

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Writ Petition (M/S) No. 2045 of 2009

N.B. Tissues Ltd.Petitioner

Versus

State of Uttarakhand and others Respondents

Present: Mr. Anurag Bisaria, Advocate for the petitioner.
Mr. Gajendra Tripathi, Brief Holder for the State
Mr. Naresh Pant, Advocate for private respondent

Hon'ble Sharad Kumar Sharma, J. (Oral)

The land as recorded in the Khatauni No. 41 as given in the Column IV of the Khatauni, which is annexed as annexure No. 2 to the writ petition in its column nos. 6 to 12 show that the land has been converted as to utilized for industrial purposes. Accordingly, by the order dated 09.08.1982 passed by the competent Revenue Authority, a direction was issued to record the holdings, as a land use has been converted for industrial purpose under the U.P. Financial Corporation Act. When the State Financial Corporation extends financial assistance to an industrial undertaking, according to the learned counsel for the Financial Corporation, the land has had to be a land declared as non agriculture, which stands established by the entries made in the column Nos. 6 to 12.

2. The principal borrower i.e. M/s Tarai Paper Mills Pvt. Ltd., Bazpur had taken financial assistance from the respondent no. 3 (Regional Manager, U.P. Financial Corporation, Regional Office 5/222, Canal Road, Tikona, Haldwani, Uttarakhand). It has been brought on record in the counter affidavit that M/s Tarai Paper Mills Pvt. Ltd., Bazpur,

defaulted in remittance of the loan. The financial assistance was extended since was defaulted to be paid, as such the proceedings under Section 29 of the U.P. State Financial Act, 1951 was initiated against M/s Tarai Paper Mills Pvt. Ltd.

3. On issuance of due publication, the petitioner, herein, alleges and which has been accepted by the learned Counsel for the Financial Corporation that the property in question was put to auction and the same was purchased by the petitioner as an auction purchaser by the sale deed dated 02.07.1996, which is annexed as Annexure No. 1 to the writ petition. The petitioner wanted to sell the property in the year 2009 and for the said purpose, the petitioner when started the recourse of its sale, he was faced with the objection by the registering authorities to obtain an NOC from the Ceiling Department.

4. According to the petitioner, on 18.05.2009, he moved an application for the grant of NOC and an order to the effect that the land does not fall within the purview of ceiling. On the application, submitted by the petitioner it was reported that according to the reports submitted by the Patwari, some ceiling proceedings are going on against the principal tenure holder i.e. Sunder Singh and after the declaration of the land as surplus and the appeal against the same is pending. There is nothing on record to show as to what was the destiny of the appeal as filed by the Sunder Singh and pleaded in paragraph no. 9 of the counter affidavit. This is the sole contention of the respondent expressing their inability to grant NOC to the petitioner to sell the land, which he has purchased by the sale deed dated

02.07.1996 from State Financial Corporation under Section 29 of the State Financial Corporation Act, 1951.

5. In response to the aforesaid objection raised by the learned Standing Counsel, the learned counsel for the petitioner has placed reliance on the Khatauni issued for Fasli (1385 to 1390). It shows that the land has been recorded as industrial land by the order dated 09.08.1982. As soon as, the land stands recorded as an industrial land, coupled with the fact that the order passed by the competent Revenue Authority on 09.08.1982 directing to record the land as industrial land has not been challenged, nor any such challenge to the order dated 09.08.1982 has been brought to the knowledge of this Court, it would be presumed that the land is industrial in nature on the basis of Khatauni entries. If the land is non agricultural land then it automatically falls to be outside the ambit of the land as defined under Section 3(14) of Uttar Pradesh Zamindari Abolition & Land Reforms Act. Hence, once the land has been recorded as an industrial land and that orders stands unchallenged, there is no legal impediment for the respondents to decline not to grant NOC to the petitioner to enable him to sell the land of which he was the auction purchaser under Section 29 of the State Financial Corporation Act, 1951.

6. Thus, the stand taken by the learned Standing Counsel in his counter affidavit pertaining to the pendency of the ceiling proceedings will remain undisturbed by this present judgment and the same would take its own recourse looking to the relief claimed and looking to the documents brought on

record. *Prima facie*, it would be inferred that in view of the unchallenged order passed by the competent authority on 09.08.1982, the land would be treated as to be industrial and the bar of pendency of ceiling proceedings will not create any impediment in grant of NOC.

7. Writ petition is allowed. Accordingly, a mandamus is issued to the respondent Nos. 1 & 2 to grant NOC in favour of the petitioner treating the land to be the industrial land, in light of the entries made/claimed in the column Nos. 6 to 12 of Khatauni (fasli 1385 to 1390) provided there is no other legal impediment.

(Sharad Kumar Sharma, J.)

31.05.2017

Nitesh/Mahinder