
(2013) 02 RAJ CK 0163
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4147 of 2012

Vidhyadhar Singh Dhaka and Another	APPELLANT
Vs	
State of Rajasthan and Others	RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Citation : (2013) 02 RAJ CK 0163

Hon'ble Judges : Amitava Roy, C.J;Meena V. Gomber, J

Bench : Division Bench

Advocate : N.K. Maloo, Assisted by Mr. Rakesh Kumar Sharma, for the Appellant; S. Zakawat Ali, Additional Government Counsel for Respondents, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, C.J.—The instant proceeding has been referred to the Division Bench in view of the observation of the learned Single Judge recorded in the order dated 18.5.2012 quoted hereunder:-

In view of my disagreement with the judgment of the learned Single Judge in the case of Balwant Singh (Supra) on the interpretation of Section 31 of the Act of 1959, let the matter be placed before the Hon'ble Chief Justice for constitution of a Division Bench to consider the question as to "whether the previous sanction of the Asstt. Commissioner of Devasthan Department is not required for the alienation of the property of the public trusts under the Act of 1959 in situations where the deed of trust allows for alienation of the immoveable and moveable property of the trust.

We have heard Mr. N.K. Maloo, Senior Advocate assisted by Mr. Rakesh Kumar Sharma, learned counsel for the appellants and Mr. S. Zakawat Ali, Additional Government Counsel appearing for the respondents.

2. The brief facts necessary to be noted are that the petitioners had purchased land measuring 0.77700 hectare in Khasra No. 1905/275 situated at west side to

the Nawalgarh, Jhunjhunu Bye-pass from Badridas Choudhary (Goyanka) Charitable Trust (hereinafter referred to as "the Trust") vide a registered sale deed dated 29.8.2011, following which, mutation was also granted to them. At this stage, some villagers made a complaint to the District Collector, Jhunjhunu, whereupon the Sub Divisional Officer, Nawalgarh vide letter dated 14.12.2011 required the Tehsildar, Nawalgarh to ensure that the status quo of the land be maintained. It was inter alia mentioned in the said letter that the land had been purchased in contravention of Section 31 of the Rajasthan Public Trusts Act, 1959 (hereinafter referred to as the Act) and that unlawfully, the process of levelling the same was reportedly being undertaken. This was pursuant to the Advocate's notice dated 12.12.2011 issued on behalf of Richpal Saini son of Bishna Ram Saini and others alleging such illegalities. The purchasers i.e. the writ petitioners submitted a representation before the Sub Divisional Officer, Nawalgarh refuting the above imputations contending inter alia that the Trust was a registered body and that in terms of Clause 23 of the Trust deed dated 29.1.1973, the Trustees were entitled to effect such sale. Clause 23 of the Trust deed was quoted as hereinbelow:-

The trustees shall be entitled to sell any of the immoveable property or portion thereof of the trust for the benefit of the trust and for improvement of the trust fund and property only. The trustees shall be entitled to donate any portion or part of the property for any general public utility purposes.

3. It was asserted as well that the sale had been made for the benefit of the Trust and that no provision of the Act had been violated. The Tehsildar, Nawalgarh, in his report dated 10.1.2012, following a survey of the land involved, endorsed the plea of the purchasers and recorded that for the transaction no permission u/s 31 of the Act was necessary. Incidentally on 27.1.2012, the complainants informed in writing to the Sub Divisional Officer, Nawalgarh that they did not intend to pursue their objection to the validity of the sale of the land by the Trust. They mentioned further that the purchasers had provided a way for access to the cremation ground and requested the said authority not to take further steps on the legal notice.

4. Subsequent thereto, on 1.2.2012, the writ petitioners (purchasers) applied under the Right to Information Act, 2005, seeking information from the Office of the Sub Divisional Officer, Nawalgarh to disclose the legal provision under which the direction to maintain status quo of the land had been issued. As it transpired that the Sub Divisional Officer, Nawalgarh had intervened under the impression that Section 31 of the Act had been contravened and that he had referred the matter to the concerned Assistant Legal Remembrancer to advise the next step, the petitioners sought to invoke the writ jurisdiction of this Court for redress as the order of status quo of their land continued to be in force.

5. Mr. Maloo has argued, with reference to Rule 55 of the Rules of the High Court of Judicature for Rajasthan, 1952 that as the intervention of the Sub Divisional officer, Nawalgarh, keeping in view the scheme of the Act, was wholly

unauthorized, no question in fact did arise in the facts and circumstances of the case as referred to this Bench to be answered. According to him, it being apparent that the Sub Divisional officer, Nawalgarh had no jurisdiction to issue the notice dated 14.12.2011 on the purported ground that the writ petitioners' purchase of the land involved had been in contravention of Section 31 of the Act, the learned Single Judge ought to have quashed the said notice and declared all consequential steps to be illegal and null and void. He further urged that in the face of want of authority of the Sub Divisional officer, Nawalgarh to issue the notice dated 14.12.2011, it is inessential to answer the reference on merits.

6. Per contra, Mr. Zakawat Ali has argued that it being apparent from Section 31 of the Act, that no sale, exchange or gift of any immoveable or moveable property and no lease in case of any agricultural land belonging to a public trust, would be valid without previous sanction of the Assistant Commissioner, Devasthan envisaged by the said enactment, the view contrary thereto as expressed by the Single Bench of this Court in Assistant Commissioner, Devasthan Deptt., Udaipur Vs. Balwant Singh & Ors., 2011(2) DNJ (Raj.) 718, is erroneous and ought to be reviewed.

7. We have considered the materials on record and the arguments advanced.

8. Admittedly the Trust in terms of clause 23 of the Trust deed referred to hereinabove had reserved to itself the right to sell its immoveable property for its benefit. Be that as it may, inspite of repeated queries, the learned State Counsel could not draw our attention to any provision of the Act authorizing the Sub Divisional officer, Nawalgarh to intervene and to take any steps, as done in the instant case on the plea of invalidity of the sale in favour of the writ petitioners for non-compliance of Section 31 of the Act. A plain reading of Chapter-III of the Act dealing with appointment of officers and servants thereunder to carry out the provisions of the Act does not even indicate any such authority of the Sub Divisional officer, even by implication. In that view of the matter the notice dated 14.12.2011 cannot be construed to be in valid exercise of the power of this authority under the Act. The views expressed by the Tehsildar in his report, as mentioned hereinabove, as well as the withdrawal of the complaint pertaining to the sale of the land involved in favour of the writ petitioners are matters of records. Thus in view of the specific challenge to the notice dated 14.12.2011 of the Sub Divisional officer, Nawalgarh on the ground of lack of his competence, we feel persuaded, in the singular facts and circumstances of the case, to sustain the plea that the issue referred does not call for to be addressed on merits. In our comprehension, from the ambit of the impugment laid against the action of the Sub Divisional officer, Nawalgarh, the question referred to this Bench does not arise as comprehended in Rule 55 for being answered by this Bench and thus any process to embark upon such a venture would only be an academic exercise unwarranted by the attendant factual premise. Being of the view that the Sub Divisional officer, Nawalgarh had no jurisdiction whatsoever to issue the notice dated 14.12.2011, we sustain the challenge thereto and interfere therewith and

adjudge as well, all actions pursuant thereto to be illegal and non est in law. It is made clear that we have not expressed any opinion on merits on the aspect as to whether the sale of the land involved in favour of the writ petitioners is valid or not when judged on the touchstone of Section 31 of the Act and we leave it to be answered in an appropriate case. This notwithstanding, in view of the determination of invalidity of the notice dated 14.12.2011, the petition is allowed. No costs.