

(1973) 02 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 395 of 1972

Phoolchand Jain and Others

APPELLANT

Vs

Registrar, Public Trusts, Satna, M.P. and Others

RESPONDENT

Date of Decision : 22-02-1973

Acts Referred:

Madhya Pradesh Public Trust Act, 1951 — Section 25(3), 33(2)

Citation : AIR 1974 MP 55 : (1975) ILR (MP) 647 : (1973) JLJ 822 : (1973) 18 MPLJ 658

Hon'ble Judges : P.K. Tare, C.J.;S.M.N. Raina, J

Bench : Division Bench

Advocate : B.C. Verma, for the Appellant; R.K. Samaiya, for the Respondent

Judgement

Tare, C.J.

This is a petition under Articles 226 and 227 of the Constitution of India, against the order, dated 2-5-1972 (Petitioner's Annexure-C). passed by the Sub-Divisional Officer. Raghurajnar, appointing trustees in place of other trustees and imposing a fine of Rs. 250/-, purporting to act u/s 33(2) of the Madhya Pradesh Public Trusts Act, 1951, for an alleged contravention of Section 25 (2) of the said Act. The petitioners challenged the said order mainly on the grounds that the Sub-Divisional Officer. Raghurajnar, had no jurisdiction to exercise the powers of the Collector as Registrar of Public Trusts and secondly, he had no territorial jurisdiction, which according to the petitioners, vested in the Sub-Divisional Officer, Nagod. The further ground urged on behalf of the petitioners is that the power to remove the trustees did not vest in the Registrar of Public Trusts, but the same could be exercised by the District Court only and, in any case, no fine could be imposed by the Sub-Divisional Officer, functioning as Registrar of Public Trusts.

Taking up the question of jurisdiction of the Sub-Divisional Officer, Raghurajnar, we may observe that although according to Section 3 of the M. P. Public Trusts Act, 1951, the Collector is the Registrar of Public Trusts, Section 34-

A of the Act empowers the Registrar to delegate his powers to a Revenue Officer, not below the rank of a Sub-Divisional Officer. The said section is as follows:--

"Section 34-A.-- Delegation of powers by Registrar.-- Subject to the provisions of this Act and to such restrictions and conditions, as may be prescribed, the Registrar may, by order in writing, delegate all or any of his powers and duties under this Act to any revenue officer of his district not below the rank of a Sub-Divisional Officer."

In pursuance of the powers conferred by the Section, the Collector, namely, the Registrar of Public Trusts, Satna, by order No. 1009/R/63, dated 13th August, 1965 (a certified copy of which has been filed on record) delegated the powers to the Sub-Divisional Officers in the following words:

"In exercise of the powers conferred on me u/s 34-A of the M. P. Public Trusts Act, 1951. I hereby delegate all my powers and duties under this Act to the Sub-Divisional Officers in respect of their jurisdiction as Sub-Divisional Officers.

Sd/- K. G. Telang Registrar-cum-Collector, Public Trusts. District Satna."

Thus, the Registrar having delegated the powers and duties to the Sub-Divisional Officers, no exceptions can be taken of the fact that the Sub-Divisional Officer, Raghurajnagar, exercised powers in the present case. That is an objection without any basis.

As regards the territorial jurisdiction it is true that the Sub-Divisional Officers are empowered to try cases within their jurisdiction as Sub-Divisional Officers. The contention of the learned counsel for the petitioners was that the temple known as "Shri digamber Jain Mandir Singhpur is located in Tahsil Nagod and, therefore, the Sub-Divisional Officer, Nagod, only is empowered to try the present case. In this connection attention was invited to the fact that the petition originally was filed on 5-2-1970 before the Sub-Divisional Officer, Raghurajnagar. Therefore, it is contended that the presentation itself was invalid. The Sub-Divisional Officer, Raghurainagar, sent the case to the Sub-Divisional Officer, Nagod, who tried the same till 31-8-1971 and on that date, the Sub-Divisional Officer, Nagod sent back the case to the Sub Divisional Officer, Raghurajnagar. Therefore, it is contended that all the proceedings before the Sub-Divisional Officer, Raghurajnagar, are null and void as being carried without jurisdiction.

In this connection it is pertinent to note that according to Section 3 of the M. P. Public Trusts Act, 1951 the Collector is the Registrar of Public Trusts in respect of every public trust the principal office or the principal place of business of which as declared in the application made under Sub-section (3) of Section 4 is situate in his district. The application for registration is on record as respondents' Annexure-A (to be found at pages 26 and 27 of the Paper-Book). In the said application it is clearly mentioned that the head-office of the trust shall be at Santa and a branch office shall be at Singhpur. Raghurajnagar is a part of the town of Satna and consequently, the Sub-Divisional Officer, Raghurajnagar, had

the jurisdiction to try the present case as the head office of the trust is located within his jurisdiction. Thus, there is no substance in the contention raised on behalf of the petitioner that the Sub-Divisional Officer, Raghurajnagar, had no territorial jurisdiction to try the present case. In fact, the Sub-Divisional Officer, Raghurajnagar, alone had the jurisdiction and the place where the branch office may be located may or may not have jurisdiction. However, we do not propose to decide that question in the present case.

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:

"Section 25. Filling of vacancies. -- (1) Where a public trust is under the management of a Board of trustees, the working trustees 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 trustees 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 the Registrar fill up the vacancies thus created in the Board of Trustees? The Registrar in the present case had called upon the working trustees

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.

It is clear that the Registrar has the power to give a direction to the managing trustee to hold elections as required by the constitution of the trust. But the further question is as to what is to be done if that order is not complied with. It was urged on behalf of the petitioners that fresh elections were held on 28-11-1971 and, therefore, the direction should be deemed to have been complied with. It is also urged that an intimation to that effect was given to the Sub-Divisional Officer, Nagod, on 1-12-1971. From the record we do not find any such thing. The order of the Sub-Divisional Officer, functioning as Registrar, was passed on 2-5-1972, and the petitioners had appeared before him on the relevant dates. As such, the petitioners very well knew that the case had been sent back to the Sub-Divisional Officer, Raghurajnagar, and the Sub-Divisional Officer Nagod, had no seisin of the case. Thus, there would be no point in intimating the Sub-Divisional Officer, Nagod, of any fresh election that might have been held. However, there is nothing on record either in the return or in the shape of documents to conclude that any such election had been held by the managing trustee. Therefore, we conclude that no such election had been held. The real question is whether the Registrar could nominate all the trustees treating the office of the trustees vacant because of non-compliance with his directions we may observe that the process involves removal of the present trustees and nominating fresh ones upon failure of the managing trustee to hold the elections. As per the terms of the trust-deed, we do not find that the trustees are to vacate the office automatically after the period of three years, although the provision is that election should be held every third year in the month of Kunwar. Therefore, if elections are not held, the Registrar can Certainly give a direction to the managing trustee to hold such elections and in the event of non-compliance, the only course open to the Registrar will be to apply to the Court for removal of the trustees and for appointment of fresh trustees. But, we do not think that the Registrar himself has the power to nominate the trustees. In this connection it is pertinent to note the provision of Section 27 (2) of the Act, which is as follows: --

"Section 27.-- Court's power to hear application.-

(1)

(2) While exercising the power under Sub-section (1) the Court shall among

other powers, have power to make an order for-

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (d) Providing a scheme of management of the trust property;
- (e) directing how the fund of a public trust whose original object has failed, shall be spent, having due regard to the original intention of the author of the trust or the object for which the trust was created;
- (f) issuing any directions as the nature of the case may require."

Further on, Sub-section (3) of the said Section provides for an appeal to the High Court and Sub-section (4) further provides that no suit relating to a public trust u/s 92 of the CPC shall be entertained by any Court on any matter in respect of which an application can be made u/s 26. Thus, as the process involves removal of the existing trustees and "appointment of fresh trustees, we think that that power can only be exercised by the Court and the word "Court" as per Section 2 Sub-section (1) of the Act means the principal civil court of original jurisdiction in the district, which means the Court of the District Judge or the Court of the Additional District, Judge, if the District Judge empowers him in that behalf u/s 7 (2) of the M. P. Civil Courts Act 1958. Thus, from any point of view we feel that the Registrar had no power to nominate fresh trustees upon failure of the managing trustee to hold election. But the only course left open to him was to apply to the District Court for removal of the existing trustees and for appointing fresh trustees in the event of non-compliance by the managing trustee in the matter of holding elections in the month of Kunwar after three years.

The learned counsel for the petitioner also urged that the penalty as contemplated by Section 33 of the Act could not be imposed by the Registrar, but for any contravention, the proper course would be to prosecute the guilty persons before a Magistrate, who alone would be competent to impose the penalty. In this connection we may note the provision of Sub-section (2) and Sub-section (3) of the said Section 33 of the Act which is as follows:--

"Sec. 33 (2).-- Whoever contravenes any of the provisions of this Act for which, no specific penalty has been provided by this Act, shall be punished with fine which may extend to two hundred and fifty rupees."

As there is no special procedure for trial of contravention of the provisions of the Act, the trial has necessarily to be under the provisions of the Code of Criminal Procedure. In this connection we might advert to the observations of a Division Bench of this Court in *Hiralal Singhai v. Collector and Registrar Public Trusts*. Damoh. 1961 MPLJ 1123. As such, the order passed by the Registrar imposing penalty is also illegal and the same is liable to be quashed.

As a result of the discussion aforesaid, we hold that the order of the Registrar of Public Trust nominating trustees after removal of the existing trustees and also imposing penalty cannot be sustained in law, although we uphold his order to the extent that he could give a direction to the managing trustee to hold the general elections. But in that event of non-compliance, he was required to move the District Court for removal of the trustees and for appointment of fresh trustees and he should also prosecute the guilty persons for non-compliance and have them punished u/s 33 (2) of the Act by a regular Criminal Court. Therefore, we quash the order to the extent of the directions which are found to be illegal and further we hold that the Registrar shall be free to apply to the District Court as also to order prosecution of the guilty persons before the regular Criminal Court. The petition, therefore, partly succeeds and is allowed to the extent indicated. However, under the circumstances, we make no order as to costs, which shall be borne as incurred. The outstanding amount of the security deposit shall be refunded to the petitioners.