

(1987) 04 MP CK 0009
In the Madhya Pradesh High Court
Case No : C.R. No. 1043 of 1985

Digamber Jain Hitopadeshini Sabha and Another	APPELLANT
Vs	
Narendra Kumar Bukharia and Others	RESPONDENT

Date of Decision : 29-04-1987

Acts Referred:

Madhya Pradesh Public Trust Act, 1951 — Section 26, 27, 36, 36(1)
Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 2

Citation : (1988) ILR (MP) 331 : (1991) JLJ 93 : (1990) 35 MPLJ 55 : (1990) MPLJ 55

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : S.C. Jain, for the Appellant; A.K. Jain, for the Respondent

Final Decision : Allowed

Judgement

S.K. Seth, J.

It is not in dispute that the applicant i.e. Digamber Jain Hitopadeshini Sabha, Bina was registered as public trust under the provisions of the M. P. Public Trusts Act, 1951. The non-applicants made a complaint to the Registrar of Public Trusts, Khurai that the trust property was not being properly managed by the President and the Secretary of the Trust and that they were acting contrary to the purpose of the Trust. On this, purporting to act u/s 26 of the Act, the Registrar of Public Trusts applied to the Court for directions in the matter. On receipt of the application, the Additional Judge to the Court of District Judge, Sagar at Khurai registered the case as Miscellaneous Civil Case No. 7 of 1983 and proceeded to deal with it u/s 27 of the Act. The complainants were arrayed as the applicants in the case. The public trust, through its Chairman and Secretary, was arrayed as the non-applicant. Certain preliminary objections were raised on behalf of the public trust as regards the maintainability of the proceedings. The said objections were rejected by the Additional District Judge vide his order dated 3-10-1985. It is being aggrieved by it that the public trust has filed the present revision u/s

115, CPC in this Court.

In the opinion of this Court, as the revision deserves to be allowed on one short ground alone it is not necessary to examine the other grounds raised on behalf of the public trust in this revision. It is not in dispute that prior to coming into force of the M. P. Public Trusts Act, 1951 the public trust in question had been functioning as a society registered under the provisions of the Societies Registration Act, 1860. It is also not in dispute that it was in its character as a society working for religious and charitable purpose that it got itself registered as a public trust under the provisions of the M. P. Public Trusts Act, 1951. It is further not in dispute that on coming into force of the M. P. Societies Registration Act, 1959 the said public trust was deemed to be a society registered under the said Act and thereafter on the said Act having been replaced by the M. P. Society Registrikaran Adhiniyam, 1973 it has been deemed to be registered under the said Adhiniyam. The main ground raised by the public trust before the Additional District Judge was that when as per its character as a society it was being administered under the M. P. Society Registrikaran Adhiniyam, 1973, nothing contained in the M. P. Public Trusts Act, 1951 could apply to it in view of section 36 of the said Act. It was on the basis of the said ground that it was argued that the proceedings commenced pursuant to the application made by the Registrar of Public Trusts u/s 26 of the M. P. Public Trusts Act and pending in the Court of Additional District Judge u/s 27 of the said Act were without jurisdiction and not maintainable.

In the opinion of this Court, as the point in question stands concluded by a Division Bench decision of this Court in Shankar Singh Thakur Kishansingh and Ors v. Sanstha Sonabai Sarvakshram, Khurai and Anr. 1975 MPLJ 780 the abovesaid objection raised by the public trust/applicant with regard to the maintainability of proceedings u/s 27 of the M. P. Public Trusts Act pending in the Court of Additional District Judge, Khurai deserves to be accepted and the proceedings have to be held to be without jurisdiction and not maintainable. It may be mentioned that, like in the present case, the public trust which was dealt with in Shankar Singh's case (supra) was originally a registered society under the Societies Registration Act, 1860. It was explained by the Division Bench in great detail as to how on account of subsequent legislative changes such a society was deemed to be a society registered under the M. P. Society Registrikaran Adhiniyam, 1973.

In the above connection, it is useful to refer to the following passage in the Division Bench decision of this Court in Shankar Singh's case (supra):-

"We have already referred to the certificate of registration Ex. P./1, which was issued to be society when it was registered under the Societies Registration Act, 1860. We have also stated that u/s 6(2) of the 1959 Act the society was deemed to be registered under that Act. We have further said that in view of section 33(2) of the 1959 Act reference to the Registrar of Joint Stock Companies in the certificate of registration issued under the Central Act of 1860 has to be

construed as a reference to the Registrar of Societies under the Madhya Pradesh Act. Further, section 13 of the Madhya Pradesh General Clauses Act, 1957, provides that "where any Madhya Pradesh Act repeals and re-enacts, without modification, any provision of a former enactment then reference in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted. This section corresponds to section 8 of the General Clauses Act, 1897. Section 8 of the Central Act has been construed to apply also to a case when the Union Parliament repeals a State Act on the reasoning that the word "enactment" is quite general and covers both Central and State Acts: (see *State of Punjab and Others Vs. Sukh Deb Sarup Gupta*, . It has further been held that the word "instrument" in the context of section 8 of the Central Act will include a formal legal writing like an order made under a statute or subordinate legislation or any document of a formal character made under constitutional or statutory authority; (see *Sree Mohan Chowdhury Vs. The Chief Commissioner, Union Territory of Tripura*, . Section 13 of the Madhya Pradesh General Clauses Act must be construed in the light of these decisions of the Supreme Court. This section is, therefore applicable when a Madhya Pradesh Act repeals so far as Madhya Pradesh is concerned any Central Act. Further, in the light of the decision of the Supreme Court in *Mohan Choudhury vs. Chief Commr., Tripura* (supra), a certificate of registration issued under the Societies Registration Act, 1860, will amount to an instrument within the meaning of section 13 of the Madhya Pradesh General Clauses Act. As a result of this provision, the Certificate of registration of the society (Ex.p/1) which was issued under the Societies Registration Act, 1860 and which refers to be said Act had to be read after the coming into force of the Madhya Pradesh Societies Act, 1959, as issued under this Act and as referring to it".

The Division Bench went on to explain the further legal position in the above regard as follows:-

"On the same reasoning, after the Madhya Pradesh Societies Registration Act, 1959 was repealed and replaced by the Madhya Pradesh Society Registrickaran Adhiniyam, 1973, the certificate of registration would, be as issued under and referring to the 1973 Act. Thus, the certificate of registration of the plaintiff society must be deemed to have been issued under the 1973 Act and the society must be deemed to have been registered under this Act, although there is no specific provision to that effect contained in this Act. The definition of "society" contained in the 1973 Act includes "societies which are deemed to be registered under this Act." This definition itself shows that the Legislature contemplated cases where a society would be deemed to be registered. Although the legislation has failed to say expressly as to what are the societies which would be deemed to be registered under the 1973 Act, we are clear that the intention was to refer to the societies which were registered under the predecessor Acts. We have clearly shown that the plaintiff society, although initially registered under the Central Act of 1860, was deemed to be registered under the Madhya Pradesh Act

of 1959 when that Act came into force and after its repeal it must be deemed to be registered under the 1973 Act."

It was pointed out by the Division Bench that the M. P. Society Registrarian Adhiniyam, 1973 apart from providing those matters for which provisions were made in the Central Act and in the M. P. Act of 1959, contains many provisions which confer extensive powers upon the Registrar and the State Government over the affairs of the society. Section 11 empowers the Registrar to amend memorandum, regulations and bye-laws of the society if he considers that the amendment is necessary in the interest of the society. Section 21 provides that a society cannot acquire or transfer any immovable property without the prior permission of the Registrar. Section 25 provides as to what books of account are to be kept by a society. Section 26 empowers the Registrar to seize records, registers or the books of account of a society. The Registrar can also take possession of funds and property of the society through a duly authorised person. Section 28 authorises the Registrar to order a special audit. Section 32 empowers the Registrar to hold an enquiry into the Constitutional working, the financial position of the society. The Act also authorises the State Government u/s 33 to supersede society in case of mismanagement or to remove the Governing Body and appoint a person to manage the affairs of a society.

If the provisions of the 1973 Act are compared with the provisions contained in the Public Trusts Act, it will be seen that the Registrar and the State Government exercise more powers to control over a registered society than exercised by the Registrar under the Public Trusts Act over a registered public trust. The object of the Public Trusts Act was to provide for control over the affairs of a public trust. The same object is achieved in case of societies by the drastic provisions contained in the 1973 Act. According to the Division Bench, it would, therefore, be correct to say that just as a registered public trust is administered under the Public Trusts Act, a registered society is administered under the 1973 Act. A registered society formed for religious and charitable purpose is no doubt a public trust, but as it is administered under the Society Registrarian Adhiniyam, 1973 it is a Public Trust administered under "any enactment for the time being in force" within the exemption contained in section 36(1)(b) of the Public Trusts act.

According to section 36(1)(b) of the M. P. Public Trusts Act, 1951, nothing contained in the said Act shall apply to a public trust administered under any enactment for the time being in force. The Division Bench repelled the argument that the exemption u/s 36(1)(b) would apply only to a public trust administration of which is covered by a separate enactment as for example Shri Mahakaleshwar Temple at Ujjain, the administration of which was governed by Shri Mahakaleshwar Temple Act, Samvat 2009. According to the Division Bench, the language of section 36(1) (b) could not be limited in the abovesaid manner. It was pointed out by the Division Bench that the enquiry to be made for applying the exemption is whether the public trust concerned is administered under any enactment, other than the Public Trusts Act, for the time being in force. If there

is any enactment, which provides for the management and control over affairs of a public trust, the public trust would come within the exemption irrespective of the fact that the same enactment covers management and control of other public trusts of the same nature. It was concluded by the Division Bench that having regard to the provisions of the M. P. Society Registrikaran Adhiniyam, 1973, it is quite clear that they are administered under the Act and therefore a registered society will fall within the exemption contained in section 36(1)(b) of the Public Trusts Act.

In the opinion of this Court, therefore, the public trust/applicant is right in its submission that since it is a registered society and is administered under the provisions of the M. P. Society Registrikaran Adhiniyam, 1973, the M. P. Public Trusts Act, 1951 is not applicable to it. It has to be held that the proceedings commenced pursuant to the application made by the Registrar of Public Trusts, Khurai u/s 26 of the M. P. Public Trusts Act and pending in the Court of Additional Judge to the Court of District Judge, Sagar at Khurai u/s 27 of the said Act are without jurisdiction and not maintainable.

For the reasons stated above, the revision is allowed. The order dated 3-10-1985 passed by the Additional Judge to the Court of District Judge, Sagar at Khurai in Misc. Civil Case No. 7 of 1983 is set aside. It is held that the proceedings pending u/s 27 of the M. P. Public Trusts Act in the serial case, initiated pursuant to the application made by the Registrar of Public Trusts, Khurai u/s 26 of the said Act, are without jurisdiction and not maintainable. It is ordered that the said proceedings shall stand quashed and the case shall not be proceeded with any further.

However, in the circumstance, there shall be no order as to costs.