

(1989) 06 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2627 of 1989

Dinesh Kumar Jaiswal and Another

APPELLANT

Vs

The Collector, Jabalpur and Others

RESPONDENT

Date of Decision : 19-06-1989

Acts Referred:

Madhya Pradesh Public Trust Act, 1951 — Section 10, 2(4), 3, 5, 6

Citation : AIR 1990 MP 250 : (1990) ILR (MP) 142 : (1989) MPJR 906 : (1989) MPLJ 840

Hon'ble Judges : S. Awasthy, J; P.C. Pathak, J

Bench : Division Bench

Advocate : Rama Gupta, Dy. Advocate General, Ravindra Shrivastava and Y.S. Dharmadhikari, for the Appellant; Tej Kuamr Modh, Raj Kumar Verma, G. Ghate and N.S. Kale, for the Respondent

Final Decision : Dismissed

Judgement

P. C. Pathak, J.

This petition, under Articles 226 and 227 of the Constitution, has been filed for issue of a writ of certiorari to quash resolution dated 4-3-89, Annexure E, of the Cantonment Board and order dated 4-4-1989, Annexure P, of respondent No. 2, for issue of a writ of mandamus to respondents 1 to 4 to take appropriate steps to prevent alienation, waste or alterations of the trust property and to hold inquiry and formulating a scheme for administration of the trust and its property. The petitioners also pray for a writ of prohibition commanding respondents 1 to 4 to restrain respondents 6 to 9 from making reconstruction of shops 33-A and 33-D in Sadar Bazar, Cantonment, Jabalpur, which are in occupation of the petitioners as tenants of the trust.

Late Maulana Malak Saheb of Nagpur created a public trust named "Mehdi Bagh Public Trust, Nagpur". Late Hijab A. Maulana was appointed as a trustee. His son was Late Khan Bahadur Maulana Mohammed Ebrahim Riza Malak (MEN Malak) who was nominated as successor dayee. On his death, late Hasan Noorani Malak

was appointed as a trustee by order dated 7-9-1963, Annexure B. On his death, the trust property came in to possession and management of his son Amiruddin Malak, respondent No, 6.

The original trust was created on 9-6-1894 by deed, Annexure A. The trust has extensive moveable and immovable properties situated at various places constituting a nucleus for further accretions of property. Huseni Villa with out-houses including vacant land and plinth and building under construction bearing plot No. 132, area 5.40 acres, situated in Sadar Bazar, Cantonment, Jabalpur (hereinafter called "the property in dispute") was acquired for and on behalf of the trust by sale deed dated 8-1-1929, Annexure Q, by late M.E.R. Malak as a Dayee. The petitioners allege that this property forms part of the trust property, for which reliance is placed on supplementary trust deed, Annexure A/3.

It is alleged that the predecessors of respondent No. 6 began to claim various trust properties as their own. Consequently, disputes had arisen. An application (Annexure R) was made on 7-10-1953 before the Registrar, Public Trust, Nagpur, u/Section 5 of M. P. Public Trusts Act, 1951 (hereinafter called "the Act"). By order dated 11-11-1955, the Registrar held that the trust is not a public trust. The order was subjected to challenge up to the Supreme Court. By decision reported in Hasan Nurani Malak Vs. Assistant Charity Commissioner, Nagpur and Others, the Supreme Court held that the Registrar acting under the Act is enjoined upon to make entry in the Register of Public Trusts irrespective of whether the trust is found to be a public trust or not. Any person aggrieved by that finding could make the Registrar to cause an entry to be made in the Register and thereafter file a suit to set aside the finding and to have the entry corrected.

Civil Suit vide Spl. C.S. No. 143 of 1967 was filed in the Court of III Joint Civil Judge, Senior Division, Nagpur, challenging the finding of the Registrar, u/s 8 of the Act. By judgment dated 30-9-1986, Annexure C, the suit was dismissed solely on the ground that the plaintiffs are not the beneficiaries of the trust and have no locus standi to file the suit. The Court, however, held that the trust created by Maulana Malak Saheb was a public trust. The said judgment is under challenge is an appeal (R.C.A. 16 of 1987). Respondent No. 6 has filed a cross-objection in the said appeal. The appeal is still sub judice.

On 22-11-1988, respondents 7 and 8 acting as "constituted attorney for respondent No. 6" submitted an application u/s 179 of the Cantonments Act, 1924, (Annexure 4 R I), to obtain sanction for construction of a non-residential building complex on the property in dispute. On recommendation of the Building and Health Committee, as per resolution dated 27-1-1989 (Annexure D), the Cantonment Board, accorded sanction by its resolution dated 4-3-1989 (Annexure E). Armed with the sanction, respondents 6 to 9 started construction of the building and also threatened the petitioners to vacate the shops at the cost of dire consequences. All these gave rise to a serious law and order problem and the matter was also reported to the police. Police has registered a case

against them.

The petitioners, apprehending further construction and attempted dispossession, made an application on 14-3-1989 (Annexure F) to the Collector to take immediate steps for stopping construction over the trust property. The Collector/District Magistrate forwarded the application to the Registrar, Public Trusts (respondent No. 2). He passed an interim order dated 15-3-1989 (Annexure H) restraining respondents 6 to 9 from making any construction on the disputed land. The respondents filed reply denying that the property in dispute is the property of the public trust. They also questioned the jurisdiction of the Registrar and locus standi of the petitioners to make the application. The petitioners filed a rejoinder (Annexure J) that in view of the finding of the civil Court that the trust is a public trust, the Collector, Jabalpur and the Registrar, Public Trusts could exercise powers as such u/s 10 of the Act. Two separate applications (Annexures K and L) were also filed under Sections 10 and 26 of the Act along with a copy of the Civil Court's judgment with a request to take cognizance of the finding of the Civil Court, make appropriate entry in the register and to take appropriate steps to preserve the trust property from attempted wrongful conversion and misappropriation by respondent No. 6.

Respondent No. 2, by his order dated 5-4-1989, rejected the application holding that he had no jurisdiction to adjudicate upon the controversy and that Mehdi Baugh Trust is not a public trust. Aggrieved by the said order, the petitioners have approached this Court with the present petition.

Respondents 1 to 3 did not file any return. Respondents 4 and 5 filed the return that according to General Land Record, the plot in dispute was leased out to N.E.R. Malak by leased deed dated 10-11-1933. On his death on 18-6-1987, the name of respondent No. 6 H. N. Malak was mutated along with other legal heirs on 7-2-1989. On an application dated 3-12-1988, made by respondent No. 6 and other heirs, the Board sanctioned construction of shopping complex over the land in dispute according to the provisions of the Cantonments Act and the Rules framed thereunder. According to their records, the land in dispute is not recorded in the name of any public trust. Rest of the allegations were denied for want of knowledge.

Respondent No. 6 filed the return denying all the allegations in the petition. Among others, it is submitted that the public trust authority at Jabalpur has no jurisdiction to entertain any application with regard to the property in dispute since the Registrar, Public Trusts of Nagpur, who alone had the jurisdiction, recorded a finding that it was not a public trust and that finding is under challenge in an appeal pending in the Court of Addl. District Judge Nagpur. All applications filed before the public trust authority at Jabalpur are, therefore, without jurisdiction and hence this Court has no jurisdiction to grant any relief in respect of the matter which falls within the territorial jurisdiction of Bombay High Court. He also submitted that the petitioners have no locus standi to seek redress in the petition or to move any application under the M. P. Public Trusts Act

as they are not the beneficiaries of the said trust.

During the course of argument, learned counsel for the respondents pressed their objection as to the jurisdiction of respondents 1 and 2 on the applications to take any steps under the M. P. Public Trusts Act. Since the objection goes to the root of the controversy, it is essential to examine whether or not respondents 1 and 2 could take any action in respect of the property of Mehdi Baugh Trust Nagpur.

It is essential to examine the scheme of the Act. Section 2(4) of the Act defines "Public Trust". Section 3 declares the Collector to be the Registrar of Public Trusts in respect of every public trust the principal office or the principal place of business of which is situate in his district. On receipt of an application, the Registrar's has to make an inquiry u/s 5 of the Act and record a finding whether the trust is public trust or not u/s 6 and cause entries in the register in accordance with his findings. Section 10 deals with trust, the property of which is situate within the limits of more than one district, as in the present case. The Registrar is required to intimate his findings to the Collectors of all districts within whose jurisdiction any part of the trust property is situate.

From the foregoing provisions, it is clear that there can only be one Registrar for a public trust. As seen above, the Collector acquires jurisdiction to act as Registrar in respect of a public trust on the declaration of its principal office or principal place of business in the application for registration. There is no specific provision conferring power on the Registrar to determine principal office or principal place of business of a public trust. However, by implication, it can be taken that such a power vests in the Collector of that district where the application for registration is made first. His order is final subject to decision of the State Govt. in appeal, if any.

Admittedly, the application (Annexure "R") for registration of Mehdi Baug trust as a public trust was first made to the Registrar of Public Trusts, Nagpur. The said application omits to declare the principal office or principal place of business of the trust at Nagpur. It was assumed by all concerned that the principal office so also the principal place of business of the trust is at Nagpur, inasmuch as, the Registrar proceeded with an inquiry without any objection and finally recorded a negative finding. Even up to the stage of Supreme Court, it was never contended that the principal office or the principal place of business of the trust is at any place other than Nagpur. It is also not the case of the petitioners that the principal office or the principal place of business of the trust is at Jabalpur that is to say other than Nagpur. Therefore, it must be held that it is the Registrar of public Trust, Nagpur alone, who has the jurisdiction to deal with the applications complaining mal-administration, or misappropriation of Mehdi Baug Trust property, subject to the condition that the trust is registered as a public trust. That Registrar held that Mehdi Baug Trust is not a public trust. So long as this finding is not reversed in the civil appeal, even that Registrar has no jurisdiction to pass any order with regard to the trust property. In the circumstances the

remedy may be only before the Court of appeal, before whom the matter is still pending.

Even though the application for registration Annexure Q omitted to declare the principal office or the principal place of business of the trust that cannot be determined by the Registrar of public trust, Jabalpur, inasmuch as, that power vests in the Registrar before whom the application for registration was made first. We may usefully refer to *Hariram v. Mahant Raghunath Das*, (Civil Revision No. 433 /58, dt. 24-9-1959 (Jabalpur) 1960 LLJ . 41.), wherein it was held that a trust having principal office or principal place of business outside the State of M.P. is not liable to be registered under the Act even though some of its property is situated within the State of Madhya Pradesh.

Even if the petitioners were to contend that the principal office or the principal place of business of the trust is at Jabalpur, the Registrar, Public Trust, Jabalpur could not have entertained any application to that effect nor could be proceed to make any inquiry in view of the bar contained in Section 4(4) of the Act.

Our conclusion that the Act contemplates only one Registrar for a public trust having property in more than one district, is also fortified by the report of the Select Committee on the M.P. Public Trusts Bill, 1951, published in M.P. Gazette (Extra-ordinary) dated 29th Aug. 1951 at page 939. The M.p. Public Trusts Bill, 1951 (22 of 1951) was published in the M.P. Gazette (Extra ordinary) dated 24-3-1951 at page 139. The Select Committee assigned reasons for redrafting Clause 3 of the Bill as under :

"We think that the jurisdiction in respect of a trust having properties lying in different districts should be vested in one Registrar and he should deal with all matters connected with the trust. The clause has been accordingly re-drafted."

In *R.S. Nayak Vs. A.R. Antulay*, the Supreme Court held that report of the Committee which preceded the enactment of a Legislation, reports of Joint Parliamentary Committee and report of a commission set up for collecting information leading to the legislation are permissible external aids to construction of the Act. Earlier view in *The Commissioner of Income Tax, Andhra Pradesh, Hyderabad Vs. Jayalakshmi Rice and Oil Mills Contractor Co.*, was dissented in *R. S. Nayak's* case (supra). He is, therefore, of the opinion that the report of the Select Committee could be looked into to ascertain the intention of the legislature.

The petitioners made applications u/s 26 and 10 of the Act before respondents 1 and 2. Section 26 empowers the Registrar to make an application to the Court for directions, if he is satisfied that the trust property is not being properly managed or administered. Section 10 empowers the Registrar to intimate Collectors of the district where the property of the trust is situated. The respondents 1 and 2, not being the Registrar for Mehdi Baug Trust, had no jurisdiction to entertain both the applications and to pass any order on them. In the circumstances, it is not essential for us to examine whether the resolution

passed by the Contonment Board is valid or not, parti cularly so when learned counsel on behalf of respondent No. 6 made a statement at the bar that the shops occupied by the petitioners are not to be demolished nor are they likely to be evicted without recourse to due process of law.

In view of the foregoing discussions the preliminary objection raised on behalf of the respondents is upheld and the petition fails on that count alone. We, decline to examine merits of other submissions advanced on behalf of the petitioners.

The petition fails and is dismissed with costs in favour of respondent No. 6 Counsel's fee Rs. 500/-, if certified.