**(2005) 04 MP CK 0010**

**In the Madhya Pradesh High Court**

**Case No :** W. P. No. 4839 of 2000

Bhaiyalal and others APPELLANT

Vs

State of M. P. and others RESPONDENT

**Date of Decision :** 26-04-2005

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Public Trust Act, 1951 — Section 14(2)

**Citation :** (2005) 3 MPLJ 275

**Hon'ble Judges :** A.K. Shrivastava, J

**Bench :** Single Bench

**Advocate :** Imtiaz Husain, for the Appellant; P.N. Dubey, Dy. Advocate General, for respondents No. 1 and 3, Ajay Mishra with Mrs. Divyakirti Bohre, For respondents No. 2 and 6 to 9, for the Respondent

**Final Decision :** Dismissed

# Judgement

A.K. Shrivastava, J.

By this petition under Articles 226 and 227 of the Constitution of India the petitioners have challenged the validity of order dated 17-6-1999 (Annexure-P-6) by which respondent No. 2 has given permission to respondent No. 4 to sell 27.66 acres of land belonging to a registered public trust, namely, Ram Chandra Mandir, Kamtada (hereinafter referred to as "the Trust") for renovation of the temple.

As per para 5.1 of the petition, petitioners 3, 4 and 5 are the villagers of Kamtada, petitioner No. 1 happens to be the Sarpanch of Gram Panchayat Kamtada and petitioner No. 2 happens to be the Ex-Sarpanch of said Gram Panchayat. According to them they are not having any personal interest in the litigation, but they are interested in the matter inasmuch as they are worshippers of the deity of Shri Ramchandraji Mandir, which belongs to the Trust. The petitioners claim themselves to be beneficiaries of the Trust being worshippers.

 

It is no more in dispute that the trust is a registered public trust, registered under the M. P. Public Trusts Act, 1951 (hereinafter referred to "the Act").

The petitioners have called in question the pregnability of the order giving permission to alienate the land in question by the Registrar, Public Trust.

As per the contention of the petitioners, before granting permission u/s 14(2) of the Act requisite application in terms of Rule 9 of the M. P. Public Trusts Rules, 1961 (in short "the Rules") was not submitted and the Registrar did not record its satisfaction that the permission granted by him is not prejudicial to the interest of the Public Trust.

The contention of Shri Imtiaz Husain, learned counsel appearing for the petitioners is that the impugned order (Annex. P-6) as well as sale-deeds Annexures-P-2 to P-5 are illegal and are also deceptive because they contain incorrect information with regard to the situation and status of the land. According to the petitioners disputed lands are adjacent to the main road and are irrigated by canal, still in the recital these lands are shown un-irrigated and away from the main road. According to the petitioners this has been done with an oblique motive to reduce price and liability to pay stamp duty and registration fee. It has also been canvassed that sale was not made as per the market price and the respondent No. 2 ought to have applied safeguards before granting permission that the whole land is required to be disposed of for the alleged renovation/construction of the temple. It has also been putforth by the learned counsel that after the execution of the sale-deeds consideration which has been received by the respondents (Trustees) they have not utilized it for renovation of the temple (Shri Ramchandraji Mandir).

By taking assistance of abovesaid pleadings, it has been prayed that impugned order Annexure-P-6 passed by the Registrar under the Act, as well as the sale-deeds Annexures-P-2 to P-5 be declared null and void and be quashed with a further prayer that respondent No. 3 i.e. Registrar, Public Trust be directed to keep trust land under its management unless and until a committee is appointed to manage the public trust. It has also been prayed that respondent No. 4 be directed to deposit the whole sale proceeds with the Registrar and respondents No. 6 to 9 may be directed not to interfere in the possession of the respondent No. 3 on the trust land. Petitioners have further prayed that an inquiry by Central Bureau of Investigation or Economic Offences Wing of the Police be directed to enquire the matters and the persons found guilty be directed to be prosecuted.

Respondents 1 and 3 have filed a joint return, respondents 4 and 5 have filed a separate return and respondents 6 to 9 have filed a separate return, respondent No. 2 has filed a separate return.

In the return filed by respondent No. 2 it has been stated by him that at the relevant point of time he was posted as SDO, Harda and therefore he was ex-officio and was discharging duties of Registrar, Public Trust. It has also been contended by the respondent No. 2 that respondents 1 and 3 have filed a detailed return and the same has been adopted by him. The sum and substance of the return of other respondents including that of respondents 1 and 3 is that the petitioners have no personal interest in the property and they have no locus standi to file this petition. The petition is highly belated and the same deserves to be dismissed. According to respondents, petitioners have challenged validity of permission dated 17-6-1999 granted by respondent No. 2 to transfer the land of the trust. In pursuance to the permission granted, land in question has been sold and has been transferred to respondents 4 to 9 creating legal right, title and interest in their favour and the title so created in their favour cannot be set aside in writ proceedings. The petitioners may file a civil suit for cancellation of the sale-deeds. It has been denied that the permission has been given illegally. According to the respondents the permission accorded is completely just and proper and was given after due consideration of the facts and circumstances of the case and the emergent existing need of the temple. It has been contended in the return that in the application filed under Rule 9 of the Rules it was specifically mentioned that the temple being extremely old, had become dangerous and requires immediate large scale construction and repairs and to meet out that, ready funds are required. Along with the application estimate of proposed construction, certified by registered Consultant was also submitted, a copy whereof is placed on record as Annexure-R-4 along with the return of respondents 1 and 3.

On behalf of respondents 6 to 9 it has also been contended that in the application filed under Rule 9 of the Rules cogent and valid reasons are mentioned and the Registrar after due and necessary consideration and after inquiry passed the order to sell the lands. It has also been putforth by the learned counsel for the respondents on the basis of the averments made in the return that petitioners may file a civil suit for cancellation of the sale-deed. According to the learned counsel for the respondents looking to the nature of the reliefs prayed in the writ petition as well as there are highly disputed questions of facts the same cannot be adjudicated in a writ petition. In this regard learned counsel has placed reliance on the case of Smt. Urmila Patel and Others Vs. Ravindra Patel and Others, . According to the one of the stand taken by respondents, if the reliefs are perused, then it would be difficult to hold that whether it can be granted to the petitioners in a writ petition, specially when all the facts are highly disputed. The respondents have also challenged the locus standi of the petitioners and on the point of locus-standi, learned counsel has placed reliance on certain decisions of the Apex Court.

Respondents 1 and 3 along with their return have filed Annexure-R-3 which is an application and which was filed for obtaining permission to sell the land of the Trust. In the application, it has been specifically mentioned that the temple is near about 100 years old and for renovation and reconstruction of the temple, agricultural land of the Trust is required to be sold. It has also been mentioned in the application that the building is in such a dilapidated condition that it may fall down at any time and this fact pinches worshippers all the time and they are always in fear while doing worship in the temple. It has been specifically stated in the application that without selling lands in question of the Trust, renovation of the temple cannot be carried out and the purpose for which the temple was made would come to an end if it is not renovated. For ready reference it would be condign to re-write paras 2, 5 and 6 of the application which read thus:

On going through the above-said averments of the application, it is clear that the Trust is not having necessary funds with it in order to renovate the temple and if structure of the temple will fall down then the purpose for which the temple was constructed and the idols were installed would come to an end. Except the disputed land there is no other property of the Trust or the trust is having necessary funds with it in order to carry out renovation of the temple.

It be seen that if an order is to be accorded u/s 14 of the Act by the Registrar an application is required to be filed in terms of Rule 9(1) of the Rules. The said application should consist necessity for the proposed alienation and how the proposed alienation will be in the interest of the Trust. The Registrar appointed u/s 3 of the Act on receiving such type of application would make an inquiry as contemplated under sub-rule (2) of Rule 9 of the Rules as it may deem necessary. Section 14 of the Act deals with previous sanction of Registrar, in cases of sale, etc., of property belonging to public trust. For ready reference it would be germane to re-write this section :-

Previous sanction of Registrar, in cases of sale, etc., of property belonging to a public trust. - (1) Subject to the directions in the instrument of trust or any direction given under this Act? Or any other law by any court -

(a) no sale, mortgage, exchange of gift of any immovable property; and

(b) no lease for a period exceeding seven years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or building;

belonging to a public trust, shall be valid without the previous sanction of the Registrar.

(2) The Registrar shall not refuse his sanction in respect of any transaction specified in sub-section (1) unless such transaction will, in his opinion, be prejudicial to the interests of the public trust." (emphasis supplied)

Sub-section (2) of section 14 of the Act is having great significance. Under this provision Registrar is not empowered to refuse sanction unless such transaction will, in his opinion, be prejudicial to the interests of the public trust. Thus transaction, if it is not prejudicial to the interest of the public trust the Registrar has no option except to grant sanction in respect of any transaction specified in sub-section (1) of section 14. In other words, it can be said that if no prejudice to the interest of the public trust is shown on the record, the Registrar has no jurisdiction to refuse the sanction in respect of any transaction specified, in subsection (1) of section 14 of the Act. By analysing section 14 from every angle it can be said that the Registrar cannot refuse permission for sale, mortgage, exchange of gift of any immovable property belonging to the public trust unless, in his opinion, such a transaction would be prejudicial to the interests of the public trust. In this context I may profitably rely the Division Bench decision of this Court in the case of Shrideo Janki Raman Trust vs. Registrar of Public Trust, 1961 JLJSN 426.

On going through the order passed by the Registrar Annexure-P-6 it is revealed that after due consideration of the application permission was granted and the permission cannot be said to prejudicial to the interest of the Trust. The order passed by the Registrar is conditional and in consonance to Rule 9 of the Rules and section 14 of the Act. The conditions which are imposed are that the lands would be sold on market price, the consideration which would come shall be utilized for the construction of the temple and the progress of the construction work of the temple would be given to the Registrar and Tehsildar, Harda regularly.

It be seen that there is nothing on record nor it is the case of the petitioners that the trust was having sufficient funds in order to carry out the renovation of the building of the temple which is 100 years old and had become dilapidated and if that is the position, according to me, no error is committed by the Registrar, indeed, it had rightly exercised its jurisdiction by granting sanction to sell the lands for the benefit of the Trust. It is not the case of the petitioner that the Trust was having sufficient funds with it to carry out the renovation of the Trust''s temple nor any document in that regard has been placed on record in order to show that it was not necessary to alienate the disputed land.

On going through the return of respondents 4 and 5 it is found that petitioners themselves were interested in purchasing the property, but they were interested to purchase the property at a very low price to which respondent No. 4 did not agree and, therefore, they have filed this frivolous writ petition. A rejoinder has been filed by the petitioners but they had no courage to refute these specific and crucial averments made by the respondents 4 and 5. Thus, the purpose to file this petition is exposed. Since, the Trust did not sale the lands in dispute to petitioners, mala fidely petitioners have filed this petition.

Respondents 1 and 3 i.e. State of M. P. and Registrar of Public Trust have specifically stated in their return that according to the market price the lands of the Trust have been sold. What is the actual price of the lands in dispute and what amount could be fetched, these are all disputed questions of fact and cannot be decided in this writ petition. On going through averments made in the petition as well the returns and rejoinder placed on record it is revealed that renovation of the building is being carried out and is in progress. It is also found that the sale price has been deposited in the fixed deposit receipts in different Banks.

On going through the reliefs which the petitioners are seeking, it is revealed that they are seeking cancellation of the sale-deeds for which they may file civil suit. As a matter of fact, in the civil suit there could be a detail inquiry in regard to the highly disputed facts which are stated in this petition.

In view of above this petition is found to be devoid of any substance and the same is hereby dismissed with costs. Counsel''s fee Rs. 2,000/-, if pre-certified. Before parting I would like to mention that the Registrar under the Act may time to time supervise the construction of the temple and may see that if after carrying out the entire construction work, some amount of sale consideration is left, the same may be directed to be kept in fixed deposit receipts in any Nationalised Bank at Harda and from the interest necessary expenditure of the Trust''s temple may be carried out. The Registrar may also from time to time check the accounts of the Trust and may pass necessary order in that regard.

 