

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP No. 6098 of 1998**

Karodimal Charity Trust, Raigarh, through: its Secretary.

---- Petitioner**Versus**

1. State of Madhya Pradesh, Through: Principal Secretary, Government of Madhya Pradesh, Department of Higher Education, Vallabh Bhavan, Bhopal.
2. The Commissioner, Higher Education, Bhopal.
3. The Principal, Paluram Dhanania Arts & Commerce College, Raigarh.
4. The Collector, Raigarh.
5. Paluram Dhanani Memorial Memorial Samiti, Raigarh, through its President.
6. Rent Controlling Authority-cum-Sub Divisional Officer, Raigarh, Chhattisgarh
7. Ramkrishna Vivekanand Mission, Kirodimal Colony, Raigarh, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Afroz Khan, Advocate
For State	:	Mr. S.P. Kale, Dy. A.G.
For Respondent No.7	:	Mr. Kishore Bhaduri, Advocate

Hon'ble Shri Justice P. Sam Koshy**C.A.V. ORDER****Delivered on 04/05/2018**

1. The present writ petition has been filed by the petitioner challenging the letter dated 09.06.1997 passed by the Deputy Collector, Raigarh rejecting the claim of the petitioner seeking rent of the disputed property. Challenge also is to Clause 7.3 and 7.4 of the agreement dated 01.10.1986 declaring them to be void and inoperative. In addition, the challenge is also to the order dated 04.02.2004 passed by the Rent Controlling Authority, Raigarh whereby the property involved in the present litigation has been allotted to Ramkrishna

Vivekanand Mission i.e. respondent no.7. In addition, the petitioner has also sought for a relief of an appropriate writ to be issued against the respondents to pay the rent of the said building to the petitioner along with arrears of rent from the time the land/building was taken over by the State Government along with interest.

2. The brief facts of the case relevant for the adjudication of the issues involved in the present petition are that the petitioner is a Trust registered under the Public Trust Act formed in the year 1946 and is engaged in religious and charitable activities. The petitioner's trust has several immovable properties in an around Raigarh and other parts of the countries. One such property owned by the petitioner's trust was known as Commerce College Building. This building was originally with the State Government, but was transferred to the petitioner's trust and by virtue of a lease executed in 1952 it came in possession of the petitioner. Along with this the Government also executed two more lease deeds in respect of two more plots which were adjacent land and building. The Government thereafter executed a lease deed with the petitioner on 15.04.1962 in respect of other properties.
3. In the year 1996 i.e. on 22.01.1966, the petitioner entered into an agreement with one Paluram Dhanania Memorial Society, an Educational Society, who were handed over the building for use of college. In due course of time, on expansion of the college some more accommodations were made available and which was later on known as Library building. Apart from making available the building for running Commerce college, the society also provided a financial

assistance by way of donation of Rs.65,000/- for smooth functioning of the college. In year 1986, the erstwhile State of Madhya Pradesh took a decision of taking over the Commerce College w.e.f. 01.10.1986 and while taking over the college the State also took over all movable and immovable assets from the Managing Committee and also ensured that the immovable property so taken is unencumbered.

4. While taking over the said commerce college, the State Government had vide its order dated 25/30.08.1986 had imposed certain conditions. Subsequently, an agreement was also entered into between the Paluram Dhanania Memorial Society and the State of Madhya Pradesh on 01.10.1986 (Annexure-F with the writ petition).
5. By virtue of the agreement entered into between the parties, the college and college building were both taken over by the State Government and the college thereafter was being run as a Government college. In between the petitioner's trust is said to have moved certain applications with the respondents seeking for rent of the said premises. The petitioner had also in between obtained an order from the Rent Controlling Authority, Raigarh, who had certified the Government rent of the said building to be around Rs.8250/- per month. On 22.07.1994, the Principal of the Govt. Paluram Dhanania Commerce and Arts College intimated the petitioner's trust that since the college and the buildings were both taken over by the State Government unconditionally with no clause of payment of rent, the Government is not liable to pay rent for the said building. Though it was refused by the Principal at the first instance in the year 1994

vide order dated 22.07.1994 (Annexure-O), the petitioner's trust continued to make repeated representations claiming for the same relief and the office of the Collector, Raigarh again vide order dated 09.06.1997 intimated the Minister for State of Madhya Pradesh for religious trust and Rehabilitation (independent charge). The records which are available with the State Government clearly shows that the building and the college both were taken over by the State Government by way of an agreement and that there was no rental clause in the said agreement and therefore the question of payment does not arise.

6. It is thereafter that the present writ petition has been filed. The contentions of the petitioner all along was that there has been no agreement whatsoever entered into between the petitioner's trust and the State Government before taking over the college and the premises. Further, that Paluram Dhanania Memorial Society did not have the power to enter into an agreement with the State Government, particularly in respect of the building and the premises attached to it. Further, it was the right to use of the building and the premises attached to it, which was transferred to the State Government and for which the petitioner was entitled for rent. It was the contention of the petitioner that respondent No.5 Paluram Dhanania Memorial Society was itself given the building by the petitioner only for the purpose of using the building for running the college as his licensee. It was also the contention that initially a resolution was passed by the Paluram Dhanania Memorial Society whereby it was resolved that after the college stands shifted to the

new Government building, which was being constructed, the said Commerce college building shall be vested back with the petitioner's trust and meanwhile the State shall also pay rent to the Trust for use of the building. It was alleged by the petitioner that the transfer of the Commerce College and its building and adjoining lands in possession of the Paluram Dhanania Memorial Society to the Government was without the consent and knowledge of the petitioner's trust. According to the petitioner the entire property in which the Commerce College stood and the adjoining lands and buildings exclusively belonged to the petitioner's trust. That, the property was also in fact in the name of the petitioner's trust all along and the title had never being transferred to Paluram Dhanania Memorial Society nor was the said society ever authorized to transfer the property to the State Government while the State Government took over the college.

7. Thus for all these reasons the petitioner prayed for declaring that the petitioner's trust still being the title holder of the said property and that the respondents should pay them the rent for the said property. At the same time they have also questioned clause No. 7(3) & (4) of the agreement dated 01.10.1986 with an additional prayer that the respondents should pay the arrears of rent to the petitioner from the date, from which the land and building of the petitioner's trust was taken over by the State Government for running of the college and later on the Government having handed over the property to the respondent No.6.
8. Per contra, the counsel appearing for the respondents opposing the

petition submits that present writ petition as such is totally misconceived and is not sustainable for more than one reason. According to the State counsel primarily the respondents have challenged only a couple of the clauses in the agreement, which as such is not permissible under law. It was also the contention of the counsel for the respondents that the petitioner's trust has not challenged the agreement as a whole, which by itself means that the substantive portion of the agreement was agreeable to the petitioner, which includes the competency of the persons who have entered into the agreement and as such the petitioner would be precluded from challenging only a portion of the agreement. It was also the contention of the petitioner that pursuant to the agreement entered into between the Paluram Dhanania Commerce & Arts College and the State Government, an official order was passed on 25/30.08.1986 in respect of taking over of the said Commerce and Arts College by the State Government and in that order itself, it was very specifically mentioned that on taking over the said College, the Government would also take over the entire assets and the movable and immovable properties including the amount of money lying with the society to be automatically transferred to the State Government unconditionally and that the Government shall not be liable for any liabilities which accrued prior to the taking over of the College by the State Government.

9. According to the respondents, this order dated 25/30.08.1986 has not been challenged or questioned by the petitioner and without which the petition itself is not sustainable. It was also the contention of the

counsel for the respondents that the writ for the nature of dispute raised and the relief sought for would not be maintainable and that the petitioner ought to have been filed a civil suit seeking title over the property which otherwise was taken over by the State Government and subsequently, the State Government having allotted the same to the respondent No.6.

10. It was further contended that the property originally belonged to the State Government itself and it was only leased out to the petitioner's trust and the lease stood expired in the year 1992 and thereafter it has not been extended and since the lease was not renewed, the petitioner as such do not have a claim over the said property whatsoever.
11. According to the counsel for the respondents, since the property has already been taken over by the State Government and it was taken over long ago, the writ petition is not the remedy available to the petitioner, but it would only be the recourse of a civil suit which was open for the petitioner. It was further the contention that even the lease which was executed in favour of the petitioner was an unregistered lease and an unregistered lease as such would not have any value so far as an immovable property is concerned. According to the State counsel, the agreement entered into between the parties and the order dated 25/30.08.1986 officially taking over the college also did not have a clause of payment of rent by the State Government. In the absence of any such clause in the agreement, the question of payment of rent does not arise and it was never paid nor was it ever agreed between the parties. Moreover, the State

counsel contended that there were enough documents in possession of the respondents which would reveal that the authorities had issued in writing to the petitioner so far as refusing to grant rent, the subsequent letter refusing the same is one which is marked as Annexure-O dated 22.07.1994, which too has not been questioned by the petitioner promptly.

12. It was contended by the State counsel that even for demanding of rent also the proper course available for the petitioner was for filing a civil suit. The issue like determination of rent, grant of rent, recovery of rent or even a demand for payment of rent are not issues which could be adjudicated upon by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India and the petition for this ground also deserves to be dismissed.
13. It was lastly contended by the State counsel that surprisingly the petitioner has not challenged the non-renewal of the lease at any point of time and as such subsequent to expiry of the lease period, the petitioner does not have any right whatsoever over the land which otherwise originally stood in the name of Government and which was in between granted on lease to the petitioner's trust and which was subsequently in the public interest taken over by the State Government, which again has not been questioned by the petitioner and for all these reasons. He thus prayed for dismissal of the petition.
14. In furtherance to the arguments made by the State counsel, the counsel appearing for the respondent No.7 submitted that the college, the premises and the adjacent land and building were all taken over by the State Government in year 1986 in between

demand for payment of rent for the said property by the petitioner's trust stood rejected by the State Government vide order dated 22.07.1994 yet from 1986 to 1998 i.e. till the filing of the writ petition i.e. for a period of about 12 years, there was no objection or any claim or a dispute raised by the petitioner before any Court of law or before any authority of the State Government. They did not even file a civil suit nor did they file the petition in between and as such the present writ petition suffers from delay and laches also.

15. According to the Respondents, the nature of dispute, in between the petitioner and the respondents is in the realm of a private agreement entered into between two parties and that too long ago which subsequently after a period of more than a decade cannot be questioned by way of a writ petition. According to the respondent No.7 the writ petition is not meant to substitute a suit for recovery of rent, the proper course available to the petitioner was that of filing of a suit for recovery. According to the counsel for the respondent No.7 all along when the negotiation between the State Government and the Paluram Dhanania Educational Society for taking over the society was under progress and even during the execution of the agreement and finally the order the State Government in 1986 officially passing the order of taking over the said institution were all within the knowledge of the petitioner's trust and if at that relevant point of time, if they had not opposed to the agreement or the clauses to the agreement, or the nature of the agreement, the petitioner's trust is thus estopped from subsequently questioning part of the agreement and also for claiming of rent including arrears of rent for the disputed

property. For the said reason and the nature of dispute the writ petition itself is neither tenable nor maintainable vis-à-vis the writ jurisdiction of this Court in exercise of the powers under Article 226 of the Constitution of India and for all these reasons they prayed for rejection of the writ petition.

16. Having heard the contention put forth on either side for proper adjudication of the case, it would be relevant at this juncture to refer to the relief sought for by the petitioner. Primary challenge is to the letter dated 09.06.1997 issued by the Deputy Collector, Raigarh, wherein the claim for rent of the disputed property was declined and the second important relief sought for is for declaring clause 7(3) & (4) of the agreement dated 01.08.1986 entered between the Paluram Dhanania Memorial Society with the Government of Madhya Pradesh to be void and inoperative and the last major relief sought for was for a direction or an issuance of a writ commanding the respondents to pay arrears of rent from the date the property was taken over with interest @12%.
17. Undisputedly, the petitioner is a public trust registered under the Public Trust Act. Some of the members of the said trust and certain other prominent members of the society formed another society known as "Paluram Dhanania Society" the object of which was to establish and run an educational institution. The petitioner's trust has handed over certain properties to the Paluram Dhanania Memorial Society for the purpose of establishment of the Commerce College, which was later on called as "Commerce and Arts College". The said society had been running the said college since 1966. In 1986

because of certain crisis, which the Paluram Dhanania Memorial Society was facing in running the college, it was decided that the said college be handed over to the State Government. Accordingly, a meeting was held between the members of the Paluram Dhanania Society as well as the authorities of the State Government and a resolution was passed. It was resolved to handover the college and entire college premises to the State Government. Based upon the said resolution, the State Government passed an order on 25/30.08.1986 wherein it was ordered that under public interest the State Government shall take over the Paluram Dhanania Commerce & Arts College w.e.f. 1.10.1986 on the following conditions. The relevant conditions being clause (c), which for ready reference is reproduced herein under:

“(ग) इस आदेश के दिनांक तक की असेट्स एवं लायबिलटीज को “फ्रीज” कर दिया माना जावेगा। इस महाविद्यालय से सम्बन्धित असेट्स एवं चल-अचल सम्पत्ति और धनराशि उसकी प्रबन्ध समिति से राज्य शासन को बिना शर्त अन्तरित हो जावेगी और शासन इस आदेश के दिनांक से पहले कि किसी प्रकार की लायबिलटीज स्वीकार नहीं करेगा?”

18. Subsequently, an agreement was duly entered into between the Paluram Dhanania Memorial Society and the State Government on 01.10.1986. As per the agreement, the State Government agreed to take over the college on “as is” and “where is” position without inheriting any sought of liabilities which were there upon the Paluram Dhanania Memorial Society. It would be relevant at this juncture to refer to certain conditions in the said agreement, which was entered into between the State Government and the Paluram Dhanania Memorial Society. The prominent conditions to the agreement were

7(1), 7(3), 7(4), 7(5) & 7(6), which are reproduced herein under:

“7(1) That the full control and management of the college shall stand transferred to the Governor as from the day of 1st October, 1986.

7(3) That the land on which the building of the College stand shall become the property of the State Government from the date given in clause 7(1) above.

7(4) That the building(s) which stand at present on the land together with appurtenance thereto in the College premises including gardens, playgrounds, other open land, furniture, fittings, and other equipment, etc. shall become the property of the State Government from the date given in clause 7(1) above.

7(5) All assets movable and immovable as specified in Schedule-III, standing in the name of and for the use of the College shall stand transferred to the Governor unconditionally from the date given in clause 7(1) above.

7(6) The transferer shall be responsible for discharging liabilities with respect to taxes, assessments, cases and any other dues or charges whatsoever which may have arisen before the 1st day of October, 1986 or which may arise after this date but related to and have been accrued prior to that date. The Governor shall be responsible for discharging only such liabilities relating to the college, its premises, equipments, etc, which relates to and accrue after the date of execution of this agreement, when the management of the College was taken over by the Governor.”

19. Based upon the said agreement, the college and premises stood transferred to the State Government w.e.f. 01.10.1986 onwards including taking over of all the assets and liabilities and in due course

of time due to the expansion of the courses and subjects being taught in the college and on account of paucity of space, the Government allotted a separate land and constructed a separate college building and thereafter the college stood transferred to the new building and the State Government subsequently allotted the old building disputed property to the respondent No.7 for running an orphanage and school.

20. In the given factual matrix of the case, now we shall proceed to decide whether the claim of the petitioner seeking for rent on the said property including arrears of rent from 1986 onwards was sustainable or not. What is relevant at this juncture is taking note of the fact that the present writ petition was filed in the year 1998. The college was taken over by the State Government w.e.f. 01.10.1986. From 1986 to 1998 except for an occasional demand of rent, the petitioner has not made any effort to challenge the order of the State Government dated 25/30.08.1986. The petitioner also did not challenge the agreement, which was entered into between the Paluram Dhanania Memorial Society and the State Government on 01.10.1986.
21. Another striking feature, which cannot be lost sight of is that even through the present writ petition, the petitioners have not questioned the decision of the State Government dated 25/30.08.1986. At the same time, the petitioner has also not questioned the entire agreement dated 01.10.1986. It is only clause No. 3 & 4 of the agreement dated 01.10.1986 against which the petitioner seems to be aggrieved of. What is paramount to be considered is that the other conditions in the agreement dated 01.10.1986 also declares an

indefeasible right of the State Government being created over the entire college premises, which were in possession of the Paluram Dhanania Memorial Society, and as such in the opinion of this Court, the petitioner would be precluded from challenging only a portion of the agreement dated 01.10.1986. That without challenging the entire agreement in its totality. Minus clause 7.3 and 7.4 also there is sufficient force in the other terms and conditions of the agreement giving exclusive control, charge and title of the State Government over the property. It is also relevant to mention at this juncture that there has been no objection or a case filed by the petitioner till now, whereby they have questioned the authority of the members of the Paluram Dhanania Educational Society or its office bearers, so far as the negotiation and agreements, which have been entered into between the Paluram Dhanani Education Society and the State Government. What also is reflected from the documents is that many of the prominent office bearers in the Paluram Dhanani Education Society were in fact also the members of the petitioner's trust. Therefore, it would not be a case where the petitioner's trust could take a plea of they being ignorant of all the developments or the trust being not aware of any of these developments. On this ground also this Court is of the opinion that the petitioner do not have much force in their claim..

22. So far as the power to enter agreement with the State Government is concerned, the petitioners' trust has never questioned the competence of the members of the society entering into a contract or an agreement with the State Government handing over the college

as well as the properties attached thereto to be run and operated by the State Government and as such, the agreement entered into between Paluram Dhanania Memorial Society and the State Government becomes a valid agreement, which in due course of time has attained its finality.

23. Another aspect which cannot be lost sight of is that the lease deed, which was executed between the petitioner and the State Government, stood valid only till 1992, thereafter it has not been extended and as such, the petitioner did not have any right over the said property. In absence of a renewal of the lease deed and in between the property also getting transferred to the State Government. From the records it also does not appear that the petitioner at any point of time beyond 1992 had tried to get the lease renewed in their favour, nor have they questioned the non-renewal before any authority or Court.
24. For all the aforementioned reasons, this Court is of the opinion that against the refusal to grant rent, the petitioner at the first instance itself having not challenged the same, so also against the non-renewal of lease also there does not seem to be any effort made by the petitioner for its renewal. The agreement of the Paluram Dhanani Education Society with the State Government and its negotiations also were never questioned by the petitioner's trust inspite of the fact that they were well aware of the developments that took place periodically. Even after the categorical letter dated 22.07.1994 holding that the petitioner's trust not entitled for rent, the same was not promptly challenged before any Court of law. Moreover, all the

issues raised by the petitioner being all disputed questions of facts and which for proper adjudication would require oral and documentary evidences, which cannot be appreciated by the High Court in exercise of its writ jurisdiction, particularly when the nature of dispute and the claim of the petitioner arising out of an immovable property. Moreover the substantive relief, which the petitioner seems to be claiming is that of declaring themselves as the title holder of the disputed property, which again is a matter which could be decided only by a competent Civil Court.

25. Last but not the least, the petitioner has challenged clause 7.3 and 7.4 of the agreement and not the entire agreement and minus these two clauses also there is substantive right created in favour of the respondent-State and merely by holding clause 7.3 and 7.4 to be bad in law would not create any right in favour of the petitioner, nor will it affect the rights, which otherwise stand created in favour of the respondent-State. That for all these, the present writ petition would not be maintainable and the same deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved