

(2012) 11 MP CK 0041

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15053 of 2008

Silas Rajesh Lal and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 226

Citation : (2013) 1 JLJ 35 : (2013) 1 MPLJ 447

Hon'ble Judges : Vimla Jain, J;K.K. Lahoti, J

Bench : Division Bench

Advocate : Akash Choudhary, for the Appellant; Sanjay Dwivedi, Government Advocate for State, V.K. Shukla for Respondent No. 4, Kishore Shrivastava with Kunal Thakre for Respondents No. 5 to 9, 14, 15 and 24 to 29, Rohit Arya with P.S. Yadav for Respondent No. 13 and Vipin Yadav for Intervenor, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.—The petitioners have invoked jurisdiction of this Court under Article 226 of the Constitution of India for seeking following reliefs:

(1) That the defaulter trustees be seriously dealt with and the entire trust properties called in question may kindly be reverted back on the name of the Public Trust Methodist Church in India by cancelling and declaring all the sale-deeds and the entire transactions as contained in the body of writ petition as null and void ab initio because, no prior consent has been obtained by the defaulter trustees from respondent No. 4 before parting with the trust properties in question, moreover, they have been misappropriated and have committed criminal breach of trust properties for which the criminal liability be fastened against the respondents No. 5 to 9 and the Superintendent of Police be ordered to take action in the matter by registering criminal cases against the defaulter trustees r/w respondents No. 5 to 9 and serious action is called for from this Hon"ble Court.

(2) That, looking to the serious allegation levelled in the entire matter supra, this Hon''ble Court be pleased to order high level probe in the matter by directing the CBI to investigate the matter and the defaulter trustees along with respondents No. 5 to 9 be punished in accordance with law.

(3) That, the respondents No. 5 to 9 be restrained from dispossessing the full members of the Trust along with the petitioners from the properties of the present Public Trust i.e. their residential houses situated at Pili Kothi 1017 Napier Town. Jabalpur and English Methodist Church Compound Nagrath Chowk Napier Town Jabalpur in which they are residing till date in the ends of justice.

(4) That, any other relief deemed fit under the present circumstances be also granted to the petitioners and this petition be allowed with cost.

The dispute between the parties, in short, can be stated thus:

(i) The petitioners are full members of Methodist Church in India. It is a Public Trust. They have challenged the action of respondents No. 5 to 9 who happen to be the office-bearers of a Public Trust namely Methodist Church in India and have transferred the properties of trust allegedly in violation of the provisions as contained in Bombay Public Trust Act, 1950. It is alleged that the act of the respondents No. 5 to 9 has jeopardised and defeated the aims and objects of the trust. They have alienated the properties of the trust without seeking permission of respondent No. 4. As the properties of the trust are still being alienated, this petition has been filed by the petitioners alleging that the respondents are still selling the properties to the colonisers, developers and builders, which are against the welfare of full members of the trust. It is alleged that the respondents No. 5 to 9 have failed to perform the religious, pious and charitable act of the trust and the properties are not utilised for the purposes of the trust. The entire sale of the properties as shown in the document Annexure P-3 is in violation of the provisions of law namely Bombay Public Trust Act, 1950.

(ii) That, the properties of the trust could be utilised only for the benefit of the full members of the trust, but it has been sold by respondents No. 5 to 9 which is an illegal act of the respondents No. 5 to 9.

(iii) That, the properties which are sold by respondents No. 5 to 9 deserve to be reverted back to the Public Trust and the possession of the properties, as are described in Annexure P-3, may be restored to the trust by cancelling the documents and declaring all the transactions as illegal. It is also prayed that the sale-deeds executed by the respondents No. 5 to 9 be declared as null and void because no prior consent was obtained by the trustees from the respondent No. 4 before sale of the trust properties. That the consideration received by the respondents No. 5 to 9 have been misappropriated thereby they have committed breach of the trust. Earlier petitioner No. 1 had filed a petition bearing Writ Petition No. 1577 of 1995 Silas Rajesh Lal v. State of M.P. and others, challenging the alienation of the trust properties, Government properties, graveyard of Christian Community and grant of coloniser licence by the Collector, but it was

subsequently withdrawn by the petitioner with liberty to agitate the matter before the Collector on 7.2.1996.

(iv) That one more petition bearing Writ Petition No. 1461/1997 Methodist Church in India v. State of M.P. and others, was filed by late Aseem Chansoriya in which an order of maintaining status quo in respect of the properties belonging to Public Trust was passed. Thereafter the petitioner No. 1 had also filed an application for initiating contempt proceeding alleging disobedience of the order passed by this Court, in which an order was passed by the High Court on 18.4.2001 Annexure P-11. On the basis of aforesaid contentions, it was submitted by the petitioners that the act of the respondents No. 5 to 9 is in gross violation of the trust, trust properties have been alienated and the reliefs as prayed in the petition may be granted to the petitioners.

2. Shri Kishore Shrivastava, learned senior counsel appearing for the respondents No. 5 to 9, 14, 15 and 24 to 29 submitted that the properties which are subject-matter of this petition are not trust properties but in fact these are properties of a society. The respondents have purchased the properties after payment of valuable consideration. Earlier a writ petition in the nature of PIL was filed for the same relief bearing Writ Petition No. 14250/2005, which was disposed of finally on 2.1.2006 with certain directions, but in spite of this, again a fresh petition for the same relief has been filed. That on the basis of same cause of action, this petition cannot be entertained and may be dismissed. That the present petition has been filed for setting aside the sale-deeds, but the purchasers are not parties in the petition. Several persons have purchased the properties and without impleading them, this petition cannot be entertained. Apart from this, there is an alternative remedy of filing a civil suit u/s 92 of the Code of Civil Procedure, so the petitioners cannot invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. It is also submitted by Shri Shrivastava that this petition may be dismissed with costs as some of the petitioners have already filed a civil suit which has been dismissed, as not maintainable.

3. Shri Rohit Arya, learned Senior Advocate appearing for respondent No. 13 also reiterated the same contentions. However, it was submitted by him that respondent No. 13 has purchased an area of 22000 sq. ft. and has started construction thereon. Thereafter, a civil suit was filed but without impleading respondent No. 13 as party. In earlier petition, respondent No. 13 has invested a huge amount after due purchase of the property, various persons have purchased the properties before filing of this petition and without impleading those, this petition cannot be entertained, as interested persons whose interest can be affected are not party in the petition.

4. Learned counsel appearing for the State has also filed reply in which it is submitted that the complaints made by the petitioners were taken into consideration by the Collector, Jabalpur who after appreciating the entire record as well as earlier sanctions granted to the Church from time to time, has

recorded a specific finding that his predecessor Collectors had passed earlier orders dated 18.4.2001 and 21.1.2008 releasing the land. These orders were passed in accordance with law and against these orders no one had approached any forum, so these orders have attained finality. That the Church had followed the conditions imposed upon it for de-reserving the land and the provisions as contained under the law were followed. In para 6, it is stated by the State that civil suits challenging the sale-deeds have been filed registered as Civil Suit Nos. 38-A/2008 and 39-A/2008 which are pending before the competent Court of jurisdiction and as such the writ petition is not maintainable. State has also filed an additional return in which it is stated that in case some illegality in the transactions is found, the respondents may be directed to hold an enquiry in that regard.

5. Respondent No. 10A, G.K. Handa has submitted that he had purchased the property in December 1990 and a period of more than 22 years have elapsed while limitation is 3 years, so present petition is barred by limitation.

6. Shri Vipin Yadav, learned counsel supported the contentions of the petitioners. It was submitted by him that before sale of the properties, permission from the Registrar, M.P. Public Trust was also required.

7. In this case, the entire dispute is in respect of alienation of the properties by the respondents No. 5 to 9 in favour of the other respondents. A similar petition was earlier filed which was registered as Writ Petition No. 14250/2005 Wilson Brown and another v. Rev. Vinay Peter and others, alleging illegal alienation of the properties. Aforesaid writ petition was finally disposed of on 2.1.2006 by a Division Bench of this Court. For ready reference, we quote the order of the Division Bench which reads thus:

The two petitioners claim to be local residents of Jabalpur where a Church established by Methodist Church of India (hereinafter referred to as "MCI") is located. They have alleged in the writ petition that on 5.10.2005, the respondent No. 1 published a notice in local newspaper inviting bids for sale of 22000 sq. ft. of land adjacent to the said Church at Jabalpur belonging to the MCI and the sale is for the purpose of construction of some building. Their case in the writ petition is that there is no need for sale of such valuable land as the existing buildings situated are in good condition and the hostel run by the said MCI also provides sufficient accommodation and the income of the MCI is enough to meet the requirements of the Church at Jabalpur. The petitioners have further alleged that the proposed sale is being made without permission of the Charity Commissioner and they have prayed that a direction be issued to the respondents to stop the illegal sale of valuable land belonging to the MCI.

On perusal of the averments in the writ petition, we find that the MCI has been registered as a Public Trust. Mr. Akhilesh Jain, learned counsel for the petitioners states that the registration of the said trust has been done under the Bombay Public Trusts, 1950. On perusal of the averments in the writ petition, we further

find that the land belonging to the Church at Jabalpur proposed to be sold is the property of the aforesaid public trust, namely MCI. For illegal sale of property belonging to a public trust registered under the Bombay Public Trusts Act 1950, remedies have been provided under the said Act. Section 50 of the said Act not only provides for inquiry by the Charity Commissioner into the allegations of breach of public trust, but also provides for a suit in a Court within the local limit of whose jurisdiction, the whole or part of the subject-matter of the Trust, is situated. On reading of the said section 50 of the Act, we further find that sufficient power has been vested on the Charity Commissioner and the Court trying the suit to grant appropriate reliefs to the petitioners against the proposed sale. Hence, the petitioner should move either the Charity Commissioner or the appropriate Court in accordance with the aforesaid Act and this Court should not entertain this petition as PIL.

The petition is accordingly dismissed.

8. As similar matter in respect of respondent Trust has already been decided by a Division Bench of this Court in which it has been directed to the petitioner to invoke the jurisdiction of the Charity Commissioner u/s 50 of the Bombay Public Trust Act, 1950, so for the similar relief, another petition cannot be entertained. Any person aggrieved by the action of trust or trustees can invoke the jurisdiction of Charity Commissioner. Section 50 of the Bombay Public Trust Act, 1950 reads as under:

50. Suit by or against or relating to public trusts or trustees or others. -- In any case -

(i) where it is alleged that there is a breach of public trust, negligence, misapplication or misconduct on the part of a trustee or trustees,

(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee,

(iii) where the direction of the Court is deemed necessary for the administration of any public trust, or

(iv) for any declaration or injunction in favour of or against a public trust or trustee or beneficiary thereof,

the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clauses (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs:

- (a) an order for the recovery of the possession of such property or proceeds thereof;
- (b) the removal of any trustee or Manager;
- (c) the appointment of a new trustee or Manager;
- (d) vesting any property in a trustee;
- (e) a direction for taking accounts and making certain enquiries;
- (f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or willful default;
- (g) a declaration as to what proportion of the trust property or OT the interest therein shall be allocated to any particular object of the trust;
- (h) a direction to apply the trust property or its income cypres on the lines of section 56 if this relief is claimed along with any other relief mentioned in this section;
- (i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the Court may deem necessary;
- (j) the settlement of scheme, or variations or alterations in a scheme already settled;
- (k) an order for amalgamation of two or more trusts by framing a common scheme for the same;
- (l) an order for winding up of any trust and applying the funds for other charitable purposes;
- (m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust;
- (n) an order exonerating the trustees from technical breaches, etc.;
- (o) an order varying, altering, amending or superseding any instrument of trust;
- (p) declaring or denying any right in favour of or against, a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or
- (q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid reliefs or is necessary in the interest of the trust:

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof;

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled:

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under sub-section (4) of section 1.

Aforesaid provisions specifically provides that an aggrieved person can always approach to the Charity Commissioner who is empowered to take action after such enquiry as he thinks necessary and to issue necessary directions. Any aggrieved person can also file a civil suit as provided in section 50 of the Bombay Public Trust Act, 1950. In this case, there are serious disputed questions in respect of the properties whether these are properties of the trust or of society and whether aforesaid properties were sold for the purpose of trust or not, all the disputed questions cannot be gone into in the writ jurisdiction. As has already been held in Writ Petition No. 14250/2005 Wilson Brown and another v. Rev. Vinay Peter and others, on 2.1.2006 that the aggrieved party can avail remedy as provided in the order, subsequent petition for the same purpose cannot be entertained.

The petitioners herein may approach to the Charity Commissioner as directed earlier in Writ Petition No. 14250/2005. Apart from this, the purchasers are also not party in this petition, without whom no effective order can be passed.

In view of aforesaid, this petition for the same/similar relief is not entertained and is dismissed in view of the specific order in Writ Petition No. 14250/2005, with no order as to costs.