

**2023 STPL(WEB) 5 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, JUDGE. AND HON'BLE MR. JUSTICE SATYEN
VAIDYA, JJ.)

DEV SANSKRITI CHARITABLE TRUST KULLU

Petitioner

VERSUS

STATE OF H.P. & OTHERS

Respondents

CWP No. 3956 of 2015-Decided on 6-7-2023.

Civil

(A) Local deities - Transfer of the lands owned by local deities in favour of third parties – Petition against - This Court in exercise of jurisdiction under Article 226 of the Constitution of India is not going to make fishing or roving inquiry and to issue any direction to the official respondents in absurdity. The petitioner has espoused its cause by way of the instant petition in the capacity of an individual entity having allegedly found the transfer of land belonging to deities in favour of private individuals or State worth cognizant under its aims and objects. As such, this cannot be said to be the espousal of the cause of public interest. The simpliciter allegations are of violation of the rights of a minor, however, without any specific instance or allegation. Petition Dismissed.

However, it should not be construed to be an approval of this Court to any transaction having effect of transfer of property of idol (deity) in violation of law and in all such cases, the person aggrieved can avail appropriate remedy available to him/her in accordance with law.

(Para 20, 23)

(B) Local deities – Locus Standi – Petition against transfer of the lands owned by local deities in favour of third parties - The objection as to right or locus of petitioner to file and maintain the instant petition. Held: Petitioner has taken up a cause for protection of interest of perpetual minors (deities) of District Kullu. No questions have been raised as regards the motive of petitioner to file instant petition. The entity of petitioner being a Trust formed for its avowed objectives has also not been questioned. Hence, petitioner definitely can be said to have the locus to approach this Court more particularly when the acts of persons vested with the authority to preserve properties of 'Deities' are sought to be assailed.

(Para 7)

(C) Writ Petition – Delay and Laches - Petition against transfer of the lands owned by local deities in favour of third parties Held: As regards the objection, of the official respondents, with respect to delayed filing of petition, we find the same to be not of much consequence for the reason that the invocation of writ jurisdiction of this Court, in this case, is for protection of rights of 'Idols' who are perpetual minors and the principles of limitation as also the delay and laches will not strictly apply in cases of minors and more particularly when the question has been raised as to transactions having adverse effect on their interests.

(Para 8)

Advocate(s): For the petitioner : Mr. Anand Sharma, Sr. Advocate with Mr. Karan Sharma, Advocate.

For the respondents : Mr. Anup Rattan, Advocate General with Mr. Ramakant Sharma and Ms. Sharmila Patial, Addl. A.Gs and Ms. Priyanka Chauhan, Dy. A.G. for respondents No.1 to 4-State. Mr. Maan Singh, Advocate, for respondent Nos. 2 to 5, 7 to 9, 11, 12, 19, 25, 27, 30, 32, 36, 37, 40, 42, 45, 46, 48, 56 to 61, 63 to 65, 67, 71 to 76, 79 to 81, 83 to 86, 91, 95, 98, 102, 103, 104, 106, 108, 111 to 116, 120, 123, 126, 127, 129, 130, 132, 133, 135, 138, 139, 140, 143, 144, 145, 146, 147, 148, 149, 151, 152, 154, 156, 157, 158, 160, 162, 170 to 173, 177, 178, 180, 181, 182, 183, 184, 185, 187, 193, 194, 197, 198, 199, 202, 205, 207, 208, 209, 210, 212, 213, 214, 216, 217, 218, 219, 220, 222, 224, 225, 228 to 232, 234, 273, 275, 276, 277, 280, 283, 284, 286, 287, 288, 289, 290, 291 and 292. Mr. Rajiv Rai, for respondent Nos. 236, 237, 238, 239, 240, 242, 244, 245, 246, 247, 251, 253, 254, 255, 266, 267, 270 and 272. Mr. Balwant Thakur, Advocate, for respondent No.89. Mr. Narender Sharma, Advocate, for respondent No. 215.

JUDGMENT

Satyen Vaidya, Judge: Petitioner is a registered trust. It claims to have been formed for various objectives including the one to protect the “Dev Sanskriti”. As per petitioner, the ‘Dev Sanskriti’ is an integral part of ethos of District Kullu. The value system intrinsically inculcates the devotion towards “Devtas” and “Devis” (local deities) in the local population of the district. A large number of local deities have their existence throughout the district having their respective area of prevalence.

2. Petitioner has specifically alleged that the local deities owned large tracts of land in their individual names. In view of personal inability of deities to cultivate their lands, the cultivation was being done through the tenants, who in almost all the cases were none else than the persons overlooking the management of the affairs of local deities. With the passage of time, various legislations have seen the light of the day for enforcing agrarian reforms. H.P. Big Landed Estate Act, 1953 and H.P. Tenancy and Land Reforms Act, 1972 being the important amongst them. Under the garb of these legislations, the agricultural holdings held in the names of local deities came to be transferred in favour of the tenants or tillers in possession. The tenants or the third parties, as the case may be, which came to be vested with the ownership of lands earlier owned by local deities, further transferred such lands to third parties and in most of the cases for tangible consideration.

3. Expressing its grievance against the transfer of the lands owned by local deities in favour of third parties, petitioner has approached this Court by way of instant petition for the following substantive reliefs: -

“i) A writ in the nature of certiorari or any other appropriate writ, order or direction to the respondents to quash and set aside the orders passed by the revenue authorities whereby permitting the Mujarian, Pujaries, Mohtmims and Kardars from time to time under the H.P. Tenancy and Land Reforms Act, 1972 and the Abolition of Big Landed Estate Act, 1953 to transfer the land of the Devi Devtas without jurisdiction, being void, illegal and arbitrary, pertaining to the land belongs to Devi Devtas i.e. 90744 bighas out of which about 84000 bighas of land of Devi Devtas, who are minors as per settled law of land, has been transferred by Kardars, to third party without any right, title, interest over the property, which certainly belongs to Idols, who are minors as mentioned in jabamandies, wajib ul arz and as per the law laid down by the various Hon'ble High Courts as well as the Hon'ble Supreme Court and now only left out land in the names of Devi Devtas of Kullu District remains to be 8400 bighas.

ii) A writ in the nature of mandamus or any other appropriate writ, order or direction to the respondents to constitute a high level committee to enquire the illegal acts without having even jurisdiction by the revenue agencies in connivance with the kardars against the terms and conditions as mentioned in the Wajib Ul Arz for the year 1948- 49 to 2011- 2012 and till date with the further direction to the respondents to get back possession of the respective idols, Devi

Devtas who are admittedly minors in all manner whatsoever, which has been transferred/sold by the Mujarian, Pujaries, Mohtimims and Kardars to other persons for their individual interest.

iii) A writ in the nature of mandamus or any other appropriate writ, order or direction to the respondents to issue necessary instructions thereby mentioning the accountability of all Kardars, Mohtimims, Manager, Mahant, Gaddi Nashin, Grandhi, trustee, Mutwali of the Devi Devtas in Kullu District in case they fail to discharge their obligatory duty, for which they have been appointed and penal consequences thereof.

iv) A writ in the nature of mandamus or any other appropriate writ, order or direction to the respondents, particularly, to the revenue and other registering authorities and other revenue agencies of respondents No.1 to 4 in the State directing them not to register any such document further which is executed by the Kardars, Mohtimims, Manager, Mahant, Gaddi Nashin, Grandhi, trustee, Mutwali, who have alienated such properties for their personal ends.

g) To constitute a High Power Committee headed by not at least below the rank of Secretary of the concerned Department.

h) For the maintenance of the Devi Devtas in Kullu District and also to enquire and make arrangements for the maintenance of the Temples of Devi Devtas.

i) For appointment of the Care Taker Committee with the condition that it shall maintain the accounts every year and shall also submit the same before the concerned Deputy Commissioner or the authority which this Hon'ble Court may deem fit, proper and just.

j) To enquire into the matter that how many are the recognized Devi Devtas and how the 50% of the revolving funds as per notification dated 29.10.2014 is being distributed to the unauthorized Devi Devtas also in Kullu District, who are self- styled and individuals, whereas the revolving fund was to be distributed among the 284 devi devtas who are recognized as per Wajib Ul Aarz for the year 1948-49.

k) For enhancement of revolving funds to the recognized Devi Devtas of Kullu District as mentioned in wajib-ul-arj for the year 1948- 49.

l) To assess the loss caused to the Devi Devtas of Kullu District owing to illegal transfer of the lands of Devi Devtas by the Kardars, Mohtimims etc. in their favour and so also to third party in connivance with the revenue officials and to take measures to recover the loss so caused to the income of the Devi Devtas.”

4. The official respondents are contesting the claim of petitioner on the grounds, firstly that the land earlier owned by local deities came to be vested either in State or in private persons under the provisions of H.P. Big Landed Estate Act, 1953, H.P. Ceiling of Land Holdings Act, 1972 and H.P. Tenancy and Land Reforms Act, 1972. As per official respondents, since the constitutional validity of all these legislations have been upheld, the transfer of lands made in pursuance thereto cannot be assailed by petitioner in present form, secondly, it is submitted that the averments made in the petition are vague, thirdly the locus-standi of petitioner to file the petition has been challenged and lastly, it is submitted that the transfers in pursuance to aforesaid legislations have taken place decades back and the claim of petitioner on such a belated stage is not bonafide and maintainable.

5. In rejoinder, petitioner has reiterated its stand that the transfer of the lands of perpetual minor (deities), especially when such transfers have adversely affected the interest of deities can never be said to be legal and valid transactions.

6. We have heard the learned counsel for the parties and have also gone through the record carefully.

7. At the outset we propose to deal with the objection as to right or locus of petitioner to file and maintain the instant petition. Petitioner has taken up a cause for protection of interest of perpetual minors (deities) of District Kullu. No questions have been raised as regards the motive of petitioner to file instant petition. The entity of petitioner being a Trust formed for its avowed objectives has also not been questioned. Hence, petitioner definitely can be said to have the locus to approach this Court more particularly when the acts of persons vested with the authority to preserve properties of 'Deities' are sought to be assailed. Reference can be made to following extract from the judgment passed by Hon'ble Supreme Court in Bishwanath and another vs. Sri Thakur Radha Ballabhji and others reported in AIR 1967 SC 1044:-

“9. Three legal concepts are well settled:

(1) An idol of a Hindu temple is a juridical person;

(2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and

(3) worshippers of an idol are its beneficiaries, though only in a spiritual sense. It has also been held that persons who go in only for the purpose of devotion have, according to Hindu law and religion, a greater and deeper interest in temples than mere servants who serve there for some pecuniary advantage : see Kalyana Venkataramana Ayyangar v. Kasturi Ranga Ayyangar, ILR 40 Mad 212 at p. 225: (AIR 1917 Mad 112 at p. 118)..

In the present case, the plaintiff is not only a mere worshipper but is found to have been assisting the 2nd defendant in the management of the temple.

10. The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the Property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps. to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the Property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment; see Radhabai v. Chimnaji (1878) ILR 3 Bom. 27, Zafaryab Ali v. Bakhtawar Singh (1883) ILR 5 All. 497, Chidambaranatha Thambiran v. P. S. Nallasiva Mudaliar, 6 Mad. LW Muhammad Abu Nasar, (1911) ILR 33 All. 660 at p. 664: (AIR 1917 Mad 112) (FB), Radha Krishnaji vs. Rameshwar Prasad Singh, AIR 1934 Pat. 584, Manmohan Halder v. Dibbendu Prosad Roy, AIR 1949 Cal. 199.

11. There are two decisions of the Privy Council, namely *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*, 52 Ind App. 245: (AIR 1925 PC 139) and *Kanhaiya Lal' v. Hamid Ali*, 60 Ind App 263 : (AIR 1933 PC 198 (I)), wherein the Board remanded, the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edn. summarizes the legal position by way of the following propositions, among others, at p. 249:

"(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said, to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol." This view is justified by reason as well as by decisions.

12. xxxxx xxxxx xxxxx

13. In the result, agreeing with the High Court, we hold that the suit filed by the idol represented by a worshipper, in the circumstances of the case is maintainable. The appeal fails and is dismissed with costs."

8. As regards the objection, of the official respondents, with respect to delayed filing of petition, we find the same to be not of much consequence for the reason that the invocation of writ jurisdiction of this Court, in this case, is for protection of rights of 'Idols' who are perpetual minors and the principles of limitation as also the delay and laches will not strictly apply in cases of minors and more particularly when the question has been raised as to transactions having adverse effect on their interests.

9. Coming to the merits of the case, it can be noticed that the challenge laid by the petitioner is too generic. In the first instance, the thrust is to seek declaration that the transactions effecting vestment of the lands of local deities (idols) under H.P. Big Landed Estate Act, 1953, H.P. Ceiling of Land Holdings Act, 1972 and H.P. Tenancy and Land Reforms Act, 1972 along with their further transfers for consideration or otherwise were void-ab-initio on the premise that the deity(idol)is a perpetual minor under law and any act of commission or omission which adversely affects or tends to effect the interest of minor is unsustainable. On the second count, the case of petitioner is that with the passage of time, there is a mushroom growth of local deities, which is having creation of vested interests. The State Government under one of its schemes, has brought up a fund for distribution to the local deities. As per petitioner, only recognized and established local deities are entitled for distribution of such funds, whereas the authorities are distributing such funds even to those entities who have no permanent basis. It is further the case of petitioner that after the transfer of lands owned by local deities in favour of the tenants or third parties, the deities have been left with no source of income even for the management of their "Pooja Archana" and other religious ceremonies/functions.

10. Petitioner has specifically pleaded that in the year 1948-49, total 90,744 bighas of land approximately was under the ownership of different local deities in District Kullu, which was reduced to only 8,458 bighas in the year 2011-12. As per petitioner, about 84,000 bighas of land owned by different deities stood squandered in the manner, as noted above. The basis for making such a claim on behalf of the petitioner is the information supplied to it by the official respondents under RTI Act.

11. Another fact which becomes noticeable is that the reduction in the land holding of local deities has been result of the aforesaid legislations related with agrarian reforms. Though, the details of impugned transactions have not been pleaded or made available, yet the petitioner and official respondents are ad-idem on the origin of such reduction, notwithstanding labeling of such transactions as void-ab-initio by the petitioner and contrarily claimed to be lawful by official respondents.

12. The question that arises for determination is whether the vestment of lands owned by deities(idols) in the State or tenants or any other third person could be validly effected under H.P. Big Landed Estate Act, 1953, H.P. Ceiling of Land Holdings Act, 1953 and H.P. Tenancy and Land Reforms Act, 1972, and if not, whether this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can grant the prayers made in the petition?

13. Distinctively, it is not a case where any individual or a couple of transactions have been assailed on the ground that Mohatmim/Manager of the deity had transferred the immovable property belonging to deity(idol) without any legal necessity and against its interest. The proposition of law that an idol is a perpetual minor cannot be disputed. Being a perpetual minor, the affairs of Idol (deity) are supposed to be managed through someone who has will to protect its interest. In most of the cases, the income of deity is from offerings or/and from the returns from its properties. In so far as these are appropriated towards the better management of religious affairs of the deity, possibly no questions come to be raised. It is only when the manager(s) of the properties of (idol) deity indulges in the mismanagement of such properties or deal with them in a manner prejudicial to the rights of deity, their action becomes questionable and in appropriate cases where their malfeasance is proved, the transactions are vitiated. Since in the facts of instance case, the challenge of the petitioner is not to any particular transactions where the property of a deity has been transferred by its manager against the interest of deity, this Court need not further venture into the legal aspects related therewith, which otherwise cannot be disputed.

14. The entire edifies of the case of the petitioner is based on the premise that out of about 90744 bighas of land once recorded in the ownership of local deities of district Kullu in the year 1948-49 it had been reduced to about 8458 bighas in the year 2011-12. The allegation is that about 84,000 bighas of land had been vested in the tenants under the H.P. Abolition of Big Landed Estate Act, 1953 or H.P. Tenancy of Land Reforms Act, 1972. As per petitioners, in most of the cases the beneficiaries were none else than the 'Pujaris or Kardars' of the idol (deity). The allegations, as noticed above, are non-specific in nature and without there being any specific averments in respect of particular impugned transaction(s).

15. In reply submitted by the official respondents, it has been submitted that most of the transactions have been under H.P. Ceiling of Land Holding Act, 1972, whereby the excess land had vested in the State and the State in exercise of its powers under the provisions of said Act had further put the land to utilization.

16. In view of the general nature of allegations made by the petitioner, there is no available clue as to the exact nature or even the number of allegedly offending transactions having taken place as result of enforcement of each of the above noted statutes. We observe so because each of the above noted statutes had their peculiar characteristics and implications arising therefrom. In H.P. Big Landed Estate Act, 1953, Section 11 (2) carved out an exception in favour of a minor provided the minor had no other means of livelihood. In H.P. Ceiling and Land Holding Act, 1972, there was no exception for the minors, rather for calculating the permissible area of a land owners or tenants and mortgagees with possession under the

said Act, the land belonging to a family consisting of husband, wife and upto three minor children was admissible. However, by virtue of sub-section (8) of Section 104 of H.P. Tenancy and Land Reforms Act, the exception was made in respect of a tenancy of a land owner, who was minor for the period during which his minority subsisted. However, there is no material before this Court to adjudicate the issue raised on behalf of the petitioner by examining any particular transaction or group thereof at the touch stone of the legal principles enunciated by each of above noted statutes.

17. In none of the case, it has been shown before this Court that the transfer of minor's interest by virtue of provisions of H.P. Abolition of Big Land Act, 1953, came to be vested in the tenant despite the fact that deity had no other sufficient means for its livelihood. In this view of the matter, no adjudication can be made by this Court.

18. Reliance has been placed on behalf of the petitioner on the judgments passed by this Court in Mandir Shivji Maharaj Darla vs. Negi and others, reported in AIR 1972 (HP) 78 and Deveta Chikhreshwar vs. Union of India reported in AIR 1972 HP 122. In our considered view, the petitioner cannot derive any benefit from the aforesaid judgments, as both the said judgments were passed after taking into consideration the facts of individual cases where the claim on behalf of a deity was made on the ground that the land of deity could not have been vested under the provision of the H.P. Abolition of Big Land Estate Act, 1953, as the deity had no other means of livelihood.

19. Similarly, the judgment passed by the Hon'ble High Court of Rajasthan in Temple of Thakurji vs. State of Rajasthan and others, AIR 1998 Rajasthan 85, will not be beneficial to the cause of the petitioner, as the said judgment was passed keeping in view Section 46 of Rajasthan Tenancy Act and also the facts of one individual case, which ultimately were found to have violated the aforesaid provisions of law. In the instant case, it is not known as to which of the transaction, if any, is violative of sub-section (8) of Section 104 of H.P. Tenancy and Land Reforms Act, 1972. As noticed above, there was no protection afforded to the minor as a land owner or tenant or mortgagee in possession under the provisions of H.P. Ceiling of Land Holding Act, 1972.

20. This Court in exercise of jurisdiction under Article 226 of the Constitution of India is not going to make fishing or roving inquiry and to issue any direction to the official respondents in absurdity. The petitioner has espoused its cause by way of the instant petition in the capacity of an individual entity having allegedly found the transfer of land belonging to deities in favour of private individuals or State worth cognizant under its aims and objects. As such, this cannot be said to be the espousal of the cause of public interest. The simpliciter allegations are of violation of the rights of a minor, however, without any specific instance or allegation.

21. As regards the objection of petitioner with respect to inequitable distribution of funds by the State Government to the local deities throughout the State, we have no hesitation to say that except for bald assertion made in the petition, no tangible material has been placed to substantiate the allegations. While exercising the writ jurisdiction, this Court even otherwise will not enter the arena, which requires adjudication on intricate and disputed questions of facts. We, however, cannot restrain ourselves from observing that petitioner has not been able to prima-facie satisfy us as to the basis on which it has drawn distinction between recognized or unrecognized/established or unestablished deities in the State for the purposes of distribution of funds allocated by the Government.

22. In light of above discussion, no relief can be granted to the petitioner. However, it should not be construed to be an approval of this Court to any transaction having effect of transfer of property of idol (deity) in violation of law and in all such cases, the person aggrieved can avail appropriate remedy available to him/her in accordance with law.

23. The petition is accordingly disposed of. Pending applications, if any, also stand disposed of.
