IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 7th OF FEBRUARY, 2023

WRIT PETITION NO.4696 / 2001

BETWEEN:-

DILIP SAPRE S/O LATE SHRI W.R. SAPRE, AGED ABOUT 72 YEARS, WORKING TRUSTEE AND SECRETARY OF TRUST, DEV PANDHARINATH MANDIR TRUST, PNDHARPUR RAHELI, DISTRICT SAGAR (M.P.)

.....PETITIONER

(BY SHRI SANJAY AGRAWAL – SENIOR ADVOCATE WITH SHRI SHREYAS PANDIT – ADVOCATE AND SHRI SHUBHAM MISHRA - ADVOCATE)

AND

1. STATE OF MADHYA PRADESH, THROUGH THE COLLECTOR, SAGAR (M.P.)

2. NARAYAN RAO KHER (DEAD) THROUGH HIS LEGAL REPRESENTATIVES ;

(a) GIRISH KHER;

(b) PRADEEP KHER;

(c) PANDURANG KHER;

ALL SONS OF NARAYAN RAO KHER

(d) SHASHIKALA SARDAR;

(e) SHANTA KULKARNI;

(f) SUSHILA JOSHI,

DAUGHTERS OF NARAYAN RAO KHER

**ALL RESIDENT OF VILLAGE RAHELI,
TEHSIL RAHELI, DISTRICT SAGAR (M.P.)**

.....RESPONDENTS

(RESPONDENT NO.1/STATE BY SHRI GIRISH KEKRE - GOVERNMENT ADVOCATE)

.....

Reserved on: 30.11.2022

Pronounced on: 07.02.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

The instant petition is languishing since 2001 to see its fate and listed under caption 'final hearing list'. With the consent of learned counsel for both the parties, the matter is heard finally.

2. This petition has been filed under Article 226/227 of the Constitution of India questioning the validity, legality and propriety of the order dated 03.07.2001 passed by the Board of Revenue in an appeal preferred under Section 41 of Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (for brevity "Act, 1960"). approving the order passed by the competent authority. The appeal was numbered as Appeal No.11-5/Ceiling/339/93 decided by the Board of Revenue by the impugned order dismissing the appeal preferred by the petitioner and hence this petition has been filed.

3. The adumbration of facts of the case lie in a narrow compass. Suffice it to say that at the time of initiating proceedings under the provisions of Act, 1960, the land in question belonged to deity and later-on in 1986 it got registered as a public trust. The gazette publication was made in this regard in State Gazette in 1982 and later-on

the order has been passed on 24.05.1986 (Annexure-P/2) by the competent authority declaring the petitioner to be a 'pubic trust' and registered as such. According to trust deed, the petitioner-trust had 622.41 acres of land in Tahsil Rahli, District Sagar. At the relevant point of time, one Narayan Rao Kher was Sarvarakar of said trust and at the same time, he was also Sarvarakar of Dev Kaal Bhairavi and Yogeshwari Mandir (in short "Mandir") situated in Jabalpur having 69.99 acres of land. The property of petitioner as well as Mandir was clubbed together and proceeding initiated under the provision of Act, 1960 to declare the land surplus. The objections were invited but nobody came-forward except then Sarvarakar Narayan Rao and who made a request that property of the petitioner-trust and Mandir shall be clubbed together and proceedings be initiated thereafter. The Additional Settlement Commissioner proceeded accepting the request of the-then Sarvarakar and as an interim measure passed an order dated 05.07.1990 declaring 400 acres of land surplus. This order was later-on reviewed by another Additional Settlement Commissioner on 18.02.1991 and by that order total 630.84 acres instead of 400 acres of land was declared surplus. Against the order dated 18.02.1991 an appeal was preferred before the Board of Revenue and the Board of Revenue by order dated 27.06.1991 remitted the matter to the Additional Settlement Commissioner setting aside the order dated 18.02.1991 restoring the order dated 05.07.1990 and thereafter Additional Settlement Commissioner passed an order on 04.11.1992 (Annexure-P/4) and it is the final order in respect of the proceeding initiated under the Act, 1960 declaring 400 acres of land of petitioner surplus. Against this order, an appeal was preferred before the Board of Revenue and the Board of Revenue by impugned order dated 03.07.2001 (Annexure-P/5)

dismissed the appeal maintaining the order passed by the Additional Settlement Commissioner.

The challenge before the Board of Revenue was that the land of petitioner was situated in village Rahli District Sagar has nothing to do with the land of Mandir situated at Jabalpur except for the fact that both the lands have common Sarvarakar i.e. Narayan Rao, but the Board of Revenue despite accepting the submission of the petitioner, did not interfere in the order observing therein that since Sarvarakar in both the deities were common, therefore, nothing illegal has been done by the Additional Settlement Commissioner declaring 400 acres of land of petitioner surplus.

Being aggrieved by the observations and finding of the Board of Revenue, this petition has been filed challenging the proceeding initiated against the petitioner and orders passed by the authorities in the said proceedings.

4. Shri Sanjay Agrawal, learned Senior Advocate appearing for the petitioner challenged the impugned order of Board of Revenue and also the order of Additional Settlement Commissioner mainly on the ground that the property belongs to the petitioner situated at Village Rahli District Sagar and the property of Mandir situated at Jabalpur are two different lands and both the properties belonged to different deities and as such they cannot be clubbed together for considering the maximum ceiling limit under the Act, 1960. He submitted that the order passed by the Additional Settlement Commissioner having no jurisdiction to initiate proceeding in respect of the property belonging to different identities and deities under the common proceeding and as such order passed is without jurisdiction. According to Shri Agrawal, the land of petitioner since situates at Village Rahli District Sagar, the

respective Sub Divisional Officer was the competent authority as per definition provided under Section 2(e) of the Act, 1960. He further submitted that in such circumstances, the Additional Settlement Commissioner is not the competent authority and the order passed by him is without jurisdiction and suffers from the principle of *coram non judice*. To reinforce, he placed reliance on a decision in the case of **Surendra Singh v. Sagarbai & Ors. I.L.R. (2019) M.P. 1376 (DB).**

5. In contrast, Shri Kekre, learned Government Advocate appearing for the respondents opposed the submissions made on behalf of the petitioner and relied upon the stand taken by the State in its reply. As per the stand, he submitted that the Board of Revenue has rightly observed that on a request made by then Sarvarakar for clubbing both the lands and then initiate proceeding under the Act, 1960, the Additional Settlement Commissioner proceeded further and decided the maximum limit of land of both the properties. He submitted that before clubbing the lands, objection was invited and in response thereto, nobody came forward and it was then Sarvarakar Narayan Rao came forward, although did not raise any objection, but requested to club the properties before proceeding further. As per Shri Kekre, the petitioner cannot take such a ground nor can assail the order of authorities on the ground that the land which has been tried by the Additional Settlement Commissioner clubbing together is purely illegal as both the lands belonging to two different deities and cannot be considered to be a common land merely because of common Sarvarakar of both the lands.

6. In repartee, Shri Sanjay Agrawal submitted that merely because then Sarvarakar appeared before the Additional Settlement Commissioner and requested for clubbing the lands together and chose the jurisdiction of Additional Settlement Commissioner, it cannot be

said to be proper for the reason that the parties had no authority to choose the jurisdiction or to make a request before the authority having no jurisdiction to try the lis. To reinforce, he placed reliance on various decisions in the case of **Kiran Singh and others v. Chaman Paswan and others (1955) 1 SCR 117 = AIR 1954 SC 340; Hasham Abbas Sayyad v. Usman Abbas Sayyad and others (2007) 2 SCC 355; Chandrabhai K. Bhoir and others v. Krishna Arjun Bhoir and others (2009) 2 SCC 315; Sarupsingh and another v. Union of India and another (2011) 11 SCC 198; State of Punjab and others v. Krishan Dayal Sharma (2011) 11 SCC 212; Zuari Cement Limited v. Regional Director, Employees' State Insurance Corporation, Hyderabad and Others (2015)7 SCC 690** and **Budhia Swain and others v. Gopinath Deb and others (1999) 4 SCC 396**.

7. After hearing the submissions made by the learned counsel for the parties and perusal of the documents available on record, there emerges two questions for adjudication, they are :-

(I) Whether, on the basis of statement of Sarvarakar, property of two different deities can be clubbed together only because their Sarvarakar was common?

(II) What is the effect of the order passed by the Board consolidating the property of deity situated beyond the territorial jurisdiction of the authority passed an order only on the basis of request made by Sarvarakar?

8. As per the facts of the case, it is clear that the land belonging to the petitioner, which by order dated 24.05.1986 (Annexure-P/2), had been declared to be a public trust having land measuring 622.41 acres situated at Tahsil Rahli District Sagar. Narayan Rao Kher at the relevant point of time was Sarvarakar of the said public trust and

was also Sarvarakar of Mandir i.e. Dev Kaal Bhairavi and Yogeshwari Mandir and the property of that Mandir situated at Jabalpur measuring 69.99 acre. The proceeding under the provisions of Act, 1960 was initiated by clubbing the land of public trust situated at Tahsil Rahli, District Sagar and land of Mandir situated at Jabalpur for declaring the land 'surplus'. The proceeding has been initiated by Additional Commissioner of Settlement of the Revenue area which is under the territorial jurisdiction of the said authority.

9. As far as the land of the petitioner is concerned, it is situated at Tahsil Rahli District Sagar and for declaring the land surplus under the provisions of Act, 1960, the competent authority has been defined i.e. Sub Divisional Officer but if property situates in more than one ceiling area then the competent authority as has been appointed by the State Government and in the present case by way of notification dated 27.03.1962 as well as 04.12.1976 Upper Commissioner of Settlement was appointed as competent authority as per the provisions of Section 2(d)(iii) of Act, 1960, but that authority acquired jurisdiction to decide the surplus land in excess to the ceiling limit even when the deity or the title holder of the land is common. Here in this case two different lands owned by two different persons were clubbed together only on the basis of statement of common Sarvarakar of both the lands and as such Upper Commissioner of Settlement proceeded under the provisions of Act, 1960 and passed an order declaring the land surplus. It otherwise reveals that the said authority infact having no jurisdiction to proceed in the matter for declaring the land surplus under the provisions of Act, 1960 because as per the provisions of Act, 1960 said authority was not competent and only because Sarvarakar made a request, the authority usurped jurisdiction to proceed in the matter for declaring the land

surplus. This could not have been done. The property of petitioner trust belongs to deity and is of Mandir registered as a public trust and Manager having no right over the same except to manage the property. The Division Bench of this Court *in re* **Surendra Singh** (supra) in paragraph 16 has observed as under:-

> "16. It is well settled proposition of law that dedicated property vests in the idol as a juristic person. When a property is given absolutely by a pious Hindu for worship of an idol, the property vests in the idol itself as juristic person. There are various judgments delivered from time to time on this issue. The Hindu idol is a juridical subject and the pious idea that it embodies is given the status of a legal person and is deemed capable in law for holding property in the same way as a natural person. It has a juridical status, with the power of suing and being sued. Its law its Manager, with all the powers which would, in such circumstances, on analogy, be given to the Manager of the estate of an infant heir and, therefore, once the property has been given to a temple, which is known as debutter or endowment in favour of the established idol, the question of its disposal by the Manager is illegal. Once the property is dedicated to the deity which is a juristic person holding the title, cannot be sold by the Manager, as has been done in the present case and, therefore, the order of the Board of Revenue by which the resolution of the Gram Panchayat has been set aside in respect of the mutation, are certainly valid orders and, therefore, the order passed by the learned Single Judge which affirms the sale and mutation of the property belonging to the deity, deserves to be set aside and is accordingly hereby set aside."

10. Thus, it is clear that the property of public trust being property of deity situated at Tahsil Rahli District Sagar cannot be clubbed with the property of Mandir situated at Jabalpur and at the request of Sarvarakar, jurisdiction cannot be exercised by the authority

even otherwise not competent to decide the issue of declaring the land surplus. As such, the order which is impugned in this petition, passed by the competent authority dated 04.11.1992 (Annexure-P/4) is an order without jurisdiction and even it can be considered that the order suffers from *coram non judice*. Further, the Supreme Court *in re* **Kiran Singh** (supra) has observed that a decree passed without jurisdiction is nullity. Again, the Supreme Court *in re* **Hasham Abbas Sayyad** (supra) has held that the order passed without jurisdiction is a nullity and same ordinarily should not be given effect to. The relevant portion is reproduced hereinbelow:-

> "22 The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice being a nullity, the same ordinarily should not be given effect to. [See Chief Justice of Andhra Pradesh and Another v. L.V.A. Dikshitulu and Others - AIR 1979 SC 193 & MD Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. (2004) 8 SCC 619]. "

Over and above, the Supreme Court *in re* **Zuari Cement Limited** (supra) has observed that any order passed by the authority want of jurisdiction renders order nullity or *non est*.

11. From perusal of the order passed by the Upper Settlement Commissioner, it is clear that the authority proceeded in the matter because the land situated at Tahsil Rahli District Sagar is the land of trust and its Sarvarakar is also the Sarvarakar of the land of Mandir

situated at Jabalpur and being a common Sarvarakar, only for his convenience and upon his request, the authority proceeded further but that order was not proper because territorial jurisdiction cannot be assigned to the authority which in fact having no jurisdiction provided by the Statute.

12. The Board of Revenue has also not dealt with this particular aspect that the land of two different deities cannot be clubbed together only because for both the lands Sarvarakar is common and he made request for clubbing the lands whereas Sarvarakar having no title over the land and he was only a Manager and acting as caretaker and the authority cannot usurp jurisdiction which is otherwise not provided by the Statute. As per Section 2(e), the definition clause provided under Act, 1960 defines 'competent authority', which is reproduced as under:-

> (e) "competent authority" means-
>
> (i) in respect of a holder whose entire land is situated within a Sub-Division, the Sub-Divisional Officer and/or such other Revenue Officer, not below the rank of a Deputy Collector as may be appointed by the State Government;
>
> (ii) in respect of a holder whose entire land is situate in more than one Sub-Division of the same district, the Collector or the Additional Collector and where there is no Additional Collector for the district such Deputy Collector, as may be empowered by the State Government to exercise the powers of Collector under the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959) for the purpose; and

(iii) in respect of a holder whose land is situate in more than one district such authority as may be appointed by the State Government.

In view of the facts and circumstances, it is clear that so far as the land of the petitioner is concerned, it was Sub Divisional Officer who can initiate the proceeding under the provisions of Act, 1960, but instead of Sub Divisional Officer, the proceeding was initiated by the officer appointed by the State Government i.e. Additional Settlement Commissioner. Only because the lands which were considered situated in two different districts, but that authority, as has been discussed hereinabove, was not competent authority and having no jurisdiction to consider the lands of the petitioner declaring it surplus as per the provisions of Act, 1960.

13. In view of the above enunciation of law, as has been discussed hereinabove, the order passed by the Additional Settlement Commission is therefore without jurisdiction and the order of Board of Revenue giving seal of approval is also illegal. Thus, both the orders being unsustainable in the eyes of law as suffer from *coram non judice* and as such nullity, cannot be given effect to, hence hereby set aside.

14. The petition is accordingly **allowed**.

No order as to costs.

(SANJAY DWIVEDI)
JUDGE

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