be lawful for the governing body of a society registered under this Act or any of its members to transfer, without the previous approval of the court, any immovable property belonging to such society.

(2) Every transfer made in contravention of sub-section (1) shall be void.

Explanation I.?The word "court" shall have the meaning assigned to it in section 13.

Explanation II.? The expression 'transfer' shall for the purposes of this section mean, ?

(a) a mortgage, change, sale gift of exchange.

(b) lease for a term exceeding five years; or

(c) irrevocable licence." (Vide U.P. Act No. 26 of 1979).

9. To bring a case under Section 5 (A) of the Act of 1860 the party who comes up before the Court for seeking permission for transfer of property of a society has to bring before the Court the material so as to establish that there is dire need of money for the society which cannot be met out from the funds of society, which is available, and immovable property has to be mortgaged, gifted, exchanged or leased out. In the instant case, it is an admitted position to petitioner that earlier a resolution was passed on 25.03.2015 by the then people incharge of the society for letting out the property to respondent no. 1, who is a developer, for constructing 125 flats from which the revenue would be generated and it would be used for the welfare of society. The developer had entered upon an agreement between office bearers of the society on 10.07.2015. As per the agreement the entire project was to be completed by 31.03.2019. As hurdles came across and project in question was not completed in time due to non-sanction of map by the development authority as property was not in the name of persons, who had executed the agreement in favour of developer and, as such, necessary application for carrying out mutation was made which was allowed by Tehsildar on 26.02.2024. It was after this that the society through its office bearers had again resolved and now have decided to transfer the land to the developer on the basis of permanent lease after obtaining permission from the competent court.

10. The application moved under Section 5 (A) of the Act of 1860 does not reveal any consideration to be paid by the developer to the society. The earlier resolution of the year 2015 was a developers

agreement whereby a certain amount per flat was to be paid to the society, which was constructed by 31.03.2019. In the second resolution which has been passed in the year 2023 it has been resolved by the officer bearers of society to transfer the land permanently in favour of respondent no. 1, this amounts to total sale of the property of the society without there being any whisper as to the sale consideration being passed on to the society.

11. Once no material has been brought on record about the sale consideration before the District Judge, Prayagarj in application moved under Section 5 (A) of the Act of 1860, no case is made out for grant of permission. The direction as sought in present writ petition under Article 227 of the Constitution of India for directing the District Judge, Prayagraj to decide the Misc. Case No. 342 of 2024 does not arise as the application itself moved under Section 5 (A) of the Act of 1860 is a defective application and the consideration amount seems to have been deliberately concealed by the office bearers of the society. It appears to be a sham transaction having been entered upon between the parties by which a big chunk of land of the society lying at Rishikesh, District Dehradun, Uttarakhand is being transferred to respondent no. 1 without there being any consideration in favour of society.

12. Considering the facts and circumstances of the present case, I find that no ground for interference is made out, nor any mandamus can be issued to the District Judge, Prayagraj requesting him to expedite the application filed under Section 5 (A) of the Act of 1860.

13. Writ petition fails and is hereby dismissed.

14. Registrar (Compliance) is directed to send a copy of this order to District Judge, Prayagraj for keeping it on record of Misc. Case No. 242 of 2024.

Order Date :- 3.3.2025 Shekhar