
(2009) 03 RAJ CK 0028
In the Rajasthan High Court

Leeladhar

APPELLANT

Vs

Bherubagh Jain Tirth and Others

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Rajasthan Public Trusts Act, 1959 — Section 39, 40, 40(3)

Citation : (2009) 3 RLW 2638

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This misc. appeal has been filed u/s 40(3) of the Rajasthan Public Trust Act, 1959 (hereinafter referred to as the Act of 1959) against the order of the learned Additional Dist. and Sessions Judge No. 3, Jodhpur dtd. 23.7.2001 dismissing the civil misc. application No. 4-A/1991 filed by the appellant u/s 40 of the said Act seeking to set aside the sale made by the respondent No. 1 - Public Trust in favour of the respondent No. 5 - a Housing Society of a land measuring 53.11 bighas situated at village Gewa, Dist. Jodhpur on 18.10.1985 for a sum of Rs. 9,55,557/-.

2. None appeared for the appellant on both the days though the matter was heard in part on 17.3.2009 and again kept today for dictation of order/judgment, therefore, the arguments of Mr. J.M. Bhandari, learned Counsel for the respondents were heard and record was perused.

3. The main contentions raised by the applicant before the learned trial Court in the application u/s 40 of the Act appears to be that the sale in question made by the respondent No. 1 - Public Trust on 18.10.1985 was without any sanction obtained from the Assistant Commissioner, Devasthan Department as required by Section 31 of the said Act and therefore, the said sale was not valid. The applicant also contended that the land in question belonged to deity and therefore, the Public Trust could not sell the said land. He also contended that

the provisions of Rajasthan Urban Land Ceiling Act applied and therefore, for this reason also, the land in question could not be sold by the respondent - Public Trust. It was also contended before the Court below that despite the order dtd. 23.8.1986 passed by learned Commissioner, Devasthan Department, the sale in question was affected by the Public Trust contrary to the said order and. therefore, the said was invalid.

4. The said application was opposed by the respondents and the learned trial Court framed following five issues for consideration:

i) Whether the sale-deed dtd 18.10.1985 for sale of property by Bherubagh Jain Tirth Trust, Sardarpura, Jodhpur is liable to be cancelled as per the facts stated in the application and whether the order dtd. 23.8.1986 passed by the Commissioner Deveasthan, Udaipur is void and ineffective?

ii) Whether the applicant is entitled to permanent injunction against the non-applicant against the transfer of Trust property and not to permit anybody else to possess the property of the trust and not to raise construction thereon?

iii) Whether in view of the specific plea in para 19 raised by the non-applicant No. 4, the application u/s 40 of the Rajasthan Public Trust Act is maintainable or not and whether under the said" provisions, a registered sale-deed can be cancelled?

iv) Whether the application deserves to be dismissed as not maintainable in absence of non-impleadment of Sh. Jain Swetambar Bherubagh Parshwanath Jain Tirth Trust? v) Relief.

5. The learned trial Court after taking evidence from both the sides dismissed the said application u/s 40 of the Act by the impugned order dtd. 23.7.2001 deciding issue No. 4 regarding non-impleadment of Sh. Jain Swetambar Bherubagh Parshwanath Jain Tirth and in favour of the applicant, whereas the issues No. 1 and 2 were decided against the applicant and in favour of the respondents. Issue No. 3 had already been decided on 1.2.1997 in favour of the applicant as to the maintainability of the application. Accordingly, the learned trial Court dismissed the said application u/s 40 of the Act.

6. The learned Counsel for the respondents Mr. J.M. Bhandari submitted that the application u/s 40 of the Act filed by the applicant itself was not maintainable and even the issue No. 3 was wrongly decided in favour of the applicant. He further submitted that the sale in question of the land of the Public Trust made on 18.10.1985 by the registered sale-deed for consideration of Rs. 9,55,557/- was made after obtaining due sanction from the Assistant Commissioner on 7.1.1985 Ex.A/1 on record and therefore, the sale in question was absolutely valid. He further submitted that the applicant himself was one of the bidders in the auction held by the Public Trust after obtaining due sanction from the Assistant Commissioner and being unsuccessful and disgruntled bidder, he launched this litigation against the respondent public Trust which sold the property belonging to the Trust in the interest of the Trust and therefore, the application was

malafide and has been rightly rejected by the learned trial Court. He further submitted that the land in question did not belong to deity as per the Revenue record and it belonged to Guran Sa Deep Chand, Vanne Chand and Harak Chand as per the patta issued by the erstwhile ruler of Jodhpur Maharaja Man Singh in Samwat year 1890 Migsar Vad 5 and later on in the course of period, the said land was sold by the registered sale-deed by Guran Shree Lal Chand in favour of Public Trust on 12.4.1961 for which necessary mutation was recorded in the Revenue Record in favour of the Trust and the Public Trust was registered with the Devasthan Department on 18.4.1975, He further submitted that the auction of land in question was held after obtaining due sanction from the Assistant Commissioner, Devasthan Department on 7.1.1985 Ex.A/1 by publishing notice in news-paper "Jaltesdeep" and to the highest bidder, the said property was sold for a sum of Rs. 9,55,557/-. He also submitted that provisions of Urban Land Ceiling Act did not apply to the present case as held by this Court in the judgment dated 3.12.1997 in the writ petitions filed by the Trust and respondent No. 5. He submitted that the sale in question was absolutely legal and valid and therefore, the same could not be declared to be invalid and void. He submitted that there was due compliance of the provisions of Public Trust Act and therefore, the impugned order of the learned trial Court dated 23.7.2001 was perfectly justified and the present appeal filed by the appellant has no merit and the same deserves to be dismissed.

7. Having heard the learned Counsel for the respondents and upon perusal of the impugned judgment and relevant record including Ex.A/1 sanction order dtd. 7.1.1985 of the Assistant Commissioner, Devasthan Department, Jodhpur this Court finds considerable force in the contentions raised by the learned Counsel for the respondents, Mr. J.M. Bhandari and the present appeal filed u/s 40(3) of the Act deserves to be dismissed. The reasons for the same are as follows.

8. It would be appropriate to first look into the provisions of Sections 31, 38, 39 and. 40 of the Public Trust Act, 1959. The same are reproduced hereunder in extenso for ready reference:

31. Previous sanction to be obtained for certain transfers:(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, exchange or gift of any immovable property or of movable property exceeding five thousand rupees in value, and

(b) no lease for a period exceeding five years in the case of agricultural land or for a period exceeding three years in the case of nonagricultural land or a building belonging to a public trust shall be valid without the previous sanction of the Assistant Commissioner.

(2) An application for the sanction of the Assistant Commissioner and Sub-section (1) shall be made in the prescribed manner and form.

(3) Where, on an application duly made for sanction in respect of any transaction specified in Sub-section (1), the Assistant Commissioner does not, within two months of the receipt thereof pass final orders, it shall be presumed that he has accorded sanction in respect of that transaction.

Provided that the application describes the transaction with sufficient accuracy.

(4) The Assistant Commissioner shall not refuse to accord sanction in respect of any transaction specified in Sub-section (1) unless such transaction is, in his opinion, likely to be prejudicial to the interests of the public trust, and no order refusing to accord sanction shall be passed unless the working trustee of such public trust has had a reasonable opportunity of being heard.

38. Application for directions: (1) If the Assistant Commissioner, on the application of any person having interest in a public trust or otherwise is satisfied after making such inquiry as he thinks necessary that:

- (a) the original object of the public trust has failed;
- (b) the trust property is not being 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 of being heard, direct such working trustee or any other trustee or person having interest, in the trust to apply to the court for directions within such time not exceeding thirty days as may be specified by the Assistant Commissioner.

(2) If the working trustee or any other trustee or person having interest in the trust 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 Assistant Commissioner considers it expedient to do so, he shall himself make an application to the Court.

39. Application to Commissioner against refusal to apply u/s 38: (1) Where the Assistant Commissioner rejects an application under Sub-section (1) of the Section 38 or fails or refuses to make an application to the court himself under Sub-section (2) of that Section, the Commissioner may on an application made to him within ninety days of such rejection, failure or refusal or upon the facts otherwise coming to his knowledge and after giving the working trustee a reasonable opportunity of being heard, set aside the order of the Assistant Commissioner, if any, and require him to apply to the court himself for directions.

(2) Subject to the orders of the Commissioner under Sub-section (1), all orders passed by the Assistant Commissioner u/s 38 shall be final.

40. Powers of the court on application u/s 38 or Section 39:

(1) On receipt of an application made under or in pursuance of Section 38 of Section 39, the court shall make or cause to be made such inquiry into the case as it deems necessary and pass such orders thereon as it may consider

appropriate.

(2) While exercising the powers under Sub-section (1), the Court shall, besides other powers, have powers to make an order for:

(a) removing any trustee;

(b) appointing a new trustee;

(c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(d) providing a scheme of management of the trust property;

(e) directing how the funds of a public trust whose original has failed shall be spent, having due regard to the object for which the trust was created;

(f) issuing such other direction as the nature of the case may require.

(3) Any order passed by the court under Sub-section (2) shall be deemed to be a decree of such court and an appeal shall lie therefrom to the High Court.

9. The fact that the Assistant Commissioner, Devasthan Department granted sanction in favour of the respondent - Public Trust in question on 7.1.1985 and registered sale-deed was executed by the respondent No. 1- Public Trust in favour of the respondent No. 5 on 18.10.1995 is not in dispute. Ex.A/1 dated 7.1.1985 is reproduced hereunder for ready reference:

jktLFkku ljdkj

dk;kZy; lgk;d vk;qDr] nsoLFkku foHkkx tks/kiqj

147 7-1-85 vksj ls okLrs lgk;d vk;qDr ea=h nsoLFkku foHkkx] Jh Hks:ckx ik"oZukFk tks/kiqj tSu rhFkZ izU;kl] tks/kiqj dzeKad % eqa-ua- 2@83@tks-@fnukad % fo"k; % HkS:ckx ik"oZukFk rhFkZ] tks/kiqj dh Hkwfe cspus dh Lohd`fr ckcr~ A izlax % vkidk i= la- 171 fnukad 3-5-83

mijksDr fo"k;ad ys[k gS fd vkids izklafxd i= }kjk efUnj Jh HkS:ckx ik"oZukFk rhFkZ] tks/kiqj dh Hkwfe 53&1@2 ch?kk Jh xqjkalk rkykc tks/kiqj dh izU;kl fgr esa cspus dh Lohd`fr nh tkrh gS A

,l-Mh-@&

lgk;d vk;qDr

nsoLFkku foHkkx

tks/kiqj laHkkx] tks/kiqj

10. There is also no dispute that between these two dates i.e. 7.1.1985 and 18.10.1985, there was neither any stay, Court's order or any other legal impediment in the way of respondent No. 1 - Public Trust to sell the said agricultural land in the interest of public trust itself. There is also no dispute that

the title of the agricultural land vested in respondent No. 1 - Public Trust and the land originally was also given under patta by ex-ruler in favour of Guran Shree Deep Chand, Harak Chand and Vanne Chand in Samwat year 1890 which in course of time was sold by Guran Shri Lal Chand Chela Birdi Chand in favour of respondent No. 1 - Public Trust by registered sale-deed on 13.4.1961 for a sum of Rs. 6,000/- and necessary mutation entries were also recorded in the Revenue Record at the relevant point of time. Therefore, the said land in question cannot be said to be land belonging to deity or doli land and the respondent No. 1 - Public Trust had full authority to sell the said agricultural property. The only question raised by the applicant appears to be that the sale was in violation of Section 31 of the Act, as the sanction from the Assistant Commissioner prior to such sale was not obtained. This allegation and contention of the applicant is factually incorrect in view of Ex.A/1 sanction order of the Assistant Commissioner Ex.A/1 dtd. 7.1.1985 much prior to the sale of the land in question effected by the respondent No. 1 - Public Trust on 18.10.1985. The subsequent order passed by the Commissioner on 23.8.1986 is neither on record nor produced by the appellant as noted by learned trial Court in para 17 of the judgment under appeal, nor the same was naturally of any consequence as the sale had already taken place on 18.10.1985 and order of Commissioner could not undo the sale by the Public Trust in favour of the respondent No. 5. The purpose of Section 31 of the Act is obvious, that is, to protect the property of a Public Trust so that the Trustees cannot alienate the property of the Public Trust without knowledge of Devasthan Department so as to cause it a loss. No material has been brought on record by the applicant to establish as to what loss was caused by said sale of agricultural land in question. On the contrary, it was beneficial for and in the interest of the Trust itself. The sale in question was admittedly held in open auction after obtaining due sanction from the Assistant Commissioner and the applicant himself was a bidder in that auction, though unsuccessful. Therefore, it appears that it was more out of vengeance and to settle score with his competitors that the applicant launched the said litigation against the respondents taking shelter of provisions of Section 31 of the Act which ex facie was wrong because sanction was already obtained by the respondent No. 1 - Public Trust from the Assistant Commissioner Devasthan Department.

11. On the contention of applicability of urban ceiling law, a coordinate Bench of this Court while deciding writ petition No. 1659/1986 - Jawahar Housing Cooperative Society v. Additional Collector, Jodhpur and writ petition No. 138/1987 - Shri Bherubagh Jain Swetamber Tirth, Jodhpur v. State held in favour of the petitioners that for the land in question, the provisions of Urban Land Ceiling Act also did not apply. The said judgment dtd. 3.12.1997 has also become final as no appeal appears to have been filed against the same. In para 8 to 10 of the said judgment, the Court held as under:

8. I have considered the matter and I feel no difficulty in upholding the contention of learned Counsel for the petitioners. The relevant facts material for the decision of these writ petitions are not in dispute. It is not in dispute that the

original recorded khatedar tenant of these lands was one Gurun Lal Chand of Tapa Gachha chela of Shri Birdi Chahd ji Jati Jain, Jodhpur and he sold the lands to the Trust, and from the Trust the Society purchased the same. The Master Plan was approved and published vide the abovementioned notification on 26.11.1977. In the above Master Plan this land has been shown for the purpose other than agricultural. I may now refer to the facts of Atya Mohammadi Begum's case. The Act came into force in the State of U.P. On 17.2.1976. The definition of "urban land" in Section 2(o) excludes from its ambit land which is mainly used for the purpose of agriculture. The open land of the appellant in Aligarh was entered in the revenue-records before the appointed day (January 28, 1976) as for the purpose of agriculture in terms of Clause (B) of the Explanation to Section 2(o) of the Act. The appellant claimed exclusion of the land from the ambit of "urban land" u/s 2 (o). However, when the Master Plan for Aligarh was made on February 24, 1980 i.e. after the commencement of the Act, the land in question was shown therein for a purpose other than agriculture. Explanation (C) provides:

(C) Notwithstanding anything contained in Clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the Master Plan for a purpose other than agriculture..." The question was whether Clause (C) of the "Explanation was attracted so as to disentitle the appellant to claim its exclusion from the definition of urban land? Allowing the appeal, it was held as under: "The "master plan" defined in Section 2(h) and referred in the definition of "urban land" in Section 2(o) including Explanation (C) therein, is a master plan prepared and in existence at the time of commencement of the Act when by virtue of Section 3, rights of the holder of the land under the Act get crystallised and extinguish his right to hold any vacant land in excess of the ceiling limit. The proceedings for determining the vacant land in excess of the ceiling limit according to the machinery provisions in the Act is merely for qualification, and to effectuate the rights and liabilities which have crystallised at the time of commencement of the Act. Thus, the Explanation (C) means that if the land has been specified in the master plan existing at the time of commencement of the Act for a purpose other than agriculture, then the land shall not be deemed to be mainly used for the purpose of agriculture by virtue of the Explanation and not if the land is specified in a master plan prepared after the commencement of the Act, Just as the holder of the land cannot by his subsequent actions reduce the area of the vacant land in excess of the ceiling limit, the authorities too cannot by any subsequent action increase the area of the excess vacant land by a similar action. In the present case the master plan was not in existence on the date of commencement of the Act. Therefore, Clause (C) of the Explanation was not attracted.

9. The controversy in the present case is squarely covered by the above ratio decidendi laid down in Atya Mohammadi Begum's case. In the instant case also, the Master Plan was approved and published after commencement of the Act. Before that, the land has been shown as agricultural land in the revenue records. The purpose was altered when the Master Plan was published and it was shown

to be for the purpose other than agricultural. That is the whole basis of initiating the ceiling proceedings against the petitioners. If it is held that the above entry made in the master plan is not relevant and cannot be taken into consideration, the case of the non-petitioners falls apart. In the instant case, in view of the above principle laid down in *Atya Mohammadi Begum's* case, the entry made in the master plan which was published after coming into force of the Act cannot decide the fate of the lands in question. Since the nature of the lands before the master plan was published was agricultural; the above lands could not be subjected to the provisions of the Act.

10. For the above reasons, I allow both the petitions. The impugned order of the Addl. Collector dated 25.07.86 and notices dated 13.08.85 and 05.04.86 are hereby quashed. There shall, however, be no order as to costs.

Sd/- (P.C. Jain) J.

11. In view of aforesaid, contention raised by the appellant about the applicability of ceiling law and sale being contrary to the provisions of ceiling law is also no longer *res integra* and stands decided by this Court.

12. The findings of issue No. 4 about not maintainability of the application on account of non-impleadment of Shri Jain Shwetamber Bherubagh Parshwanath Jain Tirth Trust, decided in favour of the applicant, however, requires no interference as this was not assailed during the course of arguments.

13. Now it is to be seen whether the application filed by the applicant u/s 40 of the Act at all was maintainable or not as the learned Counsel for the respondents has raised this issue also and whether issue No. 3 was rightly decided by the trial Court or not. A bare perusal of Sections 38, 39 and 40 in sequence of the Act quoted above shows that the said application lies first to the Assistant Commissioner, then to the Commissioner and thus brought before the Court and only if it meets the parameters of Section 38 and 39 of the Act, it can be entertained by the Court. A perusal of Section 38 quoted above reveals that the question relating to sale of the Trust property is not covered by the ambit and scope of Section 38 of the Act. The only question of management or administration of Trust property is covered by Clause (b) of Sub-section (1) of Section 38 of the Act. It is not the case of the appellant that the original object of the Public Trust itself has failed as envisaged under Clause (a) nor the directions for administration of Public trust as envisaged under Clause (c) of Section 38(1) of the Act was sought. Thus, the application in question filed by the appellant directly before the Court u/s 40 of the Act apparently does not fall within the ambit and scope of any of the clauses of Section 38 (1) of the Act and was not maintainable u/s 40 of the Act. Whatever the applicant represented before the Assistant Commissioner prior to 7.1.1985 cannot be said to be his application u/s 38 of the Act and the orders of the Assistant Commissioner dtd. 18.2.1983, 22.9.1983 and 21.6.1983 on such applications that Trust may not sell the property without obtaining permission u/s 31 of the Act, stood complied with on

7.1.1985. Section 39 further deals with power of the Commissioner upon refusal by the Assistant Commissioner to deal with the application u/s 38 of the Act. Sub-section (2) of Section 39 clearly makes the order passed by the Assistant Commissioner u/s 38 of the Act as final subject to order of the Commissioner u/s 39(1) of the Act. The Court cannot entertain application u/s 40 of the Act without recourse to Sections 38 and 39 in the first place by the concerned person, raising his grievance before Assistant Commissioner and the Commissioner. The powers of the Court stipulated u/s 40(2) of the Act also do not indicate that the Court has any power to set aside the sale or cancel a registered sale-deed on the basis of grounds of application as delineated in Section 38 of the Act. The said powers pertain to management or administration of Trust itself or the Trust property rather than deciding the validity of sale itself. The Court u/s 40 of the Act does not exercise the powers of a Civil Court in a civil suit for cancellation of sale itself. Thus, neither the Assistant Commissioner nor the Commissioner u/s 38 or 39 of the Act or the Court exercising its powers u/s 40 of the Act has any power to set aside a sale made by the Trust or cancel a registered sale-deed. The provisions of Section 38, 39 and 40 of the Act operate in different field and are independent from Section 31 of the Act which requires previous sanction to be obtained by a Public Trust for certain transfers and consequence of such not obtaining the sanction is prescribed in Section 31(1) of the Act itself, which is couched in negative terms and which says that no such sale or lease etc. shall be valid without previous sanction of the Assistant Commissioner. The present application filed by the appellant u/s 40 of the Act was itself apparently not within the scope of Sections 38, 39 and 40 of the Act nor the power of the Court u/s 40(2) contemplates any such power with the Court to set aside the concluded sale or to set aside the registered sale-deed.

14. If according to the applicant, the sale is hit by Section 31 of the Act, the remedy lies in filing civil suit for cancellation of such sale-deed and not the application u/s 40 of the Act of the Public Trust Act. A reference in this regard may be made to the judgment of this Court in the case of Narain Lal and Another Vs. Prabandhkarini Committee Digamber Jain Atishya Kstratia Shri Mahavirji Village Bargava and Others, in which it was held as under:

The district Court has no jurisdiction to adjudicate on the validity or otherwise of the permission granted by the Assistant Commissioner Devasthan to the petitioners u/s 38 of the Act. The said permission is final and conclusive by virtue of Section 39(2) of the Act. The District Judge does not deal with a suit u/s 40 of the Act but with a mere applications and the jurisdiction conferred on him for the decision of the said application is very limited and qualitatively different from his plenary jurisdiction to entertain and decide all suits of a civil nature, including representative suits u/s 92 of the Code of Civil Procedure, 1976. It cannot in the exercise of such limited jurisdiction sit in judgment over the validity of the order made by another authority under the Act.

All that the District Court may concern itself in that behalf is with the existence

or otherwise of the order of the Assistant Commissioner and not with its legal validity" or otherwise. Once the district Court is satisfied that the Assistant Commissioner has issued a direction u/s 38 of the Act requiring a particular person to apply to the district Court for directions regarding the administration of a particular public trust, the district Court must hold such enquiry into the case as it deems necessary, or cause such enquiry to be made and thereafter pass such orders as it may consider appropriate in the facts and circumstances of this case. If it finds that the reliefs prayed are beyond the scope of its own powers under the Act to grant, it may dismiss the applications before it, but it cannot dismiss these applications merely on the ground that the sanction behind them u/s 38 is not valid or that the relief prayed therein is beyond the scope of Clauses (a) to (d) of Sub-section (2) of Section 40 of the act. The district Court would obviously be guilty of failure to exercise its jurisdiction u/s 40 if it were to dismiss the application on the short ground that the Assistant Commissioner had no jurisdiction to direct the making of the said application to it. 1966 R.L.W. 566 Distinguished.

15. In the case of Vallabh Darshan Hotel Private Limited and Another Vs. State of Rajasthan and Others, this Court has held as under:

(38) Mere making of entering in the register of the property by passing order u/s 21 of the Act of 1959, despite the authority passing the order having knowledge of the facts that the property in question has been dealt with by executing sale-deed by the settler of the trust himself before he intend to give the property to trust and he admitted that he is not in possession of the property and the purchaser is not ready to give back the property to settler or the trust and these facts are mentioned in the order itself then these undisputed facts prima facie makes the entry in the register only a paper entry. Learned Counsel for the respondents-plaintiffs also could not seriously dispute that the Assistant Commissioner, Devasthan Department or any authority under the Rajasthan Public Trust Act, 1959 has no jurisdiction to decide the title of any property or validity of sale-deed so as to cancel the sale-deed or declare some one as owner of the immovable property. Then also entry of any property in the register of the properties of the public trust in pursuance of Section 21 of the Act of 1959 is not a clinching factor for deciding the title of the property. The trial court, therefore, committed error of law by holding prima facie case in favour of plaintiffs merely because of the only fact that the property in question is entered in the register of property as of trust maintained by the plaintiff No. 3 by ignoring all other undisputed facts, which prima facie shows the facts otherwise, held the entry more reliable which appears to be illegal being contrary to admitted facts mentioned in the plaintiffs' own relied documents.

(39) It will be beneficial to examine the jurisdiction of the civil court in the matter of challenge to entry made in pursuance of order u/s 18 and 21 of the Act of 1959 in the register maintained under Sub-section (2) of Section 16 of the Act of 1959 of public trust. On the basis of entry in the said register, it is said that

the property in dispute became trust property. In D.B. Civil Revision Petition No. 694/92-Bajrarigdas and Ors. v. Vishva Karma Jangir Panchayat through its President Shri Ram Chandra. Jangir and Ors. decided by this Court vide judgment dated 7.10.1996 (wherein I was party to judgment), a question arose whether suit for cancellation of entry made in the register u/s 16(2) of the Act of 1959 can be filed only in any District Court or can be filed in any civil court having pecuniary jurisdiction. The Division Bench of this Court in above case, held that words "Civil Court" used in Section 22 of the Act, do not mean "District Court" alone and means any "Civil Court" including the District Court. If any civil court has jurisdiction to decide about correctness of the entries made in the register maintained under the Act of 1959 of the public trust and its property, then when a suit is filed on the basis of the entry made in the register by the order of the competent authority under the Act of 1959 and the defendants who is having title deed in his favour and is in possession of the property then certainly he having interest adverse to trust can raise objection about the correctness and validity of the entries made in the register maintained under the Act of 1959. This is because that the civil court has jurisdiction to decide the title of the property under civil law. And further because of the plain and simple reason that under the Act of 1959, none of the authority has been given power to decide title of the property and further mere making entry in the register of the trust, of any property, cannot divest a person from title to the property. Even, the matter which can be enquired into under sub-clause (ii) of Section 18 of the Act of 1959 is only whether property is the property of such property. Then in that situation, the Assistant Commissioner, Devasthan Department, can only from the documents submitted by the parties and after inviting objections under Sub-section (2) of Section 18 of the Act of 1959, can decide whether in his opinion, the property is of public trust Or not but while doing so, he cannot exercise power of civil court of declaring a deed valid or invalid, legal or illegal and also has no right to declare title of the property in favour of one or other.

16. Therefore, this Court finds that the application filed by the appellant in the present case u/s 40 of the Act itself was not maintainable and was outside the scope of Sections 38, 39 and 40 of the Act. Therefore, the issue No. 3 also appears to have been wrongly decided by the learned trial Court in favour of the applicant. The decision of trial Court on issue No. 3 is, therefore, set aside and the said issue No. 3 is also decided in favour of the respondents and against the appellant.

17. In the opinion of this Court, therefore, the learned trial Court has correctly and rightly decided issues No. 1 and 2 in favour of the non-applicants and against the applicant and the sale in question made by the respondent No. 1 - Public Trust on 18.10.1985 under a registered sale-deed after obtaining due sanction from the Assistant Commissioner, Devasthari Department on 7.1.1985 vide Ex.A/1 cannot be said to be illegal or invalid for any reason.

18. Consequently this appeal being devoid of merit is liable to be dismissed and

the same is accordingly dismissed. No order as to costs.