**(2007) 10 MP CK 0015**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Petition No. 739 of 1994

Sourabh Kumar and Others — APPELLANT

Vs

Registrar, Public Trust and Others — RESPONDENT

**Date of Decision :** 05-10-2007

**Acts Referred:**
Madhya Pradesh Public Trust Act, 1951 — Section 14

**Citation :** (2008) 1 MPLJ 628

**Hon'ble Judges :** Abhay M. Naik, J

**Bench :** Single Bench

**Advocate :** A.K. Jain, for the Appellant; Vinod Mehta, Government Advocate and None for Other Respondents, for the Respondent

**Final Decision :** Dismissed

## Judgement

Abhay M. Naik, J.

This petition has been preferred to quash the order dated 7-2-1994 contained in Annexure P/9 passed by the Court of Registrar Public Trust, (S.D.O. Khurai) District Sagar.

Short facts leading to the petition are that there was a public trust in the name of Shridev Parshwanath Digamber Jain, Naya Mandir Trust, Khurai having various objects including to render public service by providing help to the persons suffering from ailment and diseases. Vide resolution dated 11-11-1984, it was decided to open a well equipped hospital on behalf of the trust in the city of Khurai. It was estimated at Rs. 12 lacs. Liquid assets of the trust were not sufficient, therefore, a decision was taken to sell house No. 155 situated at Bihari Ward, Khurai which was owned by the Trust. It was a dilapidated property fetching no profitable income. An application, therefore, was submitted before the Registrar of Public Trust u/s 14 of the M.P. Public Trust Act (for brevity "the Act") for seeking permission to sell the house property and to utilize the money for construction of the hospital. A huge piece of land granted to the Trust on a lease for 30 years on 6-11-1987 vide Annexure P/2 was proposed to be utilized for the construction of the hospital. Learned Registrar Public Trust on 14-9-1992 passed an order marked as Annexure P/3 and granted permission subject to the following conditions:

(i) Sale will be conducted by public auction in the presence of Tahsildar, Khurai.

(ii) Auction of the property would be conducted in lots and/or piecemeal manner in order to realize maximum price.

(iii) Highest bidder would deposit l/4th amount immediately and balance amount within a week in the bank account of the Trust.

(iv) Land required for construction of the hospital would be conveyed/transferred in favour of the trust by registered gift deed or sale deed within a month and such deed of conveyance would be submitted before the Registrar Public Trust for perusal. Construction of the hospital will not be made without compliance of the aforesaid. If the land is not transferred in favour of the trust within a month by way of registered sale or gift deed, the permission u/s 14 of the Act shall be treated as cancelled.

(v) Construction of the hospital would be made only as per the proposed plan.

Thereafter, an application was made before the Registrar Public Trust for modification of order contained in Annexure P/3. It was allowed vide order dated 20-12-1993 contained in Annexure P/5. Accordingly, the conditions No. 3 and 4 contained in Annexure P/3 were modified to the following effect:

(i) After acceptance of the bid and deposit of the l/4th amount of bid, the highest bidder would be required to deposit the balance amount within a month.

(ii) Patta granted in favour of the Petitioners vide Annexure P/2 was treated as valid and the condition requiring the trust to have a registered gift deed or sale deed in its favour was omitted.

Thereafter, a public notice for auction was issued on 4-12-1993 vide Annexure P/6. Auction was accordingly, held in the presence of Tahsildar, Khurai, wherein Petitioner Nos. 2 to 10 made the highest bid. They deposited l/4th amount immediately and expressed their willingness to deposit the balance bid amount as per the amended conditions.

An objection was submitted about the breach of conditions imposed vide Annexure P/3 and pursuant thereto a show cause notice dated 15-3-1993 (Annexure P/7) was issued. Reply was given vide Annexure P/8. Learned Registrar of the trust thereafter passed the impugned order on 7-2-1994 cancelling thereby the auction proceedings being in violation of Annexure P/3, hence this petition has been preferred mainly with the following reliefs:

(i) Order marked as Annexure P/9 be quashed.

(ii) Petitioner No. 1 be permitted to continue with the construction work of the hospital and utilize the funds deposited by the auction purchaser for that purpose.

(iii) Petitioners No. 2 to 10 be permitted to deposit the balance amount of the sale proceed and get the registration of their respective portion done in their favour.

In the return, it has been contended that the auction was being conducted in violation of the terms and conditions contained in Annexure P/3 and the entire auction is vitiated due to the same.

Shri A.K. Jain, learned Counsel for the Petitioners and Shri Vinod Mehta, G.A. made their respective submissions which have been considered in the light of the material on record.

Two important features of this case are that the petition was initially submitted by Petitioner No. 1 (i.e. the Trust) and Petitioners No. 2 to 10 who offered a maximum bid. During the pendency of the petition, an application bearing I.A. No. 1753-W/2003 was submitted on behalf of Petitioners to delete the name of Petitioner No. 1 (i.e. the trust) from the array of the cause title. This application was allowed and consequently, by virtue of order dated 5-1-2006 the name of the Trust i.e. Petitioner No. 1 was deleted from the array of the cause title. Secondly, the remaining Petitioners who were merely the proposed auction purchasers did not deposit the entire amount of the bid. There is neither an averment nor any document on record to establish that the entire bid amount was deposited by the Petitioner Nos. 2 to 10. In the relief Clause (III), a prayer is made that the Petitioners No. 2 to 10 be permitted to deposit the balance of the sale proceeds and get the registration of their respective portions done in their favour. From these averments, it is clear that the Petitioners No. 2 to 10 i.e. the proposed auction purchasers have not deposited the entire amount of bid and the sale certificate has not been issued in their favour. According to the permission u/s 14 of the Act they were required to deposit the balance amount in the account of the Trust. There is no averment in the writ petition that they were in any manner, prevented from depositing the balance money. This being so, the Petitioners No. 2 to 10 having failed to deposit the balance money, have no vested right in them to challenge the impugned order. Although, a prayer has been made in the writ petition that the Petitioners No. 2 to 10 may be permitted to deposit the balance amount of bid, yet there is no averment in the writ petition that they offered to deposit the balance money and that they were prevented from the same. On the contrary, petition was submitted by the trust as well as Petitioners No. 2 to 10 which goes to show that they were all together. The balance amount of bid could have well been deposited by the Petitioners No. 2 to 10 with the Petitioner No. 1 or in the account of Petitioner No. 1. Thus, the petition at the instance of Petitioner Nos. 2 to 10 alone is misconceived. On account of failure to deposit the balance amount of bid within the stipulated period, no right accrued in favour of, the proposed auction purchasers. They could have challenged the impugned order only after deposit of the entire auction amount. In the absence of such deposit, it is observed that the present

 

Petitioners (Petitioners No. 2 to 10) have no right to challenge the impugned order.

Initially, the challenge was made by the trust which was impleaded as Petitioner No. 1, but the name of Petitioner No. 1 (the Trust) was deleted by the Petitioners No. 2 to 10 themselves after seeking permission from this Court. Consequently, after deletion of the trust from the array of writ petition, the writ petition is no more maintainable at the instance of proposed auction purchasers who have not deposited the entire amount of bid offered by them.

However, since the case was also heard on merits, an anxious consideration has been given by this Court to the substance of the writ petition.

Section 14 of the Act is as follows: "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 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." Accordingly, grant of sanction is a rule unless the transaction is prejudicial to the interest of the public trust. A true copy of trust deed has been placed on record subsequently on 12-7-2007. Clause 4 enumerates the duties and powers of the trustees. Clause (Aha) clearly empowers the committee of the trust to sell the movable/immovable property of the trust except the temple. In view of this, sanction for transfer could have been validly obtained u/s 14 of the Act if the same did not cause prejudice to the trust. The proposed hospital was to be constructed on the land obtained by the trust on a lease for 30 years. Lease deed is on record as Annexure P/2 which is dated 6-11-1987. A period of about 20 years is going to lapse in near future. It is not an irrevocable lease. On the contrary, there is specific stipulation that after expiry of the lease period, the trust will hand over the possession to the lessor. There is no stipulation in the lease deed that the period of lease may be extended unilaterally by the trust. On the contrary, the period of lease may be extended only with the consent of lessor and lessee. Obviously, the trust, if, constructs the hospital on the land, will not be in a position to retain it as of right after expiry of period of lease. Thus, on one hand the trust will auction its own property and will utilize the auction proceeds for construction of hospital and on other hand, it will not be in a position to retain the hospital as of right after expiry of lease period. Thus, the proposed transaction of sale clearly seems to be

 

prejudicial in the interest of public trust.

As regards, the powers of Registrar, it may be seen that the then Registrar in exercise of powers u/s 14 of the said Act granted sanction to transfer the property of the trust with the following conditions:

(i) Sale will be conducted by public auction in the presence of Tahsildar, Khurai.

(ii) Auction of the property would be conducted in lots and/or piecemeal manner in order to realize maximum price.

(iii) Highest bidder would deposit l/4th amount immediately and balance amount within a week in the bank account of the Trust.

(iv) Land required for construction of the hospital would be conveyed/transferred in favour of the trust by registered gift deed or sale deed within a month and such deed of conveyance would be submitted before the Registrar Public Trust for perusal.

Construction of the hospital will not be made without compliance of the aforesaid. If the land is not transferred in favour of the trust within a month by way of registered sale or gift deed, the permission u/s 14 of the Act shall be treated as cancelled.

(v) Construction of the hospital would be made only as per the proposed plan.

Accordingly, the registered sale deed or gift deed in favour of the trust ought to have been got executed and submitted before the Registrar within a month. It was clearly mentioned in the said order that in case, if, registered sale deed or gift deed is not executed in favour of the trust within a month, the permission shall stand cancelled. It is not the case of the Petitioners that the registered sale deed or gift deed was duly executed by the lessor (executant of Annexure P/2) and was submitted before the Registrar within a month. After expiry of a month, the order dated 14-9-1992 automatically became ineffective and the sanction for transfer granted under it stood cancelled. The Registrar also became functus officio and had no jurisdiction to recall for the purpose of making modification in the order of sanction. I may profitably refer to the decision of this Court rendered by the Division Bench in the case of Laxmichand Modi v. B.R. Mandal, Registrar Public Trusts, Sagar, 1964 MPLJ 244 wherein it has been held that after the Registrar accorded sanction u/s 14 of the Act to the proposed sale of the house, he became functus officio and had no jurisdiction either to recall or to review the sanction given by him.

Shri A.K. Jain, learned Counsel for the Petitioners submitted that the modified order dated 20th of December, 1993 contained in Annexure P/5 is not an order of recall or review. I am not impressed by this contention for two reasons. Firstly, the order of sanction contained in Annexure P/3 contains a peremptory clause to the effect that if the land proposed for the construction of hospital is not got conveyed through the registered sale deed or gift deed within a month and such registered deed is not submitted before the Registrar within that period, sanction shall stand cancelled after expiry of period of one month. This clause automatically came into operation and the sanction granted vide Annexure P/3 became ineffective on account of such cancellation on expiry of one month. Order of modification was passed on 20-12-1993 i.e. after the peremptory clause became operative. Secondly, any variation in the terms and conditions contained in Annexure P/3 would obviously amount to recalling or reviewing the earlier order by way of modification which is not permissible according to Division Bench decision rendered in the case of Laxmichand Modi (supra).

Shri A.K. Jain, learned Counsel for Petitioners further contended that the Registrar Public Trust has no jurisdiction like a Civil Court to set aside the sale. It may be seen that the auction sale was not completed and the proposed purchasers have not deposited the entire amount of auction bid. Moreover, the sale certificate has also not been issued in favour of the Petitioners. Thus, it cannot be said that the Registrar has cancelled the auction sale. On the contrary, the Registrar has got definitely powers to determine the validity of incomplete auction proceedings which were taking place in contravention of Section 14 of the said Act. Thus, if an auction proceeding is going-on without a valid sanction u/s 14 of the said Act, the Registrar Public Trust has powers to examine the same and intervene in it in the absence of a valid sanction.

Lastly, Shri Jain, learned Counsel for Petitioners contended that the Petitioners are entitled to refund of the amount deposited by them. There is nothing on record that whether the amount deposited by the Petitioners is with the trust or with the auction conducting authority. If it is with the Trust, the Petitioners having deleted the name of the trust from the array of cause title, cannot claim it through this writ petition. However, if it is with the auction conducting authority, the Petitioners would be entitled to its refund with interest @ 6% per annum from the date of deposit to the date of actual repayment.

In the result, I do not find any substance in the writ petition and the same is hereby dismissed with the aforesaid observations.

No order as to costs.

 