

(1992) 11 MP CK 0035
In the Madhya Pradesh High Court
Case No : S.A. No. 164 of 1983

Raj Kumari and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 12-11-1992

Acts Referred:

Madhya Pradesh Public Trust Act, 1951 — Section 5, 6, 7, 8

Citation : (1993) ILR (MP) 143 : (1992) 2 MPJR 347 : (1993) 38 MPLJ 465 : (1993) MPLJ 465

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : D.P. Sharma, for the Appellant; M.G. Khedkar, Government Advocate, for the Respondent

Judgement

R.C. Lahoti, J.

The plaintiff/appellants have come up in appeal aggrieved by the judgments and decrees of the Courts below directing a suit for declaration and issuance of permanent preventive injunction to be dismissed as premature.

There is a temple situated at Datia adorned by the idol of Lord Hanumanji. Proceedings for registration of the temple as public trust have been initiated by the Registrar of Public Trusts, Datia, registered as 1/113-B/74-75. The proceedings have just been commenced and are yet pending. The plaintiffs filed a suit alleging that the temple and the building constituting the temple were all private properties of the plaintiffs and hence the Registrar of Public Trusts did not have jurisdiction either to register it as public trust or to interfere with the management thereof. In the written statement all the material plaint averments were denied and it was also submitted that the suit was premature. The plea of the defendant has prevailed with the Courts below.

Vide order dated 7-10-1983, this Court admitted the appeal for hearing parties on the following substantial questions of law :

(1) Whether Registrar, Public Trusts has jurisdiction to decide the questions as to whether the property belongs to a private individual and is not the subject matter of any trust at all?

(2) Whether a person who opposes the existence of trust, can file objections before the Registrar u/s 5 of the Act?

(3) Whether a person who disputes the existence of trust or particular property, belongs to the Trust, can institute suit u/s 8 of the M.P. Public Trusts Act?

(4) Whether under the facts and circumstances of the case, the suit of the appellants is premature?

It is not disputed that the plaintiffs are the objectors before the Registrar of Public Trusts.

It would be necessary to examine the scheme of Madhya Pradesh Public Trusts Act, 1951, whereunder the Registrar is proceeding. Section 4 provides for compulsory registration of all public trusts. The inquiry for registration in proceedings initiated on an application or suo motu by the Registrar contemplates an inquiry being made on the following points, inter alia :

(i) whether trust is a public trust;

(ii) whether any property is the property of the trust. (See Section 5)

The inquiry is to be conducted after public notice affording an opportunity of hearing to all the persons interested and objectors. On completion of the inquiry, findings with reasons must be recorded by the Registrar on all the points referred to in Section 5. Section 8 provides :

"8. Civil suit against the finding of the Registrar. -- (1) Any working trustee or person having interest in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar u/s 6 may, within six months, from the date of the publication of the notice under Sub-section (1) of Section 7, institute a suit in a civil Court to have such finding set aside or modified.

(2) In every such suit, the civil Court shall give notice to the State Government through the Registrar, and the State Government if it so desires, shall be made a party to the suit.

(3) On the final decision of the suit, the Registrar, shall, if necessary, correct the entries made in the register in accordance with such decision."

It is thus clear that whether the trust is a public trust and whether any property is the property of the public trust are subject-matters of inquiry before a statutory authority. That authority does have exclusive jurisdiction, though summary in nature, to adjudicate upon the points contemplated by Section 5 of the Act. It is only when findings have been recorded by the Registrar anyone aggrieved has the remedy of instituting a civil suit u/s 8 of the Act.

A Full Bench of the Allahabad High Court in Fateh Singh and Others Vs. Gopal Narain Singh and Others held :

"Where a suit is filed before a Civil court for a declaration the effect of which, if granted, would be to affect the decision of a revenue Court in a pending suit within the exclusive jurisdiction of that Court the proper course for the civil Court to adopt is to refuse the declaration asked for on the ground that such relief, if granted, would be nugatory."

So also a Civil Court would not ordinarily issue an injunction which would have the effect of stalling statutory proceedings before a statutory authority. It is only in case of patent defect of jurisdiction or where an authority is proceeding to usurp jurisdiction with which it is not legally vested, the Court may intercept during the pendency of the proceedings and injunct the authority from exercising such jurisdiction as it does not possess.

In Mahant Ramlaladas v. Registrar of Public Trusts 1962 MPLJ SN 41 a Division Bench of this Court held :

"It is clear from the provisions of Sections 5, 6 and 7 of the Act read together that the Registrar has to make an enquiry about all the matters mentioned in Sub-section (v) of Section 5 and to record his findings with reasons therefore on all these matters. Thereafter he has to cause entries to be made in the Register in accordance with the findings recorded by him and he must also publish on the notice, board of his office the entries so made. These requirements are mandatory because when they are fully complied with, an aggrieved party can seek his remedy of a suit u/s 8 of the Act"

The learned counsel for the plaintiff/appellants has placed reliance on a Supreme Court decision in Abdul Karim Khan and Ors. v. Municipal Committee, Raipur 1966 MPLJ 58 wherein their Lordships have held :

"The summary enquiry which Section 5 of the Madhya Pradesh Public Trusts Act contemplates is an enquiry into the question as to whether the trust is public or private. It does not take into its sweep question as to whether the property belongs to a private individual and is not the subject-matter of any trust at all. Contested questions of title do not fall within such enquiry. The only persons who are required to file objection in response to a notice are persons interested in the public trust, not those who dispute the existence of the trust or that a particular property belongs to the trust. Only objections of beneficiaries or others who claim a right to manage the trust can file objections and these objections of a limited class are to be considered by the Registrar. The interest to which Section 8(1) refers must be read in the light of Section 5(2) to be the interest of a beneficiary or of a person who claims the right to maintain the trust or any interest of a similar character; it is not the interest which is adverse to the trust set up by a party who does not claim any relation with the trust at all. A person who was not a party to the proceeding cannot be said to be aggrieved by the decision of the Registrar. He would not be found to file a civil suit as provided by

Section 8 if the property in which he claims exclusive title is held by the Registrar to belong to a public trust. Like Section 8, Section 4(5) is also confined in its operation to persons who could have appeared before the Registrar u/s 5(2)."

The case is clearly distinguishable and does not have applicability to the facts of the case at hand; firstly, the appellants are objectors before the Registrar of Public Trusts and participating in the proceedings before him; and secondly, the plaintiffs cannot say that they are third parties. They are claiming the very same temple to be their private property which is sought to be registered as public trust.

If the plaintiffs Succeed in satisfying the Registrar of Public Trusts that the trust is not a public trust and does not need to be registered or that the temple along with the building constituting it is the private property of the plaintiff, that would be an end of the matter. There would be no occasion arising for filing any Civil suit. The plaintiffs must await the findings of the Registrar. The Courts below did not err in holding the suit to be premature and in declining the relief of declaration and issuance of permanent preventive injunction in the facts and circumstances of the case.

The only grievance raised by the learned counsel for the plaintiff/appellants which merits consideration is that in the event of holding the suit to be premature and dismissing it on that ground, the trial Court ought not to have recorded findings on other issues as they would pre-empt the findings of the Registrar and would further prejudice the plaintiffs in the suit to be filed after the findings of the Registrar, if only an. occasion might arise.

For the foregoing reasons, the appeal is partly allowed. Though the finding of the Courts below holding the suit to be premature and dismissing it on that ground is maintained, all other findings recorded by the Courts below on any question other than maintainability of the suit are set aside. The appeal stands allowed to that extent. No order as to the costs. Counsel fee as per schedule, if certified.