AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No.3794 of 2007

Susagya Devi (since died)

1. R.K. Dwivedi, S/o. Late Shri C.P. Dwivedi, aged about 53 years, R/o. C-1/22, Priyadarshini Nagar, Sector-3, Raipur, Police Station and Post Raipur, District Raipur (CG)
2. Shashikant Dwivedi, S/o. Late Shri C.P. Dwivedi, aged about 49 years, R/o. Vaidehi Farm, Aarang, Police Station and Post Aarang, District Raipur (CG)
3. Chinmay Dwivedi, S/o. Late Shri S.K. Dwivedi, aged about 35 years, R/o. 76, Vivekanand Nagar, Raipur, Police Station and Post Raipur, District Raipur (CG)

---- Petitioners

Versus

Krishna Kumar Gupta (since died)

1. Ramsahay Sharma @ Bhola Prasad Sharma, S/o. Shri Raghuvar Prasad Upadhyay, aged about 65 years, At present Sarvarakar/Newly appointed Sarvarakar – Shri Radha Krishna Mandir Public Trust, Village Arang, R/o. Gupta Paragraph, Aarang, District Raipur (CG)
2. State of Chhattisgarh, Collector, Raipur, District Raipur (CG)

---- Respondents

For Petitioners	:	Mr.Manoj Paranjape, Advocate
For Respondent No.1	:	Mr.Anand Kumar Gupta, Advocate
For Respondent No.2	:	Mr.Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/03/2018

1. Shri Radha Krishna Mandir Public Trust, Aarang under the provisions of the Chhattisgarh Public Trusts Act, 1951 (hereinafter called as "the Act of 1951") applied for transfer of their agricultural land total area 1.635 hectares situated at Aarang to Smt. Susagya Devi (since deceased) under Section 14 of the Act of 1951. In that application, the Collector-cum-Registrar of Public Trust called a report from the jurisdictional Sub Divisional Officer (Revenue) and thereafter by the impugned order rejected the said application holding that the said transfer

is not beneficial to the interests of said public trust. Feeling aggrieved and dissatisfied with the order of the Collector-cum-Registrar of Public Trust, this writ petition has been preferred by the purchaser of the said land mainly on the ground that the order passed by the Registrar of Public Trust is contrary to the provisions contained in Section 14 (1) & (2) of the Act of 1951 and the Collector-cum-Registrar of Public Trust has rejected the application filed by the respondent-trust on wholly untenable grounds. He would further submit that the order passed by learned Registrar of Public Trust is in teeth of the provisions contained in Section 14(2) of the Act of 1951 as learned Registrar of Public Trust has not recorded any such finding that the proposed transfer/transaction is prejudicial to the interests of respondent-public trust. Even no inquiry as contemplated in Rule 9 (2) of the Chhattisgarh Public Trusts Rules, 1962 (hereinafter called as “the Rules of 1962”) has been done by the Collector. Therefore, the impugned order deserves to be quashed.

2. Mr.Anand Kumar Gupta, learned counsel for respondent No.1 would support the claim of the petitioners and submit that permission ought to have granted by respondent No.2.

3. Mr.Avinash Singh, learned Panel Lawyer for respondent No.2 would submit that the order passed by the Registrar of Public Trust is strictly in accordance with law and no interference is called for in exercise of jurisdiction under Article 226/227 of the Constitution of India.

4. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.

5. In order to decide the dispute between the parties, it would be appropriate to notice Section 14 of the Act of 1951 which states as under:-

> "**14. 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."

6. A focused glance of the aforesaid provision would show that sale of any immovable property belonging to a public trust shall not be valid without previous sanction of the Registrar. Sub-section (2) of Section 14 of the Act of 1951 provides that the Registrar shall not refuse the sanction in respect of any transaction specified in sub-section (1) unless such transaction would be prejudicial to the interests of public trust. Thus, if transaction is not prejudicial to the interests of public trust, the Registrar has no option except to grant sanction in respect of any transaction specified in sub-section (1) of Section 14 of the Act of 1951. In other words, it can be said that if no prejudice is caused to the interests of the public trust is shown on record, the Registrar has no jurisdiction to refuse the sanction in respect of any transaction specified in sub-section (1) of Section 14 of the Act of 1951. Therefore, recording of finding that whether transaction is prejudicial to the interests of public trust or not is *sine qua non* for exercising the powers conferred under Section 14(1) of the Act of 1951.

7. In this regard, pertinent judgment of a Division Bench of the High Court of Madhya Pradesh in the matter of **Shrideo Janki Raman Trust v. Registrar of Public Trust**[1] may be noticed herein profitably in which Their Lordships while dealing with Section 14(2) of the Act of 1951 clearly recorded that permission to transfer immovable property of a public trust can be refused when transaction is prejudicial to the interests of the trust and held as under:-

> "It will be seen from sub-section (2) of Section 14 of the Act that the Registrar cannot refuse permission for the sale, mortgage, exchange or gift of any immovable property belonging to the trust unless in his opinion such a transaction would be prejudicial to the interests of the trust. Now, here the Registrar cancelled the permission by just saying 'as the land is Nazul held rent free, permission to sell cannot be granted. My previous order according such sanction is cancelled.'. This statement of the Registrar clearly shows that he gave no consideration whatsoever to Section 14(2) while cancelling the permission. The order of cancellation does not at all show how the mere fact that the land is Nazul held rent free makes the intended sale of the land prejudicial to the interests of the trust. If the Registrar thought that the land could not be disposed of under the Nazul Rules then he should have endeavoured to show how it could not be sold and in what way a sale, if effected, would be prejudicial to the interests of the trust. The order dated 8 November 1960 of the Registrar cancelling the permission granted on 12 January 1960 is plainly not in conformity with Section 14 (2). That being so, it cannot be sustained."

8. This Court in the matter of **Shri Jinkushal Suri Charitable Trust v. State of Chhattisgarh and others**[2] has also

1 1961 JLJ-SN (426)
2 WPC No.1163/2013, decided on 6.8.2014

considered the provisions contained in Section 14(2) of the Act of 1951 and emphasized the need for recording finding that the proposed transfer is prejudicial to the interests of public trust for rejecting the application in view of the provisions contained in Section 14(2) of the Act of 1951 and observed as under:-

> “5…….On a rational and logical interpretation of the aforesaid provision of regulatory nature, it is clear that the object behind such provision is not to impose any ban but only to regulate the management of public trust in order to ensure that the interest of public trust is not adversely affected or prejudiced. Therefore, whenever, the trust proposes to dispose off any property belonging to trust, ordinarily, the permission has to be granted unless there is material available with the competent authority to form a bonafide opinion, which has to be objective in nature based on relevant material that if such permission is granted, it will be prejudicial to the interests of the public trust. Thus, whether permission is to be granted or not, will depend upon the facts and circumstances of every case but the guiding factor remains the same i.e. to protect the interests of public trust and not to allow any transaction which will prejudice the interests of the public trust.”

9. In the light of principles of law laid down by this Court and the High Court of Madhya Pradesh in the aforesaid judgment (supra), if the facts of the present case are examined, it is quite *vivid* that application of Shri Radhakrishna Mandir Public Trust filed under Section 14(1) of the Act of 1951 has been rejected by the Collector-cum-Registrar of Public Trust, but no such finding that the proposed transaction is prejudicial to the interests of public trust has been recorded by learned Registrar of Public Trust, rather finding has been recorded that the proposed transfer/transaction will not be beneficial to the interests of public trust. Thus, the order passed by the Registrar of Public Trust is in teeth of the provisions contained in Section 14(2) of the Act of 1951, therefore, it cannot be sustained and liable to be quashed.

10. There is an additional reason for upholding the order of the Registrar of Public Trust. Rules of 1962 prescribes the procedure in the matter of consideration of application under Section 14 of the Act of 1951, for sanction of alienations. The provisions, being relevant, are also extracted herein below-

> "(1) Every application for sanction of an alienation shall contain information *inter alia* on the following points,-
>
> (i) whether the instrument of trust contains any directions as to alienation of immovable property;
> (ii) what is the necessity for the proposed alienation;
> (iii) how the proposed alienation is in the interest of the public trust; and
> (iv) in the case of a proposed lease, the terms of the past leases, if any. Such application shall be accompanied by a valuation report of an expert.
>
> (2) The Registrar, before according or refusing sanction, may make such inquiry as he may deem necessary.
>
> (3) In according sanction, the Registrar may impose such conditions, as he may deem fit, if he is of the opinion that the grant of sanction to the proposed alienation without imposing such conditions will be prejudicial to the interests of the public trust."

The aforesaid Rules empowers the Registrar to make proper enquiry as may be considered necessary in order to find out whether any such proposal for alienation, advancement or any other object of the society or trust or is against the interests of the trust. Not only this, even while granting sanction, appropriate condition may be imposed by the Registrar, if in his opinion, grant of permission without imposing condition would be prejudicial to the interests of the public trust. The provisions contained in Rule 9 of the Rules of 1962 also provide guideline to the Registrar to apply its mind to relevant factors enumerated in clauses (I) to (iv) of sub-section (1) of Rule 9 of the Rules of 1962.

11. In the instant case, application was moved by Shri Radhakrishna Mandir Public Trust for transfer of land in favour of Smt. Susagya Devi. In that application, the Collector called a report from Sub-Divisional Officer (Revenue) and upon his report, proceeded to pass the orders rejecting the application under Section 14(1) of the Act of 1951. No such enquiry as contemplated in the Rules of 1962 was done in order to find out whether the proposed transaction will be prejudicial to the interests of public trust. It ought to have done by the Collector-cum-Registrar of Public Trust while deciding the application under Section 14(1) of the Act of 1951.

12. As a fallout and consequence of the above-stated discussion, the impugned order passed by the Collector-cum-Registrar of Public Trust cannot be sustained and it is hereby quashed. The matter is remitted to the Registrar of Public Trust, Raipur for holding an enquiry in the said application afresh in accordance with the Rules of 1962 and to pass the order afresh after hearing the parties keeping in view the provisions contained in Section 14(2) of the Act of 1951.

13. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-