

(2017) 02 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No.11723 of 2012

Mahavir Trust Indore

APPELLANT

Vs

The Registrar, Public Trust Indore

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 182(2)
Madhya Pradesh Public Trusts Act, 1951 — Section 4, 8, 9, 9 (1), 13, 14, 15, 20, 22,
23, 24, 25, 26, 33, 37

Citation : (2017) 3 MPLJ 152 : (2017) 2 JabLJ 33

Hon'ble Judges : Shri Vivek Rusia, J.

Bench : Single Bench

Advocate : Shri A.K. Sethi, senior counsel with Shri Vishal Baheti, Advocate, for the Petitioner; Shri Sanjay Karanjawala, GA, for the Respondent No. 1; Is present in person, for the Respondent No. 2; Shri Vijay Asudani, Advocate, for the Intervener

Final Decision : Allowed

Judgement

Shri Vivek Rusia, J.—Petitioner has filed the present petition being aggrieved by the order dated 8.11.2012 passed by the Registrar, Public Trust, Indore in case No.55/B/113/2011-12 by which petitioner/Trust was directed to seek appropriate directions from the District Judge, Indore under section 26 of the M.P. Public Trust Act.

2. Facts of the case are as under. According to the petitioner, Mahavir Trust, Indore is a registered Public Trust represented through Mr. Pradeep Singh Kasliwal. Vide deed dated 31.5.1975, the Trust was formed. The purpose of the Trust was to spread the principles of Bhagwan Mahavir by way of His literature and speeches and to work for the betterment of the principles of the Jain Community. At present there would be maximum 25 Trustees in the Trust and there were 25 numbers at the time of formation of the Trust and the mode of appointment is provided in the clause 8 and there is a provision of formation of Trust Committees and Management Committees. The duties and rights of the

President and other office bearers are also mentioned in the Trust deed.

3. Petitioner was allotted a piece of land admeasuring 42536 sq. ft. of plot No.403 for establishment of research institute and Bal Kalyan Kendra by the State Govt. vide deed dated 20.5.1986. Petitioner Trust applied to the Govt. for grant of permission for construction of shopping arcade on 12117 sq. ft. Vide order dated 14.9.1995 the said permission was granted with a premium of Rs.72,70,200/- and annual rent at the rate of Rs.5,45,265/-. After construction shops were liable to be allotted by way of bid by the Collector, Indore. Petitioner deposited the aforesaid amount in the Treasury of the State Govt. Petitioner applied for sanction of the lay out plan before the T & CP, Indore which was granted vide order dated 27.01.1996. The Municipal Corporation, Indore has also granted the building permission vide order dated 26.2.1996 for construction of shopping arcade on ground, first, second and third floor with Kirthi Stumbh, Bal Kalyan Kendra and Research Centre. The commercial use was restricted up to 12000 sq. ft. area. According to the petitioner they used only 4500 sq. ft. area for commercial activities. Under section 14 of the M.P Public Trust Act permission was granted to the petitioner to give the shop on rent basis. By way of public notice published in the newspaper applications were invited by way of sealed tenders. The highest bid was opened in favour of respondent No.5. After construction the State Govt. again granted permission to let out the premises to the Corporation Bank on lease. Respondent No.1 has also granted permission to the said effect vide order dated 11.9.2000.

4. In the year 2006 petitioner Trust submitted an application to complete the remaining work to the Municipal Corporation, Indore. The said letter was sent to the Nazul Department for no objection. The Collector, Indore has issued a notice to the petitioner and sought explanation as to how the entire construction was not completed within 3 years as per the terms of the lease deed. Meanwhile, petitioner applied for permission before the State Govt. for extension of period of construction. The State Govt. vide order dated 7.12.2006 granted further three years time for construction of research centre and Bal Kalyan Kendra. Petitioner has executed the bond in favour of the State Govt. In pursuant to the said extension the Collector vide order dated 20.8.2008 cancelled the notice issued under section 182(2) of the M.P. Land Revenue Code.

5. The Nazul Officer, Indore granted NOC vide letter dated 27.8.2008 for the purpose of grant of permission to the petitioner for construction work. The Municipal Corporation, Indore has granted building permission vide order dated 8.10.2009 in the remaining area. On the basis of said permission petitioner commenced work of construction. Again the petitioner has applied for extension of period of construction and the same was granted for a period of two years vide order dated 28.6.2011. According to the petitioner the Trust was regularly sending audit report, change in the Trust and copies of the minutes of meeting time to time to the Registrar, Public Trust and has also not violated any condition of the lease.

6. Respondent No.4 being a stranger to the Trust made a complaint to the respondent No.1 against the petitioner Trust and on the basis of the said complaint respondent No.1 issued a show cause notice dated 11.5.2012 to the petitioner and simultaneously directed petitioner to stop construction on following grounds (i) violation of condition of Trust deed No.1(2) and 1 (5). (ii) change in the use of the land to the commercial activities. (iii) not paid the lease amount of Rs.24,91,921/- and also proposed why the lease deed of survey No.402 be cancelled under section 182(2) of the M.P. Land Revenue Code, 1959. Petitioner challenged the aforesaid show cause notice and the stay order dated 11.5.12 in writ petition No.5140/12. Vide order dated 23.7.2012 writ petition was disposed of with direction to the Additional Collector to pass final order in respect of show cause notice within 3 months. Petitioner submitted the detailed reply to the said show cause notice and also deposited amount of Rs.16,35,794/- and Rs.5,45,265/- as lease rent. Petitioner also made a representation to the Principal Secretary, Revenue Department to sent a clarification about the construction made by the petitioner.

7. Vide impugned order dated 21.12.2012 the Additional Collector has found that the petitioner has violated the terms and conditions of the lease deed and did not construct the Bal Kalyan Kendra and research centre within 3 years which was the main object of the Trust. The stay order granted earlier was made absolute and the petitioner/Trust was directed to approach the State Govt. to get the position clear about the commercial use of the land.

8. Being aggrieved by the aforesaid order, petitioner filed the present petition. In the present petition notices were issued to the respondents and the Govt. filed the return justifying the action of the Collector and submitted that land was given to the petitioner on concession rate for fulfilling the aims of the Trust but they started using and land for commercial use. The research centre and Bal Kalyan Kendra has not been constructed so far. It is also submitted that the order passed by the Collector is appealable under the provisions of the M.P.L.R. Code and prayed for dismissal of the writ petition.

9. That the respondent No.2 filed an application against the petitioner Trust under section 26 of the M.P. Public Trust Act before the Registrar, Public Trust alleging that the Trust has not filed audit reports, balance sheet since 2006. They are commercially using the land which would be given for the purpose of spreading the message of Bhagwan Mahavir and has failed to achieve this objects. No election of Trustees are being held, therefore, requested the District Magistrate to call the record of the Trust, minutes book, resolution, tenancy agreement etc. The District Registrar issued notice to the petitioner who has submitted an objection in writing and along with the said objections petitioner filed copy of letter dated 16.8.99 send to the Registrar about the change taken place in the Trust. The list of Trustees removed and appointed in the meetings dated 3.2.80 till 14.3.99 has been supplied with the request to record in the official record. The audit reports have also been filed vide various letters till 2010

which are duly certified by competent authority. Various minutes of the meeting were filed by which certain decisions were taken by the Trustees in the interest of Trust. The Registrar, Public Trusts recorded statement of complainant as well as petitioner and passed the final order dated 8.11.12. Vide impugned order the Registrar has directed the working Trustees to submit an application before the District Judge under section 26 of the M.P Public Trust Act for obtaining direction about mismanagement and the activities of Trust contrary to the aims and objects of the Trust. While passing the order the Registrar has formed the opinion that there is no record available regarding appointment of Pradeep Singh Kasliwal as Trustee, therefore, he has no locus to represent the Trust. The Trust has not completed the construction work of research centre and Bal Kalyan Kendra within 3 years which is in violation of condition No.5 (6) of the lease deed. There is a violation of section 14 of the Trust Act, 1951.

10. Being aggrieved by the aforesaid order, petitioner has filed the present petition.

11. State Govt has filed the return in which it is specifically disputed that minutes of the Trust meeting (Annexure P/24) by which Pradeep Kumar Singh Kasliwal was appointed as Trustee has not been filed before the Registrar, Public Trust. No information was given that Mr. Pradeep Singh Kasliwal was appointed as President of the Trust which is required to be given within 90 days from the date of election. Since he was not appointed as Trustee, therefore, he cannot be elected as President. The irregularities committed by the Trust which are in violation of the lease conditions is the subject matter of W.P.No.3802/13 and W.P.No.6933/13.

12. Respondent No.2 has filed return in which he has highlighted various irregularities committed by the Trust in violation of the provisions of the Trust Act. According to him once the Trust is formed then it is mandatory on the part of the Trustees to follow the provisions of the M.P. Public Trust. There is no appointment of Trustee and office bearers. The entire Trust is in the exclusive control of Mr. Pradeep Singh Kasliwal who is making money from the property of the Trust. He has submitted that the Registrar has rightly passed the order referring the dispute to the District Judge and prayed for dismissal of the writ petition.

13. I have heard learned counsel for the parties and respondent No.2 in person.

14. So far the violation of conditions of lease deed are concerned in respect of which writ petition No.3802/13 and writ petition No.6933/13 were filed by the petitioner and respondent No.2. These writ petitions have been decided by this Court in which State Govt has been directed to decide the issue of extension of lease which has been expired in the year 2016 and whether the petitioner Trust has violated the conditions of the lease, therefore, the same is not required to be decided in this petition. The directions given in the writ petition No.6933/13 and W.P. No.3802/13 shall apply in this petition also.

15. The only controversy which is required to be decided in this petition is whether the Trustees were appointed from time to time and whether the information was given to the Registrar, Public Trusts by the petitioner and whether the Registrar was competent to pass the order under section 26 by directing the working Trustees to approach the District Court?.

16. That section 9 of the M.P. Public Trust Act, 1951 provides that where any change occurred in any of the register of the Trust the working Trustee shall within 90 days from the date of occurrence of such change report to the Registrar in the prescribed manner and under sub section (2) the Registrar if satisfied about the change he shall record a finding with reasons and amend the entries in the said register. If any person is aggrieved by the entries made by the Registrar under section 9 he is having a remedy under section 8 to file a civil suit. Chapter IV of the Act of 1951 deals with the audit and it is duty of the working Trustee or the Manager to maintain the balancing and auditing of the accounts and it is the duty of the auditor to prepare balance sheet and report any irregularities to the Registrar within whose jurisdiction the Public Trust has been registered. The budget and balance sheet shall be available for inspection in the office of Registrar by any person. Even the certified copy can be issued to the person interested under section 20. Section 22 gives power to the Registrar to enter and inspect any property belonging to the Trust and call the extract from any proceeding of the Trust or any book or account in possession of the Trustees. If in the opinion of the Registrar there is any material defect in the audit report submitted by the auditor and any defect in the administration of Public Trust the Registrar may enquire the working Trustees to submit an explanation and if on consideration of the report, reply and after holding the enquiry satisfied that Trustee or any other person has been guilty of gross negligence or breach of trust, misconduct etc. he shall determine the amount of loss caused to the Public Trust and may direct him to pay the said amount subject to the confirmation in appeal under section 24. Under section 23 it is the duty of the Registrar to record finding about the loss caused to the Public Trust and whether such loss was due to any breach of Trust or misconduct by any Trustee or other person and whether he is liable to pay to the Public Trust of such loss.

17. Section 25 provides that the working Trustee shall as soon as the vacancy occurs in the Board, inform the Registrar of such vacancy from time to time. On receipt of such information the Registrar may direct the working Trustee to fill up such vacancies. If the working Trustee fails to give such information the Registrar may pass order in writing to fill the vacancies and this order is also liable to be challenged before the Court within 30 days. That this Court has considered the scope of section 25 of the M.P. Public Trust Act in the case of Phoolchand Jain and others v. Registrar, Public Trusts, Satna, Madhya Pradesh and others reported in 1973 MPLJ 658. Para-5 of the said order is reproduced below:-

5. The learned counsel for the petitioners further urged that the Registrar of Public Trusts is empowered to fill in the vacancies in the Board of trustees, but he

cannot declare the existing trustees to have vacated their office, or he cannot remove them and for removal or for appointment of new trustees, the matter has to be referred to the District Court, as per section 37 of the Act. This contention is based mainly on the interpretation of section 25 of the Act, which is as follows:

"S.25. Filling of vacancies- (1) Where a public trust is under the management of a Board of trustees, the working trustee shall, as soon as a vacancy occurs in the Board, inform the Registrar of such vacancy and the time within and the manner in which he proposes to fill the same.

(2) On receipt of such information, the Registrar may, if he considers it necessary, issue any directions to the working trustee regarding the filling of such vacancy not inconsistent with any instrument of trust or the mode of succession specified in the register and the working trustee shall comply with any such direction.

(3) If the working trustee fails to give any such information or to fill the vacancy within the time specified by him or comply with any direction issued by the Registrar, the Registrar may, by order passed in writing, fill the vacancy and any person having interest in the public trust who may be aggrieved by the order of the Registrar, may apply to the Court for setting aside the order of the Registrar within thirty days from the date of such order."

The clear implication of sub section (3) is that in case the working trustee fails to fill the vacancy within the time specified by him or comply with any direction issued by the Registrar, the Registrar has the power to fill the vacancy and any person aggrieved by such order has the right to apply to the Court, namely, the District Court, for setting aside the order of the Registrar within thirty days from the date of such order. Thus, the Registrar can take action under sub section (3) of section 25 of the Act to give direction to the working trustee and he can also call for information from the working trustee and ask him to fill the vacancy. The contention of the learned counsel for the petitioners was that the phrase "filling up the vacancy" means individual vacancy and not holding of the general election of all the trustees. In this connection we might observe that the wording of sub section (3) of section 25 of the Act is wide enough to include the power to give a direction in the matter of holding general election and if such direction is not complied with, can be Registrar fill up the vacancies thus created in the Board of Trustees? The Registrar in the present case had called upon the working trustee to hold the elections as the last appointment of the trustees was in the year 1965, and, according to the trust deed, the election of the trustees must take place in the month of "Kunwar" after every three years in a general annual meeting of the members of the trust. It is also provided that in the event of a vacancy in the Board of Trustees, the vacancy would be filled up by election by primary members of the trust in a general meeting and the manager would be appointed by the trustees and the post of the manager would be a paid office. As such, the election of the trustees was due in the year 1968. But in spite of a direction given by the Registrar of Public Trusts, no action was taken by the

managing trustee and, therefore, the Registrar purported to act in the manner that he did.

18. Under section 26 if the Registrar is satisfied on an application by any person interested in the Public Trust or otherwise is satisfied that the original object of the Trust has failed or the Trust property is not being properly managed or administered or the direction of the Court is necessary for the administration of the public Trust, he may give the working Trustee an opportunity to be heard direct such Trustee to apply to Court for directions. If the Trustee fails to make any application the Registrar shall make an application to the Court.

19. The power under section 26 to the Registrar is confined to three conditions mainly where the Trust has failed its object and the property is not being properly managed and the direction from the Court is necessary. Before passing the order under section 26 the Registrar has to record a finding under section 23 that if there is any loss caused to the Public Trust and ascertain the amount and so far the allegations of non filling of vacancies of the Trust the Registrar is required to decide under section 25. Under section 25 it is obligatory on the part of the Registrar to direct the Trustees to comply the directions for filling vacancies. The order passed under section 25 is liable to be challenged before the Court. The order passed under section 23 is appealable to the District Court. The duty of the Registrar is to make efforts to fill the vacancies and also to make an enquiry about the working of the Trust and about the losses caused to the Trust then either he can refer the dispute to the civil Court or person aggrieved may make application before the civil court, therefore, so far the appointment of Trustees of the Trust is concerned it is the duty of the Registrar to take steps under section 23 for appointment of the Trustees.

20. Petitioner has submitted that they have submitted the list of change of Trustees vide letter dated 16.8.1999 from 3.2.1980 till 14.3.1999. The State Govt in their reply has denied that office of the Registrar has not received these applications. It is surprising that how the State Govt has made such a statement in the return about the non receipt of this information because the petitioner has obtained these documents and information under the Right to Information Act from the Public Information Officer, district Collectorate, Indore. When the petitioner had not furnished this information to the Registrar then how these informations have been supplied under the Right to Information Act to him. When this information has been given to the Registrar then it was his duty to record the change in the register. He was bound to pass the order under section 9 and if he was not satisfied he could have directed the Trust under section 23 to fill the vacancies.

21. Though there is a duty on the working Trustee to give the information about the change before the Registrar within 90 days but the consequence has not been given in the Act on account of failure to give such informations. The only action which can be taken is imposition of penalty under section 33 which speaks that whoever contravenes any provision of sections 4,9,13 or 15 shall be

punished with fine which may extend to Rs.1000/-. At the most the petitioner can be punished with the penalty for non furnishing information. But when such an information has already been provided to Registrar as held above then the Registrar was bound to record these entries in the register, therefore, the Registrar has wrongly held that there was no information about the change under section 9 in the Trust. The impugned order to that effect is liable to be set aside and so far as the violations of lease conditions are concerned the State Govt has already been directed to decide the same.

22. Shri Asudani, learned counsel on behalf of the intervener has filed the certified copy of the order dated 4.11.16 along with index by which the Collector has rejected the list furnished under section 9 (1) of the Trust Act only on the ground that petition is pending before the Court and petitioner may file before the civil Court directly. No affidavit in support of this application is filed when the matter was subjudice before the High Court then the Registrar ought not have passed this order but one thing is clear that there was information about change under section 9 submitted by the petitioner and the Registrar was bound to consider the same. Under section 9 only the Registrar's satisfaction is necessary to the effect that such a change has occurred or is necessary to be recorded in the register. If the working Trustee fails to fill the vacancies of the Trust under section 25 the Registrar may give a direction to the working Trustee with regard to filling of such posts of Trustees, therefore, it is the duty of the Registrar to see there should not be any vacancy of the Trustees and he should make efforts so that posts may be filled, therefore, there is no provision to reject the list sent by the working Trustees about the new appointed Trustees. If the Trustees are not appointed in accordance with the Trust deed then he may direct the Trust to send the list again because Trustees must be appointed, therefore, impugned order is set aside and the matter is remitted back to the Registrar to take decision on the information sent by the petitioner under section 9 under the provisions of the M.P. Public Trust Act as discussed above. The aforesaid direction has been issued with the purpose that the Trustees must be appointed to regularize the working of the Trust and thereafter they can represent the State Govt. for extension of the lease deed. Respondent No.2 has also made a complaint only in the interest of Trust that there should be a proper appointment of Trustees and properties of the Trust be utilized in the interest of the society. This can only be done by appointing Trustees as per the Trust Deed and to start the proper functioning of the Trust, therefore, it is the duty of the Registrar to see the working of the Trust must start after appointment of all Trustees and office bearers in accordance with Trust Deed and provisions of the M.P. Public Trust Act.

23. The Registrar, Public Trust, Indore is directed to decide the application under section 9 filed by the petitioner or if necessary he can exercise power and authority under section 25 of the Act for filling of vacancy of Trusty in the Mahavir Trust, Indore.

24. Writ petition is allowed. No order as to cost.