
(2002) 10 MP CK 0004
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2820 of 2002

Mahant Madan Mohan Das

APPELLANT

Vs

Anirudha Prasad Shastri and others

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Madhya Pradesh Public Trust Act, 1951 — Section 26, 34(A)

Citation : (2003) 2 MPLJ 116

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

Bench : Single Bench

Advocate : N.S. Kale with G. Mukhopadhyay, for the Appellant; Rohit Gupta for Respondent Nos. 1 and 2 and Shashank Shekhar for Respondent Nos. 3 and 4, for the Respondent

Judgement

Arun Mishra, J.

Petitioner in this writ petition has put the question on sustainability of order (P-1) passed by the Registrar, Public Trust, on 22-4-2002 referring the matter u/s 26 of M.P. Public Trusts Act for issue of the direction.

Respondent No. 1 filed an application before the Registrar, Public Trust, that trust was not being managed by public. The property of trust was being dissipated by Shri Bhagwan Singh Patel, Shri Laxman Das, Shri Madan Mohan Das and Shri Tulsi Das. 200 shops were constructed by the Trust and about 150 shops have been transferred at the rate 18,000/- per shop and premium of 2-5 lacs has been obtained in lawful (sic : unlawful) manner. The action is in violation of section 14 of M.P. Public Trusts Act. No prior sanction of Registrar was obtained. Trust has been put to a loss of Rs. 4-5 crores. The alienation made is illegal and void.

A writ petition was earlier filed before this Court vide W.P. No. 4285/2001 which was decided on 6-12-2001 and this Court directed Registrar, Public Trust, to bestow his anxious consideration and dispose of the proceedings in accordance with law by the end of April, 2002. The factum of disposal shall be intimated to

the Registry of this Court. With the aforesaid direction the writ petition was disposed of. The application u/s 26 was filed before the Registrar on 21-10-2000. The matter was pending on one or other count, ultimately, direction had to be issued by this Court for expeditious disposal. The order-sheet dated 26-12-2001 indicates that in spite of being required, the Trust failed to submit requisite documents in spite of the fact that directions were issued several times by the Registrar. Interim direction was issued to produce the record on next date which was fixed on 11-1-2002. Ultimately, as the record was not produced, enquiry was to be completed within the time fixed. Commissioner was appointed. To make an enquiry into the records and Tahsildar Huzur was directed to submit the report within 15 days. No record was produced before the Additional Tahsildar, Circle-2, by the Trust. Ultimately, impugned order (P-1) has been passed by the Registrar, Public Trust, on 22-4-2002. It has been noticed that in spite of several opportunities/directions Trust has not produced the record. The direction was made to produce the record. Last opportunity was given on 9-5-2001 but in spite of that the record was not produced. Then a prayer was made on behalf of the Trust not to appoint the Commissioner for making interim enquiry and later on to call the record. Commissioner was directed to make an enquiry and submit report but still no record was made available to Additional Tahsildar Huzur. Finding has been recorded that this is the case of total non-co-operation meted out by the Trust. They have not assisted the Commissioner appointed to make the enquiry. Thus, findings have been recorded that Trust is not being managed properly as alleged and it has become necessary to obtain the direction of the Civil Court. Order has been passed u/s 26(i) of M.P. Public Trusts Act.

The petitioner submits that the impugned order is bad in law. No enquiry as contemplated by section 26 has been done before making a direction to refer matter to Civil Court. Trust was not afforded due opportunity of being heard. The enquiry u/s 26(i) could not have been delegated by the Registrar to Tahsildar Huzur, who in turn could not have further delegated it to the Additional Tahsildar. Such delegation is not permissible as per section 34(A) of M.P. Public Trusts Act. No enquiry was done by the Tahsildar/Additional Tahsildar as such impugned order is bad in law and deserves to be set aside.

Respondent No. 1 in return contends that there is serious allegation of misappropriation of property of about 200 crores. 150 shops were constructed and transferred showing the nominal premium and unlawful consideration has been obtained. No permission of Registrar much less prior one which is required was taken u/s 14. Other serious allegations are made in the return of mismanagement of Trust and its properties. Several instances have been pointed out.

Shri N.S. Kale, learned Senior Counsel, appearing for the petitioner submitted that the order is bad in law. Enquiry has not been conducted properly and fairly and Registrar was not authorized to delegate the enquiry to be done by the Tahsildar/Additional Tahsildar, who in turn has also not conducted any enquiry. As such petitioner should be given an opportunity to adduce the evidence and the

impugned order be set aside.

Learned Counsel appearing for the respondents submitted that the petitioner failed to produce the record in spite of several opportunities being given. Record was deliberately withheld as that would have exposed the petitioner's conduct. Last opportunity was given on 9-5-2001, but, even after the order was passed by this Court in writ petition to decide the matter on time bound frame. No co-operation was extended ultimately Commissioner was appointed. The Commissioner was also not shown the record of the Trust property which is sufficient to infer that allegations made were true and order passed by the Registrar is proper and no interference is called for.

Registrar has passed the order in terms of section 26 of M.P. Public Trusts Act. Section 26 read as under:-

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 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.

In the instant case there is serious allegation of illegal construction of shops and alienation. 150-200 shops were constructed and transferred to the detriment of Trust in violation of section 14 of the Act. Section 14 of the M.P. Public Trusts Act requires proper sanction of the Registrar to be obtained before any sale, mortgage or lease beyond 3 years of immovable property is made. On a specific query being put what is the stand of the petitioner in that regard, the stand of the petitioner's Counsel is that question is not germane at this stage as Registrar has to first form opinion u/s 26 about mis-management. In my opinion, there is serious allegations with respect to dissipation of that property. Registrar has granted last opportunity on 9-5-2001 to produce the record. Thereafter, as the record was not being produced and enquiry was kept pending, this Court interfered in the writ and directed enquiry to be completed within 4 months by the end of April, 2002. Commissioner was appointed by the Registrar to look into the matter and submit the report but still the record was not made available and no enquiry could be conducted by the Tahsildar/Additional Tahsildar due to non-co-operation of the petitioner.

The submission of learned Counsel that no delegation could be made u/s 34-A of

M.P. Public Trusts Act cannot be accepted as it is not the case of delegation of power as contemplated u/s 34-A. Registrar has called for report based on record and that too in the capacity of Commissioner from Tahsildar/Additional Tahsildar. Section 34-A deals with the delegation of powers. Powers u/s 34-A can be delegated to an Officer not below S.D.O. In the instant case, no delegation has been made as contemplated u/s 34-A of the Act. Here in the instant case Commissioner was appointed in the circumstances mentioned above as the petitioner Trust did not co-operate and did not produce the record in spite of several orders being passed in that regard. As per section 28, Officer holding enquiry has the power of Civil Court and Commission can be issued u/s 28(d). u/s 28(a), affidavits can be received. Witnesses can be summoned u/s 28(b). Documents can be compelled to be produced under Clause (c) of section 28 but in spite of invoking Clause (c) and (d) of section 28, Registrar could not succeed. In spite of direction to produce the documents, they were not produced. In spite of issue of commission, nothing could be done due to with-holding the documents/record. Thus, the adverse inference drawn by Registrar is proper as the documents have been deliberately with-held by the Trust. Thus, sufficient grounds exists for making the reference u/s 26(i) of the Act, the order passed by the Registrar, Public Trust is proper. In case Trust has not moved the Court, let Registrar take appropriate steps to refer matter forthwith in accordance with order (P-1) forthwith as provided in section 26 of the Act on failure of trustee to move application as directed by Registrar.

Resultantly, writ petition is without merit and is dismissed. No order as to costs.