2019 INSC 1196

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).956 OF 2010

STATE OF MADHYA PRADESH AND OTHERS ....APPELLANT(S)

VERSUS

MURTI SHRI CHATURBHUJNATH AND OTHERS ....RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The defendants are in appeal consequent to the dismissal of their second appeal. The respondent filed a suit for declaration and permanent injunction which was dismissed. The dismissal was reversed in the first appeal and the suit was decreed.

2. Shri Rahul Kaushik, learned counsel for the appellants, submitted that respondent no.1 was a public Temple. The revenue records were therefore rightly corrected by recording the name of the collector as '*Vyawasthapak*' (Manager) which was done for better management of the temple properties. Respondent

nos.2 and 3 were only "Pujaris". Therefore, they had no right to claim ownership of the Temple lands, much less have their names entered in the revenue records, seeking restraint against interference. The Temple being situated on government land belonging to the *Aukaf* Department was a "*Devsthani Muafi*". The Pujaris had no "*Bhumiswami Rights*" in the lands. Reliance was placed on an order dated 22.07.2019 in Civil Appeal No. 5041 of 2009 ***Ramesh Das (Dead) thr. Lrs. vs. State of Madhya Pradesh & ors.***, and ***Shri Ram Mandi Indore vs. State of Madhya Pradesh and ors.***, 2019 (4) SCALE 302.

3. Conversely Shri Randhir Singh Jain, learned counsel for the respondents, submitted that the Pujaris never claimed any ownership rights in themselves to the lands. The lands belonged to the Deity gifted by Syed Mohammed Ali, Manager of the landlord Hakim. The Deity was in peaceful possession and enjoyment of the lands since very long. Puja was being done by the Pujaris on basis of the income of the Temple. The unilateral correction in the land revenue entries as late as 1979-80, by recording the collector as 'Manager' was in complete violation of the procedure prescribed in Section 115 of the Madhya Pradesh

Land Revenue Code 1959 (hereinafter referred as "the Code") as concurrently held by the First Appellate Court and the High Court. Reliance was placed on an order dated 06.10.2016 in Civil Appeal No. 8554 of 2015 "***State Government of Madhya Pradesh & ors. vs. Narsingh Mandir, Chikhalda & ors.***".

4. We have considered the submissions on behalf of the parties and perused the materials relied upon by the counsel for the parties as also the precedents cited.

5. The suit was filed by the Deity through the Pujaris claiming ownership to the lands received from Syed Mohammad Ali, Manager of the landlord Hakim situated in Village Kharsod Kalan, District Ujjain. The Pujaris did not lay any claim to ownership of the lands in them. The Temple was constructed by the forefather of the Pujaris, who continued to perform puja and enjoy the usufructs of the lands also. They were suddenly made aware of the correction made in column 3 of the land records in the year 1979-80 when the collector published notice for auction settlement of the lands, leading to the institution of the suit. There is no material on record with regard to any alleged mismanagement of the temple which required it to be taken over

by the Collector. On the evidence on record, the respondents plaintiffs have been held to be *Maurusi Krishaks* of the lands. Column 3 records their occupation, while the ownership stands in the name of the Deity.

6. It is not the case of the appellant that the plaintiff Temple stands recorded in the list of public temples prepared in 2013 for the District of Ujjain as noticed in ***Shri Ram Mandir Indore*** (supra). The lands have not been taken on lease by the Deity from the Government but from the erstwhile owner. ***Ramesh Das*** (supra) is distinguishable on its own facts as the ownership of the lands for a claim of a private temple was not being made in the name of the Deity but those physically in possession of the lands.

7. In the present case the name of the Deity finds place in the revenue entries for the years 1969-70, 1970-71 and 1972-73. The same is the position with regard to the revenue entries for 1973 to 1977. It is not the case of the appellants that the correction in the revenue entries in 1979-80 was made in compliance with the provisions of Section 115 of the Code. Section 115 reads as follows:

> "115. Correction of wrong or incorrect entry in land record-
> (1) A Sub-Divisional Officer may, on his own motion or on application of an aggrieved person, after making such enquiry as he deems fit, correct any wrong or incorrect entry including an unauthorised entry in the land records prepared under section 114 other than Bhoo-Adhikar Pustika and record of rights, and such corrections shall be authenticated by him:
>
> Provided that no action shall be initiated for correction of any entry pertaining to a period prior to five years without the sanction in writing of the Collector.
>
> (2) No order shall be passed under sub-section (1) without-
> (a) getting a written report from the Tahsildar concerned; and
> (b) giving an opportunity of hearing to all parties interested:
>
> Provided that where interest of Government is involved, the Sub-Divisional Officer shall submit the case to the Collector.
>
> (3) On receipt of a case under sub-section (2), the Collector shall make such enquiry and pass such order as he deems fit."

8. There is a concurrent finding by the First Appellate Court and the High Court that the procedure not having been followed, the correction made in the revenue records and on basis of which the Temple was claimed to be a public temple and the Collector as the Manager thereof was unsustainable. In ***State***

Government of Madhya Pradesh vs. Narsingh Mandir, Chikhalda (supra), this court observed:

> "Be that as it may, the appeal of the respondents warranted to be succeeded on the substantial question of law No.2 itself, inasmuch as, the entry in the revenue record could not have been changed by the Tahsildar without holding a proper enquiry and giving an opportunity to the affected persons, namely respondents herein, in this regard. Therefore, the judgment of the High Court can be sustained on that ground alone. Needless to mention, it will always be open to the concerned authority to follow the procedure under Section 115 of the M.P. Land Revenue Code, 1959 to take further action, if any.
>
> The appeal is dismissed with the aforesaid observations."

9. We therefore find no merit in the present appeal. The appeal is therefore dismissed but with similar observations as aforesaid.

..... J.
(Navin Sinha)

..... J.
(Sanjiv Khanna)

New Delhi,
October 25, 2019