

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Single Bench : HON'BLE MR. JUSTICE S. C. SHARMA

Writ Petition No.1601/2017

The Nagpur Diocesan Trust Association and Another

Versus

State of Madhya Pradesh and Others

Counsel for the Parties : Mr. Anshuman Singh with Ms. Darshana Baghel, learned counsel for the petitioners.

Mr. Shivang Soni, learned counsel for the respondents.

Whether approved for reporting : Yes

Law laid down : 1) The State cannot initiate action against a title holder alleging violation of terms and conditions of lease deed, in absence of a lease deed.
2) Proceedings under Section 182 and 248 of the M. P. Land Revenue Code, 1959 are not maintainable in respect of a private property alleging violation of terms and conditions of the lease deed.
3) Submission of false affidavit exposes the Officer-in-charge of the case for action under the Contempt of Courts Act, 1971 as well as for prosecution.

Significant paragraph numbers : 39 to 58

O R D E R

(Delivered on this 14th day of November, 2019)

The petitioners before this Court have filed present petition being aggrieved by order dated 30/01/2017 passed by Additional Collector, District Indore by which the respondent No.3

- 2 -

has directed the authorities to take possession of the property on the ground that the petitioners have not renewed the lease and have violated the terms and conditions of the lease deed.

02- The petitioner No.1 – Nagpur Diocesan Trust Association (NDTA) is a Trust and has authorized the petitioner No.2 to file the present petitioner by executing a Power of Attorney dated 09/02/2017. The Church of North India was constituted in the year 1970 as a congregation of six different churches working in India. The area in which the Church functions is divided into different diocese. The Indore area was previously within the dioceses of Nagpur and after the constitution of the Bhopal dioceses, Indore fell within the territorial region of the Bhopal dioceses. The diocese is headed by a Bishop and at present the Moderator's Commissary is the in-charge Bishop of the Bhopal diocese and therefore, the petitioner No.1 is represented through Moderator's Commissary and the petitioner No.2 is the Secretary of the Bhopal diocese of the Church of North India.

03- It has been further stated that St. Anne's Church in Indore is one of the oldest Church in Central India. In the year 1862 a requirement arose for setting-up a parsonage to provide residence to the clergy, the Agent Governor General, Central India made over a parcel of the land situated in the Residency Area,

Indore to the Committee of Affairs of Central Indian Agency for establishing a house for the clergymen (parsonage) by a transfer deed dated 07/11/1862 (Annexure-P/2).

04- It has been further stated that a parsonage to the St. Anne's Church, Indore was constructed over the aforesaid land in Residency Area and since then it is being used as a residence for the clergymen of the St. Anne's Church (presently known as the "White Church"). It has been further stated by the petitioner that British Government promulgated and brought into force the Indian Church Act, 1927 with effect from 22/12/1927 and it covered various military and civil churches, which were in existence at the relevant point of time under different diocese of the Church of England. The schedule appended to the Act enlisted all the Churches and the name of St. Anne's Church finds place in the "Civil Churches" Diocese of Nagpur.

05- In the year 1929, the Government constituted a body named as Indian Church Trustees' to hold properties of the Churches and *vide* Gazette notification dated 20/07/1929, which notified that the Union between Church of England and the Church of England in India be dissolved and the ecclesiastical law of the Church of England, so far as it existed in India, ceased to exist in India. It was also decided that all the properties of the Churches

should henceforth be managed by the Indian Church Trustees (ICT). The property of St. Anne's Church has been specifically described in the schedule appended to the aforesaid notification dated 20/07/1929 (Annexure-P/4) under the Diocese of Nagpur.

06- The petitioners have further stated that St. Anne's Church was removed from the schedule of the Indian Church Act, 1927 and vested in Indian Church Trustees. In the year 1948 *vide* order dated 23/03/1948, the Government of India took a decision that henceforth the Churches shall not be maintained out of government funds and all Churches shall be managed and maintained out of their own funds. Thus, the control and regulation of Churches and their properties by the Government of India came to an end. The petitioners have further stated that all the Churches started generating their own funds and have started managing their expenditure out of the funds generated by them.

07- The petitioners have further stated that the property of St. Anne's Church including parsonage in Plot No.57, Residency Area, Indore with the open land and building continued to be under the ownership of the Church and the Church and the and the clergymen are continuously in possession of the aforesaid property. The petitioners have further stated that the property in question fall within the territorial jurisdiction of the Nagpur Diocese

and the Indian Church Trustees executed a general Power of Attorney on 29/10/1962 in favour of Nagpur Diocesan Trust Association for the management of the said property. The name of St. Anne's Church is specifically mentioned in Schedule A – List B – 'Civil Churches'. The Nagpur Diocesan Trust Association is registered with the Registrar of Public Trusts, Mumbai under the Bombay Public Trusts Act, 1951 and St. Anne's Church along with its property i.e. its parsonage also finds place in the official record maintained in the Register of Properties.

08- The petitioners have further stated that *vide* letter dated 19/05/1965, the Indore Municipal Corporation gave a proposal to the Indian Church Trustees for grant of lease of the aforesaid property of the parsonage and the Church and the Indian Church Trustees immediately responded to the aforesaid letter by sending a reply dated 25/07/1966 stating categorically that the said property was always the property of the Church vested in the Indian Church Trustees and the question of grant of lease or fixing the lease rent by Indore Municipal Corporation does not arise.

09- It has been further stated that after formation of Church of North Indian in 1970 the Bhopal Diocese was created. Indore fell under the Bhopal Diocese of the Church of North India and all the properties of Indore were placed under the management of Bishop

- 6 -

of Bhopal, Church of North India. The property in question is being used as residence of Bishop of Bhopal and the other clergy of the Church. The petitioners have further stated that the head of Diocese is the Bishop and the successive Bishops appointed for Bhopal by the Church of North India along with the Property Manager of the Diocese have been given Power of Attorney by the Nagpur Diocesan Trust Association for management of the property.

10- The petitioners have further stated that Indore Municipal Corporation has assessed the property tax on the aforesaid property of the petitioners and the same is being recovered continuously by the Corporation. The petitioners have further stated that in the year 2003 the respondents started proceedings in respect of the aforesaid property against some persons who occupied certain portions of the property and no notice of any kind was served upon the petitioners. It was only in 2006 the petitioners have received a notice on 30/09/2006 wherein it was stated that proceedings under Section 248 of the M. P. Land Revenue Code, 1959 had been instituted in respect of the property in Plot No.57, Residency Area, Indore against petitioners. The then Bishop was called upon to file a reply. The Bishop with quite promptitude submitted a reply and has stated that occupation of

the petitioner in respect of the property in question can never be said to be illegal and submitted all the documents in respect of title before the authorities.

11- The respondents in the notice as well as in the proceedings alleged that lease conditions have been violated by the petitioners and in fact there was no lease in respect of the aforesaid property and the respondents started proceeding ahead assuming existence of an imaginary lease deed. No lease deed was supplied to the petitioners at any point of time and again a notice under Section 182(2) of the M. P. Land Revenue Code, 1959 was served to the petitioners.

12- Thereafter, the petitioner submitted an application on 29/11/2012 before the authorities with a request to supply lease deed, if any, and no action was taken by the revenue authorities in respect of the petitioners' application. Hence, the petitioners' came up before this Court by filing a writ petition and the same was registered as Writ Petition No.13624/2013. The petition was disposed of by this Court by an order dated 03/12/2013 with a direction to the respondents to supply a copy of lease deed before proceeding ahead further in the matter. The fact remains that no lease deed was supplied by the revenue authorities to the petitioners as there was no lease deed in existence.

13- The petitioners have further stated that while the aforesaid proceedings were going on, some antisocial elements made an attempt to take forceful possession of the aforesaid property on 29/07/2016 and the respondent No.4 registered a case under Section 145 of the Code of Criminal Procedure, 1973 and issued a notice to the petitioners on 04/08/2016. The petitioners did submit a reply and the matter is still pending.

14- The petitioners have further stated that property of the petitioners i.e. plot No.57, Residency Area, Indore measuring 4.21 acres is not a leased property and they are in continuous possession since 1862. It is further contended that there is no lease deed to show that the property was given on lease to the petitioners for a period of 10 years in 1947 and in spite of the aforesaid fact, the impugned order has been passed on 30/01/2017 holding that the property in question is a leased property and it was given to the petitioners for a period of 10 years in the year 1947.

15- The petitioners have further stated that the respondents have erroneously arrived at a conclusion that the petitioners have violated the terms and conditions of the lease deed and therefore, the State is having a right of free entry to the property. The petitioners have further stated that the State

Government by passing an executive fiat has changed the nature of the property from private property to government property and attempts are being made to evict the petitioner from the same. The petitioners have prayed for quashment of the order passed by the respondents on 30/01/2017.

16- The petitioners have raised various grounds before this Court and the contention of the petitioners is that the impugned order dated 30/01/2017 has been passed in blatant violation of the statutory provisions as well as the fundamental rights of the petitioners guaranteed under Articles 14, 19, 21 and 30 of the Constitution of India. The other grounds raised by the petitioners is that in respect of private property, the respondents have taken action under the provisions of M. P. Land Revenue Code, 1959 and the exercise of powers under Section 181 and 182 of the M. P. Land Revenue Code, 1959 is completely without jurisdiction.

17- The petitioners have further stated that the stand of the respondent / State in placing reliance in respect of another property i.e. *Rallies Brothers Ltd.* is misplaced. In the case of *Rallies Brothers Ltd.*, it was a leased property whereas in the case of petitioners, the property is not a leased property and therefore, the entire action of the respondents is *void ab initio*.

18- The petitioners have also stated that Section 248 of

M.P. Land Revenue Code, 1959 is not at all application in the case of the petitioners as it is a private property belonging to Church and therefore, the order passed by the respondents is a nullity. The petitioners have also stated that St. Anne's Church was established in 18th Century and the parsonage for the St. Anne's Church was established on 07/11/1862. The property finds place as a property of Church right from 1862 and an attempt is being made to convert the Church property into government property.

19- The petitioners have further stated that they have not violated any lease conditions as there is no lease deed at all and the basis on which the respondents have proceeded ahead in the matter i.e. violation of lease conditions itself is erroneous keeping in view the fact that its a property owned by the Church and no action could have been taken under the M. P. Land Revenue Code, 1959. The petitioners have prayed for the following reliefs:-

- (i) Set aside the impugned order dated 30.01.2017 (Annexure P16) passed by the respondent No.3;
- (ii) Direct the respondents to not to interfere with the possession or title of the petitioners over the property in question namely Plot No.57, Residency Area, Indore;
- (iii) Direct the respondent No.4 to expeditiously decide the proceedings registered under Sec. 145 Cr.P.C.;
- (iv) Grant any other relief that this Honourable Court deems fit and just in the facts and circumstances of the case."

20- A reply has been filed in the matter by the

- 11 -

respondents / State and the respondents / State in the reply has stated that a lease was granted to the petitioners on 03/02/1947 and it was valid for 10 years. The lease was not renewed after 1957 and the same has come to an end in the year 1957 itself. The respondents / State has stated that large number of notices were issued to the petitioners and no one was present before the Additional Collector, Indore and therefore, impugned order Annexure-P/16 was passed and it was passed keeping in view the statutory provisions and as per the settled principles of law.

21- It has been further stated that from 02/10/1959 the lease is vesting with the State of Madhya Pradesh keeping in view Section 58 of the M. P. Land Revenue Code, 1959. The respondents have stated that petitioners have violated the conditions of the lease, lease rent have not been deposited since inception and lease was not renewed and therefore, keeping in view Section 180 to 182 of the M. P. Land Revenue Code, 1959 action was initiated against the petitioner. The respondents have stated that disputed questions of law are involved in the present writ petition and therefore, the High Court cannot look into the plea raised by the petitioners. The respondents have prayed for dismissal of the writ petition.

22- The aforesaid reply was filed on 04/04/2018. There is

another reply on behalf of the State Government filed along with an affidavit of one Ms. Shalini Shrivastava, SDO / SDM, Sanyogitaganj, Indore (M.P.) and again in the aforesaid reply it has been stated that impugned order dated 30/01/2017 (Annexure-P/16) was rightly passed. The respondents have stated that the disputed area was a part and parcel of the Residency Area under the Holkar State.

23- It has been further stated that in the year 1805 a treaty took place between Holkar State and East India Company, which is known as "Mandsaur Treaty" and the said area under the Treaty came under the control of East India Company. The said Residency Area was governed by the Residency Area Authority till 01/08/1947 and at the relevant point of time Residency Area Bazar Act was applicable in the Residency Area and thereafter, Residency Area Authority Act, 1934 was applicable and it was in existence till 15/08/1947. It has been further stated that on 02/08/1947 the residency authority handed over all its properties to the erstwhile Holkar State and the property becomes part and parcel of the property of the Holkar State. The Holkar State was governed by Indore State Land Revenue Tenancy Act, 1931 and was applicable in respect of Residency Area also. Thereafter, in the year 1950 the Madhya Bharat Land Revenue Tenancy Act

came into force and a merger of the Holkar State took place with the Madhya Bharat in the year 1956 and the State of Madhya Bharat later on merged into existing state of Madhya Pradesh.

24- The respondents have stated that the property in question was the property of the Holkar State and thereafter, it became the property of State of Madhya Pradesh. The respondents have also stated that by virtue of notification dated 25/08/1955 issued under the provisions of Section 5(A) of Municipalities Act the Residency Area was included within the boundaries of the Indore Municipality. It has been further stated that on 08/02/1947, the Secretary, Residency Area Authority *vide* notification No.823(B) decided the rates in respect of rent for the sites under the Residency Area and therefore, the rent was decided for all the properties situated in Residency Area.

25- The respondents have stated that by virtue of Gazette Notification dated 02/08/1947, the land again became the property of Maharaja Holkar (Holkar State) and it was under the control of Holkar State only. Another notification was issued on 02/08/1947 and the entire Residency Area was included under the municipal administration. The respondents have also referred to a notification dated 06/08/1947 by which an In-charge was appointed for the entire administration of Residency Area.

26- The respondents have stated that Residency Area was under the ownership and control of the Holkar State and it was subjected to the statutory provisions as contained under the Sate Land Revenue and Tenancy Act, 1931, later on M. P. Land Revenue Code, 1959 and thereafter, M. P. Land Revenue Code, 1959. The stand of the respondents is that the property in question was a part and parcel of the Residency Area and at no point of time the property was under the exclusive ownership of the petitioners.

27- The respondents have stated that a lease deed was executed in favour of the petitioners. The respondents have filed a copy of lease deed (Annexure-R/4) and their contention is that the property was given on lease to the petitioners and the petitioners have got no right to file the present writ petition. It has been stated that the lease deed was executed in favour of the United Church of Canadian Mission and the petitioners have illegally taken possession of the property and has got no right or title and therefore, the order passed by the respondents does not warrant any interference.

28- It has also been stated that a dispute arose earlier between some persons and the petitioners in respect of the subject property and a complaint was filed by one Sharol Bobby Das,

Secretary of Indian Church Trustees of India against Robert Ali Bishop and one Manoj Charan and a receiver was appointed by an order dated 04/08/2016. The respondents have also stated that an agreement was executed between one Sharol Bobby Das and one Robert Ali. By the aforesaid agreement, property was illegally transferred and possession was given. The respondents in short have stated that there was a lease deed in favour of the petitioners. The petitioners have not paid rent and therefore, by virtue of the fact that petitioners have not renewed the lease and have not paid the rent, they have rightly passed the impugned order.

29- A rejoinder has been filed in the matter and it has been stated by the petitioners that property in question was never a leased property. It was always a freehold property granted to the Church way back on 07/11/1862. It has been stated that earlier a notice was issued to the petitioners alleging violation of lease conditions and a writ petition was preferred before this Court i.e. Writ Petition No.13624/2013, which was disposed of by an order dated 03/12/2013 with a direction to the Additional Collector to provide a copy of lease deed, however, the same has not been provided to the petitioners till date. The petitioners have further stated that Additional Collector has passed the impugned order dated 30/01/2017 alleging violation of lease conditions and non-

renewal of lease. However, there is no lease deed in existence.

30- The petitioners have stated that the respondents have made an incorrect / false statement to misguide this Court and the lease deed (Annexure-R/4), which has been filed by the respondents is not in respect of the property in question i.e. Plot No.57, Residency Area. The lease deed which has been filed by the respondents (Annexure-R/4) is in respect of area which was given to the United Church of Canadian Mission, Indore. The said property is situated on boundary road in the Residency Area and is about 02 Kilometers away from the property, which is the subject matter of the present writ petition.

31- The description of property (Annexure-R/4) is contained in the lease deed itself. The said property is bounded by—

- i) Towards East and North by Boundary Road;
- ii) Towards South by open plot (which is now with M. P. State Tourism Development Corporation); and
- iii) Towards West by CPWD Compound and Dak Bungalow.

The petitioners have also stated that the description of the property itself makes it very clear that it is not a property of Plot No.57, Residency Area. The subject property, which is the subject matter of the present writ petition is situated in the heart of Residency Area and is away from the property described in the

lease deed dated 31/07/1947, which was executed in favour of United Church of Canadian Mission.

32- The petitioners have further stated that the so called lease (Annexure-R/4), which was in favour of United Church of Canadian Mission was transferred to the United Church of Northern India Trust Association and the lease was renewed for 8.15 acres in the name of United Church of Northern India Trust Association for a period of 30 years by registered lease deed dated 05/07/1983. Lease was again renewed for a period of 30 years through registered lease deed dated 04/09/2014 and the lease would expire on 31/03/2044.

33- The petitioners have stated that by making false statements, the respondents have committed an offence keeping in view the statutory provisions as contained under the Indian Penal Code, 1860 as well as under the Code of Criminal Procedure, 1973. The petitioners have stated that by taking shelter of some lease deed and by alleging that Annexure-R/4 is a lease deed which was executed in petitioners' favour, the respondents are trying to justify their illegal order. Even if it is presumed that lease deed was in favour of the petitioners, the same has been renewed up to 31/03/2044. This itself falsify the entire claim of the State of Madhya Pradesh.

34- The petitioners have stated that in respect of plot No.57, there was no lease. It was under the absolute ownership of the petitioners and neither the Madhya Bharat Land Revenue and Tenancy Act, 1950 nor M. P. Land Revenue Code, 1959 is applicable in respect of the petitioners. The petitioners have further stated that the reason assigned in the return are frivolous reason, they do not find place in the order dated 30/01/2017 and the respondents cannot supplement the reasons through affidavit or return, though reasons assigned in the return are again frivolous reasons. It is a case where Church property is being grabbed by the State Government.

35- Learned counsel for the petitioners has argued before this Court that all attempts are being made in the State of Madhya Pradesh to grab the properties belonging to Church and such an action of the State deserves to be quashed and the State Government cannot be permitted to treat the minority in the manner and method it has been done in the present case.

36- Rejoinder to the additional return has also been filed in the matter and it has been reiterated that Annexure-R/4 lease deed, which has been brought on record is in favour of United Church of Canada Mission. It has been renewed for a period of 30 years through lease deed dated 04/09/2014 and therefore, as an

incorrect statement has been made on behalf of the person, who have filed return and has furnished affidavit are to be prosecuted. The property in question was transferred by Agent Governor General, Central India by transfer deed dated 07/11/1862 and the petitioners are in possession of the property since then.

37- The petitioners have stated that its a freehold property and not a leasehold property and there is no lease in fact in respect of plot No.57, Residency Area, admeasuring 4.50 acres. The petitioners have prayed for quashment of the impugned order.

38- Heard learned counsel for the parties at length and perused the record.

39- The petitioners in the present case is aggrieved by order dated 30/01/2017 passed by Additional Collector, Indore by which the possession of the property belonging to plot No.57 area 4.21 acres is sought to be taken from the petitioners and alleged lease deed is sought to be cancelled. St. Anne's Church in Indore is the oldest Church in Central India and keeping in view the requirement for setting up a parsonage to provide residence to the clergy, the Agent Governor General, Central India made over a parcel of land situated in the Residency Area of Indore to the Committee of Affairs of Central Indian Agency for erecting a house for the clergymen (parsonage) by a transfer deed dated 07/11/1862

(Annexure-P/2).

40- A parsonage to the St. Anne's Church, Indore was constructed on the aforesaid property in Residency Area. It was being used as residence for the clergymen of St. Anne's Church (presently known as "White Church") and the parsonage is the property of St. Anne's Church.

41- The British Government promulgated and brought into force brought into force the Indian Church Act, 1927 with effect from 22/12/1927 and the aforesaid statute covered various military and civil churches, which were in existence at the relevant point of time under the different diocese of the Church of England. The schedule appended to the Act enlisted all the Churches and the name of St. Anne's Church finds place in the "Civil Churches" Diocese of Nagpur.

42- The Government in the year 1929 constituted a body in the name of "Indian Church Trustee" to hold properties of the Churches and through a Gazette Notification dated 20/07/1929, it was notified that the union between the Church of England and the Church of England in India be dissolved and the ecclesiastical law of the Church of England, so far as it existed in India, ceased to be existed in India. It was decided that all the properties of the Churches should be henceforth managed by Indian Indian Church

Trustees. The property of St. Anne's Church has been specifically described in the schedule appended to the aforesaid notification under the Diocese of Nagpur (notification dated 20/07/1929, Annexure-P/4). Thus, it is crystal clear that St. Anne's Church was removed from the schedule of the 1927 Act and vested in the Indian Church Trustees.

43- By notification / order dated 23/03/1948, the Government of India took a decision that henceforth, the Churches shall not be maintained out of the government funds and all the Churches shall be managed and maintained out of their own funds. The control of Government over the Churches was discontinued and the Churches started managing their expenditure out of their self generated funds. The property of St. Anne's Church including parsonage in plot No.57, Residency Area with open land and building was under the exclusive ownership of St. Anne's Church and the clergymen are in continued settled possession of the subject property.

44- The property in question fell within the territorial jurisdiction of the Nagpur Diocese and the Indian Church Trustees executed a general Power of Attorney on 29/10/1962 in favour of Nagpur Diocesan Trust Association, Nagpur for the management of the said property. The name of St. Anne's Church is specifically

mentioned in Schedule A – List B – 'Civil Churches' (Annexure-P/6). The Nagpur Diocesan Trust Association is registered with the Registrar of Public Trusts, Mumbai as per the provisions of Bombay Public Trusts Act, 1951 and the list of property managed by it is also maintained in the register of properties maintained with the Registrar, Bombay Public Trust. The name of St. Anne's Church with its parsonage is specifically mentioned in the said register maintained under the Bombay Public Trusts Act, 1951.

45- Thus, in short no lease deed of any kind was executed in favour of St. Anne's Church nor in favour of the Diocese. The property is under the absolute ownership of Church. In the year 1965, a letter was issued by Indore Municipal Corporation to be more specific on 19/05/1965 and the Indore Municipal Corporation gave a proposal to Indian Church Trustees and the Indian Church Trustees categorically submitted a reply saying that it is the property of the Church. It is not the property of Government or of Municipal Corporation and the question of grant of lease or fixation of lease rent does not arise.

46- The another important aspect of the case is that in the year 1970, Church of North India was established and Bhopal Diocese was created. Indore fell under the Bhopal Diocese and all the properties of Indore were place under the management of

Bishop of Bhopal, Church of North India. The property in question is being used as residence of the Bishop of Bhopal and the other clergy of the Church. The head of the Diocese is the Bishop. The successive Bishops appointed for Bhopal by the Church of North India along with the Property Manager of the Diocese have been given the Power of Attorney by Nagpur Diocesan Trust Association for the management of the property.

47- The Indore Municipal Corporation has assessed the Property Tax in respect of property in question and the same is being paid regularly by the petitioners. The Indore Municipal Corporation failed in its attempt to take over the property of the Church in the year 1965 and thereafter, the State Government started harassing the clergymen. In the year 2003 proceedings were initiated under the M.P. Land Revenue Code, 1959 and a notice was issued to the petitioners and the petitioners did submit a reply. Proceedings under Section 248 of M. P. Land Revenue Code, 1959 were initiated and it was alleged that the petitioners have violated the lease conditions.

48- The petitioners submitted a reply stating categorically that there is no lease deed in existence in respect of subject property and also submitted an application on 29/11/2012 demanding copy of lease deed but no such lease deed was given

to the petitioner and therefore, the petitioners were compelled to file a writ petition before this Court i.e. Writ Petition No.13624/2013 and the same was disposed of by an order dated 03/12/2013 directing the respondents / State to provide a copy of lease deed before proceeding further in the matter. Order dated 03/12/2013 passed in Writ Petition No. 13624/2013 reads as under:-

“The prayer in this petition is for quashment of the order dated 12/09/2013 passed by Additional Collector, Indore whereby application filed by the petitioner for providing copy of the lease-deed was dismissed, be set-aside.

2. Short facts of the case are that show-cause notice has been issued by the respondent No.2 in which it was alleged that petitioner has violated the terms and conditions of the lease, therefore, why the lease-deed could not be cancelled. After appearance petitioner moved the application praying copy of the lease-deed be provided. The application was dismissed on the ground that petitioner must be heaving the copy of lease agreement against which present petition has been filed.

3. A preliminary objection has been raised by counsel for the respondents No.1 and 2 to the effect that efficacious alternative remedy is available to the petitioner before Revenue Authority under Section 44 of the M.P.L.R.C. It is submitted that since remedy available, therefore, petition filed by the petitioner be dismissed.

4. Learned counsel for the petitioner submits that though the remedy is available but not efficacious. It is submitted that case of the petitioner is that no lease ever has been executed in favour of the petitioner, on the contrary sale-deed was executed in favour of predecessor-in-title of the petitioner. it is submitted that petition filed by the petitioner be allowed and the impugned show-cause notice be quashed.

5. After hearing counsel for the parties at length and keeping in view that final decision has yet to take place on the show-cause notice which has been issued to the petitioner by the respondent No.2 and the matter is at the initial stage wherein prayer of the petitioner was to provide the copy of the lease-deed, this Court directs the authorities to provide the copy as prayed as the show-cause notice is based upon the said document and should be refuse only on the ground that petitioner must be having the copy of the lease-deed.

6. With the aforesaid observations, petition stands disposed of. C. C. as per rules.”

It is pertinent to note that property in question is valuable property. Initially the Municipal Corporation wanted to take over the property, thereafter, the State Government made an attempt to take over the property and even land *mafia* started eyeing the property. An attempt was made to take forcible possession of the property. A case was also registered under Section 145 of the Code of Criminal Procedure, 1973, notices were issued to the petitioner and no action has been taken in the matter. Undisputedly, the St. Anne's Church is in possession of the property since 07/11/1862.

49- The most shocking aspect of the case is that the State Government and its officers in the present case are acting as land *mafia*. On affidavit it has been stated by the State Government that the property in question was a property on lease. Annexure-R/4 has been filed as a lease deed in respect of the property, which is the subject matter of the present writ petition. The impugned order passed by the respondents in paragraphs No.11, 12 and 13 reads as under:-

“11- नजूल अधिकारी इंदौर द्वारा प्रस्तुत प्रतिवेदन का अवलोकन किया गया उक्त प्रकरण में संलग्न कलेक्टर इंदौर प्र० क्रमांक 2/अ-39/1999-2000 म०प्र० शासन विरुद्ध रेलीस ब्रदर्स लिमिटेड ब्रांच आफिस रेलीस हाऊस के प्रकरण में पारित आदेश दिनांक 03-07-2001 के पृष्ठ क्रमांक 16 एवं 17 में दर्शित विवरणका में अ.क्रं.

21 के पार्सोनिज बंगला का उल्लेख किया गया है। वर्ष 1947 में 10 वर्ष की लीज की समयावधि पर दिया गया था, वर्ष 1957 में लीज की समयावधि समाप्त हो चुकी है, किन्तु इस लीज का नवीनीकरण लीजगृहिता द्वारा नहीं कराया जाने से प्रश्नाधीन भूमि पर शासन पुर्नप्रवेश कर सकता है। म0प्र0 भू-राजस्व संहिता, 1959 की धारा 182(2) में कार्यवाही की जाना प्रस्तावित किया है।

12- मध्यप्रदेश शासन की प्रश्नाधीन सम्पत्ति प्लॉट नं. 57 रेसीडेंसी एरिया अथारिटी की होकर रेसीडेंसी एरिया अथारिटी का उत्तराधिकारी राज्य शासन है। प्रश्नाधीन भूमि शासकीय भूमि है। भूतपूर्व रेसीडेंसी एरिया अथारिटी इंदौर द्वारा लीज एग्रीमेंट वर्ष 1947 को पार्सोनिज बंगला के पक्ष में निष्पादित किया है। म0प्र0 भू-राजस्व संहिता, 1959 की धारा 181 अनुसार प्रत्येक ऐसा व्यक्ति जो राज्य सरकार से भूमि धारण करता है या जिसे राज्य सरकार या कलेक्टर ने भूमि को दखाल में लेने का अधिकार दिया हो, ऐसी भूमि के संबंध में सरकारी पट्टेदार कहलाएगा। जिसे धारा-182 के अंतर्गत समीक्षा का पात्र होना पड़ेगा। मा0 उच्चतम न्यायालय के रे.नि.1991 शासन विरुद्ध कृष्णाजीराव शिन्दे के प्रकरण में यह विनिश्चित किया कि वर्ष 1959 के पूर्व के पट्टे धारा 181-182 के अंतर्गत नहीं आ सकते। वैसे भी इन धाराओं की वेयररीडिंग भी स्पष्ट है कि:- 181(1) प्रत्येक ऐसा व्यक्ति जो राज्य सरकार से भूमि धारण करता है या जिसे राज्य सरकार या कलेक्टर ने भूमि में दखल लेने का अधिकार प्रदान कर दिया है और जो भूमि को भूमिस्वामी के रूप में धारण करने का हकदार नहीं है, ऐसी भूमि के संबंध में सरकारी पट्टेदार कहलाएगा। संहिता की इस परिभाषा में कही भी यह नहीं लिखा है कि राज्य सरकार से भूमि धारण करने की तिथि 1959 के पूर्व की नहीं होना चाहिए। धारा 182 पढ़ने मात्र से स्पष्ट है कि यह भी 1959 के पूर्व के पट्टों का किसी तरह उन्मोचित नहीं करती। धारा 182(1) सरकारी पट्टेदार, इस संहिता के किन्ही अभिव्यक्त उपबंधों के अध्याधीन रहते हुए अपनी भूमि पर उस अनुदान के जो कि सरकारी अधिनियम, 1895 के अर्थ के अंतर्गत अनुदान समझा जाएगा। निबन्धों तथा शर्तों के अनुसार भूमि धारण करने पर यह धारा जिस सरकारी अनुदान का उल्लेख करती है, वह स्वयं 1959 के पूर्व की है, यह धारा "टेनेन्ट" शब्दा का प्रयो न कर "लेखी" पट्टेदार शब्द प्रयोग करती है। यह महत्वपूर्ण है। यह भी स्पष्ट है कि पट्टेदार की भूमि यदि पट्टेदार द्वारा धारित की जा सकती है तो केवल अनुदान के निबन्धों तथा शर्तों के अनुसार अन्यथा धारा 182(2) के अनुसार ऐसी भूमि का उपयोग उन प्रयोजनों से, जिनके कि लिए वह प्रदान की गई थी, भिन्न प्रयोजनों के लिए किया है उसे बेदखल किया जा सकेगा। स्पष्ट है कि यह भूमि प्रतिप्रार्थी को अन्य प्रयोग करने के लिए नहीं दी गई थी। उपरोक्त तथ्यों एवं विधि के प्रावधानों के आधार पर इस न्यायालय को प्रश्नाधीन भूमि पर पुर्नप्रवेश का अधिकार प्राप्त है।

13- प्रतिप्रार्थी क्रमांक-1 का यह दायित्व भी है कि शासन द्वारा लीज पर दी गई भूमि पर ऐसी कोई गतिविधि संचालित नहीं करना चाहिए जो लीजडीड की शर्तों को प्रभावित करती हो तथा उसके विपरीत

हो। प्रश्नाधीन भूमि शासन द्वारा पारसोनिज बंगलो के लिए दी गई थी। अतः लीज पर भूमि जिन उद्देश्यों पर दी गई है उनका अक्षरशः पालन किये जाने का दायित्व लीजगृहिता का है। प्रतिप्रार्थी क्रमांक-1 द्वारा लीज का नवीनीकरण वर्ष 1957 से नहीं कराया गया है जिससे शासन को लीजरेंट राशि की हानि हो रही है एवं प्रश्नाधीन भूमि किराये पर देकर आर्थिक लाभ प्राप्त किया गया है। इस प्रकार प्रतिप्रार्थी क्रमांक-1 द्वारा लीज का नवीनीकरण नहीं कराया जाना लीज की अनिवार्य शर्तों का उल्लंघन किया जाना भी निर्विवाद रूप से सिद्ध होता है। निष्कर्षतः लीजधारी द्वारा शासन की लीजडीड की शर्तों का उल्लंघन किया जा रहा है। जिससे शासन को ग्राम कस्बा इन्दौर स्थित पारसोनिज बंगला प्लॉट नंबर-57 की भूमि पर 4.21 एकड़ पर पुनर्प्रवेश का अधिकार प्राप्त हो गया है। अतः प्रश्नाधीन भूमि शासन पक्ष में वैधित्व कर शासकीय घोषित की जाती है। नजूल अधिकारी इंदौर को रिसीवर नियुक्त किया जाता है। नजूल अधिकारी इंदौर को निर्देशित किया जाता है कि प्रश्नाधीन भूमि एवं उस पर निर्मित संरचना का कब्जा शासन हित में प्राप्त करने की कार्यवाही सुनिश्चित करे।

यह आदेश आज दिनांक 30-01-2017 को मेरे हस्ताक्षर एवं न्यायालय की मुद्रा से खुले न्यायालय में जारी किया गया है।”

In the impugned order, it has been stated that the property in question was leased out in the year 1947 for a period of 10 years and the lease deed has come to an end in the year 1957 and the same has not been renewed. Hence, the State Government is entitled to take possession of the said property.

50- This Court for the first time is witnessing such a false statement made on affidavit by the State of Madhya Pradesh. The lease deed (Annexure-R/4), reference of which finds place in the impugned order as well as in the return, is not in respect of the property which is the subject matter of the present writ petition i.e. plot No.57, Residency Area. It is in respect of a different property. It is in respect of a property admeasuring 8.25 acres and was given on lease by the Residency Area Authority to United Church of

Canada Mission, Indore. The said property is situated on boundary road in the Residency Area and is about 02 Kilometers away from the property, which is the subject matter of the present writ petition. The description of the property Annexure-R/4 is contained in the lease deed Annexure-R/4 itself. The said property towards East and North is bounded by Boundary Road, towards South is bounded by an open plot (which is now with M. P. State Tourism Development Corporation) and towards West is bounded by CPWD Compound and Dak Bungalow.

51- The aforesaid description of the property itself discloses that it is not the property of Plot No.57, which is situated in the heart of the Residency Area and about 02 Kilometers away from the property described in lease deed dated 31/07/1947 executed in favour of United Church of Canada Mission.

52- Not only this, the property leased out in favour of United Church of Canada Mission was transferred to the United Church of Northern India Trust Association and the lease was renewed for 8.15 acres in the name of the United Church of Northern Indian Trust Association for a period of 30 years by a registered lease deed dated 05/07/1983 (Annexure-P/17). The lease was further renewed for a period of 30 years through registered lease deed dated 04/09/2014 and the lease period of

the property referred by the respondents in return would expired on 31/03/2044. It is really strange that by giving reference of a lease deed, which is altogether in respect of some other property and which is valid up to 31/03/2044, the respondents have made a statement that the lease deed of the property which is the subject matter of the present writ petition has not been renewed and rent has not been paid. The Officer who has made an incorrect statement on oath deserves to be prosecuted.

53- The another important aspect of the case is that Annexure-R/4 was never filed by the petitioners before any authority. The respondents are guilty of making false statement on oath before this Court. The various notifications in respect of Residency Area relating to transfer of property by the Maharaja of Holkar State in favour of the State Government, fixation of rent, etc. would certainly not at all extinguish the right and title of the Church over the private held by them since 1862.

54- The reasons assigned in the impugned order are to be looked into while deciding the correctness of the impugned order keeping in view the law laid down in the cases of **Mohinder Singh Gill Vs. Chief Election Commissioner** reported in (1978) 1 SCC 405, **Nand Kishore Ganesh Joshi Vs. Commissioner, Municipal Corporation** reported in (2004) 11 SCC 417 and **R. S. Garg Vs.**

State of U. P. reported in **(2006) 6 SCC 430**. In the aforesaid cases, it was held that an order of an authority has to be sustained only on the basis of the reasons contained in the order. It is not permissible to supplement or supplant the reasons by filing affidavits in judicial proceedings challenging such orders.

55- The only reason assigned in the order dated 30/01/2017 for alleged cancellation of lease deed is violation of lease conditions and its non-renewal. There is no lease deed in existence in the present case and the respondents have referred to a lease deed (Annexure-P/4), which is in respect of altogether different piece of land and the same was renewed from time to time and it is valid up to 31/03/2044.

56- The State Government is supposed to act in a fair and transparent manner. This is a case where the State Government has acted like a land *mafia* for grabbing the property of a Church, which is in existence since 18th Century. The Church is in possession of the land since 07/11/1862. From the record it can be safely gathered that it is the exclusive property of the Church and the question of interference by the State in the property owned and controlled by the Church, does not arise. The writ petition is allowed and the impugned order dated 30/01/2017 is quashed.

57- In the present case, as false statement has been made

by the respondents, they are guilty of committing contempt as they have *prima-facie* interfered with the justice delivery system by making an attempt to mislead this Court. Let a notice be issued to respondents No.2, 3 and 4 as to why proceedings for initiating criminal contempt be not initiated against them and as to why they should not be punished.

58- The Principal Registrar shall issue notices to respondents No.2, 3 and 4 and a separate appropriate case should be registered in the matter. Notice be made returnable within four weeks. Copy of this order be also forwarded to all the persons to whom notices are issued. Notice be also issued to the person (Officer-in-charge of the case), who has filed affidavit in support of the return filed on behalf of the State of Madhya Pradesh. With the aforesaid, writ petition stands allowed with a cost of Rs.1 Lakh.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

Tej