



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



S.B. Civil Writ Petition No. 7017/2011

1. Prem Prakash Bihani, aged 66 years, S/o Late Shri Sagar Mal Bihani, R/o House No. 210, Old Housing Board Colony, Sirsa, District Sirsa, Haryana.

2. Bhanu Prakash Bihani, aged about 60 years, S/o Late Shri Sagar Mal Bihani, R/o House No. 210, Old Housing Board Colony, Sirsa, District Sirsa, Haryana.

3. Prakash Chand Bihani, aged about 56 years, S/o Late Shri Sagar Mal Bihani, R/o Shani Temple Street, Noharia Bazar, Sirsa, Haryana.

4. Smt. Mala Devi, aged about 58 years, W/o Shri Poonam Chand Totla, R/o Totla House, Chhota Bazar, Post Office Sambhar, District Jaipur, Rajasthan.

5. Smt. Sudha Kumari, aged about 54 years, W/o Late Shri Vimal Kumar Maheshwari, R/o Mohta Chowk, Bikaner.

6. Alok Bihani, aged about 41 years, S/o Late Shri Om Prakash Bihani, R/o Shani Temple Street, Noharia Bazar, Sirsa, Haryana.

7. Shri Baijnath Sagarmal Bihani Dharmshala and Hanuman Temple Trust, Hanumangarh through General Power of Attorney Shri Prakash Chand Bihani R/o Sirsa, Haryana.

----Petitioner

Versus

1. The State of Rajasthan through the Secretary, Devasthan Department, Government of Rajasthan, Jaipur.

2. The Commissioner, Devasthan Department, Government of Rajasthan, Udaipur.

3. The Assistant Commissioner, Devasthan, Hanumangarh Town, Hanumangarh.

4. Shri Devki Nandan Chotia S/o late Shri Thani Ram, R/o 196, Durga Colony, Hanumangarh Junction, Rajasthan.





----Respondent

For Petitioner(s) : Mr. Vikas Balia, Sr. Advocate assisted
by Mr. Mudit Nagpal and
Mr. Nishant Gaba

For Respondent(s) : Mr. Sandeep Soni for
Mr. B.L. Bhati, AAG
Mr. Siddharth Mewara



HON'BLE MS. JUSTICE REKHA BORANA

Order

06/11/2025

1. The present writ petition has been filed aggrieved of order dated 06.12.2010 (Annexure-16) whereby the appeal as preferred by respondent no.4 - Devki Nandan Chotia before the Commissioner, Devasthan Department against order 17.05.2010 (Annexure-13) passed by the Assistant Commissioner, stood partly allowed.
2. Vide order dated 17.05.2010, the Assistant Commissioner proceeded on to reject the application under Section 17(2) of the Rajasthan Public Trust Act, 1959 as filed by applicant (respondent no.4) and proceeded on to allow the application as filed by the present petitioners for registration of the Trust in question.
3. Order dated 17.05.2010 was assailed by respondent no.4 and the Appellate Authority although affirmed the finding of the Assistant Commissioner to the effect that respondent no.4 was not entitled for any relief but then, proceeded on to hold that the property as directed to be registered in favour of the petitioners, would be declared to be a land of public trust for charitable purposes. The Appellate Authority also held that the decree for



partition as granted by the Civil Court would not come in way of the said order.

4. Aggrieved of above order, the present writ petition has been filed by the petitioners.

5. Learned Senior Counsel appearing for the petitioners raised the following grounds:-

(i) Learned Appellate Authority exceeded its jurisdiction in proceeding on to declare the land in question to be a land of public trust for charitable purposes without there being any prayer of any of the parties for the same.

(ii) Learned Appellate Authority exceeded its jurisdiction also in holding that a decree of a Civil Court would be of no consequence so far as the land in question is concerned.

(iii) Learned Appellate Authority recorded an incorrect finding to the effect that the land in question was allotted to the fore-fathers of the petitioners at a concessional rate and that too, for charitable purposes i.e. for construction of a Dharmshala.

6. Learned Senior Counsel submitted that the land was purchased by the fore-fathers of the petitioners after paying the complete valuation of the property and not on any concessional/subsidized rate. Further it was nowhere the clause of the Patta that the land would be used mandatorily for Dharmshala only.

7. Learned Senior Counsel further submitted that the land being of the ownership of the petitioners, the Civil Court rightly passed a decree of partition and the same could not have been





undone/given a forgo by the Commissioner, Devasthan Department vide the order impugned.

8. So far as respondent no.4 is concerned, a settlement has already been arrived to between the parties and respondent no.4 has even withdrawn the writ petition filed by him against the order impugned. Meaning thereby, there remains no contesting party so as to oppose the prayers as made by the petitioners.

9. Learned counsel appearing for respondent no.4 fairly admits that after writ petition filed by him having been withdrawn, no lis so far as respondent no.4 is concerned, survives.

10. Learned counsel for the respondent Devasthan Department is not in a position to refute the fact that the Patta in question was not issued/allotted at any concessional rate and further that the said Patta nowhere comprises of any stipulation to the effect that the land would be used only for charitable purposes.

11. Heard learned counsel for the parties and perused the record.

12. To reach to a conclusion whether the land in question was allotted to Baijnath son of Asharam and Sagarmal son of Baijnath at a concessional rate and for charitable purposes, the Court perused the Patta in question (Annexure-1).

13. A bare perusal of the Patta reflects that the land in question was sold out for Rs.312 to Baijnath and Sargarmal in the year 1916. The said Patta nowhere reflects that the land was sold out at a concessional rate. Further, there is no stipulation in the said Patta regarding its user.

14. In view of above, this Court is of the clear opinion that the finding recorded by the Appellate Authority to the effect that the





land in question was allotted/sold out at a concessional rate for charitable purposes is clearly erroneous on the face of it.

15. Further as held by Hon'ble the Supreme Court in the case of **Kuldeep Chand vs. Advocate General to Government of H.P.**, reported in **(2003) 5 SCC 46**, in absence of any formal and written instrument to establish endowment as a public trust, it cannot be concluded that there was any intention of dedicating land for a charitable purposes relinquishing right of ownership.

16. Herein, although it is admitted on record that a Dharmshala was constructed on the land in question at the inception but then, it is also admitted that a portion of the said land was acquired subsequently, and in lieu of the acquired land, an alternative land was allotted to the petitioners.

17. In view of above facts, mere establishment of a Dharmshala on the land purchased by the fore-fathers of the petitioners cannot be deemed to conclude that the land was allotted for charitable purchases and would be used for the said purpose only for ever. It is further evident and admitted that 14000 sq. feet of land as allotted in lieu of the acquired land, has been decided to be used by the petitioners for establishment of a Dharmshala and even a Trust Deed has been executed by the petitioners for that purpose. The said trust deed has also been placed on record.

18. Further this Court is of the clear opinion that the Appellate Authority erroneously recorded a finding to the effect that the order passed by the Appellate Authority would override the decree passed by a competent Civil Court. The said proposition is totally contrary to law.





19. In view of above observations, the present writ petition deserves to be and is hereby **allowed**. Order dated 06.12.2010 (Annexure-10) passed by the Commissioner, Devasthan Department is hereby quashed and set aside to the extent it holds that the land other than the land of Dharmshala (Trust) shall be treated as land of public trust as well as the partition undertaken amongst the family members of the petitioners by the orders of the civil court shall not come in the way of public trust.

20. Stay application and all pending applications, if any, stand **disposed of**.

(REKHA BORANA),J

160-Mak/-

