
(2021) 09 MP CK 0135
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 1081 Of 2020

Badri Prasad Tiwari

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 29-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Indian Trusts Act, 1882 — Section 2(1), 4(3), 5, 26, 28, 29
Code Of Civil Procedure, 1908 — Section 151
Code Of Criminal Procedure, 1973 — Section 250
Madhya Pradesh Land Revenue Code, 1959 — Section 250
Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005,
— Section 2(1)

Citation : (2021) 09 MP CK 0135

Hon'ble Judges : Sujoy Paul, J; Anil Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sujoy Paul, J

1. In this Writ Appeal filed .u/S.2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, the appellant assails the order passed by learned Single Judge dated 22/10/2020 passed in WP No.8013/2020 whereby the petition filed by the appellant was dismissed.

2. Shorn of unnecessary details, the relevant facts as projected by the appellant are that in the year 1971 the respondent No.2 Trust was registered under the M.P. Trust Act, 1951 (for short "Trust Act"). The trust owned land comprised in Survey No.95 area 8.5 hectare. In the year 1976, six bighas of land belonging to the Trust was acquired by the State for Scheme No.32 of Town Improvement Trust (TIT) Ratlam. Further, 24 bighas of land of the Trust was acquired for Scheme No.55 of Ratlam Municipal Corporation in the year 1991. One Suresh Gurjar was elected as President of the Trust in the year 1995. On 14/8/2001, the Registrar Public Trust granted permission to respondent No.2 to sell 1.800

hectare (nine bighas) of land to the present appellant. Accordingly, through a registered sale deed dated 30/8/2001 (Annexure P/3), the petitioner got 1.800 hectare land out of Survey No.95.

3. A Civil suit was filed by the trust through the then President challenging the said sale deed of petitioner on 2/8/2006. This Civil Suit bearing number 56A/14 (re-numbered) was dismissed by civil court by passing a judgment and decree Annexure P/4. First Appeal No.10/2017 was filed by the Trust against the said judgment. The interim application filed in the First Appeal was dismissed on 22/11/2017 (Annexure P/6). It was observed that the Trust unsuccessfully assailed the sale deeds in Civil Suit No.32-A/2002, 42-A/2002 and 89-A/2004 and said suits were dismissed, therefore, no case was made out for grant of temporary injunction. It is averred that the name of petitioner was recorded in the revenue records on 1.800 hectare in revenue Case No.15/A-3/2001-2002. This document is filed along with IA No.2628/2020.

4. Shri Amit S Agrawal, learned Sr.Counsel for appellant by taking this Court to IA No.989/2021 submits that the respondent No.2 Trust by preferring an application dated 16/10/2019 before the Registrar, Public Trust prayed for removal of encroachments. In the matter, the Registrar/Sub Divisional Officer (SDO) Ratlam City by notice dated 16/10/2019 directed the Revenue Inspector (RI) Ratlam to submit a status report. The Revenue Inspector by report dated 21/10/2019 opined that after demarcation of Survey No.95/1 and 95/2 only the position of land would be clear. Resultantly, the SDO, Ratlam by order dated 22/10/2019 directed the Trust to undertake the exercise of demarcation. The Trust preferred such application seeking declaration. After the said exercise, a report was prepared by Superintendent, Land Revenue, Ratlam dated 24/1/2020 and said authority opined that at present correct boundaries of Survey No.95/1 cannot be determined. Shri Agrawal placed reliance on following para of this report:-

5. After perusal of the said report, the SDO, Ratlam by order dated 9/1/2020 opined that no further proceedings are required and matter is filed/closed.

"g fd losZ u- 95@2 dk Lohd`r cVkdau QnZ foØ; foyS[k prqFkZ lhek ls fHkUu LFkku ij gksdj rRdkfyu veys }kjk ewy losZ ua95 ds दूसरे LFkku ij cVkadu QnZ izLrkfor dj Lohd`r fd;k x;k tks lhekadu fnukad rd ogh vkd`fr vLrhRo es a gSA tcfd 95@2 ds Lohd`r ysvkmV vuqlkj Hkw&[k.M foØ; gksuk crk;k x;k gSA LFky ij lo sZ ua- 95@2 o 95@3 dk Lohd`r cVkadu vuqlkj lhekadu djus ij dCt s dh fLFkrh cny tkrh gSA LFky ij mifLFkr mHk; i{kks o iapku dks bl fLFkrh ls voxr dj;k x;k;ka losZ uEcj 95@2 dk Lohd`r cVkadu jftLV`h dh prqFkZ lhek o dCtk LFkku ls nwljs LFkku ij Lohd`r gksus ls lhekdau =qfVi w.kZ gksdj fookn dh fLFkrh fufeZr gksuk ikbZ xbZA , slh fLFkfr esa losZ u- a 95@1] 95@2 ,oa 95@3 dh lhekdau dk;Zokgh iw.kZ ugh gks ikbZA losZ ua= 95@1 dh vkd`fr =qfV iw.kZ cVkadu Lohd`r gksu s ls mldh lhekvs dks Hkh rF;kRed lgh fc anqvks ij ugh crk;k tk ldrk gSA"

6. It is strenuously contended that the same SDO who after obtaining the above

report closed the proceedings on 29/1/2020, again entertained a similar complaint of the same Trust dated 12/2/2020 (Annexure P/7). After having closed the report in the end of January, 2020 it was no more open to the SDO to re-open the same issue by entertaining similar complaint of same party i.e. respondent No.2. It is urged that the action of entertaining second complaint and passing of consequential orders are an example of (I) malice in law (ii) an action which is inherently without jurisdiction.

7. The SDO by order dated 11/5/2020 (Annexure P/1) directed removal of the encroachment. Consequently, the Tehsildar passed the order dated 30/5/2020 (Annexure P/2) directing the appellants to remove encroachment. It was contended that in both the orders impugned dated 11/5/2020 and 30/5/2020 the name of petitioner is specifically mentioned as an encroacher and he was directed to remove the encroachment.

8. WP No.8013/2020 was filed under Article 226/227 of the Constitution of India to assail both the orders dated 11/5/2020 (Annexure P/1) and 30/5/2020 (Annexure P/2). The learned Single Judge by order dated 12/6/2020 directed issuance of notice to respondent No.2 and by way of an interim relief, stayed the operation of impugned order only in respect of land which was purchased by Badrilal through sale deed dated 30/8/2001. Thereafter on 15/7/2020, 27/7/2020, 17/8/2020 and 5/10/2020 the time was granted to file reply and interim relief was continued. The interim relief was clarified by order dated 17/8/2020. Learned Sr.Counsel submits that respondents never filed reply, did not dispute any factual averments of the writ petition. Learned Single Judge decided the matter by impugned order dated 22/10/2020. it is urged that this order is bad in law because (i) the finding that petition was filed under Article 227 of Constitution is contrary to record (ii) Similarly, finding in the order that name of petitioner does not find place in the impugned orders is also factually incorrect (iii) the question of competence of Registrar, Public Trust was not examined in the light of submissions of petitioner (iv) the finding given by writ court on more than one occasion that petitioners' land is not adversely affected is erroneous because in both the orders impugned, the petitioner is treated as an encroacher by specifically mentioning his name. The writ court has failed to examine that as per Sec.26 of Public Trust Act the Registrar/SDO has no authority, jurisdiction and competence to declare anybody as encroacher or issue consequential orders for his removal from the land in question. For the same reason, the Registrar cannot decide the question of title which jurisdiction is vested only with the Civil Courts. Lastly, it is submitted that as per Sec.250 of Madhya Pradesh Land Revenue Code, 1959 (Code) the power to remove encroachment is vested with the Tehsildar and not with the SDO.

9. Reference is made to the judgments of Supreme Court to bolster the submission that petition filed with a nomenclature (under Article 226 & 227 of the Constitution) against a body which is not 'Court', the petition must be treated as a petition filed under Article 226 of the Constitution. (2015) 5 SCC 423 (Radhe

Shyam & Another v/s Chhabi Nath & Others), (2006) 7 SCC 496 (Kishorilal v/s Sales Officer, District Land Development Bank) and (2015) 9 SCC 1 (Jogendrasinghi Vikaysinji v/s The State of Gujarat & Others) are relied upon for this purpose.

10. The action of Registrar amounts to malice in law is the next submission of learned Senior Counsel for the appellant based on the judgments of Supreme Court reported in (2003) 4 SCC 739 (The State of Andhra Pradesh & Others v/s Goverdhanlal Pitti), 1984 (4) SCC 10 (J. Mohapatra Co & Another v/s The State of Orissa & Another) and 2005 (6) SCC 776 (Punjab State Electricity Board Ltd v/s Zora Singh & Others). The Full Bench's decision of this Court reported in AIR 1976 MP 160 (Ramgopal Kanhaiyalal v/s Chetu Batte) is pressed into service to contend that appropriate remedy for the respondents was to file a civil suit. The Full Bench judgment in Ramgopal Kanhaiyalal (supra) was approved by the Supreme Court in (2000) 3 SCC 668 (Rohini Prasad & Others v/s Kasturichand & Another).

11. The Registrar has limited powers as mentioned in Section 26 of the Trust Act. The Registrar cannot be equated with a 'Court'. 'Court' is separately defined under the Trust Act.

12. Countering the aforesaid argument, Shri Vinay Gandhi, learned counsel for respondent No.2 submits that he is supporting the impugned order of the learned Single Judge questioning the maintainability of this writ appeal on three counts:- (i) the locus of writ petitioner. To elaborate, it is urged that the sale deed is pregnant with a map. Beyond the land mentioned in the map, the petitioner has no claim. The petitioner has already sold out the lands which were shown the map. Thus, he had no locus to file the writ petition (ii) the petitioner had alternative remedy to file a civil suit. A number of civil suits were filed by those persons whose names find place as non-applicants in the impugned order dated 11.05.2020. Civil Suits to declare the same impugned order dated 11.05.2020 as null and void are filed. The petitioner has the same remedy and (iii) the petition filed by the petitioner must be treated as a petition under Article 227 of the Constitution. The learned Single Judge treated the said petition under Article 227 of the Constitution and consciously exercised his power under Article 227 of the Constitution. Against the order passed by the learned Single Judge under Article 227 of the Constitution, this writ appeal is not maintainable.

13 Reliance is placed on AIR 1992 SC 185 (Sushilabai Laxminarayan Mudliyar & Others v/s Nihalchand Waghajibhai Shah & Others), AIR 1998 SC 128 (M/s Pepsi Foods Ltd & Another v/s Special Judicial Magistrate & Others), (2008) 14 SCC 58 (Ramesh Chandra Sankla & Others v/s Vikram Cement & Others), 2014 (1) M.P.L.J. 308 (Swati Singh v/s M.P.Kshetra Vidyut Vitran Co. Ltd., Bhopal & Another), Writ Appeal No.385/2017 (Jyoti Nagar Grah Nirman Sahkari Sanstha Maryadit Through President Sany S/o Prahladdas Nima v/s Baljeet Singh) decided on 04.09.2017 and Writ Appeal No.105/2009 (The State of Madhya Pradesh v/s Mid India Developer Pvt. Ltd. & Others) decided on 13.01.2020.

14. Shri Vinay Gandhi has taken pains to contend that power under Article 227 of the Constitution can be exercised against a 'Court / Tribunal'. A conjoint reading of Sections 28 and 29 of the Trust Act makes it clear that the Registrar has same powers which a Court has, and therefore, it must be held that Registrar under the Trust Act is a 'Court'.

15. Parties confined their arguments to the extent indicated above.

16. We have bestowed our anxious consideration on rival contentions of learned counsel for the parties and perused the record.

MAINTAINABILITY OF WRIT APPEAL:-

17. As noticed above, Shri Vinay Gandhi, learned counsel for the respondent strenuously contended that the Registrar, Public Trust is a 'Court' and, therefore, order of Registrar assailed in a petition and consequential order passed in that petition must be treated to be an order passed in exercise of power under Article 227 of the Constitution. We do not see any merit in this contention. Before dealing with this aspect in detail, it is apposite to quote certain provisions of Trust Act. Section 2(1) defines the 'Court' which reads as under:-

"2(1) "Court" means the principal Civil Court of original jurisdiction in the district;"

Section 26 & 28 reads as under:-

Section 26 of Public Trust Act

Section 28 of Public Trust Act

26. Application to Court for directions. - (1) If the Registrar on the application of any person interested in the public trust or otherwise is satisfied that,-

(a) the original object of the public trust has failed;

(b) the trust property is not being properly managed or administered; or

(c) the direction of the Court is necessary for the administration of the public trust; he may, after giving the working trustee an opportunity to be heard direct such trustee to apply to Court for directions within the time specified by the Registrar.

(2) If the trustee so directed fails to make an application as required, or if there is no trustee of the public trust or if for any other reason, the Registrar considers it expedient to do so, he shall himself make an application to the Court.

28. Officers holding inquiries to have the powers of Civil Court. - In holding inquiries under this Act, the Registrar shall have the same powers as are vested in Courts in respect of the following matters, under the Code of Civil Procedure, 1908 (V of 1908), in trying a suit,-

- (a) proof of facts by affidavits;
- (b) summoning and enforcing attendance of any person and examining him on oath;
- (c) compelling the production of documents;
- (d) issuing of commissions.

(emphasis supplied)

18. The argument of Shri Vinay Gandhi, learned counsel for the respondent was that Section 28 makes it clear that the Registrar has same powers which are vested in Courts as per the provisions of CPC and hence it has all trappings of a Court. A careful reading of Section

28 leaves no room for any doubt that power so assigned to the Registrar under the CPC are relating to holding of inquiries. Section 5 of the Public Trust Act envisages the inquiry for the purpose of registration of a trust. For this purpose, Registrar is obliged to make an inquiry for the purpose of ascertaining:- (i) whether the trust is a public trust; (ii) whether any property is the property of such trust; (iii) whether the whole or any substantial portion of the subject-matter of the trust is situated within his jurisdiction; (iv) the names and the addresses of the trustees and the manager of such trust; (v) the mode of succession to the office of the trustee of such trust; (vi) the origin, nature and object of such trust; (vii) the amount of gross average annual income and the expenditure of such trust; and (viii) the correctness or otherwise of any other particulars furnished under subsection (3) of Section 4.

19. A conjoint reading of Section 5 and Section 28 leads to an inevitable conclusion that the powers of Court which are flowing from CPC are given to Registrar for limited purpose of holding an inquiry and not for the purpose of any kind of adjudication.

20. Section 26 begins with the heading 'application to Court for directions'. Section 2(1) and 26 read together cannot lead to a conclusion that legislature intended to empower the Registrar as a 'Court' for any purpose. Otherwise, Section 26 would have been worded in a different manner. A plain reading of Section 26 makes it clear that in 3 situations/eventualities mentioned in Clauses a, b & c, the Registrar can either direct the trustee to apply to Court for directions or he himself can undertake that exercise of preferring an application to the Court. By no stretch of imagination, it can be said that Registrar under the Trust Act is a 'Court'. Interestingly, a Division Bench of this Court in the case reported in 1969 MPLJ 680 (Umedi Bhai vs. The Collector, Shehore) opined that proceedings before the Registrar are not judicial proceedings. The Registrar not being a Court, he cannot exercise inherent powers under Section 151 of Code of Civil Procedure or otherwise. Thus, it can be safely held that contention of learned counsel for the respondent in this regard is devoid of substance.

21. In commentry on the Constitution of India (8th addition 2010) by Justice D.D. Basu the distinguishing feature between a 'Court' and an administrative or domestic Tribunal is taken note of in following words:-

"What distinguishes a Court from an administrative or domestic tribunal is that it is only a 'Court' which represents the "judicial power" of the Sovereign, viz., the power by which "every Sovereign must of necessity have to decide controversies between its subjects or between itself and its subjects, whether the rights relate to "life, liberty or property".

22. In the impugned order, learned Single Judge mentioned Article 227 of the Constitution on more than one occasion. However, once it is held that the Registrar, Public Trust is not a "Court", the question of exercising jurisdiction under Article 227 of the Constitution over his order does not arise. The said power could have been exercised against an order passed by a Court or a Tribunal. The Registrar aforesaid does not fall within the ambit of either Court or Tribunal. Thus, merely because in the order impugned, the learned Single Judge has mentioned Article 227 of Constitution and relied on a judgment of Supreme Court in Shalini Shyam Shetty v/s Rajendra Shankar Patil (2010) 8 SCC 329, which relates to scope of judicial review in exercise of power under Article 227 of the Constitution, the order impugned will not become an order passed under Article 227 of the Constitution. Thus, we are unable to persuade ourselves with the line of argument of Shri Vinay Gandhi. Since the order of Registrar cannot be treated to be an order passed by the 'Court', the judgments cited by Shri Gandhi regarding maintainability of writ appeal against an order passed by Writ Court under Article 227 of the Constitution are of no assistance to him.

23. The Full Bench of this Court considered a catena of judgments of Supreme Court in 2017 (4) MPLJ 109 (Shailendra Kumar vs. Divisional Forest Officer) and opined as under :-

"18. We may clarify that the orders passed by the Judicial Courts, subordinate to a High Court even in criminal matters when challenged in proceedings before the High Courts are only under Article 227 of the Constitution of India. Thus no intra Court appeal would be maintainable against an order passed by the learned Single Judge in proceedings arising out of an order passed by Judicial Courts, may be civil or criminal proceedings."

Looking from any angle, it cannot be said that writ appeal is not maintainable against the impugned orders passed by the Registrar and Tehsildar against which a writ petition is dismissed.

24. The impugned order of learned Single Judge was supported on yet another ground of availability of alternative remedy. It was urged that the non-applicants and other persons against whom impugned order was passed, most of them approached the Civil Court seeking declaration that the impugned orders dated 11/05/2020 and 30/05/2020 be declared as null and void. In our opinion, since the orders aforesaid are passed by govt. authorities namely Registrar, Public

Trust/SDO and Tehsildar, it cannot be said that writ petition against said orders was not maintainable. Moreso, when challenge is made on the ground of competence of that authority coupled with the ground of malice in law. If more than one remedy is available to the litigant, it is the choice of the litigant as to which remedy one would like to avail. Merely because some other litigants have chosen to approach the Civil Court, the petitioner could not have been compelled to approach the Civil Court.

25. The matter may be viewed from another angle. The appellants have contended that neither Section 26 of Trust Act nor Section 250 of Code enables the SDO/Registrar to pass an order of removal of encroachment. This inherent lack of jurisdiction, in our opinion, can always become subject matter of judicial review. In series of judgments, it was held that alternative remedy is not a bar when the Authority didn't have jurisdiction. Thus, this argument of respondents also cannot cut any ice.

26. In the impugned order, learned Single Judge recorded as under:-

"The petitioner before this Court has filed this present petition under Article 227 of the Constitution

In the considered opinion of this court, the Sub-Divisional Officer has not committed any illegality / irregularity warranting any interference in exercise of jurisdiction under article 227 of the Constitution of India."

(emphasis supplied)

27. Indisputably, this finding is contrary to record and clearly erroneous. The impugned order of Registrar dated 11/05/2020 and consequential order of Tehsildar dated 30.05.2020 are pregnant with petitioner's name and directions are issued to remove the encroachment. Thus, the learned Single Judge has based its order on a wrong premise which cannot sustain judicial scrutiny.

COMPETENCE OF THE REGISTRAR:-

28. Section 250 of the Code empowers the Tehsildar to take appropriate action to remove the encroachment. No such power is vested with Registrar, Public Trust. If law prescribes a thing to be done in a particular manner, it has to be done in the same manner. No other authority may usurp that power in absence of any enabling provision. The relevant provisions of Trust Act which provide certain powers to Registrar do not give him any kind of power of adjudication or issuance of order to Tehsildar to remove encroachment. Even in the capacity of SDO, he could not have usurped the power of a statutory authority namely, Tehsildar, who is duly empowered by Section 250 of the Code. We find force in our view from the judgment of Supreme Court reported in (2010) 11 SCC 557 (Manohar Lal v/s Ugrasen). The relevant portion reads as under:-

"No higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the original statutory authority nor can the superior

authority mortgage its wisdom and direct the original statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the original statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act."

(emphasis supplied)

29. We have minutely examined the provisions of the Trust Act and are unable to hold that the Registrar was competent to pass the impugned order dated 11.05.2020. We find force in the argument of learned Senior Counsel for the appellant that the said order suffers from inherent lack of jurisdiction. Resultantly, the order of learned Single Judge dated 22.10.2020, the impugned order of Registrar dated 11.05.2020 (Annexure P/1) and consequential order of Tehsildar dated 30.05.2020 are set aside. This order will not come in the way of official respondents to proceed against the appellants in accordance with law.

The writ appeal is allowed to the extent indicated above.