

COURT NO.2

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) 180/2008

M/s Ski & Snow Resorts Pvt. Ltd.,
Ram Nagar, Nainital.

.....Petitioner

Versus

State of Uttarakhand & Others

.....Respondents

Mr. Sudhir Kumar, Advocate with Mr. Anant Kumar,
learned Counsel for the petitioner.
Mr. Bindesh Kumar Gupta, learned Additional Advocate General for
the respondent no. 1 & 2.

30th September, 2008

Hon'ble P.C. Verma, J.

By means of this writ petition, petitioner has prayed for a writ of certiorari for quashing the proceedings initiated under Section 166 & 167 of the U. P. Zamindari Abolition & Land Reforms Act, 1950 pending before the respondent no. 2/Assistant Collector, Ist Class, Joshimath, District Chamoli in case no. 6 of 2007-08, *State v. Vijai Singh Pal & others*.

2. Relevant and undisputed facts of the case are that the petitioner purchased land comprised in plots no. 15, 16 and 17 measuring 2 nali, 5 nali and 8 nali 12 muthi respectively in Village Auli Lagga Salul Dungra, Tehsil Joshimath, District Chamoli through the registered sale deed dated 24.4.1996 from Dr. Vijai Singh Pal and others, who belong to Scheduled Tribe. Another plot no. 18 measuring about 31 nali situated in aforesaid village belonging to those persons was also taken on lease by

the petitioner. The land has been declared as non-agricultural land by the order of the then Assistant Collector, Ist Class, Joshimath. The petitioner has constructed a resort over the said land in the name of Cliff Top Club. During the construction of the resort, the area of Auli was brought under the provisions of U.P. (Regulations of Building Operations) Act. The notices were issued to the petitioner for raising alleged unauthorized constructions and an order for demolition was passed by the Prescribed Authority, against which the appeal of the petitioner was allowed by the Controlling Authority by the order dated 28.7.1999 and order of the Prescribed Authority was set aside. After the construction of the resort, the same was registered under the Sarai Act.

3. The land in Village Auli Lagga Salul Dungra was proposed to be acquired for promotion of winter games. The land of the petitioner was also included in the acquisition scheme. Petitioner preferred a writ petition before the State Government and after due consideration the land in dispute was excluded from acquisition due to construction of a resort over the aforesaid plots. In the meantime, petitioner has filed a writ petition before this Court, which was dismissed as infructuous vide order dated 23.8.2005 passed by Division Bench of this Court.

4. Thereafter Tourism Department applied for demarcation of its land to the respondent no. 2 upon which a notice was issued to the petitioner. While the demarcation case was pending, the Tourism Department applied to the respondent no. 2 to remove the alleged encroachment by the letter dated 1.12.2007. Thereafter

on 2.12.2007 a part of the resort was demolished with police aid alleging it to be an encroachment on the land of Tourism Department. Being aggrieved, petitioner filed a civil suit before the Civil Judge (Sr. Division), Gopeshwar, Chamoli seeking permanent injunction.

5. On 2.12.2007 itself, an F.I.R. was lodged by the respondent no. 2 against Mr. Atul Sharma, Managing Director of petitioner-company and some other persons under Sections 166, 167, 218 and 420 of the Indian Penal Code at Police Station Joshimath, Chamoli. Thereafter Managing Director of the petitioner-company filed a Writ Petition (Criminal) No. 12 of 2008 before this Court, wherein an interim order dated 8.1.2008 has been passed by Division Bench of this Court preventing arrest of Mr. Atul Sharma, Managing Director of the petitioner-company.

6. Respondent no. 2 also initiated proceedings under Section 166 and 167 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 on the basis of the reports dated 28.11.2007 & 30.11.2007 submitted by Revenue Inspector, Joshimath and Tehsildar, Joshimath respectably. On the basis of these reports, a case no. 6 of 2007-08 has been registered and show cause notice was issued to the petitioner. Hence, this writ petition has been preferred by the petitioner to quash the proceedings of the aforesaid case no. 6 of 2007-08.

7. I have heard learned Counsel for the parties and have carefully perused the materials available on record.

8. The respondent no. 2 after calling reports from revenue authorities initiated proceedings under Section

166 & 167 of the U. P. Zamindari Abolition & Land Reforms Act, 1950 alleging the transfers of the land in dispute in favour of the petitioner being void and hit by Section 157-B of the U. P. Zamindari Abolition and Land Reforms Act, 1950. These proceedings are under challenge before this Hon'ble Court.

9. The contention of the learned Additional Advocate General is that the petitioner was not legally entitled to purchase the land in question as the same was recorded in the name of persons belonging to Scheduled Tribes who were debarred from transferring their holding by sale etc. by virtue of the provisions contained under Section 157-B of the U. P. Zamindari Abolition & Land Reforms Act, 1950. Section 157-B of the U. P. Zamindari Abolition & Land Reforms Act applies by virtue of Section 3(18) of the Kumaon & Uttarakhand Zamindari Abolition & Land Reforms Act. On the other, contention of the learned Counsel for the petitioner is that only certain provisions of U.P. Zamindari Abolition & Land Reforms Act are applicable in the area governed by the Kumaon and Uttarakhand Zamindari Abolition & Land Reforms Act.

10. In view of the rival contentions of the parties, the only question for consideration which arises is as to whether the provisions of Section 157-B of the U. P. Zamindari Abolition & Land Reforms Act, 1950 applies to the area governed by the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act, 1960. If the said section applies to the area in reference, the sale in favour of the petitioner shall be void in accordance with Section 167 of the said Act and if the said section is not applicable, then the sale in favour of the petitioner is

legal and valid and no action for the same can be taken against the petitioner.

11. In order to resolve the controversy involved in the case, relevant provisions of U.P. Zamindari Abolition & Land Reforms Act and Kumaon & Uttarakhand Zamindari Abolition & Land Reforms Act, 1960 are needed to be discussed. Therefore, I proceed to scrutinize the relevant provisions of both these Acts.

12. In order to grant right to the agriculturists over the land that they ploughed and in order to reform the land laws in accordance with the Constitution of India, the then Government of Uttar Pradesh enacted U. P. Zamindari Abolition & Land Reforms Act, 1950 which was enforced in the State of Uttar Pradesh w.e.f. 24.1.1951. Since there was a vast difference in geographical, social and economic status and local customs and rules and regulation were also different in the hill areas of the existing State of U.P. with the plain areas, the U. P. Zamindari Abolition & Land Reforms Act, 1950 was not applied to hill areas of the existing State of Uttar Pradesh and for such areas, the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 was enacted and was applied to District Chamoli w.e.f. 19.6.1965 by notification no. 2132/I-A-10(8)-65 dated 14.6.1965 with certain modifications and adaptations as mentioned therein.

13. The Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act incorporated certain provisions of U. P. Zamindari Abolition & Land Reforms Act. Section 47 and 52 of the Kumaon & Uttarakhand Zamindari

Abolition and Land Reforms Act are important in order to the controversy involved in the present writ petition which are reproduced as under:

“Section 47. Application of the provisions of Chapters VIII and X of U.P. Act 1 of 1951.- (1) The provisions of section 134 to 139, 142 to 146, 152 to 195, 197 to 211-A, 212-B, 212-C, 213 to 230, 232 and Sections 241 to 294 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, and of the rules framed under Sections 230 and 294 of the said Act, shall, *mutatis mutandis*, apply to the area to which the notification under Section 4 relates, but the State Government may, by order published in the official Gazette, make such adaptation, modification, alternation or exception not affecting the sentence as may in its opinion appear necessary and any such adaptation, modification, alteration or exception shall not be questioned in any court of law;

Provided that Section 245 of the said act shall, in relation to such area, apply with the following modifications:-

- (i) one and a half acres of land in areas to which this Act applies shall count as one acre;**
- (ii) in a district where there are no hereditary rates, the reference to ‘hereditary rates’ shall be construed as a reference to ‘village land revenue rates’;**

(iii) in relation to any district in which the maximum hereditary rates or village land revenue rates do not exceed rupee one per acre, the words 'rupees five' and 'rupees ten' in clause (i) of the proviso to sub-section (2) of the said section 245 shall be substituted by the words 'rupees three' and 'rupees five' respectively and the words 'rupees ten' and 'rupees twenty' in clause (ii) thereof shall be substituted by the words 'rupees six' and 'rupees ten' respectively.

(2) Every such order shall have effect from the date of the commencement of this chapter.

(3) The state government may, by subsequent notified order, supersede or modify an order issued under sub-section (1) wholly or partly, and any such suppression or modification may be made retrospectively to a date not earlier than the date of the order issued under that sub-section.

Section 52. Application of provisions of certain sections of Chapter XII of U.P. Act 1 of 1951 to Kumaon and Uttarakhand.- (1) The provisions of sections 321 to 331-A, 333 to 336, 338 and 341 to 344 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, and of the rules framed under Section 344 of the said Act shall, *mutatis*

***mutandis*, apply to Kumaon and Uttarakhand Divisions but the State Government may, by order published in the official Gazette, make such adaptation, modification, alteration or exception not affecting the substance as may in its opinion appear necessary and any such adaptation, modification, alteration or exception shall not be questioned in any court of law.**

(2) Every such order shall have effect from the date of commencement of this Chapter.”

14. A plain reading of Section 47 and 52 of the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act reveals that only certain provisions of the U. P. Zamindari Abolition and Land Reforms Act are made part of the Kumaon & Uttarakhand Zamindari Abolition & Land Reforms Act and whole of the U. P. Zamindari Abolition and Land Reforms Act is not made part of the said Act and as such the whole of the U. P. Zamindari Abolition and Land Reforms Act is not applicable in the hill areas of the Uttarakhand. Sections 134 to 139, 142 to 146, 152 to 195, 197 to 211-A, 212-B, 212-C, 213 to 230, 232, 241 to 294, 321 to 331-A, 333 to 336, 338 and 341 to 344 of the U. P. Zamindari Abolition and Land Reforms Act, as they existed at that time, have been made applicable to the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act.

15. The U. P. Zamindari Abolition and Land Reforms Act, 1950 was amended by U. P. Act 20 of 1982 w.e.f.

3.6.1981 by which a new section 157-B was inserted which prohibits transfer of land by the persons belonging to Schedule Tribes in the state. It is important to mention here that in the amending Act, there is no provision by which the said amendment was made applicable to the areas governed by Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act.

16. As discussed hereinabove, only certain provisions are applicable in the area as are mentioned in section 47 and section 52 of the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act. What is the legal effect of section 47 and section 52 of the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act and whether any amendment made in the U. P. Zamindari Abolition & Land Reforms Act will automatically apply to the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act.

17. No doubt, incorporation of whole or some provisions of an enactment in another enactment is always legal. In such a situation, the earlier enactment or the provisions thereof shall be deemed to have been written in the subsequent enactment and they shall become integral part of that subsequent enactment. But in my judgment, any amendment, modification, repeal etc. of the earlier or original enactment shall not affect the applicability of earlier enactment or its provisions with reference to the subsequent enactment unless it is so expressly provided in the amending, modifying or repealing Acts.

18. The Hon'ble Apex Court in ***Shamrao V. Parulekar & Others v. District Magistrate & Others*** reported in **AIR 1952 SC 324** observed that "the construction of an

Act which has been amended is now governed by technical rules and we must first be clear regarding the proper cannons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all”.

19. In the case of ***M/s Agrawal Trading Corporation & Others v. The Collector of Customs & Others*** reported in **(1972) 1 SCC 553**, the Apex Court observed that it is a well accepted legislative practice to incorporate by reference, if the Legislature so chooses, the provisions of some other Act in so far as they are relevant for the purposes of and in furtherance of the scheme and objects of that Act.

20. While dealing with the similar controversy, the Apex Court in ***Bolani Ores Ltd. v. State of Orissa*** reported in **(1974) 2 SCC 777** observed as under:

“If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed. This very concept is embodied in the provisions of Section 7 of the Taxation Act as also the relevant sections in the Taxation Acts of other States, namely, that where a motor vehicle is not using the roads and it is declared that it will not use the roads for

any quarter or quarters of a year or for any particular year or years, no tax is leviable thereon and if any tax has been paid for any quarter during which it is not proposed to use the motor vehicle on the road, the tax for that quarter is refundable. If this be the purpose and object of the Taxation Act, when the motor vehicle is defined under Section 2(c) of the Taxation Act as having the same meaning as in the Motor Vehicles Act, 1939, then the intention of the legislature could not have been anything but to incorporate only the definition in the Motor Vehicles Act as then existing, namely, in 1943, as if the that definition was bodily written into Section 2(c) of the Taxation Act. If the subsequent Orissa Motor Vehicles Taxation (Amendment) Act, 1943, incorporating the definition of 'motor vehicle' referred to the definition of 'motor vehicle' under the Act as then existing, the effect of this legislative method would, in our view, amount to an incorporation by reference of the provisions of Section 2(18) of the Act in Section 2(c) of the Taxation Act. Any subsequent amendment in the Act or a total repeal of the Act under a fresh legislation on that topic would not affect the definition of 'motor vehicle' in Section 2(c) of the Taxation Act. This is a well accepted interpretation both in this country as well as in England which has to a large extent influenced our law."

21. In the case of *The State of Madhya Pradesh v. M. V. Narasimhan* reported in (1975) 2 SCC 377, similar controversy was involved and the Apex Court opined as under:

“On a consideration of these authorities, therefore, it seems that the following proposition emerges:

Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. The principle, however, will not apply in the following cases:

- (a) where the subsequent Act and the previous Act are supplemental to each other;**
- (b) where the two Acts are in pari materia;**
- (c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and**
- (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act.”**

22. In the case of *Mahindra and Mahindra Ltd. v. Union of India & Another* reported in (1979) 2 SCC 529, it has been observed as under by the Hon'ble Supreme Court:

“We do not think this contention is well founded. It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily lifting a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation, Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as a reference to the provision as re-enacted. But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation

is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporation statute.”

23. In view of the above legal proposition propounded by the Hon'ble Apex Court, it can safely be inferred that only those provisions of the U. P. Zamindari Abolition & Land Reforms Act as are mentioned in section 47 and section 52 of the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act are made applicable under the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act as they were in the U. P. Zamindari Abolition & Land Reforms Act, 1950 at the time of enactment of the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act, 1960. These provisions of the U. P. Zamindari Abolition & Land Reforms Act are incorporated in the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act. Since the incorporation was made in the year 1960, the provisions of the U. P. Zamindari Abolition & Land Reforms Act, 1950 as they were in the year 1960, applied to the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act. Since Section 157-B was inserted by Act 20 of 1982 w.e.f. 3.6.1981, and there is nothing in the amending Act to show that the said provision was intended to apply to the areas governed by Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act also. The provisions of Section 157-B cannot be extended

to the area governed by Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act.

24. It was argued by the learned Additional Advocate General that Section 3(18) of the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act provides that the U. P. Zamindari Abolition & Land Reforms Act as amended from time to time in their application to the State of Uttar Pradesh shall apply to the areas governed by the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act. Section 3(18) of the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act reads as under:-

“3(18) references to the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 and to the U. P. Land Revenue Act, 1901 or to rules framed thereunder shall be construed respectively as references to the said Acts or rules as amended from time to time, and references to enactments relating to acquisition of land for a public purpose shall be construed as references to those enactments as amended from time to time in their application to Uttar Pradesh.”

25. Reading of the aforesaid provision itself makes it abundantly clear that any amendment made in the U. P. Zamindari Abolition & Land Reforms Act shall apply to the areas governed by the Kumaon & Uttarakhand Zamindari Abolition & Land Reforms Act. This does not imply that amendment to any provision which has not been made applicable to the Kumaon & Uttarakhand

Zamindari Abolition and Land Reforms Act shall also be applicable. In view of the decisions of the Hon'ble Apex Court discussed supra, no amendment made in the principal Act shall be applicable to the adapting Act unless it is also made applicable to such Act. Section 3(18) only provides that the amendments made to the U. P. Zamindari Abolition & Land Reforms Act shall also be applicable to the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act but it does not provide that insertion of a new section shall also be applicable to the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act. It is not disputed that Section 157-B has been inserted as a new Section and is not added as a sub-section of any pre-existing section. Therefore Section 157-B cannot be deemed to have been applicable to the Kumaon and Uttarakhand Zamindari Abolition and Land Reforms Act.

26. It has also been argued by the Additional Advocate General on behalf of the respondents that the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act and the U. P. Zamindari Abolition & Land Reforms Act are supplemental to each other. In my considered opinion, an Act can be said to be supplemental to another Act if the working of one Act is rendered ineffective and illusory without the application of the other Act. This is not the situation in the present case. It has not been shown by the respondents as to how the working and functioning of the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act shall be affected by not applying the impugned amendments made in the U. P. Zamindari Abolition & Land Reforms Act. Reliance was placed upon the decision of the Hon'ble

Supreme Court in the case of ***Mariappa and others v. State of Karnataka and others*** reported in **AIR 1998 SC 1334**. The facts and circumstances of the said case are entirely different with the facts and circumstances of the present case. In the case before the Hon'ble Supreme Court, the Karnataka Act was not a self contained Act as it did not have any machinery for effecting its provisions and for that purpose, machinery provided under the Central Act was to be utilized. Furthermore, both the Acts were in pari materia. In the present case, the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act is a complete and self contained Act and is not in pari materia with the U. P. Zamindari Abolition & Land Reforms Act, 1950. Only certain provisions of the

U. P. Zamindari Abolition & Land Reforms Act have been made applicable to the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act and any amendment to those provisions shall also apply by virtue of Section 3(18) of the Kumaon and Uttarakhand Zamindari Abolition and Land Reforms Act. Therefore this judgment does not help the case of the respondents.

27. Further reliance was placed upon the decision of the Hon'ble Supreme Court in the case of ***M/s Ashok Service Centre and Others v. State of Orissa***, reported in **(1983) 2 SCC 82**. The facts and circumstances of the said case are also entirely different with the facts and circumstances of the instant case. In the case before the Hon'ble Supreme Court, the whole of the Principal Act was made applicable in the later Act. After examining the scheme of the two Acts, the Supreme Court held that the subsequent Act was dependant on the principal Act and could not be effective if read without the principal Act.

Further, the Supreme Court has stated that the provisions of the later Act should be given preference over the provisions of the principal Act as the later Act tends to modify the principal Act. Learned Additional Advocate General does not derive any assistance from this authority. In the present case, later Act has adopted certain provisions of an earlier Act. The later Act is not supplemental to the earlier Act. The functioning of the later and the earlier Acts is not dependant on each other. Both the Acts are not in pari materia. The later Act does not tend to amend or modify the earlier Act. Therefore, any amendment made in the earlier or principal Act shall not apply to the later adapting Act just because the word *mutatis mutandis* has been used in the later Act. At the most, by the use of these words, the provisions of the earlier Act sought to be made applicable in the later Act shall be read without any change or modification, as if they had been written in the later Act by pen and ink. But it cannot be construed by any stretch of imagination that any change made in the earlier Act, except in the provisions made applicable, shall be applicable to the later Act.

28. In view of my foregoing discussion, it is established beyond doubt that the provisions contained under Section 157-B of the U.P. Zamindari Abolition & Land Reforms Act are not applicable to the areas governed by the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act and, therefore, the members of schedule tribe shall be entitled to transfer their holdings by sale, etc. and such sales shall not be impeded by any statutory provisions. Such sales shall be legal, valid, binding and effective.

29. It would be important to take note of the fact that the transfer of the land in dispute in favour of the petitioner and the construction of the resort over that land by the petitioner has been considered, acknowledged and accepted by the Government throughout the entire period unless the impugned proceedings were initiated against the petitioner.

30. In view of my above discussion and conclusion, the writ petition succeeds and it is held that the transfer of land in dispute by sale deed or lease deed in favour of the petitioner is not hit by provisions contained under Section 157-B of the U.P. Zamindari Abolition & Land Reforms Act and the same is valid and legal. The impugned proceedings in case no. 6 of 2007-08 under Section 166 & 167 of the U.P. Zamindari Abolition & Land Reforms Act pending before the respondent no. 2/Assistant Collector, 1st Class, Joshimath, District Chamoli are an abuse of process of law, which are liable to be quashed and are hereby quashed. Writ petition is allowed accordingly. However, there shall be no order as to costs.

(P.C. Verma, J.)

Prabodh