

(2013) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4994 of 2007

Durga Prasad Dewedi

APPELLANT

Vs

State of Madhya Pradesh, Sub Divisional Officer Sihora and
Satyendra Kumar Goutam

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Public Trust Act, 1951 — Section 4, 8

Citation : (2013) 07 MP CK 0021

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

Bench : Single Bench

Advocate : S.P. Sharma and Mr. M.M. Mudgal, for the Appellant; Divyakirti Bohrey, Panel Lawyer for Respondents No. 1 and 2 and Shri Devesh Khatri, Advocate, for the Respondent

Judgement

A.K. Shrivastava, J.—The order passed in this petition shall also govern the disposal of W.P. No. 14952/2005 (Durga Prasad Dewedi vs. State of M.P. & Ors.). By this petition under Article 226 /227 of the Constitution of India, the petitioner has sought quashment of order dated 27.02.2007 (Annexure-P/6).

2. On bare perusal of the impugned order (Annexure-P/6) dated 27.02.2007 which has been passed by the Additional Collector, Jabalpur it is found that the temple as well as movable and immovable property adjoining to the temple has been directed to be registered as Trust under M.P. Public Trust Act, 1951 (in short "Act"). Indeed the said order has been passed upon the application submitted by the respondent no. 3 Satyendra Kumar Gautam that the property of the temple namely Sita Ramchandra Ji Bhagwan and the land recorded in the name of temple is being mismanaged and therefore against the erring persons necessary legal proceedings be initiated and the property be registered as public trust. Upon such application of respondent no. 3 the Collector directed Naib Tehsildar to hold an inquiry. Eventually he submitted a report on 13.09.2006. The Sub Divisional Officer (Revenue) Sihora also submitted his opinion dated 03.02.2007.

On the basis of those reports the Collector found that in the village Jhingari there is a temple namely Sita Ramchandra Ji Bhagwan to whom several persons have offered gold and silver ornaments in gift. The said temple was established in the year 1905 by the-then Malguzar Bhaiyalal and Ramdayal Dwivedi who also gave land area 9.62 acre in gift. In the revenue record 11.33 acre of land is recorded in the name of temple and in that regard a decree has also been passed in Civil Suit No. 317-A/1994 on 22.03.1999 holding that 169.99 acre of land is owned by the said temple. Today only 33.30 acre land is there and where other lands have gone this has not been described by Sarvrahakar. Hence, the Collector came to the conclusion that the property of the temple is being misappropriated. Because the land in question has been recorded in the name of Collector, therefore, it was directed by the impugned order to constitute a public trust. Indeed this order has been challenged by the petitioner.

3. The contention of learned counsel for petitioner is that earlier upon the application submitted by the father of respondent no. 3 as well as other villagers, the Registrar Public Trust in the Court of Sub Divisional Officer registered a Revenue Case No. 2B-72/73 in regard to the same temple and the land of the temple and it was specifically held by the Registrar Public Trust that it is a private temple and cannot be registered under the Act. This order was passed on 01.09.1982 (Annexure-P/2).

4. It has also been put-forth by learned counsel that aforesaid order was assailed by the father of respondent no. 3 u/s 8 of the Act alongwith Narayan Prasad Tiwari, Kishorilal Patel, Laxmi Prasad and Moolchand against present petitioner Durga Prasad. However, the Civil Court in Civil Suit No. 317-A/1994 on 22.03.1999 concurred with the view of Registrar, Public Trust and held that temple is a private temple and the land belongs to said temple and cannot be registered as Public Trust under the Act. A decree was also drawn up in that regard and it became final since no appeal was filed. Hence, the contention of learned counsel is that by concealing the reality that the father of respondent no. 3 alongwith some villagers long back in the year 1972-73 filed an application to register the temple u/s 4 of the Act as public trust which was rejected and again now respondent no. 3 has come-forward to get it registered as public trust. Hence now it cannot be registered as public trust under the Act.

5. On the other hand, Smt. Divyakirti Bohrey, learned Panel Lawyer submits that because the property of temple which is being misappropriated by the petitioner, therefore, the Collector has rightly passed an order after holding an inquiry through Naib Tehsildar to register the temple and property as Public Trust and therefore this petition be dismissed. She has also submitted that the name of Collector as Prabandhak (Manager) has been recorded in the revenue record.

6. Having heard learned counsel for the parties, I am of the view that this petition as well as connected petition deserves to be allowed.

7. Indeed whether the temple and its property can be registered under the Act as

public trust, this point has already come to an end since the Registrar Public Trust upon the application submitted by father of respondent no. 3 as well as other villagers categorically held vide its order dated 21.09.1982 that the said temple is a private temple and it cannot be registered as a public trust. Not only this, the order of Registrar was assailed by father of respondent no. 3 and other persons by filing the civil suit against the finding of the Registrar and it was categorically held by the Civil Court after recording the evidence that the temple in question is a private temple and the land is also owned by the said temple and cannot be registered as public trust. Since said judgment and decree of Civil Court has attained finality, now the Collector cannot direct the Registrar under the Act to register the temple as public trust and the land as property of the trust. Hence, on this short ground this petition deserves to be allowed.

Regarding W.P. No. 14952/2005:-

8. Indeed this petition has been filed by the petitioner on the ground that the land of the temple was acquired by the State Government and the compensation amount through cheque has been given jointly in the name of Collector and in the name of petitioner, but, the Collector has nothing to do with it because it has already been held by the Civil Court that temple as well as land of temple is private and is not of public trust. According to me, merely because in the revenue record the Collector's name as Manager of the temple is mentioned it would not jeopardize the right of the petitioner because it has already been held in the earlier round of litigation which came to an end that the temple is private and land is of temple and cannot be registered as public trust under the Act. Thus, the respondent no. 2 is hereby directed to issue the cheque solely in the name of temple Sita Ramchandra Ji Bhagwan through Sarvrahakar, petitioner Durga Prasad Dwivedi. For the reasons stated hereinabove, this petition as well as connected writ petition No. 14952/2005 succeeds and is hereby allowed. The impugned order dated 27.02.2007 (Annexure-P/6) is hereby set aside. No costs.