
(2015) 09 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1860 of 2014

Mahant Bhagwandas and Others

APPELLANT

Vs

Vishnu Goyal and Others

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Public Trust Act, 1951 — Section 25, 25(2), 26, 7, 9

Citation : (2015) 3 JLJ 340 : (2016) 1 MPLJ 173

Hon'ble Judges : Rohit Arya, J.

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; Santosh Agrawal, for the Respondent

Final Decision : Disposed Off

Judgement

Rohit Arya, J.—Heard on admission. By this petition, under Article 226 of the Constitution of India, challenge is made to the order dated 30.1.2014 passed by respondent No. 2, in compliance of the order passed on 10.5.2012 by a Coordinate Bench of this Court in Writ Petition No. 5047/2009. It is considered apposite to quote the operative part of the order dated 10.5.2012, which reads as under:

"The prayer made in this petition is for quashment of the order dated 5.10.2009 passed by respondent No. 2 on the application filed by respondent No. 1.

With the consent of the parties, this petition is disposed of with a short direction that both the parties shall appear before respondent No. 2, who shall consider the objections filed by the petitioners on the application filed by respondent No. 1 by passing a reasoned order.

It is made clear that before proceeding further, the respondent No. 2 shall first determine the question relating to jurisdiction.

With the aforesaid direction, the petition stands disposed of."

2. Facts necessary for disposal of the writ petition are in narrow compass. Trust by the name of Shri Laxminarayan Ji Maharaj, Bhujaria Talab Guna, was registered as Public Trust by the order of Registrar dated 3.7.1980 in Case No. 3-B/113/76-77. Smt. Kanchi Bai (since deceased) was appointed as Trustee. However, entry in that behalf was not made in the Register under section 7 of the M.P. Public Trusts Act, 1951 (for short "the Act"). The same was recorded on 3/7/1990 by a separate order. Prior to that, Kanchi Bai had died on 2.6.1990. As such, the Trust was without Trustee. Respondent No. 2, on 4.10.1990 had passed an order (Annexure R-2), whereunder, though no Trustee was appointed, yet, to ensure regular offering of Puja in the temple of Trust and for protection and management of the property of Trust, one Narottam Das was appointed as Pujari (Manager). It was further observed that separate proceedings shall be initiated for appointment of Trustees.

At this stage, it is relevant to quote clause 5 of the constitution of Trust, which reads as under:

Therefore, the Trustee is to be appointed from amongst the disciple, Guru Bhai or Guru Bahin of Mahant by way of succession.

3. The aforesaid order dated 4.10.1990 has been challenged on 4.4.1991 by way of suit for declaration by the present petitioner No. 1, which is pending consideration before the trial Court, for declaration that the plaintiff is the trustee of the Trust and, therefore, the order treating him as only Pujari (Manager) was illegal; seeking further declaration that defendants No. 1 and 2 had no jurisdiction to increase the number of trustees by resorting to the process of appointment of new trustees.

4. It appears that on 31.1.2008, respondent No. 2 has passed an order under section 9 of the Act for substitution of name of the present petitioner Mahant Bhagwandas alias Fakkadbaba Guru Narottam Das in place of Kanchibai and Mahant Narottam Das for Seva and Puja of the temple, and not as trustees. It further appears that an application (Annexure P-6) was filed under sections 9, 25 and 26 of the Act for appointment of Trustees before respondent No. 2. Vide order dated 5.10.2009, respondent No. 2 observed that vide order dated 31.1.2008 name of Narottam Das which was recorded as Pujari (Manager) has been substituted by that of the petitioner in the same capacity, and not as a trustee and as there were no trustees, the matter was deferred for proceedings under sections 9, 25 and 26 of the Act. The said order was under challenge in Writ Petition No. 5047/2009, as indicated above.

5. Respondent No. 2, while passing the impugned order in compliance of the order passed by this Court dated 10.5.2012 in Writ Petition No. 5047/2009 (supra), has held that the trust is a Registered Trust and, therefore, he has power to change the name of trustees and as regards appointment of trustees, he deferred the proceedings till the next date. Therefore, as on date, respondent No. 2 has not taken a final decision as regards appointment of trustees.

6. In the light of the aforesaid facts and circumstances, it is clear that no trustee has been appointed after death of Kanchi Bai. Only Pujari has been appointed for offering Puja and for management of the temple.

7. Learned counsel for the petitioners, while challenging the aforesaid order, has contended that the aforesaid order is contrary to the directions issued by this Court vide order passed in Writ Petition No. 5047/2009 (supra). It is submitted that respondent No. 2 ought to have first considered whether he has jurisdiction to decide the representation filed under sections 9, 25 and 26 of the Act, before entering into the merits of the representation. According to learned counsel for the petitioners, respondent No. 2 has not decided his own jurisdiction. It is further contended that as a matter of fact petitioner No. 1's name has already been recorded as a trustee by order dated 31.1.2008 and, therefore, there is no vacancy for appointment of Trustee in the Trust. Hence, the application filed by the respondents, ought to have been dismissed.

8. Having perused the order passed by respondent No. 2 on earlier occasion and the order passed by this Court, in the opinion of this Court, the contention advanced by the petitioners is fallacious. As a matter of fact, respondent No. 2 has addressed on the issue of jurisdiction and rightly held that the Trust being a registered Trust, he has jurisdiction to make entries in the Register and also amend the entries under section 9 read with section 25 of the Act. The aforesaid order is passed in compliance of this Court's order dated 10.5.2012 (supra).

9. The second contention of learned counsel for the petitioners is that as the trustee has already been appointed, no further action in the matter of appointment of trustee is required and, therefore, respondent No. 2 has no jurisdiction to proceed further in the matter of appointment of trustees.

10. The second contention is also based upon misconceived notion about the order passed by respondent No. 2 on earlier occasion and misplaced facts. Respondent No. 2, after the death of Kanchi Bai, has not appointed any Trustee up till date. Instead, vide orders dated 4.10.1990 and 31.1.2008, he had only appointed Pujari for offering Puja and management of the temple.

11. Section 7 of the Act empowers the Registrar to make entries in the Register as regards Trustees. Section 9 empowers him to record the changes brought in the Trust or Trustees. Section 25 deals with vacancies and contemplates that as soon as vacancy occurs in the Board of Trustees, the working Trustee shall inform the Registrar of such vacancy and the time within and the manner in which, he proposes to fill the same. On receipt of such information, the Registrar may, if considers necessary, issue directions to the working Trustee regarding the filling of such vacancy, not inconsistent with any instrument of the Trust or the mode of succession specified in the Register. The working Trustee is obliged to abide by the aforesaid directions. However, if the working trustee fails to give any such information as regards vacancy, or fails to fill the vacancy or comply with the directions issued by the Registrar, Registrar may, by order passed in writing, fill

the vacancy. Any person having interest in the Public Trust is set at liberty to challenge the order of the Registrar in the Court within 30 days from the date of order.

12. As such, no Trustee exists. Registrar, therefore, is under an obligation to appoint the trustee in accordance with the constitution of the Trust. However, as indicated above, the Registrar is yet to take a decision in the matter of appointment of trustees and, therefore, the second contention is also fallacious and deserves rejection.

13. In the opinion of this Court, this writ petition is premature. Respondent No. 2 is justified in resorting to proceedings for appointment of the Trustees. Parties are at liberty to participate before respondent No. 2, as well as, to raise all the pleas available to them on facts and in law. However, it is considered apposite to observe that the Registrar shall appoint the Trustees in accordance with the mode of succession provided for in clause 5 of the constitution of Trust, as indicated above, in the light of provisions contained in section 25(2) of the Act. With the aforesaid observations, this petition is disposed of. Needless to observe that if any of the parties or any person, is aggrieved by the order of the Registrar, he may question the same, if so advised, as provided for in sub-section (3) of section 25 of the Act.