



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 11499/2022

Partap Ram



-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of Devsthan, Government Of Rajasthan, Jaipur
2. Commissioner, Devsthan, Udaipur.
3. Assistant Commissioner, Devsthan Department, Jodhpur.
4. Land Acquisition Officer Cum Sub Division Officer Jodhpur, Jodhpur (Rajasthan).

-----Respondents

For Petitioner(s) : Mr. Moti Singh

For Respondent(s) : Mr. Manish Patel, AAG

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Judgment

Reportable

Reserved on 05/04/2024

Pronounced on 20/04/2024

Per Dr. Pushpendra Singh Bhati, J:



Litigation may kindly be allowed and by an appropriate writ, order or directions may kindly be issued against the respondents in following manners.

a) That by an appropriate writ, order and direction the order dated 19.01.2015 (Annexure-8) passed by Deputy Secretary, Administrative Reforms Department, and the order dated 25.02.2015 (Annexure-9) passed by Additional Chief Secretary, Devsthan Department may kindly be declared illegal, arbitrary and without jurisdiction further same may kindly be quashed and set aside.

b) That by an appropriate writ, order and direction the respondent may kindly be directed to release all kind of the withhold amount which is deposited against the compensation of the acquisition of the land of non-government temples of any part/region of the State and further the State Authority may kindly be directed to grant the compensation against any acquisition to the non-Government Temples personally or their trust which is working for management and administration of the temple.

c) That by an appropriate writ, order and direction the amount awarded by the Land Acquisition Officer, Jodhpur in pursuance of the award no.79 dated 25.05.2021 (Annexure-6) against the acquisition of the land of Shri Mahadev Ji Temple (Doli Mandir Shri Mahadev Ji) at Village Jajiwal Bhatiyar may kindly be released in favour of the Temple or the Trust working for management of the temple, the interest upon such amount from the date of award to till realization may also be awarded.

d) That by an appropriate writ or direction may kindly be issued and respondent Devsthan Commissioner may kindly be directed to submit the entire details before this Hon'ble Court of the deposit amount in his account in terms of the





State of Rajasthan, by which the petitioner may get full justice may also be allowed.

f) That the present graves the liberty to raise any other point at the time of hearing in the court.”

2. Brief facts of the case, as placed before this Court by learned counsel for the petitioner, are that the petitioner is working as President of a Trust, namely, Shri Mahadev Ji Mandir (Matha), Village Jajiwal Bhatiyar, District Jodhpur and the said trust was registered as Public Trust vide order dated 16.11.2007 passed by the Assistant Commissioner, Devsthan Department, Jodhpur under Rajasthan Public Trust Act, 1959 (*hereinafter referred to as 'Act of 1959'*). After the said registration, the management of the aforesaid Temple was handled by the Trust Committee, including the bank account and audit report.

2.1. Thereafter, on 26.06.2020, a Gazette Notification was published under the National Highway Act, 1956 for construction of Ring Road around the Jodhpur City, and pursuant to the same, the land acquisition proceedings were also initiated, as regards certain lands, including the Trust land and compensation award was also passed on 25.05.2021 by the concerned authority, in lieu of the said acquisition of lands, but as regards the Trust, the awarded compensation amount was not transferred in its account.

2.2. In such circumstances, the petitioner submitted an application before the Land Acquisition Officer for release of the





2.3. A Committee, as mentioned in the order, was already in place for the purpose of utilizing the compensation amount. This Committee would follow the necessary legal procedures and make recommendations for the allotment of alternative land to the Temple whose land has been acquired. Furthermore, instead of keeping the compensation amount, the concerned municipal or local bodies will purchase alternative land(s) using the funds so deposited in the Devsthan Department's account, for the purpose of allotment of such land to the owners of the land(s) so acquired. Similar order was also passed by the respondent Devsthan Department on 25.02.2015.

2.4. Thus, being aggrieved by the orders dated 19.01.2015 & 25.02.2015, the present petition has been preferred claiming the afore-quoted reliefs.

3. Learned counsel for the petitioner submitted that the respondents' order to withhold the compensation amount, payable towards acquisition of the Temple's khatedari land, is arbitrary and illegal. It was also argued that once the compensation award has been passed, the Temple is fully entitled to receive the said amount.

3.1. Learned counsel further submitted that the Trust is registered under the Act of 1959 for the management and administration of the Temple, and therefore, the said Temple





case, the Temple is not managed by the government, so the supervisory power of the Devasthan Commissioner as regards the said Temple are not exercisable.

3.3. Learned counsel further submitted that the temple or trust is not receiving any grants or funds from the government, and therefore, the provisions of the Act of 1959 and guidelines regarding government control and administration do not apply to the petitioner trust or temple. Therefore, the orders in question are not justified in law.

3.4. Leaned counsel also submitted that the deity of the temple is a perpetual minor and any kind of act against the interests and rights of the deity cannot be sustained in the eyes of law. In support of such submission, learned counsel relied upon the judgment rendered by Coordinate Bench of this Hon'ble Court in the case of ***Doli Mandir Shri Mahadev Ji Through Devotee Vs. State of Rajasthan & Ors. (D.B. Spl. Appl. Writ No. 396/2020 & other connected matter, decided on 04.11.2022).***

4. On the other hand, learned counsel appearing on behalf of the respondents, while opposing the aforesaid submissions made on behalf of the petitioner, submitted that as per Section 37 of the Act of 1959, the Commissioner of the Devasthan Department, being the Treasurer of the charitable endowments of the Rajasthan





District Collector, and a direction was issued to allot the land to be purchased out of the compensation amount so deposited with the department to the temple on the recommendations of the said Committee.

4.2. It was also submitted that since the Temple is a perpetual minor and the pujari/trustee is a *de facto* guardian thereof, therefore the pujari/trustee is authorized only to the extent of managing the Temple's property and falls under the definition of Section 11 of the Hindi Minority and Guardianship Act, 1956. Therefore, as per learned counsel, the petitioner is not legally entitled to receive the compensation amount.

4.3. It was further submitted that the Government of Rajasthan has issued a circular dated 11.06.2020, in which it has been specifically stated that the trust/pujari is not authorized to obtain the acquisition amount in lieu of land acquisition so made and the impugned decision was taken in larger public interest so as to safeguard the Doli lands. It was also submitted that the said circular was not challenged by the petitioner in present PIL.

4.4. Learned Counsel for the Devasthan Department in addition to above submissions, submitted that the Devasthan Department has still not received the acquisition amount from the competent authority.

5. Heard learned counsel of the parties as well as perused the





Act, 1956 for construction of Ring Road around the Jodhpur City, and pursuant to the same, the land acquisition proceedings were also initiated, as regards certain lands, including the Trust land and compensation award was also passed on 25.05.2021 by the concerned authority, in lieu of the said acquisition of lands, but as regards the Trust, the awarded amount was not transferred in its account.

7. In the meantime, the petitioner submitted an application before the Land Acquisition Officer for release of the compensation amount of acquisition of Trust land in its favour. The Land Acquisition Officer vide the impugned order dated 19.01.2015 stated that the compensation amount shall be released in the account of the respondent-Commissioner Devasthan Department and subsequently, the Devasthan Department vide impugned order dated 25.02.2015 also passed the similar order.

8. This Court further observes that the Revenue Department, Government of Rajasthan issued a circular dated 11.06.2020 (P.9 (34) Raj-6/2019/101) wherein it is clearly stated under both the Land Acquisition Act, 1894 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the compensation in lieu of the acquisition of Temple land is not receivable by the pujari/trustee, who acts as the caretaker of the land; instead, the compensation





“राजस्थान सरकार

राजस्व (ग्रुप-6) विभाग

प.9 (34) राज-6/2019/101 जयपुर दिनांक :- 11/06/2020

1. समस्त, सम्भागीय आयुक्त।
2. समस्त, जिला कलक्टर, राजस्थान।

परिपत्र

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अतः ऐसे प्रथम श्रेणी के प्रकरणों में यह स्पष्ट किया जाता है कि ऐसी भूमि के संबन्ध में 1984 अधिनियम एवं 2013 अधिनियम के तहत पुजारी/ट्रस्ट “केयरटेकर मैनेजर” की हैसियत से किसी प्रकार का मुआवजा प्राप्त करने के अधिकारी नहीं है। इस प्रकार के प्रकरणों में मुआवजा निर्धारण प्रशासनिक सुधार विभाग की आज्ञा क्रमांक प.6(1) प्र.सु./अनु-3/2015 दिनांक 19.01.2015 (संलग्नक-1) के अनुसार संबंधित विभाग में जमा किया जाता रहेगा।

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8. जैसा कि संलग्नक -4 एवं संलग्नक-5 में स्पष्ट है कि मंदिर माफी के कई प्रकरणों में 1952 अधिनियम के प्रभावी होने के पश्चात उक्त अधिनियम की धारा 9 के प्रावधानों के विपरीत भू-प्रबंध संक्रिया के दौरान खातेदारी का गलत इन्द्राज जागीर अधिनियम के विपरीत दर्ज किया गया है, या अनुचित रूप से रेफरेन्स दायर कर जागीर अधिनियम के विपरीत गलत रूप से खातेदारी का अंकित किया गया है या बाद में संस्था या ट्रस्ट का गठन कर इस प्रकार की संस्था के नाम खातेदारी अधिकारों का अंकन कर दिया गया है। इस तरह के प्रकरणों में ऐसे व्यक्ति/संस्था/ट्रस्ट इस विभाग के परिपत्र क्रमांक प. 3(2)राज-6/2017 पार्ट/101 जयपुर, दिनांक 18.09.2019 (संलग्नक-2) के अनुसार किसी प्रकार का खातेदारी अधिकार प्राप्त करने के पात्र नहीं है, एवं इस कारण से वे भूमि आवाप्ति अधिनियम 1984 एवं भूमि अधिग्रहण में उचित मुआवजा और पारदर्शिता का अधिकार, पुर्नवास और पुर्नस्थापना अधिनियम 2013 के तहत मुआवजा प्राप्त करने के अधिकारी भी नहीं है।”





acquisition of the Temple land, and thus, the respondents have rightly passed the impugned orders.

10. This Court further observes that in view of the above, and particularly, the afore-quoted circular, the petitioner cannot claim compensation for the land acquisition of the temple because it is evident that the amount has to remain in the account of the Devasthan Commissioner. Furthermore, the land was to be purchased from the concerned entities such as the Nigam, Panchayat, and Development Authority, for allotment thereto to the Temple as compensation in lieu of the acquisition in question. This entire process was carried out by the Collector as Chairman of the Committee, and four other members, which is perfectly justified in law.

10.1. The said Committee was comprising of District Collector (as Chairman), and Chief Executive Officer, Zila Parishad, Executive Officer / Secretary of Development Authority / Executive Engineer of Housing Board / Sub Divisional Officer, Officer of the Accounts Services posted in the District, as nominated by the District Collector and Concerned Assistant Commissioner, Devsthan Department.

10.2 This Court further observes that the impugned order dated 25.02.2015 passed by the respondent-Devsthan Department clearly stated as to how the amount of compensation in lieu of





क्रमांक प.5(9)देव/2003

आयुक्त,

देवस्थान विभाग,

उदयपुर।

जयपुर, दिनांक 25/2/2025

विषय :- अराजकीय मंदिर/मदिर न्यास की भूमि अधिग्रहण का मुआवजा भुगतान के संबंध में।

प्रसंग :- आपका पत्र क्रमांक एफ 3(4) सामान्य/देव/2004-पार्ट-1/8094 दिनांक 4.6.2012

महोदय,

उपरोक्त विषयान्तर्गत प्रासंगिक पत्र के संदर्भ में चाहा गया मार्गदर्शन निम्न प्रकार है:-

1. राजकीय मंदिरों के अवाप्ति से प्राप्त राशि से उनके पुर्नवास की व्यवस्था देवस्थान विभाग द्वारा की जावेगी। पुरातत्व महत्व के मंदिरों का पुर्नवास पुरातत्व विभाग द्वारा करवाया जावेगा तथा पुर्नवास राशि का भुगतान मुआवजा राशि में से किया जाएगा।
2. भूमि पर बोई फसल के मुआवजा राशि का भुगतान अवाप्ति से पूर्व भूमि के उपयोग/उपभोग की उप खण्ड अधिकारी से जांच उपरान्त मंदिर पुजारी को उपखण्ड अधिकारी/तहसीलदार के माध्यम से वार्षिक भुगतान की जावें।
3. अराजकीय मंदिर की भूमि अवाप्ति पर प्राप्त मुआवजा राशि आयुक्त, देवस्थान विभाग के निजी निक्षेप खाते में पूर्व की तरह जमा की जाती रहे। संबंधित मंदिर जिसकी भूमि अवाप्ति पर मुआवजा राशि प्राप्त हुई है, उस राशि से भूमि नगर निगम/पंचायत समिति/विकास प्राधिकरण/आवासन मण्डल की जो भूमि उपलब्ध हो, वह उस संस्था के द्वारा मांगी गई राशि के अनुरूप अदा कर बदले में जमीन मंदिर के नाम आवंटित कराई जावेगी। एवज में भूमि दिलवाने के लिये जिला कलेक्टर की अध्यक्षता में एक स्थाई समिति कमेटी गठित की गई है, जो भूमि का चयन कर, देय राशि निर्धारित कर आयुक्त, देवस्थान विभाग, राजस्थान को अपनी अनुशंसा प्रेषित करेगी एवं आयुक्त, देवस्थान उक्त राशि को नगर निगम/पंचायत समिति/विकास प्राधिकरण/आवासन मण्डल को अदा करेंगे। बदले में प्राप्त की गई भूमि संबंधित मंदिर के नाम रहेगी। इस संबंध में प्रशासनिक सुधार विभाग द्वारा जारी आज्ञा संख्या प .6(1)प्रसु/अनु-3/2015 दिनांक 19.1.2025 द्वारा निम्नानुसार स्थाई समिति का गठन किया गया है:-

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|--|---------|
| 1. जिला कलेक्टर | अध्यक्ष |
| 2. मुख्य कार्यकारी अधिकारी, जिला परिषद | सदस्य |
| 3. नगर निगम का अधिशाषी अधिकारी/
या विकास प्राधिकरण का सचिव/आवासन मण्डल
का अधिशाषी अभियंता/उपखण्ड अधिकारी | सदस्य |
| 4. जिले में पदस्थापित लेखा सेवा का अधिकारी जो
जिला कलेक्टर द्वारा नामित हो | सदस्य |
| 5. संबंधित सहायक आयुक्त, देवस्थान विभाग
आज्ञा दिनांक 19.1.2015 की फोटोप्रति संलग्न है। | समन्वयक |

भवदीय,

एस. डी."





to which this Act extends, and that, the State Government issued the aforementioned Circular dated 11.06.2020, which requires deposition of the compensation amount in lieu of the acquisition of the Temple land in the account of the concerned department, which in the present case is the respondent-Devsthan department. Therefore, the compensation amount in question to remain in account of Commissioner of Devsthan Department is justified in law, which otherwise, as prescribed, would serve the interests of the Temple/Trust, inasmuch as the said amount of compensation, would be utilized, as per the recommendations of the Committee.

Sec. 7 - Devasthan Commissioner:

- 1. The State Government shall, by notification in the official Gazette, appoint an officer to be called the Devasthan Commissioner, who, in addition to other duties and functions imposed on him by or under the provisions of this Act or any other law for the time being in force, shall subject to the general and special orders of the State Government superintend the administration and carry out the provision of this Act through the territories to which this Act extends.*
- 2. The Commissioner shall be corporation sole by the name of the Devasthan Commissioner of the State of Rajasthan, shall as such have perpetual succession and a common seal and may sue and be sued in his corporate name.*





a public trust, which shows that the said authorities work for the benefits and interests of the public trust(s) and therefore, in the given circumstances, pujari/trustee cannot claim control of the amount of compensation in lieu of acquisition of Temple land.

12. This Court also observes that as per Section 37 of the Act of 1959, the Commissioner is deemed to be a Treasurer of a Charitable Endowments in the State of Rajasthan. As per the aforequoted circular, the compensation in lieu of the acquisition of the Temple's land is required to be deposited in the account of the Commissioner, Devsthan Department. Therefore, any act of the Commissioner as Treasurer would not be prejudicial to the rights and interests of such Temple/Trust. For ready reference the said Section 37 of the Act of 1959 is reproduced as hereunder:-

"Sec. 37 - Commissioner to be Treasurer of Charitable Endowments:

Notwithstanding anything contained in the Charitable Endowments Act, 1890 (Central Act VI of 1890), the Commissioner shall be deemed to be the Treasurer of Charitable Endowments for the State of Rajasthan appointed under the provisions of the said Act and the property vesting in the Treasurer before the date on which this Act comes into force shall be deemed to vest in the Commissioner as the Treasurer of Charitable Endowments, and the provisions of the said Act shall apply to the Commissioner as the treasurer of Charitable Endowments





State of Rajasthan and definition of the 'charitable endowments' as contained in Section 2 (3) of the Act of 1959, reads as under:-

"(3) "Charitable endowment" means all property given or endowed for the benefit of, or used as of right by, the community or any section thereof for the support or maintenance of objects of utility to the said community or section; such as resthouses, pathshalas, schools and colleges, houses for feeding the poor and institutions for the advancement of education, medical relief and public health or other objects of a like nature and includes the institution concerned;"

12.2. This Court also observes that the Temple in question is registered as a Public Trust and the definition of 'Public Trust' as contained in Section 2 (11) of the Act of 1959 reads as under:-

"(11) "Public trust" means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, dharmada or any other religious or charitable endowment or institution and a society formed either for a religious or charitable purpose or for both;"

12.3. This Court further observes that the Temple in question is a registered public trust, further the term 'charitable endowment' is covered under the above-said definition of 'Public Trust', and the Commissioner, as per Section 37 of the Act of 1959, acts as the Treasurer of the Temple receiving charitable endowment. This





it is the duty of the State through Commissioner of the respondent-Devsthan Department, to ensure protection of rights and interests of the Temple.

12.4. This Court also observes that the State Government is the best authority to protect the right of the temple and in particular, under the Act of 1959, the Commissioner, being a Treasurer is empowered to exercise its control over the Temple and also to receive compensation in lieu of acquisition of the Temple land.

13. This Court also observes that the entire exercise carried out by the respondents is aimed at protecting and safeguarding the Temple land and was done in the larger public interest. The orders in question clearly demonstrate the lawful manner in which the compensation amount is being proposed to be utilized for the benefit of the Temple, whose land has been acquired pursuant to the proceedings in question.

14. This Court further observes that as per the settled proposition of law, the Temple (deity) is a perpetual minor and the pujari/trustee acts only as its caretaker and thus, the compensation in lieu of acquisition of Temple's land has to remain in the account of the Commissioner, Devsthan Department, who in turn, would utilize the same for purchase of alternate land as per the decision of the Committee, and such land after being





custodian role of the respondent-Devsthan Department, no prejudice is being caused to the Temple and the deity.

15. Thus, in light of the aforesaid observations and afore-quoted circular as well as looking into the factual matrix of the present case, this Court does not find it a fit case so as to grant any relief to the petitioner in the present PIL Petition.

16. Consequently, the present petition (PIL) is dismissed. All pending applications stand disposed of.

(MUNNURI LAXMAN),J

(DR.PUSHPENDRA SINGH BHATI),J

SKant/-

